

OFFICE BUILDING LEASE

between

COUNTY OF SAN MATEO,  
as Landlord

and

STARBURST I, INC.,  
as Tenant

For the lease of

One Circle Star Way  
San Carlos, California

April 1, 2013

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**LIST OF EXHIBITS:**

- EXHIBIT A-1 and A-2 -- Plot Plans [Section 2.1]
- EXHIBIT B -- Intentionally Omitted
- EXHIBIT C -- Work Letter [Section 6.1(a)]
- EXHIBIT D -- Campus Rules and Regulations [Section 22]
- EXHIBIT E -- Exclusions from Expenses [Section 26.2(a)(i)]
- EXHIBIT F -- Form of Guarantee [Section 26.3]
- EXHIBIT G -- Building and Campus Repairs [Section 2.2]

## OFFICE LEASE

THIS OFFICE LEASE (this "Lease"), dated for reference purposes only as of March 12, 2013, is between the COUNTY OF SAN MATEO, a political subdivision of the State of California ( "Landlord"), and STARBURST I, INC., a corporation organized under the laws of the State of Delaware and registered to conduct business in the State of California ("Tenant").

Landlord and Tenant hereby covenant and agree as follows:=-

### **1. BASIC LEASE INFORMATION**

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	March 12, 2013
Landlord:	COUNTY OF SAN MATEO, a political subdivision of the State of California
Tenant:	STARBURST I, INC. a corporation organized under the laws of the State of Delaware (and permitted successors and assigns)
Campus (Section 2.1):	The property consists of County Assessor's Parcel Numbers: 046-240-180 and 052-103-170, together with the improvements thereon, commonly known as Circle Star Plaza, more particularly shown on the attached <u>Exhibit A-1</u> ,
Building and Premises (Section 2.1):	The premises consist of the entire office building located at One Circle Star Way, San Carlos (the "Building"), more particularly shown on the attached <u>Exhibit A-2</u> , together with the non-exclusive use of the parking and common areas of the Campus (the "Premises").
Rentable Area of Premises (Section 2.1):	Approximately 103,948 rentable square feet
Term (Section 3.1):	Commencement date: April 1, 2013  Expiration date: June 30, 2019 ("Expiration Date")



Base Rent (Section 4.1):

Base rent for the initial term shall be as set forth in the table below:

Period	SF	Rent/SF/ NNN	Rent Monthly
Yr. 1	103,948	\$2.25	\$233,833.00
Yr. 2	103,948	\$2.32	\$241,159.36
Yr. 3	103,948	\$2.39	\$248,435.72
Yr. 4	103,948	\$2.46	\$255,712.08
Yr. 5	103,948	\$2.53	\$262,988.44
Yr. 6	103,948	\$2.61	\$271,304.28
Mo. 73-75	103,948	\$2.69	\$279,620.12

Base Rent during any extended term shall be as set forth in Section 24.

Rent Credit(Section 4.1):

On the Commencement Date, Tenant shall receive a Base Rent Credit equal to the sum of the first 9 months rent for the entire Premises, except that for months 8 and 9 of the Term, the credit shall not apply to 25,000 square feet and Tenant shall pay rent on such 25,000 square feet.

Use (Section 5.1):

Tenant will occupy and use the Premises for general office use, research and development, laboratory and other operations incident to the conduct of Tenant's business.

Tenant Improvements (Section 6.1):

Landlord shall provide Tenant with an allowance of \$25.00 per rentable sq. ft., to be utilized by Tenant for its interior improvements to the Premises.

Utilities and Services (Section 10.1):

Tenant shall pay for utilities and services related to its use of the Premises.

Security Deposit (Section 23):

None.

Tenant's Percentage Share of Operating Expenses (Sections 4.1(b) and 26.2):

Tenant's Percentage Share of the Building shall be 100%, including all costs directly associated with its use of the Common Areas and Campus. Tenant's Percentage share of the Common Areas of the Campus shall be 50%.



Notice Address of Landlord (Section 27.1):

County Manager  
400 County Center  
Redwood City, California 94063  
Attn: Real Property Services  
Fax No.: (650) 363-4832

with a copy to:

Office of County Counsel  
400 County Center, 6<sup>th</sup> Floor  
Redwood City, California 94063  
Fax No.: (650) 363-4034

Key Contact for Landlord:

Margaret "Peggy" Jensen,  
Deputy County Manager

Telephone No.:

(650) 363-4598

Alternate Contact for Landlord:

David Holland, Assistant County Manager

Telephone No.:

(650) 363-4131

Address for Tenant (Section 27.1):

Softbank Capital  
38 Glen Avenue  
Newton, Ma. 02459  
Fax No.: (617) 928-9304

Key Contact for Tenant:

Josh Lubov

Telephone No.:

(617) 928-9300

Alternate Contact for Tenant:

Ron Fisher

Telephone No.:

(617) 928-9300

Brokers (Section 27.8):

Cornish & Carey Commercial, Newmark  
Knight Frank

Other Noteworthy Provisions:

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## **2. PREMISES**

### **2.1. Lease Premises**

Subject to the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord those premises identified in the Basic Lease Information (the "Building") and shown on the plot plan(s) attached hereto as Exhibit A-2 (the "Premises"). The rentable area of the Building specified in the Basic Lease Information shall be conclusive for all purposes hereof. The Building, land upon which the Building is located and all other improvements on and appurtenances to such land, including the parking structure and the building identified as Two Circle Star Way, are referred to collectively as the "Campus" or "Property", and are shown on Exhibit A-1. Tenant shall have the non-exclusive right, together with other tenants on the Campus, of access to and from the Campus by the main entrances thereto. Tenant shall have the use of its pro-rata share of the parking throughout the lease term and any extension thereof.

### **2.2. Premises Condition**

EXCLUSIVE OF ITEMS AND WORK THAT ARE PART OF THE TENANT IMPROVEMENTS, LANDLORD SHALL DELIVER THE PREMISES TO TENANT WITH THE BUILDING SYSTEMS IN GOOD WORKING CONDITION, INCLUDING BUT NOT LIMITED TO, THE ROOF, THE BUILDING ELEVATORS, THE GARAGE ELEVATOR, HVAC, ELECTRICAL, PLUMBING AND LIGHTING. FOR PURPOSES OF THIS PROVISION "GOOD WORKING CONDITION" MEANS THAT THE CONDITION OF THE BUILDING STRUCTURE AND BUILDING SYSTEMS WILL ALLOW THE BUILDING TO BE OCCUPIED BY TENANT AND NOT IMPAIR TENANT'S ABILITY TO CONSTRUCT ITS TENANT IMPROVEMENTS (IT BEING UNDERSTOOD THAT LANDLORD WILL BE UNDERTAKING WORK TO REPAIR OR UPGRADE PORTIONS AND ASPECTS OF THE BUILDING SYSTEMS DURING THE EARLY MONTHS OF THIS LEASE). WHEN SUCH WORK BY LANDLORD IS COMPLETED, THE PARTIES SHALL EXECUTE AN ACKNOWLEDGEMENT TO THAT EFFECT. THE BUILDING AND CAMPUS REPAIR WORK TO BE PERFORMED BY LANDLORD SHALL BE AS SET FORTH IN EXHIBIT G.

TENANT ACKNOWLEDGES AND AGREES THAT, EXCEPT AS STATED IN THE FOREGOING SENTENCE, THE PREMISES ARE BEING LEASED AND ACCEPTED IN THEIR "AS IS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES GOVERNING THEIR USE, OCCUPANCY AND POSSESSION. TENANT REPRESENTS AND WARRANTS TO LANDLORD THAT TENANT HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF TENANT'S OWN CHOOSING, THE CONDITION OF THE PREMISES, LANDLORD'S INTENDED WORK TO REPAIR AND UPGRADE THE BUILDING, AND THE SUITABILITY OF THE PREMISES FOR TENANT'S INTENDED USE. TENANT HAS DETERMINED, BASED SOLELY ON ITS OWN INVESTIGATION, THAT THE PREMISES ARE SUITABLE FOR TENANT'S BUSINESS AND INTENDED USE. TENANT ACKNOWLEDGES AND AGREES THAT, EXCEPT AS MAY BE SPECIFIED IN THE FIRST PARAGRAPH OF THIS SECTION 2.2 ABOVE AND SECTION 25.3 BELOW ("DELIVERY CONDITION"),



NEITHER LANDLORD NOR ANY OF ITS AGENTS HAVE MADE, AND LANDLORD HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR TENANT'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

TENANT ACKNOWLEDGES RECEIPT OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS DATED JUNE 24, 1997, BETWEEN MOZAD, L.P. AND HOMESTEAD VILLAGE INCORPORATED (#97-076680); (2) THE GRANT OF SIGN EASEMENTS AND RIGHTS DATED APRIL 19, 2000, BETWEEN 2500 WLB., INC AND LANDMARK SCREENS, LLC (#2001-206131); AND (3) THE AMENDED AND RESTATED GRANT OF SIGN EASEMENTS AND RIGHTS DATED APRIL 19, 2000, BETWEEN MOZAD, L.P. AND 2500 W.L.B., INC (#2000-044838), WHICH GOVERN THE USE OF THE CAMPUS, BUILDING AND PREMISES.

### **3. TERM**

#### **3.1. Lease Term**

The Premises are leased for a term (the "Term") commencing on the date specified in the Basic Lease Information as the commencement date (the "Commencement Date"), subject to the provisions of Section 3.2 (Delay in Delivery of Possession), below. The Term of this Lease shall end on the expiration date specified in the Basic Lease Information, unless sooner terminated or otherwise extended pursuant to the provisions of this Lease. This Lease is subject to the Extension Option(s) set forth in Section 26.1 (Option to Extend Term). Landlord shall deliver the Premises to Tenant on the Commencement Date.

#### **3.2. Delay in Delivery of Possession**

If Landlord is unable to deliver possession of the Premises to Tenant on or before the Commencement Date in the Delivery Condition, then the validity of this Lease shall not be affected thereby and Landlord shall not be liable to Tenant for any Claims (as defined in Section 18 below) resulting therefrom, and Tenant waives all provisions of any laws to the contrary. In such case the payments of Base Rent and Additional Charges shall be adjusted accordingly as if the Commencement Date were the date that the Landlord actually delivers possession of the Premises. If the Term commences later than the anticipated April 1, 2013 Commencement Date, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated or otherwise extended, pursuant to the provisions hereof.

#### **3.3. Early Entry Permit**

Upon final execution of this Lease by the Parties, Tenant shall have the right to enter the Premises prior to the Commencement Date in order to initiate the preparations and demolition required for the construction of the Tenant Improvements and then to start construction of the Tenant Improvements. Tenant's entry on and use of the Premises prior to the Commencement

Date shall be governed and controlled by the terms and conditions of the Lease, except as follows: i) Tenant has no obligation to pay Rent prior to the Commencement Date; and ii) Tenant shall cooperate with Landlord and not impair Landlord's ability to undertake and complete its work as described in Exhibit G.

#### **4. RENT**

##### **4.1. Base Rent**

Throughout the Term beginning on the Commencement Date, Tenant shall pay to Landlord the annual Base Rent specified in the Basic Lease Information, provided that such sum shall be subject to escalations as set forth in Section 4.2 (the "Base Rent"). Unless otherwise specifically provided, the Base Rent shall be paid to Landlord in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever, in equal consecutive monthly payments on or before the first day of the Term and on or before the first day of each month thereafter. All sums payable by Tenant to Landlord hereunder shall be paid in cash or by good check to the Landlord and delivered to Landlord's notice address as specified in the Basic Lease Information, or such other place as Landlord may designate in writing. If Tenant pays by check and such check is not honored, then Landlord may require Tenant to make all future payments in cash, or by cashier's check, or by wire transfer, or by ACH Deposit. If the Commencement Date occurs on a day other than the first day of a calendar month, or the Expiration Date occurs on a day other than the last day of a calendar month, then the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

The parties intend for the Tenant to have access to and use of the Premises for a period during the construction of the Tenant Improvements, with an obligation to pay Base Rent, but that Tenant receive from Landlord a credit for such rent as if Tenant had made the Base Rent payment for the entire period from April 1, 2013 through December 31, 2013 on the Commencement Date, less the payments required under subsection (a) below. Upon execution of the Lease, Tenant shall prepay rent for January of 2014. Thereafter Base Rent, which is not otherwise credited as noted above, shall be payable as follows:

(a) Base Rent for the initial floor shall begin to be payable on November 1, 2013 and shall be calculated based on a leasable area of 25,000 square feet. Base Rent for the entirety of the Premises shall begin January 1, 2014.

(b) Additional Charges, in the amount equal to Operating Expenses, as both are hereinafter defined, shall begin to be payable for the initial floor on April 1, 2013; and for the entirety of the Premises on August 1, 2013.

##### **4.2. Adjustments in Base Rent**

On each anniversary of the Commencement Date, (an "Adjustment Date"), the Base Rent payable under this Lease shall be adjusted as shown in the Basic Lease Information. For any Extended Term, rent and any adjustments thereto, shall be the amount agreed to pursuant to Section 26.1.



#### **4.3.Additional Charges**

Tenant shall pay to Landlord any and all charges and other amounts required under this Lease as additional rent (collectively, "Additional Charges"). All such Additional Charges shall be payable to Landlord at the same place and the same manner as the Base Rent is payable. Landlord shall have the same remedies for an Event of Default in the payment of any Additional Charges as for an Event of Default in the payment of Base Rent. As used in this Lease, the term "Rent" shall include the Base Rent, Additional Charges and any other amounts Tenant is obligated to pay hereunder, whether or not any such amounts are specifically characterized as rent.

#### **4.4.Late Charges**

If Tenant fails to pay any Rent or any portion of Rent within three (3) days following the date tenant receives a notice from Landlord or Landlord's Property Manager that such Rent was not paid on the due date, such unpaid amount shall be subject to a late payment charge equal to five percent (5%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Landlord and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Landlord will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Landlord for its damages resulting from such failure to pay and shall be paid to Landlord together with such unpaid amount.

#### **4.5.Default Interest**

Any Rent, if not paid within three (3) days following the date tenant receives a notice from Landlord or Landlord's Property Manager that such Rent was not paid on the due date, shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under law (the "Interest Rate"). However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

### **5. USE**

#### **5.1.Permitted Use**

Tenant will occupy and use the Premises for general office use, research and development, laboratory and other operations incident to the conduct of Tenant's business.

#### **5.2.No Unlawful Uses, Nuisances or Waste**

Without limiting the foregoing, Tenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or in violation of any applicable recorded covenant, condition, or restriction, or any applicable governmental permit or permit requirement, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Tenant shall take all precautions to eliminate any nuisances or hazards relating to its



activities on or about the Premises. Tenant shall not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises, Building or on or about the Property, except identification signs in a location and size and design approved by Landlord in its sole discretion, or as otherwise provided in this Lease.

### **5.3. Signage**

Landlord agrees that, subject to the prior reasonable review and approval by Landlord, and compliance with all applicable governmental requirements and any signage criteria in any covenants, conditions, and restrictions recorded prior to the date of this Lease, Tenant shall have exclusive right to all building signage (including any permitted use of the Building top) at One Circle Star Way, and shall have its pro-rata share of the monument signage for the Property. Any and all signage may be transferred by Tenant to an affiliated company, or approved assignee, or sublessee assuming such affiliate, assignee or sublessee occupies a minimum of 50% of the Building.

## **6. TENANT IMPROVEMENTS**

### **6.1. Tenant Improvement Work**

(a) Tenant shall plan, construct and install its improvements in and to the Premises ("Tenant Improvements" or "Tenant Improvement Work" in accordance with the Work Letter attached hereto as Exhibit C. No Tenant Improvement Work shall commence in the Premises unless and until this Lease is fully executed. Tenant shall not make any material change to the approved Plans or consent to any change order during the course of construction without first obtaining Landlord's written approval, which approval may only be withheld to the extent that a Design Problem exists. No approval by Landlord or any of its Agents of the Plans, any changes thereto or of any Alterations for purposes of this Lease shall be deemed to constitute approval of any federal, state or local regulatory authority with jurisdiction over the Premises or Tenant's use hereunder, and nothing herein shall limit Tenant's obligation to obtain all such regulatory approvals at no cost to the Landlord. Provided, however, Landlord shall be responsible for all costs associated with code compliance outside the Building that are triggered by Tenant's Improvements to the interior of the Building.

(b) Subject to Landlord's review and approval of Tenant's plans, and to applicable municipal review and approval, Tenant shall have access to the Building's roof to install, operate and maintain mechanical and electrical equipment and satellite or wireless communications during the Term of this Lease, or as the Term may be extended.

(c) Solely in its capacity as Landlord, and subject to its review and approval of Tenant's final plans with regard thereto, which approval may only be withheld to the extent that a Design Problem exists, Landlord agrees to allow Tenant to construct and use a rooftop garden area and rooftop deck and a stairwell from the 4th floor to the rooftop deck.

(d) Notwithstanding the foregoing, and as set forth in Section 24, below, Landlord shall maintain restoration rights on the rooftop deck and/or stairwells to the rooftop deck as well as any non-standard office Tenant Improvements.

(e) Notwithstanding the foregoing provisions of this Section 6.1, and in addition to such provisions, all Tenant Improvements are subject to the terms and conditions specified in Exhibit

C. In the event of a conflict between the terms and conditions of the foregoing provisions of this Section 6.1 and the provisions of Exhibit C, the provisions of Exhibit C shall control.

(f) All Tenant Improvements and any Tenant Alterations shall be accomplished in accordance and compliance with the laws governing "public works" and the payment of prevailing wages, including California Labor Code §1720, et seq, as more particularly described in Exhibit C hereto.

(g) Tenant shall not construct any Tenant Improvement or Tenant Alterations that would (i) have an adverse effect on the Building Structure, (ii) have an adverse effect on the Building Systems, or (iii) not comply with Applicable Laws.

(h) A Design Problem is defined as and will only exist to the extent the Tenant Improvements or Tenant Alterations would (i) have an adverse effect on the Building Structure, (ii) have an adverse effect on the Building Systems, or (iii) not comply with Applicable Laws.

## **6.2.Tenant Improvement Allowance**

Landlord shall provide Tenant with an allowance of \$25.00 per rentable sq. ft.(i.e., \$2,598,700, based on 103,948 sq. ft.), to be utilized by Tenant for its interior improvements to the Building. This Tenant Improvement allowance ("TIA") shall be used and disbursed as set forth in Exhibit C.

## **7. ALTERATIONS**

### **7.1.Tenant's Alterations**

Tenant shall not make or permit any alterations to the Building or to the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, communications systems of the Building ("Building Systems"), and shall not make or permit any alterations, installations, additions or improvements, structural or otherwise (collectively, "Alterations"), in, to or about the Premises, without Landlord's prior written consent in each instance, which consent may only be withheld to the extent that a Design Problem exists. All Alterations shall be done at Tenant's expense in accordance with plans and specifications approved by Landlord, only by duly licensed and bonded contractors or mechanics approved by Landlord, and subject to any conditions that Landlord may reasonably impose. If the cost of any Alterations is in excess of Twenty Five Thousand Dollars (\$25,000), then, to compensate Landlord for its efforts, Tenant shall pay to Landlord a fee equal to Landlord's total "Hard Costs" in connection with the Landlord's review of the proposed work. Landlord's Hard Costs include the out-of-pocket costs and expenses reasonably incurred by Landlord, including fees paid to its Property Manager and monies paid for and to consultants and professional reviewers and advisors. This payment to Landlord by Tenant is described as a Coordination Fee in section 4.2.3 of Exhibit C (Work Letter Agreement).

### **7.2.Title to Improvements**

Except for Tenant's Personal Property (as described in the next section), or as may be specifically provided to the contrary in the approved Plans, all appurtenances, fixtures, improvements, equipment, additions, and other property attached or affixed to or installed in the



Premises at the Commencement Date or during the Term, including, without limitation, the Tenant Improvements and any Alterations, shall become Landlord's property at the end of the Lease Term unless and to the extent Tenant removes same and repairs any damage to the Premises caused by such removal. Tenant may be required to remove any such property at the termination of the Lease as Landlord may request as further provided in Section 24 (Surrender), below.

### **7.3.Tenant's Personal Property**

All furniture, trade fixtures, office equipment and articles of movable personal property installed in the Premises by or for the account of Tenant, without expense to Landlord, and that can be removed without structural or other damage to the Premises (collectively, "Tenant's Personal Property") shall be and remain Tenant's property. Tenant may remove its Personal Property at any time during the Term, subject to the provisions of Section 24 (Surrender of Premises), below. Tenant shall pay any taxes or other impositions levied or assessed upon Tenant's Personal Property, at least ten (10) days prior to delinquency, and shall deliver satisfactory evidence of such payment to Landlord within ten (10) business days of a request.

### **7.4.Landlord's Alterations to the Campus**

Landlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the Campus provided that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the uses permitted hereunder.

## **8. REPAIRS AND MAINTENANCE**

### **8.1.Landlord's Repairs**

Subject to reimbursement as an operating expense, Landlord shall repair and maintain the Common Areas and the portions of the Campus other than the Premises. Tenant shall reimburse Landlord for any damage to the Common Areas, excluding normal wear and tear, caused by any act or omission of Tenant, its Agents or Invitees (as such terms are defined in Section 27.5), except to the extent that such damage is covered by the Section 19.4 Waiver or Subrogation and the repair thereof is paid for by Tenant's insurer. For the purpose of making any such repairs, Landlord may use structures in the Campus where reasonably required by the character of the work to be performed, provided that such work shall not block the main entrance to the Premises nor unreasonably interfere with Tenant's business. Tenant waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned thereby, except as covered by Section 8.4.

### **8.2.Tenant's Maintenance and Repairs**

Tenant shall maintain, at no expense to Landlord, the Premises (including, without limitation, the floors, interior plumbing, elevators, electrical wiring, fixtures and equipment) in good repair and working order and in a clean, secure, safe and sanitary condition. Tenant shall promptly make all repairs and replacements: (a) at no cost to the Landlord, (b) by licensed



contractors or qualified mechanics approved by Landlord, (c) so that the same shall be at least equal in quality, value and utility to the original work or installation, (d) in a manner and using equipment and materials that will not interfere with or impair the operations, use or occupation of the Building or the Building Systems, and (e) in accordance with any applicable Rules and Regulations (as defined in Section 23.1 (Rules and Regulations) and all applicable laws, rules and regulations. If the cost of any such repairs or replacements is in excess of Twenty Five Thousand Dollars (\$25,000) and is due to acts or omissions of Tenant, its Agents or Invitees, then Tenant shall pay to Landlord an administrative fee equal to Landlord's total "hard" costs in connection with Landlord's review of the work. Tenant hereby waives all rights to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.

### **8.3. Property Management Services**

So long as Landlord identifies and provides a Property Manager, Tenant shall utilize said Property Manager to meet Tenant's obligations regarding utilities, maintenance and repair of the Premises. Tenant agrees that as part of Additional Rent and Operating Expenses, Tenant shall pay to Landlord its apportioned share of the Landlord's costs for such Property Management Services; provided however, in no event will Tenant be required to pay more than 3% of Base Rent as its apportioned share of such Property Management costs.

### **8.4. Tenant's Right to Make Repairs**

Notwithstanding any of the terms set forth in this Lease to the contrary, if Tenant provides Notice (or oral notice in the event of an "Emergency", as that term is defined, below) to Landlord of an event or circumstance which requires the action of Landlord with respect to repair and/or maintenance required on any full floor of the Building leased by Tenant, including repairs to the Building Structure and/or Building System located on such floor, which event or circumstance with respect to the Building Structure or Building System materially or adversely affects the conduct of Tenant's business from the Premises, and Landlord fails to commence corrective action within a reasonable period of time, given the circumstances, after the receipt of such Notice, but in any event not later than thirty (30) days after receipt of such Notice, then Tenant may proceed to take the required action upon delivery of an additional ten (10) business days' Notice to Landlord specifying that Tenant is taking such required action (provided, however, that the initial thirty (30) day Notice and the subsequent ten (10) day Notice shall not be required in the event of an Emergency) and if such action was required under the terms of this Lease to be taken by Landlord and was not commenced by Landlord within such ten (10) business day period and thereafter diligently pursued to completion, then Tenant shall be entitled to prompt reimbursement by Landlord of Tenant's reasonable costs and expenses in taking such action. In the event Tenant takes such action, Tenant shall use only those contractors used by Landlord in the Building for work unless such contractors are unwilling or unable to perform, or timely perform, such work, in which event Tenant may utilize the services of any other qualified contractor which normally and regularly performs similar work in Comparable Buildings. Following completion of any work taken by Tenant pursuant to the terms of this Section 8.4, Tenant shall deliver a detailed invoice of the work completed, the materials used and the costs relating thereto. If Landlord does not deliver a detailed written objection to Tenant within thirty (30) days after receipt of an invoice from Tenant, then Tenant shall be entitled to deduct from

Rent payable by Tenant under this Lease, the amount set forth in such invoice. If, however, Landlord delivers to Tenant, within thirty (30) days after receipt of Tenant's invoice, a written objection to the payment of such invoice, setting forth with reasonable particularity Landlord's reasons for its claim that such action did not have to be taken by Landlord pursuant to the terms of this Lease or that the charges are excessive (in which case Landlord shall pay the amount it contends would not have been excessive), then Tenant shall not then be entitled to such deduction from Rent. Provided, however, Tenant may institute the appropriate legal proceeding to collect from Landlord the amount expended by Tenant to make the repairs, with interest thereon at the Interest Rate, to the extent that Landlord was required to make such repairs, but did not make such repairs, and that Tenant's repair costs were fair and reasonable and Landlord did not pay such amounts to Tenant. For purposes of this Section 8.4, an "Emergency" shall mean an event threatening immediate and material danger to people located in the Building or immediate, material damage to the Building, Building Systems, Building Structure, Tenant Improvements, or Alterations, or creates a realistic possibility of an immediate and material interference with, or immediate and material interruption of a material aspect of Tenant's business operations.

## **9. LIENS AND ENCUMBRANCES**

### **9.1.Liens**

If any lien claims arise out of any work performed, material furnished or obligations incurred by or for Tenant and in the event Tenant does not, within five (5) days following the claim of any such lien, cause the lien claim to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies, the right, but not the obligation, to cause the lien to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Landlord by Tenant upon demand. Landlord shall have the right to post on the Premises any notices that Landlord may deem proper for the protection of Landlord, the Premises, and the Building, from mechanics' and materialmen's liens. Tenant shall give to Landlord at least eleven (11) business days' prior written notice of commencement of any Alteration, repair or construction on the Premises. Tenant agrees to indemnify, defend and hold Landlord and its Agents harmless from and against any claims for mechanic's, materialmen's or other liens in connection with any improvements, alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

### **9.2.Encumbrances**

Subject to Section 9.1 above, Tenant shall not create, permit or suffer any liens or encumbrances affecting any portion of the Premises, the Property or Landlord's interest therein or under this Lease.



## **10. UTILITIES AND SERVICES**

### **10.1. Utilities and Services**

During the Term, Tenant shall pay, before delinquency, all charges or assessments for telephone, water, sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other utilities and services of any kind that may be used on the Premises. Tenant shall cooperate and coordinate with Landlord's Property Manager to assure that billings and payments for utilities and services are directed to the appropriate party and timely paid.

### **10.2. Water and Energy Conservation; Mandatory or Voluntary Restrictions**

In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on Landlord or the Property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event Landlord is required or elects to make alterations to any part of the Building in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Rent and Additional Charges reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant.

### **10.3. Interruption of Services**

In the event of an interruption in, or failure or inability of any service or utility to be provided to the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon Landlord any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Legal Requirement permitting the termination of this Lease due to such interruption, failure or inability.

## **11. COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS**

### **11.1. Compliance with Laws**

Tenant shall promptly comply, at no cost to the Landlord, with all present or future laws, ordinance, resolution, regulation, requirement, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority relating to the Premises or the use or occupancy thereof (the "Legal Requirements") and with any and all recorded covenants, easements, conditions and restrictions affecting the Property or any portion thereof, whether in effect at the time of the execution of this Lease or adopted or recorded at any time thereafter and whether or not within the present contemplation of the parties. Tenant further understands and agrees that it is Tenant's obligation, at no cost to the Landlord, to cause the Premises and Tenant's uses thereof to be conducted in compliance with the Americans With Disabilities Act, 42 U.S.C.A. §§ 12101 et seq. Any Alteration made by or on behalf of Tenant pursuant to the provisions of this Section shall comply with the provisions of Section 8.2

(Tenant's Repairs), above. The parties acknowledge and agree that Tenant's obligation to comply with all Legal Requirements as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises (including any of the Tenant Improvements or any of Tenant's Alterations), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Landlord, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Legal Requirement involved, and whether the Legal Requirement involved is related to Tenant's particular use of the Premises.

#### **11.2. Regulatory Approvals**

##### **(a) Responsible Party**

Tenant understands and agrees that Tenant's use of the Premises and construction of the Tenant Improvements permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises, including, without limitation, County agencies. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of Landlord under this Lease. Tenant shall bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Property or Landlord's interest therein must first be approved by Landlord in its sole discretion. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and Landlord shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify Landlord and the other Indemnified Parties (as defined below) hereunder against all Claims (as defined below) arising in connection with Tenant's failure to obtain or failure by Tenant, its Agents or Invitees to comply with the terms and conditions of any regulatory approval.

##### **(b) Landlord Acting as Owner of Real Property**

Tenant further understands and agrees that Landlord is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from County officials, departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, Landlord is in no way modifying or limiting Tenant's obligation to cause the Premises to be used and occupied in accordance with all applicable laws, as provided further above. As the Owner of the Real Property and the party entitled to receive Rent hereunder, the Landlord agrees to credit Tenant for its costs associated with construction permits issued by the Landlord and shall use its best efforts to expedite the municipal approval process.



### **11.3. Compliance with Landlord's Risk Management Requirements**

Tenant shall not do anything, or permit anything to be done, in or about the Premises which would be prohibited by or increase rates under a standard form fire insurance policy or subject Landlord to potential premises liability. Tenant shall faithfully observe, at no cost to the Landlord, any and all requirements of Landlord's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of the Premises or are otherwise connected with standard prudent commercial practices of other landlords.

## **12. SUBORDINATION**

Currently no part of the Premises or the Property stands as security for any loans. Should the Landlord wish to use the Property to secure a loan, before doing so Landlord shall deliver to Tenant a Subordination/Non-Disturbance Agreement ("SNDA") from any existing or future mortgage holder(s), ground lessor(s) or lien holder(s) as a condition precedent to any such subordination and, upon Landlord's request, Tenant, or Tenant's successor-in-interest, shall execute and deliver any and all instruments desired by Landlord evidencing such subordination in the manner requested by Landlord. Landlord represents to Tenant that as of the date this Lease is executed, there exists no loan or ground lease encumbering the Building.

## **13. INABILITY TO PERFORM**

No actual or constructive eviction, in whole or in part, shall entitle Tenant to any abatement or diminution of Rent or relieve Tenant from any of its obligations under this Lease. If Landlord is unable to perform or is delayed in performing any of Landlord's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond Landlord's reasonable control, no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon Landlord or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby. Tenant hereby waives and releases any right to terminate this Lease under Section 1932, subdivision 1 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect.

## **14. DAMAGE AND DESTRUCTION**

### **14.1. Damage and Destruction**

(a) If the Building or other improvements constructed on the Premises by Landlord are damaged or destroyed, whether partially or entirely, by any cause, Landlord, at Landlord's own cost and expense, shall repair, restore, or reconstruct the damaged or destroyed building and other improvements constructed by Landlord so that the condition and quality of the new building and other Landlord improvements shall be as near as reasonably possible to the condition and quality immediately prior to the damage or destruction. Damage to or destruction of any portion of the Building, fixtures, or other improvements on the Premises by fire, the elements, or any other cause shall not terminate this Lease or entitle Tenant to surrender the

Premises or otherwise affect the respective obligations of the parties, any present or future law to the contrary notwithstanding. However, if the building, fixtures, or other improvements on the Premises are totally destroyed or damaged to the extent that the Premises is wholly unsuitable or inadequate for the purposes for which Tenant was using the Premises prior to the destruction or damage, all Base Rent shall abate effective the date of the destruction or damage. Further, if the Building is damaged to the extent that the Premises is partially unsuitable or inadequate for the purposes for which Tenant was using the Premises prior to the damage, the Base Rent otherwise payable by Tenant shall be reduced effective the date of the damage so that the new Base Rent payable shall be an amount equivalent to the proportion of the Base Rent otherwise payable as the total floor area of the building still reasonably suitable for Tenant's use under this Lease bears to the total floor area of the building prior to the damage. Upon the completion by Tenant of a new building and other improvements after completion of the repair, restoration, or reconstruction, all partial or total abatement of rental shall cease and the full rental provided for in this Lease shall again be payable.

(b) If the Premises are damaged or destroyed in whole or in part, and the Lease is not otherwise terminated, Tenant shall proceed with due diligence to have plans and specifications prepared and obtain approval by Landlord, which approval shall not be withheld unless a Design Problem exists, to commence rebuilding, reconstruction, or restoration of its Tenant Improvements as promptly as possible after the occurrence of the event causing the damage or destruction, and thereafter to diligently complete the work.

#### **14.2. Waiver**

Landlord and Tenant intend that the provisions of this Section govern fully in the event of any damage or destruction and accordingly, Landlord and Tenant each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4 and Sections 1941 and 1942, of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect.

### **15. EMINENT DOMAIN**

#### **15.1. Definitions**

(a) "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

(b) "Date of Taking" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

(c) "Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.



## **15.2. General**

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. Landlord and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.10, 1265.40, 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

## **15.3. Total Taking; Automatic Termination**

If there is a total Taking of the Premises, then this Lease shall terminate as of the Date of Taking.

## **15.4. Partial Taking; Election to Terminate.**

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but Landlord is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if Landlord elects to terminate; provided, however, that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) If there is a partial Taking of a substantial portion of the Building but not the Premises, Landlord shall have the right to terminate this Lease in its entirety.

(c) Either party electing to terminate under the provisions of this Section 15 shall do so by giving the other party written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

## **15.5. Rent; Award**

Upon termination of this Lease pursuant to an election under Section 15.4 above, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 15.6 below for any period during which this Lease continues in effect after the Date of Taking, and (ii) Landlord shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.



#### **15.6. Partial Taking; Continuation of Lease**

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 15.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking; provided, however, in no event shall the monthly Base Rent be reduced to less than seventy-five percent (75%) of the monthly Base Rent immediately prior to the Date of Taking, and (b) Landlord shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

#### **15.7. Temporary Takings**

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the Taking, and Landlord shall be entitled to receive the balance of any Award.

### **16. ASSIGNMENT AND SUBLETTING**

#### **16.1. Restriction on Assignment and Subletting**

Except as may be specifically provided in this Lease to the contrary, Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder (collectively, an "Assignment"), or permit or license any portion of the Premises to be used or occupied by anyone other than itself, or sublet any portion of the Premises (collectively, "Sublease"), without Landlord's prior written consent in each instance, which consent shall not be unreasonably withheld. Landlord shall notify Tenant of its decision as to whether such consent is granted or withheld within ten (10) business days of Landlord's receipt of such request. Notwithstanding the foregoing, Tenant may Assign this Lease or Sublet any or all portions of the Premises to any Tenant's Affiliate (as defined below) registered to conduct business in the State of California without obtaining the consent of Landlord by giving Landlord written notice of its intent thereof at least fifteen (15) business days before the proposed effective date of such transfer. As used in this Section, the term "Tenant's Affiliate" shall mean, any of the following: (1) any person or entity owning, directly or indirectly, fifty percent (50%) or more of the ownership interests of Tenant (an "Owning Person"), (2) any

entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by any Owning Person, (3) any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by Tenant, or (4) the Guarantor of this Lease.

#### **16.2. Notice of Proposed Transfer**

If Tenant desires to enter into an Assignment or a Sublease, it shall give written notice (a "Notice of Proposed Transfer") to Landlord of its intention to do so. The Notice of Proposed Transfer shall identify the proposed transferee and state the terms and conditions of the proposed Assignment or Sublease. Tenant shall deliver to Landlord with its request for Landlord's consent the proposed Assignment or Sublease and any documents or information reasonably related to the proposed transaction or Transferee.

#### **16.3. Sublease**

Landlord agrees that Tenant may sublease all or a portion of the Premises to tenants reasonably acceptable to Landlord. Landlord and Tenant shall split any excess sublease rent on a 50%-50% basis, after Tenant first deducts its reasonable subleasing costs, which costs are composed of real estate commissions and attorneys fees, amortized over the term of the sublease. Landlord's share of such excess sublease rent shall be referred to as the "Transfer Premium".

#### **16.4. Effect of Sublease or Assignment**

No Sublease or Assignment by Tenant nor any consent by Landlord thereto shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment not in compliance with this Section shall be void and, at Landlord's option, shall constitute a material default by Tenant under this Lease. The acceptance of any Base Rent or other payments by Landlord from a proposed Transferee shall not constitute consent to such Sublease or Assignment by Landlord or a recognition of any Transferee, or a waiver by Landlord of any failure of Tenant or other transferor to comply with this Section. If there is an Assignment or Sublet, whether in violation of or in compliance with this Section, in the event of default by any Transferee, or any successor of Tenant, in the performance or observance of any of the terms of this Lease or any Sublease or Assignment agreement, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee or successor.

#### **16.5. Assumption by Transferee**

Each Transferee (other than Landlord) shall assume all obligations of Tenant under this Lease (with respect to the Premises space being transferred) and shall be liable jointly and severally with Tenant for the payment of the Base Rent and Additional Charges, and for the performance of all the terms, covenants and conditions to be performed on Tenant's part hereunder. No Assignment shall be binding on Landlord unless Tenant or Transferee has delivered to Landlord a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by such Transferee satisfactory in form and substance to Landlord. However, the failure or refusal of such Transferee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above. Tenant shall reimburse Landlord on demand for any reasonable costs that may be incurred by Landlord in



connection with any proposed Sublease or Assignment, including, without limitation, the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

#### **16.6. Indemnity for Relocation Benefits**

Without limiting Section 16.5 (Assumption by Transferee) above, Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease, including those that may be provided for pursuant to California Government Code section 7262. Tenant shall Indemnify Landlord for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

#### **16.7. Occupancy by Others**

Notwithstanding any contrary provision of this Article 16, Tenant shall have the right without the payment of a Transfer Premium, without the receipt of Landlord's consent, but on prior Notice to Landlord, to permit the occupancy of up to fifteen percent (15%) of the rentable square feet of the Premises (in aggregate as, to any and all such transferees), to any individual(s) or entities, not otherwise a Tenant's Affiliate, which constitute a charitable organization with a relationship to Tenant and/or to any business entity with a business relationship with Tenant (which business relationship is not created solely in order to allow occupancy of the Premises under this Section 16.7) (collectively, "**Tenant's Occupants**"), provided such occupancy shall not be a subterfuge by Tenant to avoid its obligations under this Lease or the restrictions on Transfers pursuant to this Article 16. Tenant shall promptly supply Landlord with any documents or information reasonably requested by Landlord regarding any such individuals or entities. Notwithstanding the foregoing, no such occupancy shall relieve Tenant from any obligations or liability under this Lease.

#### **16.8 Notice of Assignment or Sublet**

Tenant shall report any assignment or sublease under this Lease to the Landlord within ten (10) calendar days after such assignment or sublease transaction is finalized.

### **17. DEFAULT; REMEDIES**

#### **17.1. Events of Default**

Any of the following shall constitute an event of default (the "Event of Default") by Tenant hereunder:

(a) a failure to pay Base Rent or Additional Charges when due, and such failure continues after written notice from Landlord as follows: i) for three (3) days after the date of written notice by Landlord (the "First Unpaid Rent Notice Period"); and ii) continues for three (3) days after written notice from Landlord following the First Unpaid Rent Notice Period (the "Second Unpaid Rent Notice"). The Second Unpaid Rent Notice is intended by the parties

(b) a failure to comply with any other covenant, condition or representation made under this Lease and such failure continues after written notice from Landlord as follows: i) for fifteen (15) days after the date of written notice by Landlord, provided that if such default is not capable of cure within such 15-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion as soon as reasonably possible (the "First Notice Period"); and ii) continues for three (3) days after written notice from Landlord following the First Notice Period (the "Second Notice"). The Second Notice is intended by the parties to serve as the three (3) day notice required by California Code of Civil Procedure Section 1161 or any replacement thereof.

(c) an appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

## **17.2. Remedies**

Upon the occurrence of an Event of Default Landlord shall have the following remedies, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies now or hereafter allowed by law or in equity:

(a) Landlord may terminate Tenant's right to possession of the Premises at any time by written notice to Tenant. Tenant expressly acknowledges that in the absence of such written notice from Landlord, no other act of Landlord, including, but not limited to, its re-entry into the Premises, its efforts to relet the Premises, its reletting of the Premises for Tenant's account, its storage of Tenant's Personal Property and trade fixtures, its acceptance of keys to the Premises from Tenant, its appointment of a receiver, or its exercise of any other rights and remedies under this Section 17.2 or otherwise at law, shall constitute an acceptance of Tenant's surrender of the Premises or constitute a termination of this Lease or of Tenant's right to possession of the Premises.

Upon such termination in writing of Tenant's right to possession of the Premises, this Lease shall terminate and Landlord shall be entitled to recover damages from Tenant as provided in California Civil Code Section 1951.2 or any other applicable existing or future Legal Requirement providing for recovery of damages for such breach, including but not limited to the following:

- (i) The reasonable cost of recovering the Premises; plus
- (ii) The reasonable cost of removing Tenant's Alterations, trade fixtures and improvements; plus



(iii) All unpaid rent due or earned hereunder prior to the date of termination, less the proceeds of any reletting or any rental received from subtenants prior to the date of termination applied as provided in Section 17.2(b) below, together with interest at the Interest Rate, on such sums from the date such rent is due and payable until the date of the award of damages; plus

(iv) The amount by which the rent which would be payable by Tenant hereunder, including Additional Charges under Section 4.3 above, as reasonably estimated by Landlord, from the date of termination until the date of the award of damages, exceeds the amount of such rental loss as Tenant proves could have been reasonably avoided, together with interest at the Interest Rate on such sums from the date such rent is due and payable until the date of the award of damages; plus

(v) The amount by which the rent which would be payable by Tenant hereunder, including Additional Charges under Section 4.3 above, as reasonably estimated by Landlord, for the remainder of the then term, after the date of the award of damages exceeds the amount such rental loss as Tenant proves could have been reasonably avoided, discounted at the discount rate published by the Federal Reserve bank of San Mateo for member banks at the time of the award plus one percent (1%); plus

(vi) Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law, including without limitation any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease which in the ordinary course of things would be likely to result therefrom.

(b) Landlord has the remedy described in California Civil Code Section 1951.4 (a landlord may continue the lease in effect after the tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations), and may continue this Lease in full force and effect and may enforce all of its rights and remedies under this Lease, including, but not limited to, the right to recover rent as it becomes due. After the occurrence of an Event of Default, Landlord may enter the Premises without terminating this Lease and sublet all or any part of the Premises for Tenant's account to any person, for such term (which may be a period beyond the remaining term of this Lease), at such rents and on such other terms and conditions as Landlord deems advisable. In the event of any such subletting, rents received by Landlord from such subletting shall be applied (i) first, to the payment of the costs of maintaining, preserving, altering and preparing the Premises for subletting, the other costs of subletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (ii) second, to the payment of rent then due and payable hereunder; (iii) third, to the payment of future rent as the same may become due and payable hereunder; (iv) fourth, the balance, if any, shall be paid to Tenant upon (but not before) expiration of the term of this Lease. If the rents received by Landlord from such subletting, after application as provided above, are insufficient in any month to pay the rent due and payable hereunder for such month, Tenant shall pay such deficiency to Landlord monthly upon demand. Notwithstanding any such subletting for Tenant's account without termination, Landlord may at

any time thereafter, by written notice to Tenant, elect to terminate this Lease by virtue of a previous Event of Default.

During the continuance of an Event of Default, for so long as Landlord does not terminate Tenant's right to possession of the Premises and subject to Section 16 (Assignment and Subletting) and the options granted to Landlord thereunder, Landlord shall not unreasonably withhold its consent to an assignment or sublease of Tenant's interest in the Premises or in this Lease.

(c) During the continuance of an Event of Default, Landlord may enter the Premises without terminating this Lease and remove all Tenant's Personal Property, Alterations and trade fixtures from the Premises and store them at Tenant's risk and expense. If Landlord removes such property from the Premises and stores it at Tenant's risk and expense, and if Tenant fails to pay the cost of such removal and storage after written demand therefor and/or to pay any rent then due, then after the property has been stored for a period of thirty (30) days or more Landlord may sell such property at public or private sale, in the manner and at such times and places as Landlord deems commercially reasonable following reasonable notice to Tenant of the time and place of such sale. The proceeds of any such sale shall be applied first to the payment of the expenses for removal and storage of the property, the preparation for and the conducting of such sale, and for attorneys' fees and other legal expenses incurred by Landlord in connection therewith, and the balance shall be applied as provided in Section 17.2(b) above.

Tenant hereby waives all claims for damages that may be caused by Landlord's re-entering and taking possession of the Premises or removing and storing Tenant's Personal Property pursuant to this Section 17.2, and Tenant shall indemnify, defend and hold Landlord harmless from and against any and all Claims resulting from any such act. No re-entry by Landlord shall constitute or be construed as a forcible entry by Landlord.

(d) Landlord may require Tenant to remove any and all Alterations from the Premises or, if Tenant fails to do so within ten (10) days after Landlord's request, Landlord may do so at Tenant's expense.

(e) Landlord may cure the Event of Default at Tenant's expense, it being understood that such performance shall not waive or cure the subject Event of Default. If Landlord pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse Landlord upon demand for the amount of such payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until Landlord is reimbursed by Tenant. Any amount due Landlord under this subsection shall constitute additional rent hereunder.

### **17.3. Waiver of Redemption**

Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges which it might have under any present or future Legal Requirement to redeem the premises or to continue this Lease after being dispossessed or ejected from the Premises.



#### **17.4. Landlord's Right to Cure Tenant's Defaults**

If Tenant defaults in the performance of any of its obligations under this Lease, then Landlord may, at its sole option, remedy such default for Tenant's account and at Tenant's expense by providing Tenant with three (3) days' prior written or oral notice of Landlord's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by Landlord). Such action by Landlord shall not be construed as a waiver of such default or any rights or remedies of Landlord, and nothing herein shall imply any duty of Landlord to do any act that Tenant is obligated to perform. Tenant shall pay to Landlord upon demand, as additional rent, all costs, damages, expenses or liabilities incurred by Landlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Tenant's obligations under this Section shall survive the termination of this Lease.

#### **17.5 Landlord's Defaults**

Notwithstanding anything to the contrary set forth in this Lease, Landlord shall not be in default in the performance of any obligation required to be performed by Landlord pursuant to this Lease unless Landlord fails to perform such obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's failure to perform; provided, however, if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be in default under this Lease if it shall commence such performance within such thirty (30) day period and thereafter diligently pursues the same to completion. Upon any such default by Landlord under this Lease, Tenant may, subject to the other provisions of this Lease, exercise any of its rights provided at law or in equity. Any award from a court in favor of Tenant requiring payment by Landlord which is not paid by Landlord within the time period directed by such award, may be offset by Tenant from Rent next due and payable under this Lease.

### **18. WAIVER OF CLAIMS; INDEMNIFICATION**

#### **18.1. Limitation on Landlord's Liability; Waiver of Claims**

Landlord shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases Landlord and its Agents from all Claims (as defined below) for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Building adjacent to or connected with the Premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, collapse, pollution or contamination, (iv) stopped, leaking or defective Building Systems, (v) Building defects, and (vi) any other acts, omissions or causes. Nothing in this Section shall relieve Landlord from liability caused solely and directly by the gross negligence or willful misconduct of Landlord or its Agents, but Landlord shall not be liable under any circumstances for any consequential, incidental or punitive damages.

## **18.2. Tenant's Indemnity**

Tenant, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("Indemnify") Landlord including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, and all of its and their Agents, and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "Indemnified Parties"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, "Claims"), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person, including, without limitation, employees of Tenant, or loss of or damage to property, howsoever or by whomsoever caused, occurring in or about the Premises; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use or occupancy or manner of use or occupancy of the Premises by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them; (d) the condition of the Premises; (e) any construction or other work undertaken by Tenant on the Premises whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises or the Property; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease and further except only such Claims as are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Landlord's costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Landlord from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by Landlord and continues at all times thereafter. Tenant's obligations under this Section shall survive the termination of the Lease.

## **19. INSURANCE**

### **19.1. Tenant's Insurance**

(a) Tenant, at no cost to the Landlord, shall procure and keep in effect at all times during the Term insurance as follows:

(i) Commercial general liability insurance with limits not less than Five Million Dollars (\$5,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, Special-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU).

(ii) Worker's Compensation Insurance with statutory limits and Employer's Liability Limits not less than \$1,000,000 each accident.



(iii) Business automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, as applicable, if Tenant uses automobiles in connection with its use of the Premises.

(iv) Such other insurance as is generally required by commercial owners on buildings similar in size, character, age and location as the Building, as may change from time to time.

(b) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(d) All liability insurance policies shall be endorsed to provide the following:

(i) Name as additional insured the Landlord its officers, agents and employees.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(e) Each insurance policy required pursuant to Section 19.1(a) above shall be issued by an insurance company authorized to do business in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VII" or higher in the most recent edition of Best's Insurance Guide.

(f) All policies shall be endorsed to provide thirty (30) days' advance written notice to Landlord of cancellation or intended non-renewal (or ten (10) days' advance written notice in case of nonpayment of premium), mailed to the address(es) for Landlord set forth in the Basic Lease Information.

(g) Tenant shall deliver to Landlord certificates of insurance in form and from insurers satisfactory to Landlord, evidencing the coverage required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon Landlord's request, and Tenant shall provide Landlord with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, Landlord may procure, at its option, without waiving any rights or remedies which Landlord may have for Tenant's default hereunder, the same for the account of Tenant, and the cost thereof shall be paid to Landlord within five (5) days after delivery to Tenant of bills therefor.

(h) Upon Landlord's request, Tenant and Landlord shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the County of San Mateo is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant for risks comparable to those associated with the Premises, then Tenant shall, at Landlord's request, increase the amounts or coverage carried by Tenant to conform to such general commercial practice.

(i) Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's liability under Section 18.2 (Tenant's Indemnity), or any of Tenant's other obligations under this Lease.

(j) Notwithstanding anything to the contrary in this Lease, if any of the required insurance coverage lapses, Landlord may elect, at its sole discretion, to terminate this Lease by delivering to Tenant three (3) days written notice of termination and, if so delivered, this Lease shall so terminate unless Tenant renews the insurance coverage within the three (3) day notice period.

#### **19.2. Tenant's Personal Property**

Tenant shall be responsible, at no cost to the Landlord, for separately insuring Tenant's Personal Property.

#### **19.3. Landlord's Self Insurance**

Tenant acknowledges that Landlord self-insures against casualty, property damage and public liability risks and agrees that Landlord may at its sole election, but shall not be required to, carry any third party insurance with respect to the Building, the Premises or otherwise.

#### **19.4. Waiver of Subrogation**

Notwithstanding anything to the contrary contained herein, Landlord, and Tenant (each a "Waiving Party") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Building or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party.

### **20. ACCESS BY LANDLORD**

Tenant shall permit Landlord or Landlord's agents, representatives, or employees to enter the Premises at all reasonable times and upon reasonable notice to inspect the Premises to determine whether Tenant is complying with the terms of this Lease and to do other lawful acts that may be necessary to protect Landlord's interest in the Premises under this Lease or to perform Landlord's duties under this Lease.



## **21. CERTIFICATES**

### **(a) Tenant's Certificates**

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from Landlord, shall execute and deliver to Landlord or to any party designated by Landlord a certificate stating: (a) that Tenant has accepted the Premises, (b) the Commencement Date and Expiration Date of this Lease, (c) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (d) whether or not there are then existing any defenses against the enforcement of any of Tenant's obligations hereunder (and if so, specifying the same), (e) whether or not there are any defaults then existing under this Lease (and if so specifying the same), (f) the dates, if any, to which the Base Rent and Additional Charges have been paid, and (g) any other information that may be required.

### **(b) Landlord's Certificates**

Landlord, at any time and from time to time upon not less than ten (10) days' prior notice from Tenant, shall execute and deliver to Tenant or to any party designated by Tenant a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) whether or not there are any defaults then existing under this Lease (and if so specifying the same), (d) the dates, if any, to which the Base Rent and Additional Charges have been paid, and (f) any other information that may be required.

## **22. RULES AND REGULATIONS**

Tenant shall faithfully comply with the rules and regulations attached to this Lease as Exhibit D and all modifications thereof and additions thereto that Landlord may from time to time put into effect (the "Campus Rules and Regulations"). Landlord shall not be responsible for the non-performance of the Campus Rules and Regulations by any other tenant or occupant of the Campus. In the event of any conflict between any provision of this Lease and any provision of the Campus Rules and Regulations, this Lease shall control. Landlord shall not revise or amend the Campus Rules and Regulations in a manner that will unreasonably interfere with Tenant's normal and customary business office operations.

## **23. SECURITY DEPOSIT**

As stated in the Basic Lease Information, no security deposit from Tenant shall be required.

## **24. SURRENDER OF PREMISES**

Upon the Expiration Date or other termination of the Term of this Lease, Tenant shall peaceably quit and surrender to Landlord the Premises together with the Tenant Improvements and all Alterations approved by Landlord in good order and condition, except for normal wear and tear after Tenant having made the last necessary repair required on its part under this Lease, and further except for any portion of the Premises condemned and any damage and destruction

for which Tenant is not responsible hereunder. The Premises shall be surrendered free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Landlord. Immediately before the Expiration Date or other termination of this Lease, Tenant shall remove all of Tenant's Personal Property as provided in this Lease, and repair any damage resulting from the removal. If such removal is not completed at the expiration or other termination of this Lease, Landlord may remove the same at Tenant's expense. Notwithstanding anything to the contrary in this Lease, Landlord can elect at any time prior to the Expiration Date or within five (5) days after termination of this Lease, to require Tenant to remove, at Tenant's sole expense, all or part of the Tenant Improvements, Alterations or other improvements or equipment constructed or installed by or at the expense of Tenant. Tenant shall promptly remove such items and shall repair, at no cost to the Landlord, any damage to the Premises or the Building resulting from such removal, or if Tenant fails to repair, Landlord may do so, at Tenant's expense. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining in the Premises after the Expiration Date or sooner termination of this Lease may, at Landlord's option, be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by law.

Concurrently with the surrender of the Premises, Tenant shall, if requested by Landlord, execute, acknowledge and deliver to Landlord a quitclaim deed to the Premises and any other instrument reasonably requested by Landlord to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Tenant Improvements or other improvements or equipment which remain part of the Premises.

Tenant shall not be obligated to remove standard, normal and customary business office tenant improvements. Whether a tenant improvement is a standard, normal and customary business office tenant improvement shall be determined by Landlord in its sole discretion and may be indicated as part of Landlord's approval at the time that the improvement is constructed or installed, or at anytime thereafter prior to the expiration of the Lease.

## **25. HAZARDOUS MATERIALS**

### **25.1. Definitions**

As used herein, the following terms shall have the meanings set forth below:

(a) "Environmental Laws" shall mean any present or future federal, state, local or administrative law, rule, regulation, order or requirement relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage), or to health and safety, industrial hygiene or the environment, including, without limitation, soil, air and groundwater conditions.

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health, welfare or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and



Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "Investigate and Remediate" ("Investigation" and "Remediation") shall mean the undertaking of any activities to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Property or that has been, are being or threaten to be Released into the environment, and to clean up, remove, contain, treat, stabilize, monitor or otherwise control such Hazardous Material.

(d) "Release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Premises, or in, on, under or about any other part of the Property or into the environment.

#### **25.2. No Hazardous Materials**

Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Property, or transported to or from the Property, with the sole exception that Tenant may keep and use such substances in the Premises in such reasonably limited amounts as are customarily used for general office purposes (such as copy toner and other normal office and cleaning supplies) so long as such storage and use are in compliance with all applicable Environmental Laws at all times. Tenant shall give immediate written notice to Landlord of: (a) any action, proceeding or inquiry by any governmental authority (including, without limitation, the California State Department of Health Services, the State or any Regional Water Quality Control Board, the Bay Area Air Quality Management district or any local governmental entity) against Tenant with respect to the presence or Release or suspected presence or Release of Hazardous Material on the Premises, Building or Property or the migration thereof from or to other property; (b) all demands or claims made or threatened by any third party against Tenant or the Premises, Building or Property relating to any loss of injury resulting from any Hazardous Materials; (c) any Release of Hazardous Material on or about the Premises or any other part of the Property has occurred that may require any Investigation or Remediation; and (d) all matters of which Tenant is required to give notice pursuant to Section 25359.7 of the California Health and Safety Code.

#### **25.3. Tenant's Environmental Indemnity**

If Tenant breaches any of its obligations contained in this Section, or, if any act or omission of Tenant, its Agents or Invitees, results in any Release of Hazardous Material in, on, under or about the Premises or any other part of the Property in violation of any applicable Environmental Laws, then, without limiting Tenant's Indemnity contained in Section 18.2, Tenant shall, on behalf of itself and its successors and assigns, Indemnify the Indemnified Parties, and each of them, from and against all Claims (including, without limitation, damages for decrease in value of the Premises or the Property, the loss or restriction of the use of rentable or usable space or of any amenity of the Premises or the Property and sums paid in settlement of

claims, attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, costs incurred in connection with activities undertaken to Investigate and Remediate Hazardous Material and to restore the Property to its prior condition, fines and penalties assessed for the violation of any applicable Environmental Laws, and any natural resource damages. Without limiting the foregoing, if Tenant or any of its Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other part of the Property, Tenant shall immediately and at no expense to Landlord take any and all appropriate actions to return the Premises or the Property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Landlord from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by the Landlord and continues at all times thereafter. Tenant shall afford Landlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

#### **25.4. Survival of Obligation**

Tenant's obligations under this Section 25 shall survive the Expiration Date or other termination of this Lease.

#### **25.5. Asbestos**

Landlord represents the Premises and parking garage at the subject site were constructed in 1998. Based on the age of construction of the subject site buildings, it is unlikely for asbestos-containing materials to be present in subject site buildings.

#### **25.6. Exception to Tenant's Hazmat Obligations**

Notwithstanding anything to the contrary in this Lease, under no circumstances shall the Tenant have any obligations to the Landlord with respect to Hazardous Materials that existed in the Building or the Premises prior to the execution of this Lease or thereafter brought onto the Building or the Premises by Landlord, unless they were placed thereon by Tenant, its agents, contractors, employees, visitors or consultants.

### **26. SPECIAL PROVISIONS**

#### **26.1. Extension Option**

##### **(a) Option to Extend Term.**

Landlord grants to Tenant a one-time option to extend the Term of this Lease as to the entire Premises only (the "Extension Option") for an additional thirty-six (36) months (the "Extension Term") commencing upon the Expiration Date upon the following terms and conditions. Tenant may exercise the Extension Option no earlier than fifteen (15) months, and



no later than twelve (12) months, prior to the expiration of the initial term by giving written notice to Landlord. Any such notice by Tenant shall be irrevocable by Tenant. If any Event of Default by Tenant is then in effect or outstanding hereunder either at the time of Tenant's exercise of the Extension Option or at any time prior to the first day of the Extension Term, then Landlord may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option, and any exercise thereof, shall be null and void. Landlord shall also have the right to void Tenant's Extension Option if Tenant has assigned its interest hereunder or sublet more than fifty percent (50%) of the Premises.

(b) Base Rent and Other Terms

If Tenant elects to exercise the Extension Option, then the lease for the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, except that Base Rent hereunder shall be adjusted to 100% of the Prevailing Market Rate, on an "as is" basis as follows:

(i) No later than two hundred seventy (270) days prior to commencement of the Extension Term, Landlord shall notify Tenant in writing of Landlord's determination made in good faith of the Prevailing Market Rate for the Premises to be used to calculate the Base Rent for the Extension Term. As used herein, the term "Prevailing Market Rate" for the Premises shall mean the rental, any applicable free rent or rent credit, and all other monetary payments and escalations, including, without limitation, consumer price indexing, that Landlord could obtain from a third party desiring to lease the Premises for the Extension Term taking into account the age of the Building, the size, location and floor levels of the Premises, the quality of construction of the Building and the Premises (but valuing the quality and improvements in the Premises as to the value they would have to a typical third party user and ignoring the fact that the Premises were previously used by Tenant and or may have been built out by or for Tenant), the services provided under the terms of this Lease, the rental then being obtained for new leases of space comparable to the Premises in the locality (i.e., Redwood City, Redwood Shores, and San Carlos) of the Building, and all other factors that would be relevant to a third party desiring to lease the Premises for the Extension Term in determining the rental such party would be willing to pay therefor.

(ii) Within fifteen (15) days after receipt of Landlord's determination of the Prevailing Market Rate, Tenant shall notify Landlord in writing either of (i) Tenant's acceptance of such determination, in which case such determination shall constitute the new Base Rent as of the commencement of the Extension Term, or (ii) Tenant's own good faith determination of the Prevailing Market Rate, including written justification for its determination.

(iii) If Tenant provides Landlord with its determination of the Prevailing Market Rate pursuant to Section 26.1(b)(ii) above, then within thirty (30) days following Tenant's notice to Landlord, the parties shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve in good faith any such disagreement as to the Prevailing Market Rate. The parties may, by an instrument in writing, mutually agree to extend such consultation period for a reasonable period to resolve their disagreement if the parties are negotiating in good faith and would be unable to resolve their differences within such period.

(iv) If within such consultation period Landlord and Tenant cannot reach agreement as to the Prevailing Market Rate, then promptly after the end of such consultation period Landlord and Tenant shall submit the matter for resolution in accordance with the following procedure.

(A) Appointment of Brokers. Each party shall appoint one (1) broker within thirty (30) days after the final date for agreement on the Prevailing Market Rate in accordance with Section 26.1(b)(iii) above. Upon selecting its broker, each party shall promptly notify the other party in writing of the name of the broker selected. Each such broker shall be competent, licensed, qualified by training and experience in the County of San Mateo, and shall be a member in good standing of the San Mateo County Association of Realtors ("SAMCAR"). Each such broker may have a prior working relationship with either or both of the parties, provided that such working relationship shall be disclosed to both parties. Without limiting the foregoing, each broker shall have at least ten (10) years' experience valuing commercial real estate in the County of San Mateo. If either party fails to appoint its broker within such 30-day period, the broker appointed by the other party shall individually determine the Prevailing Market Rate in accordance with the provisions hereof.

(B) Appraisal Instructions. Each broker will make an independent determination of the Prevailing Market Rate (also referred to herein as an "appraisal"). The brokers may share and have access to objective information in preparing their appraisals, but they will independently analyze the information for their determination of the Prevailing Market Rate. Neither of the brokers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither party shall communicate with the broker appointed by the other party regarding the instructions contained in this Section before the brokers complete their appraisals. If either broker has questions regarding the instructions in this Section or the interpretation of the Lease, such broker shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretative guidance received from the party appointing such broker. There shall not be any arbitration or adjudication of the instructions to the brokers contained in this Section. Each broker shall complete, sign and submit its written appraisal setting forth the Prevailing Market Rate (to the nearest half percentage point) to the parties within thirty (30) days after the appointment of the last of such brokers. If the higher appraised Prevailing Market Rate is not more than one hundred ten percent (110%) of the lower appraised Prevailing Market Rate, then the Prevailing Market Rate shall be the average of such two (2) Prevailing Market Rate figures (to the nearest half percentage point).

(C) "Baseball" Appraisal. If the higher appraised Prevailing Market Rate is more than one hundred ten percent (110%) of the lower appraised Prevailing Market Rate, then the first two brokers shall agree upon and appoint an independent third broker within thirty (30) days after both of the first two (2) appraisals have been submitted to the parties, in accordance with the following procedure. The third broker shall have the minimum qualifications as required of an broker pursuant to paragraph (i) above, and shall also have experience acting as a neutral broker in disputes involving commercial real estate or real estate development opportunities, including ground leases and rental valuation. The two brokers shall



inform the parties of their appointment of the third broker at or before the end of such 30-day appointment period. Each party shall have the opportunity to question the proposed third broker, in writing only, as to his or her qualifications, experience, past working relationships with the parties, and any other matters relevant to the appraisal set forth in the Lease. Either party may, by written notice to the other party and the two brokers, raise a good faith objection to the selection of the third broker based on his or her failure to meet the requirements of this Section. In such event, if the two brokers determine that the objection was made in good faith, the two brokers shall promptly select another third broker, subject again to the same process for the raising of objections. If neither party raises a good faith objection to the appointment of the third broker within ten (10) days after notice of his or her appointment is given, each such party shall be deemed to have waived any issues or questions relating to the qualifications or independence of the third broker or any other matter relating to the selection of the third broker under the Lease. If for any reason the two brokers do not appoint such third broker within such 30-day period (or within a reasonable period thereafter not to exceed twenty (20) days in the event a good faith objection is made as provided above), then either party may apply to SAMCAR for appointment of a third broker meeting the foregoing qualifications. If SAMCAR denies or otherwise refuses to act upon such application within sixty (60) days from the date on which the party or parties first applies to SAMCAR for appointment of the third broker, either party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent third broker meeting the foregoing qualifications.

Such third broker shall consider the appraisals submitted by the first two brokers as well as any other relevant written evidence which the third broker may request of either or both of the first two brokers. If either of the first two brokers shall submit any such evidence to such third broker, it shall do so only at the request of the third broker and shall deliver a complete and accurate copy to the other party and the broker such party selected, at the same time it submits the same to the third broker. Neither party, and neither of the brokers they appoint, shall conduct any *ex parte* communications with the third broker regarding the subject matter of the appraisal. Within thirty (30) days after his or her appointment, the third broker shall determine the appraised Prevailing Market Rate determined by selecting one or the other of the first two (2) brokers that is the closer, in the opinion of the third broker, to the actual Prevailing Market Rate. The determination of the third broker shall be limited solely to the issue of deciding which of the appraisals of the two brokers is closest to the actual Prevailing Market Rate. The third broker shall have no right to propose a middle ground or to modify either of the two appraisals, or any provision of the Lease.

(D) Conclusive Determination. Except as provided in California Code of Civil Procedure Section 1286.2 (as the same may be amended from time to time), the determination of the Prevailing Market Rate by the accepted appraisal shall be conclusive, final and binding on the parties. Neither of the first two (2) brokers nor the third broker shall have any power to modify any of the provisions of the Lease and must base their decision on the definitions, standards, assumptions, instructions and other provisions contained in the Lease. Subject to the provisions of this Section, the parties will cooperate to provide all appropriate information to the brokers and the third broker. The brokers (but not the third broker) can utilize the services of special experts, including experts to determine such things as property condition, market rates, leasing commissions, renovation costs and similar matters. The

brokers and the third broker will each produce their determination in writing, supported by the reasons for the determination.

(E) Fees and Costs; Waiver. Each party shall bear the fees, costs and expenses of the broker it selects under Section 26.1(b)(iv)(A) and of any experts and consultants used by that broker. The fees, costs and expenses of the third broker under Section 26.1(b)(iv)(C) shall be shared equally by Landlord and Tenant. Each party waives any claims against the broker appointed by the other party, and against the third broker, for negligence, malpractice or similar claims in the performance of the appraisals or arbitration contemplated by this Section.

(v) If, either by agreement of the parties or by the arbitration procedure provided herein, the Prevailing Market Rate is not finally determined by the commencement of the Extension Term, then Tenant shall pay the Prevailing Market Rate determined by Landlord until such time as the Prevailing Market Rate is finally determined by agreement of the parties or by the appraisal procedure set forth in this Section, at which time Landlord shall refund any excess amount to Tenant or Tenant shall pay any shortage to Landlord, as the case may be. No such delay in the determination of Prevailing Market Rate shall be deemed to constitute a waiver by either party of the adjustment of Prevailing Market Rate as provided in this Section.

## **26.2. Operating Expenses**

The parties intend that this be a "triple net" Lease and that Tenant pay the Base Rent owing hereunder absolutely net of all costs and expenses relating to Landlord's ownership, operation, maintenance and repair of the Building. The provisions of this Section below for the payment of Tenant's Expense Share are intended to pass on to Tenant its share of all such costs and expenses.

### **(a) Definitions**

For purposes of this Section, the following terms shall have the meanings hereinafter set forth:

(i) "Expenses" or "Operating Expenses" means the total cost and expenses in connection with the management, operation, maintenance and repair of the Building, except for those exclusions identified in Exhibit E hereto.

(ii) "Tenant's Expense Share" is 100% of the Building Expenses, including all costs directly associated with its use of the Common Areas and Campus; plus 50% of the Campus Common Area Expenses.

### **(b) Payment of Tenant's Expense Share**

Tenant shall pay to Landlord as Additional Charges each month the of Tenant's Expense Share. Such payment shall be made monthly, in advance, in an amount estimated by Landlord or through its Property Manager.. Provided, however, in no event shall the Management Fees portion of Tenant's share of Expenses exceed three percent (3%) of Tenant's



then current Base Rent. At the conclusion of each Lease Year, Landlord shall furnish Tenant with a statement (herein called "Landlord's Expense Statement"), setting forth the total Expenses for such Year and Tenant's Expense Share thereof, which statement shall be conclusive and binding upon Tenant unless Tenant challenges the accuracy thereof within ninety (90) days of its submittal. If Tenant's Expense Share of the actual Expenses for such Lease Year exceeds the estimated Expenses paid by Tenant during such Lease Year, Tenant shall pay the difference to Landlord (whether or not this Lease has terminated) within fifteen (15) days after the receipt of Landlord's Expense Statement. If the total amount paid by Tenant for any such Expense Share shall exceed Tenant's Expense Share of the actual Expenses for such Lease Year, such excess shall be credited against the next installments of Expenses due from Tenant to Landlord hereunder, or if the Term of this Lease has expired, shall be refunded to Tenant.

(c) Proration

If the Commencement Date or Expiration Date shall occur on a date other than the first or last day, respectively, of a Lease Year, Tenant's Expense Share for the Lease Year in which the Commencement Date or Expiration Date occurs shall be prorated based on a 365-day year.

**26.3. Guaranty**

Pursuant to a guaranty in substantially the form attached as Exhibit F, Softbank Holdings Inc. has agreed to guarantee Tenant's performance of this Lease. The guaranty is being provided concurrently with Tenant's execution of this Lease, and consistent with Section 23 above, is provided in lieu of a Security Deposit.

**26.4. Right of First Refusal**

During the term of this Lease or during any extension thereof, Tenant shall have the following Right of First Refusal with respect to Two Circle Star Way ("ROFR"), so long as no Event of Default by Tenant of this Lease is then in effect or outstanding at the time of the exercise of this Right of First Refusal or anytime thereafter until the right is either exercised or ends.

(a) Landlord shall not lease or agree to lease the building, or any portions of the building, commonly known as Two Circle Star Way (the "Other Building") without first offering the Tenant an opportunity to enter into a lease for the premises identified. The word "lease" for purposes of this provision shall not include the temporary use or occupancy by the Landlord for its own staff or employees.

(b) Before Landlord executes a lease of the Other Building, or any portion thereof, with a third party, Landlord shall offer ("First Offer") to lease the Property to Tenant, in writing and on terms and conditions substantially identical to those proposed for the lease of the Property to a third party. The First Offer shall, at a minimum, include the following information:

- (i) the rent proposed for the lease to the third party;
- (ii) a description of the premises to be leased;

- (iii) the amount of any deposit
- (iv) the lease term;
- (v) rent credit or free rent, if any;
- (vi) Tenant Improvement Allowance, if any;
- (vii) the other material terms and conditions of the proposed lease

(c) Tenant shall have ten (10) business days from the date of the First Offer to accept the First Offer ("Acceptance Period") by delivering to Landlord the acceptance on or before 5:00 p.m. on the last day of the Acceptance Period. If the First Offer is for a lease term that is less than five (5) years, then any acceptance by Tenant will be deemed to be an acceptance of the First Offer, but with a 5-year term, including appropriate adjustments to rent to cover the entire lease term. If Tenant fails to accept the First Offer on or before the last day of the Acceptance Period, the First Offer shall be deemed to be rejected by Tenant, but this ROFR shall be reinstated if Landlord does not enter into a lease for the identified space on terms that are substantially identical (or better for the Landlord) than the terms set forth in the First Offer to Tenant, within one hundred and eighty (180) days of the date Tenant received the First Offer from Landlord.

(d) If Tenant accepts the First Offer, such acceptance shall be binding and irrevocable and Tenant shall have fifteen (15) days following acceptance of the First Offer ("Closing Period") to execute a lease of the premises pursuant to the terms and conditions of the First Offer.

## **27. GENERAL PROVISIONS**

### **27.1. Notices**

Any notice given under this Lease shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, with postage prepaid, to:

- (a) Tenant (i) at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or
- (b) Landlord at Landlord's address set forth in the Basic Lease Information; or
- (c) to such other address as either Landlord or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by email or facsimile to the telephone number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice



by facsimile. Tenant shall promptly provide Landlord with copies of any and all notices received regarding any alleged violation of laws or insurance requirements or any alleged unsafe condition or practice.

#### **27.2. No Implied Waiver**

No failure by Landlord or Tenant to insist upon the strict performance of any obligation of the other under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Landlord, shall constitute a waiver of such breach or of Landlord's or Tenant's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. Any consent by Landlord or Tenant hereunder shall not relieve the other party of any obligation to secure the consent of Landlord or Tenant, as appropriate, in any other or future instance under the terms of this Lease.

#### **27.3. Amendments**

Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by both parties hereto.

#### **27.4. Authority**

If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing representations and warranties.

#### **27.5. Parties and Their Agents; Approvals**

The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party, and the term "Invitees" when used with respect to Tenant shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of Tenant. Unless otherwise specified in writing by Landlord, all approvals, consents or other determinations permitted or required by Landlord hereunder shall be made by or through Landlord's Deputy County Manager for Community Services unless otherwise provided in this Lease.

#### **27.6. Interpretation of Lease**

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Landlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

#### **27.7. Successors and Assigns**

Subject to the provisions of this Lease relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by Landlord named herein (or by any subsequent landlord) of its interest in the Building as owner or lessee, and the acceptance of the obligations of Landlord under this Lease by the Transferee, (unless such acceptance is not required by a transfer by operation of law), Landlord (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

#### **27.8. Brokers**

Landlord shall be responsible for the payment of brokers fees in accordance with its brokerage services agreement with Cornish & Carey Commercial, Newmark Knight Frank..

#### **27.9. Severability**

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

#### **27.10. Governing Law**

This Lease shall be construed and enforced in accordance with the laws of the State of California.



#### **27.11. Entire Agreement**

This instrument, including the exhibits hereto, which are made a part of this Lease, contains the entire agreement between the parties and all prior written or oral negotiations, understandings and agreements are merged herein. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither Landlord nor Landlord's Agents have made any representations or warranties with respect to the Premises, the Building or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

#### **27.12. Holding Over**

Any holding over after the expiration of the Term with the express consent of Landlord shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a Base Rent equal to one hundred fifty percent (150%) (but at one hundred ten percent (110%) for the first month of any such holdover) of the latest Base Rent payable by Tenant hereunder prior to such expiration, together with an amount estimated by Landlord for the monthly Additional Charges payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Any holding over without Landlord's consent shall constitute a default by Tenant and entitle Landlord to exercise any or all of its remedies as provided herein, notwithstanding that Landlord may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of the Lease.

#### **27.13. Time of Essence**

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

#### **27.14. Cumulative Remedies**

All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

#### **27.15. Survival of Indemnities**

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof.

#### **27.16. Signs**

Tenant's placement and usage of signs and signage are subject to the provisions of this Lease, including without limitation sections 5 and 11. Landlord has already approved the signage renderings attached to the February 19, 2013 email from Brent Takahashi to Ben Stern.

#### **27.17. Relationship of the Parties**

Landlord is not, and none of the provisions in this Lease shall be deemed to render Landlord, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

#### **27.18. Light and Air**

Tenant covenants and agrees that no diminution of light, air or view by any structure that may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction of the Base Rent or Additional Charges under this Lease, result in any liability of Landlord to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder.

#### **27.19. No Recording**

Tenant shall not record this Lease or any memorandum hereof in the public records.

#### **27.20. Options Personal**

The right or option to extend the Term of this Lease and the ROFR (the "Option Rights") are each personal to the original Tenant and may be exercised only by the original Tenant while occupying the Premises, which Original Tenant exercises such Option Right without the intent of thereafter making any Assignment of this Lease or Subletting of the Premises, or any portion thereof, and may not be exercised by or assigned, voluntarily or involuntarily, by or to any person or entity other than Tenant provided, however, that the Option Rights may be exercised by or assigned to a Tenant Affiliate (as defined in Section 16.1, above). The Option Rights herein granted to Tenant are not assignable separate and apart from this Lease, nor may either be separated from this Lease in any manner, either by reservation or otherwise.

#### **27.21. Public Transit Information**

Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Building and encouraging use of such facilities, all at Tenant's sole expense.



#### **27.22. Taxes, Assessments, Licenses, Permit Fees and Liens**

(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. (b) Tenant agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law, all of which shall be paid when the same become due and payable and before delinquency. (c) Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same.

#### **27.23. Non-Liability of Landlord Officials, Employees and Agents**

No elective or appointive board, commission, member, officer, employee or other Agent of Landlord shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by Landlord or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of Landlord under this Agreement.

#### **27.24. No Relocation Assistance; Waiver of Claims**

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Landlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Landlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Lease with respect to a Taking.

#### **27.25. Counterparts**

This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

#### **27.26. Effective Date**

This Lease shall become effective on the date upon which this Lease is duly executed and delivered by the parties hereto.

#### **27.27. Acceptance of Lease by Tenant**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF LANDLORD HAS AUTHORITY TO COMMIT LANDLORD TO THIS LEASE UNLESS AND UNTIL LANDLORD'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS

CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF LANDLORD HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID IF THE BOARD OF SUPERVISORS DOES NOT APPROVE THIS LEASE, IN ITS SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF LANDLORD SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON LANDLORD.

This Lease for One Circle Star Plaza is entered into by the parties hereto as of the date first above written.

TENANT: STARBURST I, INC.,  
a corporation organized under the laws of the  
State of Delaware

By: \_\_\_\_\_

Its: \_\_\_\_\_

*[Signature]*  
Secretary and Treasurer

LANDLORD: COUNTY OF SAN MATEO,  
a political subdivision of the State of California

\_\_\_\_\_  
County Manager

*[Signature]*

ATTEST:

*[Signature]*, Deputy  
Clerk of the Board

RESOLUTION NO.: 072388



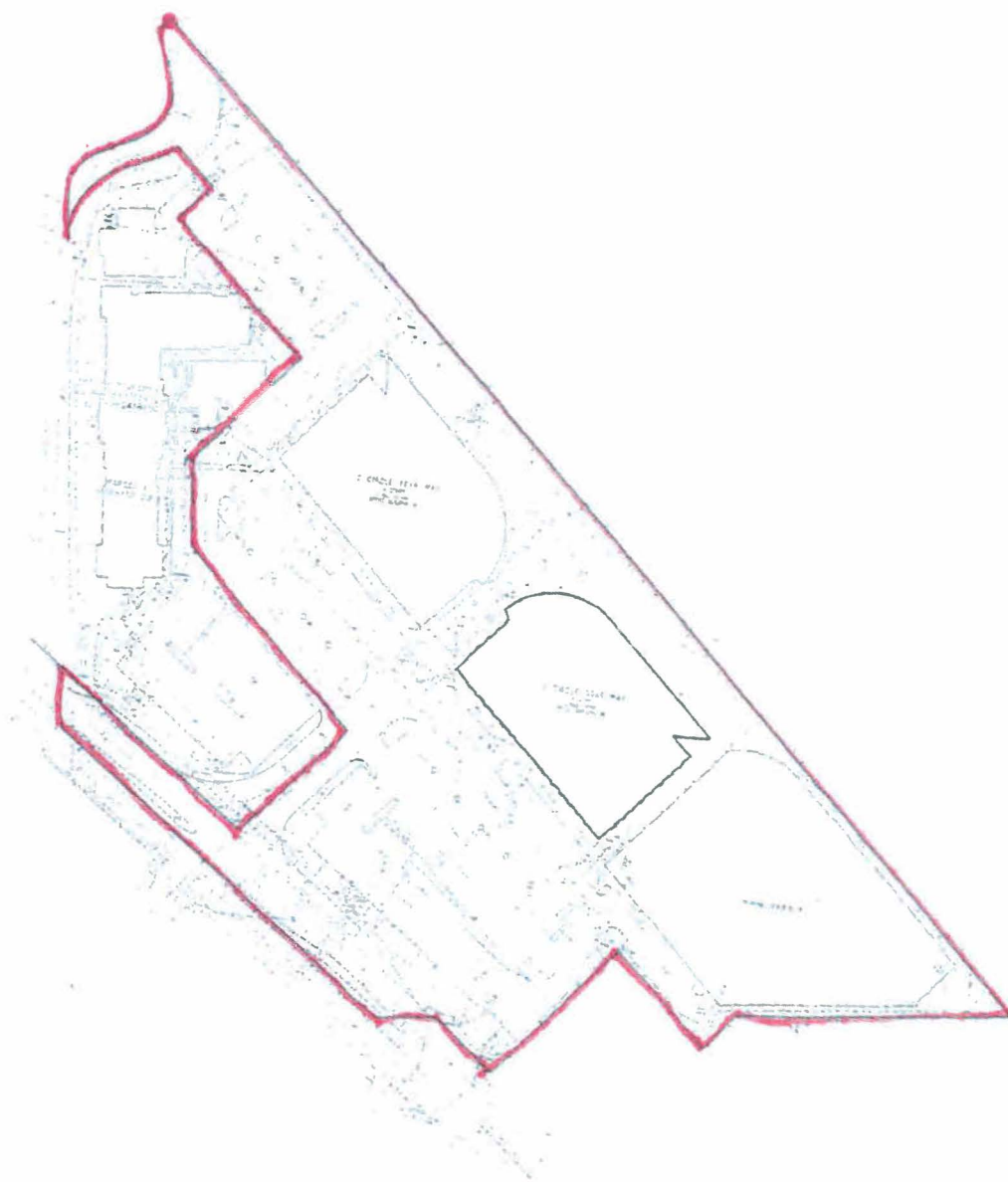
OFFICE LEASE

EXHIBIT A-1 (Campus)

And

EXHIBIT A-2 (Building/Premises)

Exhibit A-1 [CAMPUS]





# Exhibit A-2 [PREMISES]

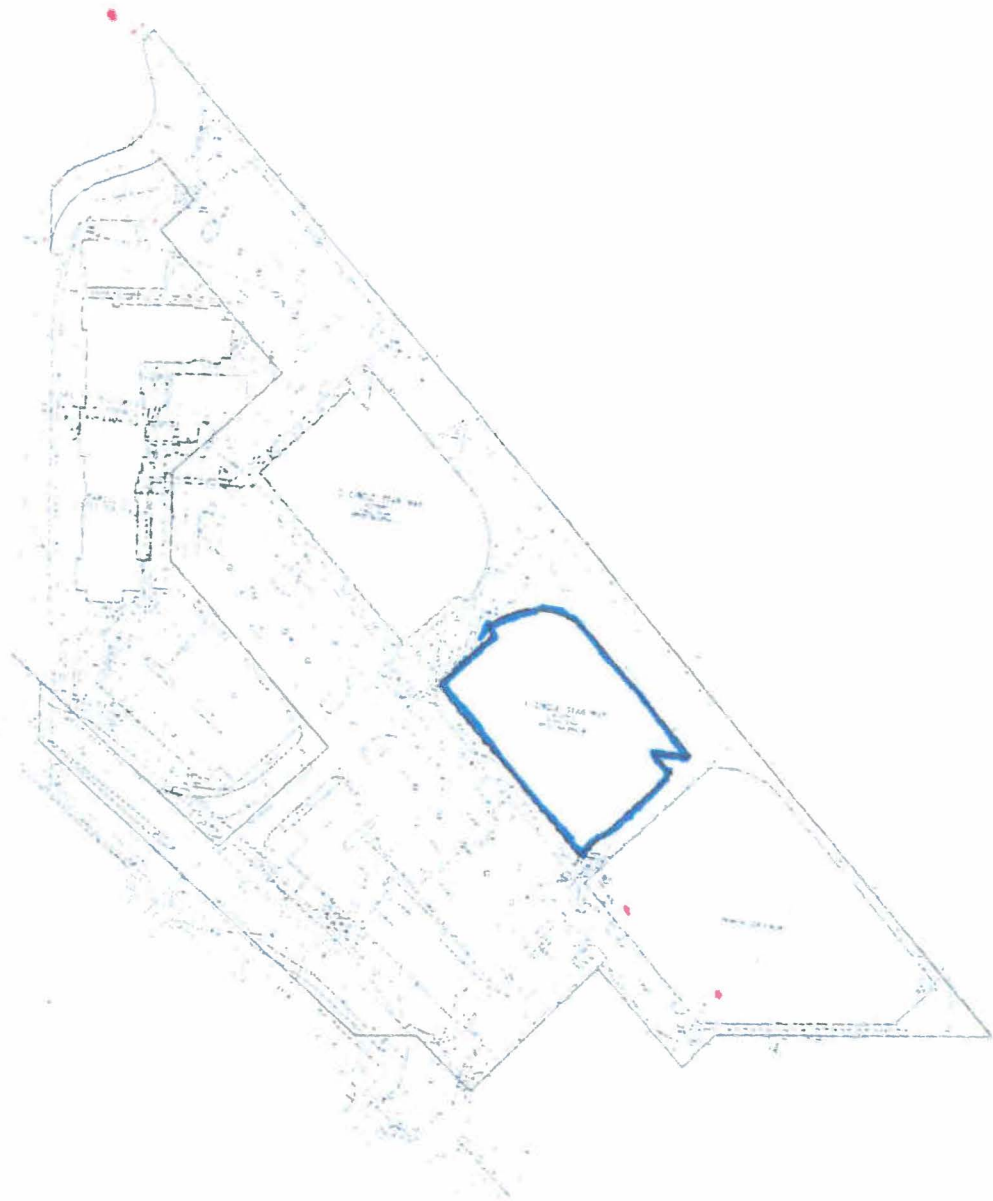


EXHIBIT B

INTENTIONALLY OMITTED



EXHIBIT C

WORK LETTER AGREEMENT

## EXHIBIT C

### WORK LETTER AGREEMENT

This Work Letter Agreement ("Work Letter Agreement") shall set forth the terms and conditions relating to the construction of the Premises, including Tenant Improvements and Tenant Alterations. All references in this Work Letter Agreement to "the Lease" shall mean the relevant portions of the Lease to which this Work Letter Agreement is attached as Exhibit "C".

#### SECTION 1.

##### BASE, SHELL AND CORE

Tenant shall accept the base, shell and core of the Premises and the Building (collectively, the "Base, Shell and Core") in their current "As-Is" condition existing as of the date of the Lease and the Commencement Date, subject to the Landlord's additional work and representations and warranties expressly set forth in the Lease regarding the condition of the Premises (the Delivery Condition as set forth in the Lease).. Landlord and Tenant shall use commercially reasonable efforts to obtain LEED-Silver certification for the Building as is evidenced by formal approval of the United States Green Building Council; provided, however, that the rights and obligations of Landlord and Tenant under the Lease shall not be affected by the failure to obtain such certification. Tenant shall install in the Premises certain Tenant Improvements and Tenant Alterations (as defined below) pursuant to the provisions of this Work Letter Agreement. Except for Landlord's obligation to disburse the Tenant Improvement Allowance as described below, and Landlord's obligation to deliver the Premises to Tenant in its Delivery Condition, Landlord shall not be obligated to make or pay for any alterations or improvements to the Premises, the Building or the Project.

#### SECTION 2.

##### TENANT IMPROVEMENTS

2.1 Tenant Improvement Allowance. Tenant shall be entitled to a one-time tenant improvement allowance (the "Tenant Improvement Allowance") in the amount of up to, but not exceeding Twenty-Five Dollars (\$25.00) per square foot of the Premises (i.e., up to Two Million Five Hundred Ninety-Eight Thousand Seven Hundred Dollars (\$2,598,700) based on 103,948 sq. ft. square feet in the Premises), for the costs relating to the initial design and construction of Tenant's improvements which are affixed to the Premises (the "Tenant Improvements", which for purposes hereof shall also mean and include "Tenant Alterations" as that term is defined in the Lease.). Notwithstanding anything to the contrary contained herein, Landlord shall have no obligation to disburse all or any portion of the Tenant Improvement Allowance to Tenant unless Tenant makes a request for disbursement pursuant to the terms and conditions of Section 2.2 below prior to that date which is the latter of: a) twelve (12) months after the Commencement Date or b) thirty (30) days after notice from Landlord that the Tenant Improvement



Allowance Period is ending (which notice may not be given by Landlord earlier than nine (9) months after the Commencement Date). In no event shall Landlord be obligated to make disbursements pursuant to this Work Letter Agreement in a total amount which exceeds the Tenant Improvement Allowance. Tenant shall not be entitled to receive any cash payment or credit against rent or otherwise for any unused portion of the Tenant Improvement Allowance which is not used to pay for the Tenant Improvement Allowance Items (as such term is defined below) and such excess amount shall be retained by Landlord as its property.

## 2.2 Disbursement of the Tenant Improvement Allowance.

2.2.1 Tenant Improvement Allowance Items. Except as otherwise set forth in this Work Letter Agreement, the Tenant Improvement Allowance shall be disbursed by Landlord only for the following items and costs (collectively, the "Tenant Improvement Allowance Items"):

2.2.1.1 Architect/Engineer Fees. Payment of the fees of the Architect and the Engineers retained by Tenant, as those terms are defined in Section 3.1 of this Work Letter Agreement, may be deducted from the Tenant Improvement Allowance to pay for such fees, and payment of the fees incurred by, and the cost of documents and materials supplied by, Tenant's Architect and consultants in connection with the preparation and review of the Construction Drawings, as that term is defined in Section 3.1 of this Work Letter Agreement;

2.2.1.2 License Fees. The payment of plan check, permit and license fees relating to construction of the Tenant Improvements;

2.2.1.3 Construction Costs. The third party cost of construction of the Tenant Improvements, including, without limitation, contractors' fees and general conditions, building materials and technology, testing and inspection costs, costs of utilities, trash removal, parking and hoists, and the costs of after-hours freight elevator usage;

2.2.1.4 Base, Shell and Core Changes. The cost of any changes in the Base, Shell and Core work when such changes are required by the Construction Drawings (including if such changes are due to the fact that such work is prepared on an unoccupied basis), such cost to include all direct architectural and/or engineering fees and expenses incurred in connection therewith;

2.2.1.5 Code Requirements. The cost of any changes to the Construction Drawings or Tenant Improvements required by applicable laws and building codes (collectively, "Code");

2.2.1.6 Taxes. Sales and use taxes and Title 24 fees; and

2.2.1.7 Coordination Fee. The Coordination Fee, as that term is defined in Section 4.2.3 of this Work Letter Agreement.

2.2.2 Delivery Condition. Landlord shall pay for and absorb all costs incurred by Landlord in causing the Building and Premises to be placed in the Delivery Condition and such amounts shall not be deducted from the Tenant Improvement Allowance.

2.2.3 Disbursement of Tenant Improvement Allowance. Subject to Section 2.1 above, during the construction of the Tenant Improvements, Landlord shall make monthly disbursements of the Tenant Improvement Allowance for Tenant Improvement Allowance Items for the benefit of Tenant and shall authorize the release of monies for the benefit of Tenant as follows:

2.2.3.1 Monthly Disbursements. On or before the fifth (5th) day of each calendar month during the construction of the Tenant Improvements (or such other date as Landlord may designate), Tenant shall deliver to Landlord: (i) a request for payment of the Contractor, approved by Tenant, in a form to be provided by Landlord, showing the schedule, by trade, of percentage of completion of the Tenant Improvements in the Premises, detailing the portion of the work completed and the portion not completed, and demonstrating that the relationship between the cost of the work completed and the cost of the work to be completed complies with the terms of the Final Costs Statement, as that term is defined in Section 4.2.1 below; (ii) invoices from all of Tenant's Agents, as that term is defined in Section 4.1.2 below, for labor rendered and materials delivered to the Premises, which invoices shall support the entire amount requested by Tenant; (iii) executed stop payment notices releases from all of Tenant's Agents, which release (conditionally or unconditionally) stop notices or liens in the full amount requested pursuant to clause (i) above, which releases shall comply with the appropriate provisions, as reasonably determined by Landlord, of the applicable provisions of the California Civil Code; and (iv) all other information reasonably requested by Landlord. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in Tenant's payment request. On or before the fifteenth (15th) day of the following calendar month, Landlord shall deliver a check to Tenant made jointly payable to Contractor and Tenant in payment of the lesser of (A) Landlord's Percentage Share (as defined below) of the amounts so requested by Tenant, as set forth in this Section 2.2.2.1, above, less a five percent (5%) retention (the aggregate amount of such retentions to be known as the "Final Retention") and (B) the balance of any remaining available portion of the Tenant Improvement Allowance (not including the Final Retention), provided that Landlord does not dispute any request for payment based on non-compliance of any work with the Approved Working Drawings, as that term is defined in Section 3.4 below, or due to any substandard work, or for any other reason. For purposes of this Tenant Work Letter, (a) in the event the Final Costs (as hereinafter defined) is less than or equal to \$2,598,700, the "Landlord's Percentage Share" shall be one hundred percent (100%), and (b) if the Final Costs is more than \$2,598,700, then "Landlord's Percentage Share" shall be calculated by dividing the amount of the Tenant Improvement Allowance by the Final Costs (including any change orders) as prepared by Tenant and, reasonably approved by Landlord from time to time, and shall in no event exceed one hundred percent (100%); provided, however, that Landlord shall never be required to disburse more than the remaining balance of the Tenant Improvement Allowance. Within twenty (20) days after Tenant's delivery to Landlord of the items described in clauses (i) through (iv), Landlord shall pay the



amounts requested by Tenant (less the Retention with respect to the amounts requested), and Tenant shall provide Landlord with written evidence of that payment (which shall include unconditional mechanic's lien releases and/or release of stop payment notices in the aggregate amount of such payment, which releases shall comply with the appropriate provisions, as reasonably determined by Landlord, of the applicable provisions of the California Civil Code. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's payment request.

2.2.3.2 Final Retention. Subject to the provisions of this Work Letter Agreement, a check for the Final Retention payable jointly to Tenant and Contractor shall be delivered by Landlord to Tenant following the completion and payment in full of construction of the Tenant Improvements, provided that (i) Tenant delivers to Landlord properly executed mechanics lien releases in compliance with applicable California Civil Code provisions and (ii) Landlord has reasonably determined that no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building, the curtain wall of the Building, the structure or exterior appearance of the Building.

2.2.3.3 Tenant Improvement Allowance Items. Landlord shall only be obligated to make disbursements from the Tenant Improvement Allowance to the extent costs are incurred by Tenant for Tenant Improvement Allowance Items.

2.2.3.4 Tenant's Right to Offset. If Landlord fails to disburse a Tenant Improvement Allowance payment that is otherwise due and owing pursuant to the terms of the Lease and this Work Letter, then Tenant shall have the right to offset against rent owed under the Lease, an amount equal to the unpaid amount of such Tenant Improvement Allowance payment, but Landlord may in turn institute any available and appropriate legal proceeding to collect from Tenant the portions of offset amount by Tenant, plus interest thereon, to the extent that Tenant's offset is determined to be in error.

2.2.4 Specifications for Building Standard Components. Landlord has established specifications (the "Specifications") for the Building standard components to be used in the construction of the Tenant Improvements in the Premises which Specifications have been received by Tenant. Unless otherwise agreed to by Landlord, the Tenant Improvements shall comply with the Specifications.

### SECTION 3.

#### CONSTRUCTION DRAWINGS

3.1 Selection of Architect/Construction Drawings. Tenant shall retain the architect/space planner (the "Architect") approved by Landlord, which approval shall not be unreasonably withheld, to prepare the Construction Drawings. The engineering consultants engaged by Tenant (the "Engineers") to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, life

safety, and sprinkler work in the Premises shall be subject to Landlord's approval, which approval shall not be unreasonably withheld. DES Architects + Engineers, Inc. has been engaged by Tenant and approved by Landlord. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "Construction Drawings." All Construction Drawings shall comply with Landlord's drawing format and shall be subject to Landlord's approval, which shall not be withheld except and to the extent that a Design Problem (as defined in the Lease) exists. Tenant and Architect shall verify, in the field, the dimensions and conditions of the Premises, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord's review of the Construction Drawings as set forth in this Section 3, shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, compliance with applicable laws or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings.

3.2 Final Conceptual Space Plan. Tenant shall supply Landlord with four (4) copies signed by Tenant of its final space plan for the Premises before any architectural working drawings or engineering drawings have been commenced. The final space plan (the "Final Space Plan") shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and equipment to be contained therein. Landlord may request clarification or more specific drawings for special use items not included in the Final Conceptual Space Plan. Landlord shall advise Tenant within five (5) business days after Landlord's receipt of the Final Conceptual Space Plan for the Premises if the Landlord has found any Design Problems in the Plan. If Tenant is so advised, Tenant shall promptly i) cause the Final Conceptual Space Plan to be revised to correct any Design Problems, and (ii) deliver such revised Final Space Plan to Landlord, and Landlord shall advise Tenant within three (3) business days after Landlord's receipt of the revisions if Landlord has found any Design Problems. Landlord shall provide Tenant a "Space Plan Allowance" equal to up to ten cents (\$.10) per rentable square foot of Premises for reasonable, out-of-pocket expenses incurred by Tenant in conducting a test fit. The Space Plan Allowance shall be included as a portion of the Tenant Improvement Allowance.

3.3 Final Working Drawings. After the Final Conceptual Space Plan has been approved by Landlord and Tenant, Tenant shall promptly cause the Architect and the Engineers to complete the architectural and engineering drawings for the Premises, and cause the Architect to compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits for the Tenant Improvements (collectively, the "Final Working Drawings"), and shall submit the same to Landlord for Landlord's approval, which approval may be withheld only to the extent that Landlord identifies any Design Problems. Tenant shall supply Landlord with four (4) copies signed by Tenant of such Final Working Drawings. Landlord shall advise



Tenant within three (3) business days after Landlord's receipt of the Final Working Drawings for the Premises if Landlord had found any Design Problems. If Tenant is so advised, Tenant shall promptly (i) revise the Final Working Drawings in accordance with such review to eliminate any Design Problems, and (ii) deliver such revised Final Working Drawings to Landlord.

3.4 Approved Working Drawings. The Final Working Drawings shall be approved by Landlord (the "Approved Working Drawings") prior to the commencement of construction of the Premises by Tenant. After approval by Landlord, which approval is subject only to the identification of a Design Problem, of the Final Working Drawings, Tenant shall promptly submit the same to the appropriate governmental authorities for all applicable building permits. Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building permit or certificate of occupancy for the Premises and that obtaining the same shall be Tenant's responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit or certificate of occupancy. No material changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Landlord, which consent may be withheld only to the extent that Landlord identifies a Design Problem.

3.5 Submission in Parts. The Space Plan and the Working Drawings may be submitted at one or more times and in one or more parts and the procedures set forth above shall apply to each submission and partial submission.

## SECTION 4.

### CONSTRUCTION OF THE TENANT IMPROVEMENTS

#### 4.1 Tenant's Selection of Contractor and Tenant's Agents.

4.1.1 The Contractor. A general contractor, approved by Landlord, in its reasonable discretion, shall be retained by Tenant to construct the Tenant Improvements ("Contractor"). NOVO Construction has been engaged by Tenant and approved by Landlord.

4.1.2 Tenant's Agents. The Contractor and all subcontractors, laborers, materialmen, and suppliers used by Tenant and the Contractor are collectively referred to herein as "Tenant's Agents". Tenant's Agents who will perform any mechanical, electrical, plumbing, life safety, structural, heating, ventilation, and air-conditioning work in the Premises must be approved by Landlord, which approval shall not be unreasonably withheld.

#### 4.2 Construction of Tenant Improvements by Tenant's Agents.

4.2.1 Construction Contract: Cost Budget. Prior to Tenant's execution of the construction contract and general conditions with Contractor (the "Contract"), Tenant shall submit the Contract to Landlord. As soon as it is available, Tenant shall provide

Landlord with a written detailed cost breakdown (the "Final Costs Statement"), by trade, of the final costs to be incurred, or which have been incurred, as set forth more particularly in Section 2.2.1.1 through 2.2.1.7 above, in connection with the design and construction of the Tenant Improvements to be performed by or at the direction of Tenant or the Contractor which costs form a basis for the amount of the Contract, if any (the "Final Costs").

4.2.2 Compliance. Tenant's and Tenant's Agents' construction of the Tenant Improvements shall comply with the following: the Tenant Improvements shall be constructed in strict accordance with the Approved Working Drawings.

4.2.3 Coordination Fee. Tenant shall pay a logistical coordination fee (the "Coordination Fee") to Landlord in an amount equal to Landlord's total "Hard Costs" in connection with the Landlord's review of the proposed work. Landlord's Hard Costs include the out-of-pocket costs and expenses reasonably incurred by Landlord, including fees paid to its Property Manager and monies paid for and to consultants and professional reviewers and advisors.

4.2.4 Coordination with Landlord's Work. As noted in the Lease, as part of the Delivery Condition, Landlord may be performing construction work on the Premises after the Lease Commencement Date on April 1, 2013 and Tenant's commencement of its Tenant Improvement work. Landlord agrees to conduct its construction work in such a manner so as to avoid interfering with the Tenant Improvement work after April 1, 2013, and to coordinate with the schedule for Tenant Improvement work.

4.2.5 Indemnity. Tenant's indemnity of Landlord as set forth in the Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them, or in connection with Tenant's non-payment of any amount arising out of the Tenant Improvements and/or Tenant's disapproval of all or any portion of any request for payment. Such indemnity by Tenant, as set forth in the Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to Landlord's performance of any ministerial acts reasonably necessary (i) to permit Tenant to complete the Tenant Improvements, and (ii) to enable Tenant to obtain any building permit or certificate of occupancy for the Premises.

4.2.6 Insurance Requirements.

4.2.6.1 General Coverages. All of Tenant's Agents shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in the Lease.

4.2.6.2 Special Coverages. Tenant shall carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of the Tenant Improvements, and such other insurance as Landlord may require, it being understood and agreed that



the Tenant Improvements shall be insured by Tenant pursuant to the Lease immediately upon completion thereof. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord, and in form and with companies as are required to be carried by Tenant as set forth in the Lease.

4.2.6.3 General Terms. Certificates for all insurance carried pursuant to this Section 4.2.6 shall be delivered to Landlord before the commencement of construction of the Tenant Improvements and before the Contractor's equipment is moved onto the policies of insurance must contain a provision that the company writing said policy will give Landlord thirty (30) days prior written notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance. In the event that the Tenant Improvements are damaged by any cause during the course of the construction thereof, and if the Lease has not otherwise been terminated, Tenant shall immediately repair the same at Tenant's sole cost and expense. All policies carried under this Section 4.2.6 shall insure Landlord and Tenant, as their interests may appear, as well as Contractor and Tenant's Agents, and shall name as additional insureds Landlord's property manager, Landlord's asset manager (if any), and all mortgagees and ground lessors of the Building. All insurance, except Workers' Compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner and that any other insurance maintained by owner is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under Section 4.2.5 of this Work Letter Agreement.

4.2.7 Governmental Compliance. The Tenant Improvements shall comply in all respects with all applicable laws and regulations, including without limitation the following: (i) the Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; (iii) building material manufacturer's specifications; (iv) any applicable requirement to obtain a payment bond in the total amount of the public works project pursuant to Civil Code section 9550; (v) contractor license requirements under California law; (v) prevailing wage requirements pursuant to Labor Code section 1770 et. seq.; (vi) hours of labor requirements pursuant to Labor Code sections 1810-1815; (vii) certified payroll record requirements pursuant to Labor Code section 1776; (viii) apprenticeship requirements pursuant to Labor Code sections 1777.5-1777.7; (ix) prohibition against use of debarred contractors and subcontractors pursuant to Labor Code section 1777.1 and 1777.7; and (x) workers compensation requirements pursuant to Labor Code section 3700..

4.2.8 Inspection by Landlord. Landlord shall have the right to inspect the Tenant Improvements at all times, provided however, that Landlord's failure to inspect the Tenant Improvements shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Tenant Improvements constitute Landlord's approval of the same. Should Landlord disapprove any portion of the Tenant



Improvements, Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved. Any defects or deviations in, and/or disapproval by Landlord of, the Tenant Improvements shall be rectified by Tenant at no expense to Landlord, provided however, that in the event Landlord determines that a defect or deviation exists or disapproves of any matter in connection with any portion of the Tenant Improvements and such defect, deviation or matter might adversely affect the mechanical, electrical, plumbing, heating, ventilating and air conditioning or life-safety systems of the Building, the structure or exterior appearance of the Building, Landlord may, take such action as Landlord deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such defect, deviation and/or matter, including, without limitation, causing the cessation of performance of the construction of the Tenant Improvements until such time as the defect, deviation and/or matter is corrected to Landlord's satisfaction. Nothing in this Work Letter Agreement is intended to withdraw or modify approvals for a rooftop antenna or rooftop garden that may already have been provided by Landlord.

4.2.9 Meetings. Commencing upon the execution of the Lease, Tenant shall hold weekly meetings at a reasonable time and at a convenient location for Landlord and Tenant, with the Architect and the Contractor regarding the progress of the preparation of Construction Drawings and the construction of the Tenant Improvements, and Landlord and/or its agents shall receive prior notice of, and shall have the right to attend, all such meetings, and, upon Landlord's request, certain of Tenant's Agents shall attend such meetings. In addition, minutes shall be taken at all such meetings, a copy of which minutes shall be promptly delivered to Landlord. One such meeting each month shall include the review of Contractor's current request for payment.

4.3 Notice of Completion; Copy of "As Built" Plans. Within ten (10) days after completion of construction of the Tenant Improvements, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the County in which the Building is located in accordance with Sections 9204 and 9208 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, which certification shall survive the expiration or termination of the Lease, (C) to deliver to Landlord two (2) sets of sepia of such as-built drawings within ninety (90) days following issuance of a certificate of occupancy for the Premises, and (D) to deliver to Landlord a computer disk containing the Approved Working Drawings in AutoCAD format, and (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the Premises.

4.4 Coordination by Tenant's Agents with Landlord. Upon Tenant's delivery of the Contract to Landlord under Section 4.2.1 of this Work Letter Agreement, Tenant



shall furnish Landlord with a schedule setting forth the projected date of the completion of the Tenant Improvements and showing the critical time deadlines for each phase, item or trade relating to the construction of the Tenant Improvements.

## SECTION 5.

### MISCELLANEOUS

5.1 Tenant's Representative. Tenant has designated Karen Wang and Gina Caruso as its sole representatives with respect to the matters set forth in this Work Letter Agreement, each of whom shall have full authority and responsibility to act on behalf of the Tenant as required in this Work Letter Agreement.

5.2 Landlord's Representative. Landlord has designated Grant Takamoto (Orchard Commercial Construction, Inc, 2055 Laurelwood Road, Suite 130, Santa Clara, CA 95054, telephone: 408-955-1415; facsimile:, 408-922-0157, gtakamoto@orchardcommercial.com Orchard Partners, LLC, 2665 North First Street, Suite 310, San Jose, California 95134; telephone: 408 955-1414; facsimile: 408 922-0157) as its sole representative with respect to the matters set forth in this Work Letter Agreement, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Work Letter Agreement.

5.3 Tenant's Lease Default or Breach of this Work Letter Agreement. Notwithstanding any provision to the contrary contained in the Lease, if an Event of Default under the Lease or any breach by Tenant under this Work Letter Agreement has occurred at any time on or before the substantial completion of the Premises, then (i) in addition to all other rights and remedies granted to Landlord pursuant to the Lease, at law and/or in equity, Landlord shall have the right to withhold payment of all or any portion of the Tenant Improvement Allowance and/or Landlord may cause Contractor to cease the construction of the Premises (in which case, Tenant shall be responsible for any delay in the substantial completion of the Premises caused by such work stoppage), and (ii) all other obligations of Landlord under the terms of this Work Letter Agreement shall be forgiven until such time as such default is cured pursuant to the terms of the Lease (in which case, Tenant shall be responsible for any delay in the substantial completion of the Premises caused by such inaction by Landlord).

EXHIBIT D

CAMPUS RULES AND REGULATIONS



## EXHIBIT D

### CAMPUS RULES AND REGULATIONS

1. Tenant shall not employ any person or persons to perform maintenance or repair services other than the County's Property Manager, unless otherwise agreed to by County in writing. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness. Janitor service will not be furnished on nights when rooms are occupied after 9:00 p.m. unless, by agreement in writing, service is extended to a later hour for specifically designated rooms.
2. Except with County's prior consent, Tenant shall not sell, or permit the sale from the Premises of, or use or permit the use of any sidewalk or mall area adjacent to the Premises, or any part of the Campus for the sale of, newspapers, magazines, periodicals, theater tickets or any other goods, merchandise or service, nor shall Tenant carry on, or permit or allow any employee or other person to carry on, business in or from the Premises for the service or accommodation of occupants or any other portion of the Campus, nor shall the Premises be used for manufacturing of any kind, or for any business or activity other than that specifically provided for in Tenant's lease.
3. Sidewalks, passageways, driveways, exits, entrances, and other common areas of the Campus shall not be obstructed by Tenant or used by Tenant for any purpose other than for ingress to and egress from the Premises. County shall in all cases retain the right to control and prevent access thereto by all persons whose presence, in the judgment of the County, shall be prejudicial to the safety, character, reputation or interests of the Campus, including its tenants and occupants.
4. Neither Tenant nor its employees or guests shall store any automobiles in the parking lots or parking garage without the prior written consent of County. Except for emergency repairs, neither Tenant nor its employees shall perform any work on any automobiles while located in the parking garage or on the Land.
5. County shall have the right to close temporarily the parking garage or certain areas therein in order to perform necessary repairs, maintenance and improvements to the parking garage.
6. No sign, placard, picture, name, advertisement or notice (a "Sign") visible from the exterior of the Premises shall be inscribed, painted, affixed, installed or displayed by Tenant without the prior written consent of County, as provided in the Lease pursuant to which Tenant occupies space on the Campus. Absent any such consent, County shall have the right to remove any Sign without notice to and at the expense of Tenant. Any such consent shall be deemed to relate to only the particular Sign so consented to by County and shall not be construed as dispensing with the necessity of obtaining the prior written consent of County.

with respect to any other Sign. All approved Signs or lettering on doors and walls shall be inscribed, painted, affixed, installed, printed or otherwise displayed, at the expense of Tenant, by a person approved by County and in a manner or style acceptable to County.

7. No curtains, draperies, blinds, shutters, shades, screens or other coverings, awnings, hangings or decorations shall be installed or used in connection with any window or door of the Premises without the prior written consent of County, except for normal and customary interior decorations to the Premises not visible from the exterior of the Building or Campus. In any event, any such items shall be installed so as to face the interior surface of the standard window treatment established by County and shall in no way be visible from the exterior of the Building. No articles shall be placed or kept on the windowsills or any terraces so as to be visible from the exterior of the Building. No articles shall be placed against glass partitions or doors which might appear unsightly from the outside of the Premises. No sashes, sash doors, skylights, windows or doors that reflect or admit light or air into the halls, passageways or other public places in the Building shall be covered or obstructed by Tenant without the prior written consent of County.
8. Tenant assumes all responsibility for protecting its Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry closed. County shall not be responsible for any lost or stolen property, equipment, money or jewelry from the Premises regardless of whether such loss occurs when the Premises are locked or not.
9. Tenant shall not alter any lock or access device, nor shall Tenant install any new or additional lock, access device or bolt on any door or fence on Campus or the exterior of the Premises leased by the Tenant, without the prior written consent of County.
10. County shall furnish Tenant, at no cost to Tenant, a reasonable number of keys to the Premises (given the intended occupancy). Tenant shall pay a reasonable charge for any additional keys furnished by County. Any card-keys issued by County shall upon such issuance require payment of a refundable deposit in an amount reasonably determined from time to time by County. Tenant shall not make or have made copies of any keys or card-keys furnished by County. Tenant shall, upon the expiration or sooner termination of its tenancy, deliver to County all of such keys and card-keys, together with any of the keys relating to the Premises including, but not limited to, all keys to any vaults or safes which remain on the Premises. In the event of the loss of any keys furnished by County to Tenant, Tenant shall pay County (a) the cost thereof (less any deposit paid by Tenant) or (b) the cost of changing the subject lock(s) or access device(s) if County deems it necessary to make such change.
11. From time to time, County may adopt procedures and systems for the safety of the Building, its occupants, use and contents. Tenant, its agents, employees,



contractors, guests and invitees shall comply with County's procedures and systems.

12. County reserves the right to exclude or expel from the Campus any person who is, in the judgment of County, intoxicated or under the influence of alcohol or other drug or who is in violation of any of the Campus Rules or Regulations
13. County shall have the right to prohibit any advertising by Tenant which, in County's opinion, tends to impair the reputation of the Campus or its desirability for offices, and upon written notice from County, Tenant shall refrain from or discontinue such advertising.
14. County may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, but no such waiver by County shall be construed as a waiver of these Rules and Regulations in favor of any other tenant or tenants, nor prevent County from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Building.
15. Wherever the word "Tenant" occurs in these Rules and Regulations, it is understood and agreed that it shall mean and include Tenant and Tenant's assigns and subtenants, and each of their associates, agents, clerks, employees and visitors. Wherever the word "County" occurs in these Rules and Regulations, it is understood and agreed that it shall mean and include County and its assigns, agents, officers, employees and visitors.
16. These Rules and Regulations are in addition to, and shall not be construed in any way to modify, alter or amend, in whole or part, the terms, covenants, agreements and conditions of any Lease of premises on the Campus.
17. County reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Campus, and for the preservation of good order therein.
18. Tenant shall be responsible for the observance of all the foregoing Rules and Regulations by Tenant's employees, agents, clients, customers, invitees and guests.

EXHIBIT E

EXCLUSIONS FROM EXPENSES



## EXHIBIT E

### EXCLUSIONS FROM EXPENSES

For purposes of this Lease, Operating Expenses shall not, however, include:

- (a) costs incurred in connection with the original construction of the Building or Premises or in connection with any major change in the Building Premises (collectively, for this Exhibit E, the "Project"), such as adding or deleting floors;
- (b) depreciation, interest and principal payments on mortgages and other debt costs, if any;
- (c) costs, including marketing costs, legal fees, space planners' and architects' fees, advertising and promotional expenses, and brokerage fees incurred in connection with the original development, subsequent improvement, or original or future leasing of the Project;
- (d) costs for which the Landlord is reimbursed, or would have been reimbursed if Landlord had carried the insurance Landlord is required to carry pursuant to this Lease or would have been reimbursed if Landlord had used commercially reasonable efforts to collect such amounts, from any tenant or occupant of the Building or Premises or by insurance from its carrier or any tenant's carrier or by anyone else, and electric power costs for which any tenant directly contracts with the local public service company;
- (e) any bad debt loss, rent loss, or reserves for bad debts or rent loss;
- (f) costs associated with the operation of the business of the partnership or entity which constitutes the Landlord, as the same are distinguished from the costs of operation of the Project, including partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of the Tenant may be in issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of the Landlord's interest in the Project, and costs incurred in connection with any disputes between Landlord and its employees, between Landlord and Project management, or between Landlord and other tenants or occupants;
- (g) the wages and benefits of any employee who does not devote substantially all of his or her employed time to the Project unless such wages and benefits are prorated to reflect time spent on operating and managing the Project vis-à-vis time spent on matters unrelated to operating and managing the Project;
- (h) amount paid as ground rental or as rental for the Project by the Landlord;
- (i) costs of capital repairs, capital improvements and capital equipment;
- (j) tax penalties;
- (k) costs incurred to comply with Applicable Law with respect to hazardous materials, as defined by applicable law ("Hazardous Material"), which was in existence in the

Building or on the Project prior to the date of this Lease, and was of such a nature that a federal, state or municipal governmental or quasi-governmental authority, if it had then had knowledge of the presence of such Hazardous Material, in the state, and under the conditions that it then existed in the Building or on the Project, would have then required the removal, remediation or other action with respect to such Hazardous Material; and costs incurred with respect to Hazardous Material, which Hazardous Material is brought into the Building or onto the Project after the date hereof by Landlord or any other tenant of the Project or by anyone other than Tenant or Tenant Parties and is of such a nature, at that time, that a federal, state or municipal governmental or quasi-governmental authority, if it had then had knowledge of the presence of such Hazardous Material, in the state, and under the conditions, that it then exists in the Building or on the Project, would have then required the removal, remediation or other action with respect to such Hazardous Material;

(l) any reserves retained by Landlord;

(m) costs arising from Landlord's charitable or political contributions;

(n) any finders' fees, brokerage commissions, job placement costs or job advertising cost, other than, but no more than once per year, with respect to a receptionist or secretary in the Project office, once per year; and

(o) the cost of any training or incentive programs, other than for tenant life safety information services.



EXHIBIT F  
FORM OF GUARANTY

EXHIBIT G  
BUILDING AND CAMPUS REPAIRS



## **EXHIBIT G**

### **One Circle Star – Building & Campus Repairs**

#### **HVAC**

- It is recommended that the heating hot water system pump be operated and a thorough leak check be done throughout the building at low water temperature.
- It is recommended that the rooftop ductwork be resealed to eliminate water intrusion into the supply/return airflow path.
- A majority of the equipment requires minor maintenance and repair work, such as condenser coil cleaning, replacement of one compressor, review of VFD faults, hot water pump placement, and boiler service/checkout.

#### **ROOF**

- The concrete parapet walls are exposed. These should be coated with an elastomeric coating along with a new caulking job at the transition from the wall to the metal reglet.
- The yellow safety line is fading at the perimeter of the building and should be re-painted.

#### **ELECTRICAL**

- Site Lighting
  - There are (7) existing building up-lights that will need repair and or replacement. The up-light fixture heads are broken from the fixture base.
- First Floor Cafeteria
  - One 20a 2p circuit breaker feeding a well trips to off.
  -

#### **GENERATOR**

- The existing generator will be serviced by a reputable contractor, and delivered in good operable condition. The cost of any subsequent maintenance and repair to the generator will be considered an Operating Expense as defined in Section 26.2, and allocated as a Building Expense if exclusively for the use of Tenant and its Premises, or as a Campus Expense if the generator either on a regular basis or on an emergency basis, supports both buildings in the Campus.

#### **PLUMBING**

- The sewer line outside the building seems to have some blockage from grease interceptor to street. (Landlord will hydro flush all the water lines to/from the Building, including sewer line(s).)

#### **ELEVATOR**

- Building and Garage elevators need repairs and have internal and/or external damage to the mechanical system and to the exterior panels and doors along with interior panel and door leaf maintenance required.

#### **OTHER**

- All exterior/parking lot lighting to be repaired and in good working order. (See Electrical-Site Lighting above)
- All exterior non-compliant ADA items to be mitigated by September 1, 2013.
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