

1 EX-10.20 21 dex1020.htm COMMERCIAL LEASE - THE BOARD OF TRUSTEES OF THE LELAND STANFORD JR. UNIVERSITY

2

Exhibit 10.20

3

**COMMERCIAL LEASE**

**Commented [DT1]:** Q: Why is this title not "Commercial Lease Agreement"?

4

THIS LEASE is entered into as of July 25, 2007 (the "**Effective Date**"), by and between THE

5

BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate

6

powers under the laws of the State of California ("**Landlord**"), and TESLA MOTORS, INC., a

7

Delaware corporation ("**Tenant**").

**Commented [DT2]:** Q: Stanford's corporate powers: Why recite that?

8

**1. BASIC LEASE INFORMATION.** The following is a summary of basic lease information.

9

Each item in this Article 1 incorporates all of the terms set forth in this Lease pertaining to such

10

item and to the extent there is any conflict between the provisions of this Article 1 and any other

11

provisions of this Lease, the other provisions shall control. Any capitalized term not defined in

12

this Lease shall have the meaning set forth in the Glossary that appears at the end of this Lease.

**Commented [DT3]:** "Incorporates all of the terms" — seems like overkill

**Commented [DT4]:** Q: "the other provisions shall control" — does this make any sense?

13

Address of Premises: 300 El Camino Real, Menlo Park, California

Term: Five (5) years

Scheduled Date for Delivery of Premises: August 1, 2007

Commencement Date: August 1, 2007

Expiration Date: July 31, 2012

Base Rent: Year One: \$60,000 (\$5,000 per month)

Year Two: \$90,000 (\$7,500 per month)

Year Three: \$120,000 (\$10,000 per month)

Year Four: \$165,000 (\$13,750 per month)

Year Five: \$165,000 (\$13,750 per month)

Security Deposit: \$5,000

14

Use: A dealership for the retail sales of new electric passenger automobiles, with ancillary

15

automobile repair work, automobile displays, sales offices and storage.

16

Addresses for Notice:

Landlord: Stanford University - Real Estate Office

2755 Sand Hill Road, Suite 100

Menlo Park, CA 94025

Attention: Director, Property Services

**Commented [DT5]:** Q: Why "Attention" — and why a title and not a name?

with a copy to: Carol K. Dillon, Esq.  
Bingham McCutchen LLP  
1900 University Avenue  
East Palo Alto, CA 94303

Tenant: Craig Harding Legal Dept.  
Tesla Motors  
1050 Bing St.  
San Carlos, CA 94070

17 Brokers: None

Commented [DT6]: Roadblock

18 **2. PREMISES**

19 Subject to the terms, covenants and conditions set forth in this Lease, Landlord  
20 hereby leases to Tenant and Tenant hereby leases from Landlord those premises (the  
21 "**Premises**")

22 comprised of an existing automobile showroom and automobile repair facility,

23 together with all other buildings and improvements,

24 including without limitation parking areas, sidewalks, driveways and landscaping

25 located on that certain real property described on the attached **Exhibit A**.

26 A site plan generally depicting the Premises is attached as **Exhibit B**.

27 **3. ACCEPTANCE**

28 The Premises as furnished by Landlord consist of the improvements as they exist as  
29 of the Effective Date

30 and Landlord shall have no obligation for construction work or improvements on or  
31 to any portion of the Premises.

32 Prior to entering into this Lease, Tenant has made a thorough and independent  
33 examination of the Premises and all matters related to Tenant's decision to enter into this Lease.

34 Tenant is thoroughly familiar with all aspects of the Premises and is satisfied that it is  
35 in an acceptable condition and meet Tenant's needs.

36 **Tenant does not rely on**, and Landlord does not make, any express or implied  
37 representations or warranties as to any matters including, without limitation,

Commented [DT7]: Q: So does Exhibit A describe the entire property, or just the parking areas, etc.?  
Q: How could this be clarified?

Commented [DT8]: Q: Why this "no reliance" clause?

38 (a) the physical condition of the Premises including without limitation the structural  
39 components of any improvements or any building systems within or serving the improvements  
40 (including without limitation indoor air quality),

41 (b) the existence, quality, adequacy or availability of utilities serving the Premises or  
42 any portion thereof,

43 (c) the use, habitability, merchantability, fitness or suitability of the Premises for  
44 Tenant's intended use,

45 (d) the likelihood of deriving business from Tenant's location or the economic  
46 feasibility of Tenant's business,

47 (e) Hazardous Materials on, in, under or around the Premises,

48 (f) zoning, entitlements or any laws, ordinances or regulations which may apply to  
49 Tenant's use of the Premises or business operations, or

50 (g) any other matter whatsoever.

51 Tenant has satisfied itself as to such suitability and other pertinent matters by  
52 Tenant's own inquiries and tests into all matters relevant in determining whether to enter into  
53 this Lease.

54 Tenant accepts the Premises in their existing "AS-IS", "WHERE-IS" condition, and  
55 "WITH ALL FAULTS".

56 Tenant shall, by entering into and occupying the Premises, be deemed to have  
57 accepted the Premises and to have acknowledged that the same are in good order, condition and  
58 repair in all respects.

59 Upon the Commencement Date, tenant shall execute and deliver to Landlord the  
60 Acceptance Form attached hereto as Exhibit C.

#### 61 4. TERM

62 **4.1 Term.** The Premises are leased for a term (the "*Term*") commencing on the  
63 Commencement Date and expiring on the Expiration Date.

64 Notwithstanding the foregoing, in the event this Lease is executed prior to the stated  
65 Commencement Date, the actual Commencement Date shall occur on such earlier date that  
66 Landlord delivers possession of the Premises to Tenant.

**Commented [DT9]:** This is English style (the period outside the closing quotation mark).

**Commented [DT10]:** Q: What effect does an "acknowledgement" have?

**Commented [DT11]:** Note the inconsistent capitalization.

**Commented [DT12]:** Q: Why does Landlord want a signed acceptance form?

67 The Term shall end on the Expiration Date, or such earlier date on which this Lease  
68 terminates pursuant to its terms.

69 The date upon which this Lease actually terminates, whether by expiration of the  
70 Term or earlier termination pursuant to the terms of this Lease, is sometimes referred to in this  
71 Lease as the "Termination Date".

72 **4.2 Failure to Deliver Possession.** If for any reason Landlord cannot deliver possession  
73 of the Premises to Tenant on or prior to the Scheduled Date for Delivery of the Premises,

74 then the validity of this Lease and the obligations of Tenant under this Lease shall not be  
75 affected

76 and Tenant shall have no claim against Landlord arising out of Landlord's failure to  
77 deliver possession of the Premises on the Scheduled Date for Delivery of the Premises.

78 Notwithstanding the foregoing, if Landlord fails to deliver the Premises within thirty  
79 (30) days after the Commencement Date, Tenant shall have the option to terminate this Lease,  
80 whereupon neither party shall have any further rights or obligations hereunder.

81 **4.3 Extension Option.** In the event that Landlord determines in its sole discretion  
82 that Landlord does **not** intend to redevelop the Premises or to use it for Landlord's own purposes  
83 after the Termination Date, and that therefore the Premises will be available for lease,

84 Landlord shall provide Tenant with written notice of such determination, setting  
85 forth the period of time that Landlord has determined the Premises will remain available for  
86 lease by Tenant (the "**Extension Period**").

87 Tenant shall have the option (the "**Extension Option**") to extend the Term for the  
88 Extension Period by delivering written notice to Landlord within thirty (30) days after receipt of  
89 Landlord's notice.

90 The Extension Option shall be void if an Event of Default by Tenant exists, either at  
91 the time of exercise of the Extension Option or the time of commencement of the Extension  
92 Term.

93 The terms of this Lease during the Extension Period shall be the same terms and  
94 conditions as during the original Term, except that the Base Rent applicable to the Extension  
95 Period shall be equal to the Prevailing Market Rent as of the commencement of the Extension  
96 Period, as determined pursuant to Exhibit D.

Commented [DT13]: Q: What if one of the parties breached the Lease before such a termination?

Commented [DT14]: Note the use of "extension" vice "renewal."

Commented [DT15]: Note the deadline or "sunset"

Commented [DT16]: Notice that the deadline countdown clock starts upon "receipt" of notice.

Commented [DT17]: Escalator clause here — set up as an exhibit and not as an in-line provision.

Commented [DT18]: Exhibit D uses the term "Option" and not "Extension Option"

97           The Extension Option is personal to Tenant and shall be inapplicable and null and  
 98 void if Tenant assigns its interest under this Lease, or if either party exercises its termination right  
 99 under Section 4.4. The Extension Option (if not previously exercised) shall expire as of the  
 100 Termination Date.

**Commented [DT19]:** Stanford doesn't want to give the same deal to an as-yet unknown successor to Tesal.

#### 101           **4.4 Termination Right.**

102           **(a)** Either party shall have the right to terminate this Lease during the initial  
 103 Term (but not the Extension Period) by providing written notice thereof to the other party not  
 104 less than six (6) months prior to the desired termination date (the "**Early Termination Date**").

**Commented [DT20]:** So a six-month "termination at will" provision — but not during an Extension Term ...

105           The Early Termination Date must be a date later than the second anniversary  
 106 of the Commencement Date. In the event either party exercises the termination right, the Right  
 107 of First Offer shall terminate and have no further force or effect.

**Commented [DT21]:** ... and neither party can terminate at will before the Lease has been in effect for two years.

108           **(b)** If Landlord elects to terminate this Lease and the Early Termination Date  
 109 occurs during months 25 through 36 of the Term, inclusive, then Landlord shall reimburse Tenant  
 110 the unamortized cost of any Alterations made by Tenant in the Premises, less the sum of  
 111 \$90,000.

**Commented [DT22]:** Note: This reimbursement obligation could have been done as a table.

112           If the Early Termination Date occurs during months through 37 through 48 of  
 113 the Term, inclusive, then Landlord shall reimburse Tenant the unamortized cost of any  
 114 Alterations made by Tenant in the Premises, less the sum of \$45,000.

115           If the Early Termination Date occurs during months through 49 through 60 of  
 116 the Term, inclusive, then Landlord shall have no obligation to compensate Tenant for such  
 117 termination.

118           The reimbursement payment obligation of Landlord hereunder is referred to  
 119 as the "**Termination Fee**".

**Commented [DT23]:** Summary: If Landlord pulls the plug early, then Landlord must reimburse Tenant for a portion of Tenant's alteration costs.

120           **(c)** If Tenant elects to terminate this Lease, then Landlord shall have no  
 121 obligation to pay the Termination Fee to Tenant.

122           **(d)** All Alterations made by Tenant in the Premises shall comply with any and  
 123 all requirements of Section 9 below.

124           Additionally and not by way of limitation of the foregoing, Landlord's  
 125 obligation to pay the Termination Fee shall be subject to the following conditions:

126 (i) the cost of the Alterations shall not exceed a total aggregate sum of  
127 \$300,000, and any costs incurred by Tenant in performing Alterations which exceed \$300,000  
128 shall not be included in determining the Termination Fee;

129 (ii) the Termination Fee shall be based on hard costs of construction only, as  
130 demonstrated by paid invoices provided by Tenant, and shall not include any soft costs incurred  
131 by Tenant in performing the Alterations, such as architect fees or the Landlord's review and  
132 supervision fee; and

133 (iii) the term "*unamortized costs*" used herein shall be based on a straight-  
134 line accounting calculation based on the then-remaining balance of the Term in accordance with  
135 generally accepted accounting principles.

136 **4.5 Right of First Offer for New Lease.** If at any time during the Term Landlord  
137 determines in its sole discretion that Landlord's redevelopment plans for the Premises will  
138 include a retail car dealership, then Landlord shall offer to Tenant the opportunity to lease the  
139 Premises (the "*Right of First Offer*"), as provided in this Section.

140 At such time as the redevelopment planning has proceeded to the point that  
141 Landlord is prepared to negotiate a new lease of the Premises, Landlord shall deliver written  
142 notice to Tenant of the material terms upon which Landlord would be willing to lease the  
143 Premises to Tenant (the "*Offer Notice*").

144 Tenant shall have ten (10) days after receipt in which to accept the Offer by written  
145 notice to Landlord.

146 If Tenant does not give Landlord written notice accepting the Offer within the 10-day  
147 period, Landlord shall have the right to market and lease the Premises to a third party without  
148 reoffering the interest to Tenant.

149 The Right of First Offer is personal to Tenant and shall be inapplicable and null and  
150 void if Tenant assigns its interest under this Lease, or if Tenant's anticipated use of the Premises  
151 will no longer be as set forth in the Basic Lease Information.

## 152 **5. RENT**

153 **5.1 Base Rent.** Commencing upon the Commencement Date, and thereafter during  
154 the Term, Tenant shall pay to Landlord the monthly Base Rent specified in Article 1

155 on or before the first day of each month, in advance,

156 at the address specified for Landlord in Article 1, or at such other place as Landlord  
157 designates in writing,

158 without any prior notice or demand

159 and without any deductions or setoff whatsoever (except as otherwise expressly  
160 provided in this Lease).

161 If the Commencement Date occurs on a day other than the first day of a calendar  
162 month, or the Termination Date occurs on a day other than the last day of a calendar month,  
163 then the Base Rent for such fractional month will be prorated on the basis of the actual number  
164 of days in such month.

165 **5.2 Rent Adjustment.** On each anniversary of the Commencement Date (each, an  
166 "**Adjustment Date**"), the Base Rent shall be increased as set forth in Article 1.

167 **5.3 Additional Rent.** All sums due from Tenant to Landlord or to any third party  
168 under the terms of this Lease (other than Base Rent) shall be additional rent ("**Additional Rent**"),  
169 including all sums incurred by Landlord due to Tenant's failure to perform its obligations under  
170 this Lease.

171 All Additional Rent that is payable to Landlord shall be paid at the time and place that  
172 Base Rent is paid.

173 Landlord will have the same remedies for a default in the payment of any Additional  
174 Rent as for a default in the payment of Base Rent.

175 Together, Base Rent and Additional Rent are sometimes referred to in this Lease as  
176 "**Rent**".

177

178 **5.4 Late Payment.** Any unpaid Rent shall bear interest from the date due until paid at  
179 the maximum interest rate allowed by law (the "**Interest Rate**").

180 In addition, Tenant recognizes that late payment of any Rent will result in  
181 administrative expense to Landlord, the extent of which expense is difficult and economically  
182 impracticable to determine.

183 Therefore, Tenant agrees that if Tenant fails to pay any Rent within five (5) days after  
184 its due date, an additional late charge of five percent (5%) of the sums so overdue shall become  
185 immediately due and payable.

**Commented [DT24]:** Note this part: Pro-rata adjustment for fractions of a month on either the front end or the back end.

**Commented [DT25]:** This is a table of rents.

**Commented [DT26]:** Q: Why label these "additional sums" as "Additional Rent"? (Hint: Might it have to do with some sort of special status for rent — e.g., in bankruptcy? (See [this article](#); scan down to "Your rent claim.")

**Commented [DT27]:** True enough.

**Commented [DT28]:** But is this a reasonable estimate of Landlord's "admin costs" of late rent payment?

186 Tenant agrees that the late payment charge is a reasonable estimate of the  
 187 additional administrative costs and detriment that will be incurred by Landlord as a result of such  
 188 failure by Tenant.

189 In the event of nonpayment of interest or late charges on overdue Rent, Landlord  
 190 shall have, in addition to all other rights and remedies, the rights and remedies provided in this  
 191 Lease and by law for nonpayment of Rent.

## 192 6. USE OF PREMISES AND CONDUCT OF BUSINESS

193 **6.1 Permitted Use.** Tenant may use and occupy the Premises during the Term solely  
 194 for the uses specified and permitted in Article 1 and for no other purpose without the prior  
 195 written consent of Landlord,

196 such consent to be granted or withheld in Landlord's sole and unfettered discretion.

197 Tenant's use of the Premises shall in all respects comply with all Applicable Laws (as  
 198 defined in Section 11.1).

199 **6.2 Prohibited Uses.** Tenant shall not use the Premises or allow the Premises to be  
 200 used for any illegal or immoral purpose, or so as to create waste, or constitute a private or public  
 201 nuisance.

202 Tenant shall not place any loads upon the floors, walls, or ceiling which endanger the  
 203 structure, or place any Hazardous Material in the drainage system of the Premises, or overload  
 204 existing electrical or other mechanical systems.

205 Tenant shall not use any machinery or equipment which causes any unreasonable  
 206 noise or vibration.

207 No waste materials or refuse shall be dumped upon or permitted to remain upon  
 208 any part of the Premises except in trash containers placed inside exterior enclosures for that  
 209 purpose.

210 No loudspeaker or other device, system or apparatus shall be used at the Premises  
 211 without the prior written consent of Landlord.

212 No explosives or firearms shall be brought onto the Premises without the prior  
 213 written consent of Landlord, which Landlord may withhold in its sole and absolute discretion.

Commented [DT29]: Note the restriction

Commented [DT30]: Note: There's some case law that this doesn't mean "arbitrary or capricious" withholding of consent.

Commented [DT31]: Nice use of a cross-reference.

Commented [DT32]: Q: So no computers?

Commented [DT33]: Q: Under *expresio unius ...*, would Landlord have to be reasonable in exercising its discretion about loudspeakers?



214 **7. NET LEASE; NO COUNTERCLAIM OR ABATEMENT**

215 **7.1 Net Lease.** The Rent due hereunder shall be **absolutely net to Landlord** and shall  
 216 be paid without assertion of any counterclaim, offset, deduction or defense and without  
 217 abatement, suspension,, deferment or reduction (except as otherwise provided in this Lease).

**Commented [DT34]:** A “net lease” is one where the tenant picks up all the costs (or its pro-rata share) — taxes, insurance, maintenance (referred to as a “triple-net lease”).

218 Landlord shall not be expected or required under any circumstances or conditions  
 219 whatsoever, whether now existing or hereafter arising, and whether now known or unknown to  
 220 the parties, to make any payment of any kind whatsoever with respect to the Premises or be  
 221 under any obligation or liability hereunder, except if and solely to the extent expressly so  
 222 provided elsewhere in this Lease.

223 **7.2 Real Property Taxes.** Without limiting the foregoing, **Additional Rent shall**  
 224 **include,** and Tenant agrees to bear, discharge and pay as the same become due, and before  
 225 delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or  
 226 imposts, whether general or special, or ordinary or extraordinary, of every name, nature and kind  
 227 whatsoever, including all governmental charges of every name, nature or kind that may be  
 228 levied, assessed, charged or imposed or maybe or become a lien or charge upon the Premises or  
 229 any part thereof;

**Commented [DT35]:** Tesla pays all the taxes for the property.

230 or upon the rent or income of Tenant; or upon the use or occupancy of the  
 231 Premises;

232 or any document creating or transferring an estate or interest in the Premises; upon  
 233 any of the buildings or improvements existing at any time during the Term upon the Premises; or  
 234 upon the leasehold of Tenant;

235 or upon Landlord by reason of its ownership of the Premises (but not including any  
 236 franchise, transfer, inheritance, or capital stock taxes or income taxes measured by the net  
 237 income of Landlord unless, due to a change in the method of taxation, any of such taxes is levied  
 238 or assessed against Landlord as a substitute for, in whole or in part, any other tax that would  
 239 otherwise be the responsibility of Tenant).

240 If at any time during the Term, under any Applicable Laws, any tax is levied or  
 241 assessed against Landlord directly, in substitution in whole or in part for real property taxes,  
 242 Tenant **covenants and agrees to pay and discharge** such tax.

**Commented [DT36]:** How about, “... then Tenant will pay that tax”?

243 All of the foregoing taxes, assessments and other charges which are the  
 244 responsibility of Tenant are herein referred to as “**Property Taxes.**”

245 Notwithstanding the foregoing, Tenant shall have no obligation to pay

246 (a) any portion of an increase in Property Taxes, if any, attributable to a  
247 reassessment for assessment year 2007-2008 as a result of Landlord's recent acquisition of the  
248 ground lease interest in the Premises; or

249 (b) any environmental assessment, charges or liens arising in connection with the  
250 remediation of Hazardous Materials from the Premises, the causation of which arose prior to the  
251 delivery of the Premises to Tenant, or to the extent caused by Landlord or any of Landlord's  
252 agents,

253 (c) costs or fees (other than general real property taxes) payable in connection with  
254 Landlord's right to further develop the Premises, and

255 (d) property transfer taxes, stamp or recording taxes attributable to Landlord's  
256 transfer of ownership of the Premises or any interest of Landlord therein.

257 **7.3 Project Costs.** In addition to Minimum Rent, Tenant shall pay or fund when due  
258 all Property Taxes, insurance premiums and deductibles, debt service, permit and license fees,  
259 costs of utilities and services, maintenance, repair, replacement, rebuilding, restoration,  
260 management, marketing and leasing services, operations and other costs of any type whatsoever  
261 accruing at any time during the Term in connection with the ownership, marketing, leasing,  
262 operation, management, maintenance, repair, replacement, restoration, use, occupancy or  
263 enjoyment of the Premises (collectively, "**Project Costs**").

264 Tenant shall pay all Project Costs directly,

265 and shall contract directly for all required services, utilities (including without  
266 limitation water, gas, electricity, sewer service, waste pick-up, telephone and other electronic  
267 telecommunication services) and other items described herein;

268 provided, however, that Landlord shall have the right to contract for any such  
269 services, utilities or other items if Tenant has failed to do so, or has failed to make any payment  
270 of Project Costs which is due and owing.

271 Tenant shall provide Landlord, upon written request, with copies of invoices,  
272 receipts, canceled checks and/or other documentation reasonably substantiating Tenant's  
273 payment of all Project Costs.

Commented [DT37]: NOTE:  
Environmental costs are potentially  
a Big Thing to negotiate in leases.

Commented [DT38]: "Project  
Costs" is a strange name.

Commented [DT39]: Self-help  
protection for Landlord.

Commented [DT40]: "You get what  
you INspect ...."

274 **7.4 Taxes on Tenant's Property and Business.** Tenant shall pay prior to delinquency  
275 all taxes levied or assessed by any local, state or federal authority upon the conduct of Tenant's  
276 business in the Premises or upon Tenant's Property (as defined in Section 9.4) and shall deliver  
277 satisfactory evidence of such payment to Landlord.

Commented [DT41]: Ditto.

278 If the assessed value of the Premises is increased by the inclusion of a value placed  
279 upon Tenant's Property, Tenant shall pay to Landlord, upon written demand, the taxes so levied  
280 against Landlord, or the portion of Landlord's taxes resulting from said increase in assessment, as  
281 determined from time to time by Landlord.

Commented [DT42]: Tenant must pay Landlord's taxes resulting from Tenant's Property ....

## 282 **8. REPAIRS, MAINTENANCE AND SERVICES**

Commented [DT43]: Very typical.

283 **8.1 Maintenance and Repairs.** During the Term, Tenant shall, at its own cost and  
284 expense and without any cost or expense to Landlord, keep and maintain the Premises and all  
285 improvements and appurtenant facilities thereon or related thereto,

286 including without limitation the structural components, roof, fixtures and building  
287 systems of the improvements, grounds, sidewalks, parking and landscaped areas,

288 in good condition and repair.

289 Tenant shall promptly make all repairs, replacements and alterations (whether  
290 structural or nonstructural, foreseen or unforeseen, or ordinary or extraordinary) necessary to  
291 maintain the Premises and the improvements in good condition and repair, and in compliance  
292 with all Applicable Laws and to avoid any structural damage or injury to the Premises or the  
293 improvements.

294 **8.2 No Obligation Of Landlord To Repair.** Landlord shall not be obligated to make  
295 any repairs, replacements or renewals of any kind, nature or description whatsoever to the  
296 Premises or the improvements (except to the extent caused by Landlord's willful misconduct or  
297 gross negligence), and Tenant hereby expressly waives any right to terminate this Lease and any  
298 right to make repairs at Landlord's expense under Sections 1932(1), 1941 and 1942 of the  
299 California Civil Code, or any amendments thereof, or any similar law, statute or ordinance now or  
300 hereafter in effect.

301 **8.3 Security.** Tenant shall be solely responsible for the security of the Premises and  
302 of Tenant, its employees, agents, contractors and invitees (collectively, "**Tenant's Agents**") while  
303 in or about the Premises. Any security services provided to the Premises by Landlord shall be at  
304 Landlord's sole discretion and Landlord shall not be liable to Tenant or Tenant's Agents for any

305 failure to provide security services or any loss, injury or damage suffered as a result of a failure to  
306 provide security services.

307 **8.4 Tenant's Failure to Repair.** If Tenant fails for any reason to repair or maintain the  
308 Premises as required by this Lease to Landlord's reasonable satisfaction, and does not cure such  
309 failure (a) within thirty (30) days after receipt of Landlord's written notice, or (b) if the nature of  
310 the cure will reasonably require more than thirty (30) days to perform, within a reasonable time  
311 so long as Tenant promptly commences and diligently prosecutes such cure to completion, then  
312 Landlord shall have the right, but not the obligation, to enter onto the Premises and perform  
313 such repairs or maintenance without liability to Tenant (except to the extent of Landlord's gross  
314 negligence or willful misconduct) for any loss or damage to Tenant's furnishings, fixtures,  
315 equipment or other personal property or for interference with Tenant's business arising  
316 therefrom.

317 If Landlord performs such repairs or maintenance, Tenant shall pay all costs thereof  
318 to Landlord upon demand as Additional Rent.

## 319 9. ALTERATIONS

320 **9.1 Alterations by Tenant.** Tenant shall not make or permit any alterations to the  
321 building systems, and shall not make or permit any alterations, installations, additions or  
322 improvements, structural or otherwise (collectively, "**Alterations**") in or to the Premises without  
323 Landlord's prior written consent, which Landlord shall not unreasonably withhold, condition or  
324 delay. Landlord shall respond to any request by Tenant to make any Alteration within ten  
325 (10) business days after receipt of such request for consent from Tenant.

326 Notwithstanding the foregoing, Landlord's consent shall not be required

327 (a) in the case of interior, cosmetic non-structural Alterations that do not require a  
328 permit, or affect any building systems, or

329 (b) in the case of other Alterations that do not exceed a total price of Twenty-Five  
330 Fifty Thousand Dollars (\$25,000) per project and do not affect any building systems or the  
331 structural integrity of the buildings.

332 All Alterations shall be done at Tenant's sole cost and expense, including without  
333 limitation the cost and expense of obtaining all permits and approvals required for any  
334 Alterations.

**Commented [DT44]:** Another "self-help" protection for Landlord.

**Commented [DT45]:** Contrast with the "sole and unfettered discretion" standard used elsewhere in this Lease.

**Commented [DT46]:** Q: What's the difference between a "cost" and an "expense"? (See [this write-up](#).)

335 Tenant shall reimburse Landlord within ten (10) days after written demand as  
336 Additional Rent for any out-of-pocket expenses incurred by Landlord in connection with  
337 Alterations elected to be made and/or any repairs or replacements required to be made by  
338 Tenant, including, without limitation, any reasonable fees charged by Landlord's contractors  
339 and/or consultants to review plans and specifications prepared by Tenant.

340 **9.2 Project Requirements.** The following provisions of this Section 9.2 shall apply to  
341 all Alterations, whether or not requiring Landlord's approval (unless otherwise noted):

342 (a) Prior to entering into a contract for Alterations requiring Landlord's  
343 approval, Tenant shall obtain Landlord's written approval, which approval shall not be  
344 unreasonably withheld, conditioned or delayed, of the identity of each of the design architect  
345 and the general contractor.

346 (b) Before commencing the construction of any Alterations, Tenant shall  
347 procure or cause to be procured the insurance coverage described below and provide Landlord  
348 with certificates of such insurance in form reasonably satisfactory to Landlord. All such insurance  
349 shall comply with the following requirements of this Section and of Section 13.2.

Commented [DT47]: Insurance requirement

350 (i) During the course of construction, to the extent not covered by  
351 property insurance maintained by Tenant pursuant to Section 13.2, comprehensive "all risk"  
352 builder's risk insurance, including vandalism and malicious mischief, excluding earthquake and  
353 flood, covering all improvements in place on the Premises, all materials and equipment stored at  
354 the site and furnished under contract, and all materials and equipment that are in the process of  
355 fabrication at the premises of any third party or that have been placed in transit to the Premises  
356 when such fabrication or transit is at the risk of, or when title to or an insurable interest in such  
357 materials or equipment has passed to, Tenant or its construction manager, contractors or  
358 subcontractors (excluding any contractors', subcontractors' and construction managers' tools  
359 and equipment, and property owned by the employees of the construction manager, any  
360 contractor or any subcontractor), such insurance to be written on a completed value basis in an  
361 amount not less than the full estimated replacement value of Alterations.

362 (ii) Commercial general liability insurance covering Tenant, Landlord  
363 and each construction manager, contractor and subcontractor engaged in any work on the  
364 Premises, which insurance may be effected by endorsement, if obtainable, on the policy required  
365 to be carried pursuant to Section 13.2, including insurance for completed operations, elevators,  
366 owner's, construction manager's and contractor's protective liability, products completed  
367 operations for one (1) year after the date of acceptance of the work by Tenant, broad form

368 blanket contractual liability, broad form property damage and full form personal injury (including  
369 but not limited to bodily injury), covering the performance of all work at or from the Premises by  
370 Tenant, its construction manager, contractors and subcontractors, and in a liability amount not  
371 less than the amount at the time carried by prudent owners of comparable construction projects,  
372 but in any event not less than Three Million Dollar (\$3,000,000) combined single limit, which  
373 policy shall include thereunder for the mutual benefit of Landlord and Tenant, bodily injury  
374 liability and property damage liability, and automobile insurance on any non-owned, hired or  
375 leased automotive equipment used in the construction of any work.

376 (iii) Workers' Compensation Insurance approved by the State of  
377 California, in the amounts and coverages required under workers' compensation, disability and  
378 similar employee benefit laws applicable to the Premises, and Employer's Liability Insurance with  
379 limits not less than One Million Dollars (\$1,000,000) or such higher amounts as may be required  
380 by law.

381 (c) All construction and other work in connection with any Alterations shall be done at Tenant's  
382 sole cost and expense and in a prudent and first class manner. Tenant shall construct the  
383 Alterations in accordance with all Applicable Laws, and with plans and specifications that are in  
384 accordance with the provisions of this Article 9 and all other provisions of this Lease.

385 (d) Prior to the commencement of any Alteration in excess of Ten Thousand  
386 Dollars (\$10,000), Landlord shall have the right to post in a conspicuous location on the Premises  
387 and to record in the public records a notice of Landlord's nonresponsibility. Tenant covenants  
388 and agrees to give Landlord at least ten (10) days prior written notice of the commencement of  
389 any such Alteration in order that Landlord shall have sufficient time to post such notice.

390 (e) Tenant shall take all necessary safety precautions during any construction.

391 (f) Tenant shall prepare and maintain (i) on a current basis during  
392 construction, annotated plans and specifications showing clearly all changes, revisions and  
393 substitutions during construction, and (ii) upon completion of construction of the Alterations, as-  
394 built drawings showing clearly all changes, revisions and substitutions during construction,  
395 including, without limitation, field changes and the final location of all mechanical equipment,  
396 utility lines, ducts, outlets, structural members, walls, partitions and other significant features.  
397 These as-built drawings and annotated plans and specifications shall be kept at the Premises and  
398 Tenant shall update them as often as necessary to keep them current. The as-built drawings and  
399 annotated plans and specifications shall be made available for copying and inspection by  
400 Landlord at all reasonable times.

401                   **(g)** Upon completion of the construction of any Alterations in excess of Ten  
402 Thousand Dollars (\$10,000) during the Term, Tenant shall file for recordation, or cause to be filed  
403 for recordation, a notice of completion and shall deliver to Landlord evidence satisfactory to  
404 Landlord of payment of all costs, expenses, liabilities and liens arising out of or in any way  
405 connected with such construction (except for liens that are contested in the manner provided  
406 herein).

407                   **9.3 Ownership of Improvements.** Except as provided in Section 9.4, all Alterations,  
408 and any other appurtenances, fixtures, improvements, equipment, additions and property  
409 permanently attached to or installed in or on the Premises at the commencement of or during  
410 the Term, shall at the end of the Term become Landlord's property without compensation to  
411 Tenant, or be removed in accordance with this Section.

412                   Upon written request by Tenant, Landlord shall notify Tenant in writing at the time of  
413 Landlord's approval of the Alterations whether or not the proposed Alterations will be required  
414 to be removed by Tenant at the end of the Term and Tenant shall have no obligation to remove  
415 any Alterations that Landlord has not designated in writing for removal. Tenant shall repair or  
416 pay the cost of repairing any damage to the Premises caused by the removal of Alterations. If  
417 Tenant fails to perform its repair obligations, without limiting any other right or remedy,  
418 Landlord may on five (5) business days prior written notice to Tenant perform such obligations at  
419 Tenant's expense and Tenant shall reimburse Landlord within twenty (20) days after demand for  
420 all out-of-pocket costs and expenses incurred by Landlord in connection with such repair.  
421 Tenant's obligations under this Section shall survive the termination of this Lease.

422

423                   **9.4 Tenant's Personal Property.** All inventory, furniture, trade fixtures, furnishings,  
424 equipment and articles of movable personal property installed in or on the Premises by or for the  
425 account of Tenant (except for ceiling and related fixtures, HVAC equipment and floor coverings,  
426 which shall become the property of Landlord at the end of the Term), and which can be removed  
427 without structural or other material damage to the Premises (collectively, "**Tenant's Property**")  
428 shall be and remain the property of Tenant and may be removed by it at any time during the  
429 Term. Tenant shall remove from the Premises all Tenant's Property on or before the Termination  
430 Date, except such items as the parties have agreed pursuant to the provisions of this Lease or by  
431 separate agreement are to remain and to become the property of Landlord. Tenant shall repair  
432 or pay the cost of repairing any damage to the Premises resulting from such removal, and the  
433 provisions of Section 9.3 above shall apply in the event Tenant fails to do so. Any items of  
434 Tenant's Property which remain in the Premises after the Termination Date may, on five

435 (5) business days prior written notice to Tenant, at the option of Landlord, be deemed  
436 abandoned and in such case may either be retained by Landlord as its property or be disposed of,  
437 without accountability, at Tenant's expense in such manner as Landlord may see fit.

438 **10. LIENS**

439 Tenant shall keep the Premises free from any liens arising out of any work  
440 performed, material furnished or obligations incurred by or for Tenant. If Tenant shall not, within  
441 ten (10) days following notice of the imposition of any such lien, cause the lien to be released of  
442 record by payment or posting of a proper bond, Landlord shall have, in addition to all other  
443 remedies provided in this Lease and by law, the right but not the obligation to cause any such  
444 lien to be released by such means as it shall deem proper, including payment of the claim giving  
445 rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection  
446 therewith (including, without limitation, reasonable counsel fees) shall be payable to Landlord by  
447 Tenant upon demand with interest from the date incurred at the Interest Rate. Landlord shall  
448 have the right at all times to post and keep posted on the Premises any notices permitted or  
449 required by law or that Landlord shall deem proper for the protection of Landlord and the  
450 Premises from mechanics' and materialmen's liens.

451 **11. COMPLIANCE WITH LAWS AND INSURANCE REQUIREMENTS**

452 **11.1 Applicable Laws.** Tenant, at Tenant's cost and expense, shall comply with all  
453 applicable laws, statutes, codes, ordinances, orders, rules, regulations, conditions of approval,  
454 and requirements, of all federal, state, county, municipal and other governmental authorities  
455 and the departments, commissions, boards, bureaus, instrumentalities, and officers thereof, and  
456 all administrative or judicial orders or decrees and all permits, licenses, approvals and other  
457 entitlements issued by governmental entities, and rules of common law, relating to or affecting  
458 the Premises or the use, operation or occupancy of the Premises, whether now existing or  
459 hereafter enacted (collectively, "**Applicable Laws**"). Without limiting the foregoing, Tenant shall  
460 be solely responsible for compliance with and shall make or cause to be made all such  
461 improvements and alterations to the Premises (including, without limitation, removing barriers  
462 and providing alternative services) as shall be required to comply with all applicable building  
463 codes, laws and ordinances relating to public accommodations, including the Americans with  
464 Disabilities Act of 1990, 42 U.S.C. §§ 12111 et seq. (the "**ADA**"), and the ADA Accessibility  
465 Guidelines promulgated by the Architectural and Transportation Barriers Compliance Board, the  
466 public accommodations title of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a et. seq., the  
467 Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151 et. seq., as amended, Title V of the



468 Rehabilitation Act of 1973, 29 U.S.C. §§ 790 et. seq., the Minimum Guidelines and Requirements  
469 for Accessible Design, 36 C.F.R. Part 1190, the Uniform Federal Accessibility Standards, and  
470 Title 24 of the California Code of Regulations, as the same may be amended from time to time, or  
471 any similar or successor laws, ordinances and regulations, now or hereafter adopted. Tenant's  
472 liability shall be primary and Tenant shall indemnify Landlord in accordance with Section 13.1 in  
473 the event of any failure or alleged failure of Tenant to comply with Applicable Laws. Any work or  
474 installations made or performed by or on behalf of Tenant or any person or entity claiming  
475 through or under Tenant pursuant to the provisions of this Section shall be made in conformity  
476 with and subject to the provisions of Article 9.

477 **11.2 Insurance Requirements.** Tenant shall not do anything, or permit anything to be  
478 done, in or about the Premises that would: (a) invalidate or be in conflict with the provisions of  
479 or cause any increase in the applicable rates for any fire or other insurance policies covering the  
480 Premises or any property located thereon (unless Tenant pays for such increased costs), or  
481 (b) result in a refusal by fire insurance companies of good standing to insure the Premises or any  
482 such property in amounts reasonably satisfactory to Landlord, or (c) subject Landlord to any  
483 liability or responsibility for injury to any person or property by reason of any business operation  
484 being conducted in the Premises. Tenant, at Tenant's expense, shall comply with all rules, orders,  
485 regulations or requirements of the American Insurance Association (formerly the National Board  
486 of Fire Underwriters) and with any similar body that shall hereafter perform the function of such  
487 Association.

## 488 **12. HAZARDOUS MATERIALS**

489 **12.1 Definitions.** As used in this Lease, the following terms shall have the following  
490 meanings:

491 **(a) "Environmental Activity"** means any use, treatment, keeping, storage,  
492 holding, release, emission, discharge, manufacturing, generation, processing, abatement,  
493 removal, disposition, handling, transportation, deposit, leaking, spilling, injecting, dumping or  
494 disposing of any Hazardous Materials from, into, on or under the Premises, and shall exclude the  
495 mere discovery of a pre-existing contamination, but include the exacerbation of any pre-existing  
496 contamination by Tenant or any of Tenant's Agents.

497 **(b) "Environmental Laws"** mean all Applicable Laws, now or hereafter in  
498 effect, relating to environmental conditions, industrial hygiene or Hazardous Materials on, under  
499 or about the Premises, including without limitation the Comprehensive Environmental Response,  
500 Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the

501 Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Solid Waste Disposal  
502 Act, 42 U.S.C. Section 6901, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the  
503 Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C.  
504 Section 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j,  
505 and any similar state and local laws and ordinances and the regulations now or hereafter  
506 adopted and published and/or promulgated pursuant thereto.

507 **(c) "Hazardous Material"** means any chemical, substance, medical or other  
508 waste, living organism or combination thereof which is or may be hazardous to the environment  
509 or human or animal health or safety- due to its radioactivity, ignitability, corrosivity, reactivity,  
510 explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness or other harmful  
511 or potentially harmful properties or effects. Hazardous Materials shall include, without  
512 limitation, petroleum hydrocarbons, including MTBE, crude oil or any fraction thereof, asbestos,  
513 radon, polychlorinated biphenyls (PCBs), methane, lead, urea, formaldehyde foam insulation,  
514 microbial matter (including mold) and all substances which now or in the future may be defined  
515 as "hazardous substances," "hazardous wastes," "extremely hazardous wastes," "hazardous  
516 materials," "toxic substances," "infectious wastes," "biohazardous wastes," "medical wastes,"  
517 "radioactive wastes" or which are otherwise listed, defined or regulated in any manner pursuant  
518 to any Environmental Laws.

519 **(d) "Tenant's Hazardous Materials"** means any Hazardous Materials resulting  
520 from the Environmental Activity by Tenant or any of Tenant's Agents.

521 **12.2 Environmental Release.** Landlord hereby informs Tenant that detectable  
522 amounts of Hazardous Materials may have come to be located on, beneath and/or in the vicinity  
523 of the Premises.

524 Tenant has made such investigations and inquiries as it deems appropriate to  
525 ascertain the effects, if any, of such substances and contaminants on its operations and persons  
526 using the Premises.

527 Landlord makes no representation or warranty with regard to the environmental  
528 condition of the Premises.

529 Tenant hereby releases Landlord and Landlord's officers, directors, trustees, agents  
530 and employees from any and all claims, demands, debts, liabilities, and causes of action of  
531 whatever kind or nature, whether known or unknown or suspected or unsuspected which Tenant  
532 or any of Tenant's Agents may have, claim to have, or which may hereafter accrue against the

533 released parties or any of them, arising out of or relating to or in any way connected with  
534 Hazardous Materials presently in, on or under, or now or hereafter emanating from or migrating  
535 onto the Premises (except to the extent caused by the willful misconduct or gross negligence of  
536 Landlord or Landlord's Agents during the Term.

537 In connection with such release, Tenant hereby waives any and all rights conferred  
538 upon it by the provisions of Section 1542 of the California Civil Code, which reads as follows:

539 A general release does not extend to claims which the creditor does not know or suspect to  
540 exist in his favor at the time of executing the release, which if known by him must have  
541 materially affected his settlement with the debtor.

542 **12.3 Use of Hazardous Materials.** Tenant shall not cause or permit any Hazardous  
543 Materials to be used, stored, discharged, released or disposed of in the Premises or cause any  
544 Hazardous Materials to be used, stored, discharged, released or disposed of in, from, under or  
545 about, the Premises, or any other land or improvements in the vicinity of the Premises,

546 excepting only the types and minor quantities of Hazardous Materials which are  
547 normally used in connection with Tenant's permitted use of the Premises and then only in strict  
548 accordance with all Applicable Laws, including all Environmental Laws.

549 As of the Commencement Date, Tenant shall provide Landlord a complete list of all  
550 Hazardous Materials (including MSDS sheets for all such Hazardous Materials) used or stored by  
551 Tenant or any of Tenant's Agents or subtenants at the Premises, excluding standard janitorial and  
552 office products.

Commented [DT48]: Q: How often does this really occur in practice?

553 Throughout the Term, Tenant shall continue to update this list so that it remains  
554 current.

Commented [DT49]: Q: Same question — to what extent do real-world Tenants actually do this?

555 Without limiting the foregoing, Tenant shall, at its own expense, procure, maintain in  
556 effect and comply with all conditions of any and all permits, licenses, and other governmental  
557 and regulatory approvals required for Tenant's use of Hazardous Materials at the Premises,

558 including, without limitation, discharge of appropriately treated materials or wastes  
559 into or through any sanitary sewer serving the Premises.

560 Tenant shall in all respects handle, treat, deal with and manage any and all Tenant's  
561 Hazardous Materials in total conformity with all Environmental Laws and prudent industry  
562 practices regarding management of such Hazardous Materials.

563           **12.4 Remediation of Hazardous Materials.** Tenant shall, upon demand of Landlord, and  
564 at Tenant's sole cost and expense, promptly take all actions to remediate the Premises from the  
565 effects of any Tenant's Hazardous Materials.

566           Such actions shall include, but not be limited to, the investigation of the environmental  
567 condition of the Premises, the preparation of any feasibility studies, reports or remedial plans,  
568 and the performance of any cleanup, remediation, containment, operation, maintenance,  
569 monitoring or restoration work, whether on or off of the Premises, Tenant shall take all actions  
570 necessary to remediate the Premises from the effects of such Tenant's Hazardous Materials to a  
571 condition allowing the current use of the Premises, notwithstanding any lesser standard of  
572 remediation allowable. under Applicable Laws.

573           All work shall be performed by one or more contractors selected by Tenant and  
574 reasonably approved in advance and in writing by Landlord.

575           Tenant shall proceed continuously and diligently with such investigatory and remedial  
576 actions, provided that in all cases such actions shall be in accordance with all Applicable Laws.

577           Any such actions shall be performed in a good, safe and workmanlike manner.

578           Tenant shall pay all costs in connection with such investigatory and remedial activities,  
579 including but not limited to all power and utility costs, and any and all taxes or fees that may be  
580 applicable to such activities.

581           Tenant shall promptly provide to Landlord copies of testing results and reports that are  
582 generated in connection with the above activities and any that are submitted to any  
583 governmental entity.

584           Promptly upon completion of such investigation and remediation, Tenant shall  
585 permanently seal or cap all monitoring wells and test holes in accordance with sound engineering  
586 practice and in compliance with Applicable Laws, remove all associated equipment, and restore  
587 the Premises to the maximum extent possible,

588           which shall include, without limitation, the repair of any surface damage, including  
589 paving, caused by such investigation or remediation.

590           **12.5 Indemnity.** Tenant shall indemnify, defend (by counsel reasonably acceptable to  
591 Landlord), protect and hold Landlord and Landlord's trustees, directors, officers, agents and  
592 employees and their respective successors and assigns (collectively, "**Landlord's Agents**"), free  
593 and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or

**Commented [DT50]:** The comma here should probably be a period.

**Commented [DT51]:** Q: What is "workmanlike"?

594 expenses (including reasonable attorneys' and consultants' fees and oversight and response  
595 costs) to the extent arising from

596 (a) Environmental Activity by Tenant or Tenant's Agents; or

597 (b) failure of Tenant or Tenant's Agents to comply with any Environmental Law with  
598 respect to Tenant's Environmental Activity; or

599 (c) Tenant's failure to remove Tenant's Hazardous Materials as required in  
600 Section 12.4.

601 Tenant's obligations hereunder shall include, but not be limited to, the burden and  
602 expense of defending all claims, suits and administrative proceedings (with counsel reasonably  
603 approved by Landlord),

604 even if such claims, suits or proceedings are groundless, false or fraudulent;

605 conducting all negotiations of any description;

606 and promptly paying and discharging when due any and all judgments, penalties,  
607 fines or other sums due against or from Landlord or the Premises.

608 **Prior to retaining counsel to defend such claims, suits or proceedings, Tenant shall**  
609 **obtain Landlord's written approval of the identity of such counsel, which approval shall not be**  
610 **unreasonably withheld, conditioned or delayed.**

**Commented [DT52]:** This is more-restrictive than many such requirements.

611 In the event Tenant's failure to surrender the Premises at the expiration or earlier  
612 termination of this Lease free of Tenant's Hazardous Materials prevents Landlord from reletting  
613 the Premises, or reduces the fair market and/or rental value of the Premises or any portion  
614 thereof, Tenant's indemnity obligations shall include all losses to Landlord arising therefrom.

615 **12.6 No Lien.** Tenant shall not suffer any lien to be recorded against the Premises as  
616 a consequence of any Tenant's Hazardous Materials, including any so-called state, federal or  
617 local "super fund" lien related to the remediation of any Tenant's Hazardous Materials in or  
618 about the Premises.

619

620 **12.7 Investigation.** Landlord shall have the right to enter and conduct an inspection  
621 of the Premises, including invasive tests, at any reasonable time and upon reasonable advance  
622 notice, to determine **whether Tenant is complying** with the terms of this Lease, including but not

**Commented [DT53]:** "You get what you INspect ...."

**Commented [DT54]:** Inspections are NOT limited to lease compliance.

623 limited to the compliance of the Premises and the activities thereon with Environmental Laws  
624 (the "**Environmental Investigation**").

625 Landlord shall have the right, but not the obligation, to retain at its expense an  
626 independent professional consultant to enter the Premises to conduct such an inspection, and to  
627 review any report prepared by or for Tenant concerning such compliance.

628 In the event the Environmental Investigation identifies any deficiencies in the  
629 compliance of the Premises with Environmental Laws due to any Environmental Activity by  
630 Tenant or Tenant's Agents, Tenant shall promptly correct any such deficiencies identified in the  
631 Environmental Investigation, and document to Landlord that corrective action has been taken.

632 In such event, Tenant shall also reimburse Landlord for the reasonable cost of the  
633 Environmental Investigation.

634 If the Environmental Investigation identifies any such deficiency in compliance of the  
635 Premises with Environmental Laws due to any Environmental Activity by Tenant or Tenant's  
636 Agents, then, within nine (9) months of the date of the Environmental Investigation, Landlord  
637 may request a detailed review of the status of such violation by a consultant selected by Landlord  
638 (the "**Supplemental Investigation**").

639 Tenant shall pay for the reasonable cost of any Supplemental Investigation.

640 A copy of the Supplemental Investigation shall be promptly supplied to Landlord and  
641 Tenant when it becomes available.

642 **12.8 Right to Remediate.** Should Tenant fail to perform or observe any of its  
643 obligations or agreements pertaining to Hazardous Materials or Environmental Laws, then  
644 Landlord shall have the right, but not the obligation, without limitation of any other rights of  
645 Landlord hereunder, to enter the Premises personally or through Landlord's agents, employees  
646 and contractors and perform the same.

647 Tenant agrees to indemnify Landlord for the costs thereof and liabilities therefrom as  
648 set forth above in this Article 12.

649 **12.9 Notices.** Tenant shall immediately notify Landlord of any inquiry, test, claim,  
650 investigation or enforcement-proceeding by or against Tenant or the Premises known to Tenant  
651 concerning any Hazardous Materials.

Commented [DT55]: Follow-ups  
can be important.

Commented [DT56]: Another  
Landlord "self-help" protection.

652 Tenant shall immediately notify Landlord of any release or discharge of Hazardous  
653 Materials on, in under or about the Premises.

654 Tenant acknowledges that Landlord, as the owner of the Premises, shall have the  
655 sole right at its election and at Tenant's expense, to negotiate, defend, approve and appeal any  
656 action taken or order issued with regard to Tenant's Hazardous Materials by any applicable  
657 governmental authority.

Commented [DT57]: Gold-plated defense?

658 **12.10 Surrender.** Tenant shall surrender the Premises to Landlord, upon the  
659 expiration or earlier termination of the Lease, free of Tenant's Hazardous Materials in  
660 accordance with the provisions of this Article 12.

661 **12.11 Survival; Insurance.** The provisions of this Article 12 shall survive the  
662 expiration or earlier termination of this Lease. The provisions of Article 13 (insurance) shall not  
663 limit in any way Tenant's obligations under this Article 12.

### 664 **13. INDEMNITY; INSURANCE**

665 **13.1 Indemnity.** Tenant shall indemnify, protect, defend and save and hold Landlord  
666 and Landlord's Agents harmless

667 from and against any and all losses, costs, liabilities, claims, judgments, liens,  
668 damages (including consequential damages) and expenses,

669 including, without limitation, reasonable attorneys' fees and costs, and reasonable  
670 investigation costs, incurred in connection with or arising from:

671 (a) any default by Tenant in the observance or performance of any of the terms,  
672 covenants or conditions of this Lease on Tenant's part to be observed or performed, or

Commented [DT58]: Q: Does this indemnity obligation extend to unforeseeable damages from a Tenant breach?

673 (b) the use or occupancy or manner of use or occupancy of the Premises by Tenant  
674 and Tenant's Agents,

675 (c) the condition of the Premises, and any occurrence on the Premises (including  
676 injury to or death of any person, or damage to property) from any cause whatsoever, and

677 (d) any acts or omissions or negligence of Tenant or of Tenant's Agents, in, on or  
678 about the Premises.

679 In case any action or proceeding be brought, made or initiated against Landlord  
680 relating to any matter covered by Tenant's indemnification obligations under this Section or

681 under Section 12.5, Tenant, upon notice from Landlord, shall at its sole cost and expense, resist  
682 or defend such claim, action or proceeding by counsel reasonably approved by Landlord.

683 Notwithstanding the foregoing, Landlord may retain its own counsel to defend or  
684 assist in defending any claim, action or proceeding involving potential liability of Five Million  
685 Dollars (\$5,000,000) or more, and Tenant shall pay the reasonable fees and disbursements of  
686 such counsel.

Commented [DT59]: Gold-plated defense?

687 Tenant's obligations under this Section shall survive the expiration or earlier  
688 termination of this Lease.

Commented [DT60]: NOTE: Having a survival clause here helps to ensure [note the spelling of "ensure"] that this provision doesn't inadvertently get omitted when copying and pasting the whole section.

689 Notwithstanding anything to the contrary contained in this Lease, Landlord shall not  
690 be indemnified for any losses, damages, liabilities, judgments, actions, claims, attorneys' fees,  
691 costs and expenses arising from the gross negligence or willful misconduct of Landlord and  
692 Landlord's Agents.

693 **13.2 Insurance.** Tenant shall procure at its sole cost and expense and keep in effect  
694 during the Term:

695 (a) all risk, fire, earthquake, flood and other perils, including extended  
696 coverage insurance on all buildings and other improvements.

697 The amount of such insurance shall be the Full Insurable Replacement Value.

698 Each such policy shall specify that proceeds shall be payable whether or not  
699 any improvements are actually rebuilt.

700 Each such policy shall include an endorsement protecting the named and  
701 additional insureds against becoming a co- insured under the policy.

702 Tenant hereby waives as against Landlord any and all claims and demands, of  
703 whatever nature, for damages, loss or injury to the improvements and to the property of Tenant  
704 in, upon or about the Premises caused by or resulting from fire and/or other insured perils.

705 "Full Insurable Replacement Value" means 100% of the actual costs to  
706 replace the building and improvements (without deduction for depreciation but with standard  
707 exclusions such as foundations, excavations, paving and landscaping, as applicable to specific  
708 perils), including the costs of demolition and debris removal and including materials and  
709 equipment not in place but in transit to or delivered to the Premises.

710 The Full Insurable Replacement Value shall be determined by Landlord.



711 Tenant shall maintain coverage at the current Full Insurable Replacement  
712 Value throughout the Term, subject to reasonable deductibles approved by Landlord in writing.

**Commented [DT61]:** Q: Does this mean the F.I.R.V. as of the effective date of the Lease?

713 (b) commercial general liability insurance covering Tenant's operations in the  
714 Premises and the use and occupancy of the Premises and any part thereof by Tenant.

**Commented [DT62]:** Known as "CGL coverage"

715 Such insurance shall include broad form contractual liability insurance  
716 coverage insuring Tenant's obligations under this Lease.

717 Such coverage shall be written on an "occurrence" form and shall have a  
718 minimum combined single limit of liability of not less than five million dollars (\$5,000,000.00).

**Commented [DT63]:** Q: What's an "occurrence" form?

719 Tenant's policy shall be written to apply to all bodily injury, property damage,  
720 personal injury and other covered loss (however occasioned) occurring during the policy term,  
721 with at least the following endorsements to the extent such endorsements are generally  
722 available:

723 (i) deleting any employee exclusion on personal injury coverage,

724 (ii) including employees as additional insureds,

725 (iii) providing broad form property damage coverage and products completed  
726 operations coverage (where applicable), and

727 (iv) deleting any liquor liability exclusions.

728 Such insurance shall name Landlord and any other party designated by  
729 Landlord as an additional insured,

**Commented [DT64]:** Q: "Any other party designated by Landlord"? Is there a potential for abuse here?

730 shall specifically include the liability assumed hereunder by Tenant,

**Commented [DT65]:** Additional insured general info: See [here](#).

731 shall provide that it is primary insurance,

**Commented [DT66]:** "Primary insurance" means that Landlord's policy won't be triggered unless / until Tenant's policy coverage is exhausted.

732 shall provide for severability of interests,

733 shall further provide that an act or omission of one of the named insureds  
734 which would void or otherwise reduce, coverage shall not reduce or void the coverage as to any  
735 insured,

736 shall afford coverage for claims based on acts, omissions, injury or damage  
737 which occurred or arose (or the onset of which occurred or arose in whole or in part during the  
738 policy period), and

739 shall provide that Landlord will receive thirty (30) days' written notice from  
740 the insurer prior to any cancellation or material change of coverage;

Commented [DT67]: NOTE: This "will receive" commitment might not be available from all insurers.

741 (c) commercial property insurance, including sprinkler leakages, vandalism  
742 and malicious mischief and plate glass damage covering all the items specified as Tenant's  
743 Property and all other property of every description including stock-in-trade, furniture, fittings,  
744 installations, alterations, additions, partitions and fixtures or anything in the nature of a  
745 leasehold improvement made or installed by or on behalf of the Tenant in the Premises

746 in an amount of not less than one hundred percent (100%) of the full  
747 replacement cost thereof as shall from time to time be determined by Tenant in form reasonably  
748 satisfactory to Landlord;

749 (d) Worker's Compensation Insurance in the amounts and coverages required  
750 under worker's compensation, disability and similar employee benefit laws applicable to Tenant  
751 and/or the Premises from time to time, and Employer's Liability Insurance, with limits of not less  
752 than one million dollars (\$1,000,000) or such higher amounts as may be required by law;

753 (e) business income insurance with extra expense insurance in an amount  
754 sufficient to insure payment of Rent for a period of not less than twelve (12) months during any  
755 interruption of Tenant's business by reason of the Premises or Tenant's Property being damaged  
756 by casualty; and

757 (f) any other form or forms of insurance as Landlord may reasonably require  
758 from time to time in amounts and for insurable risks against which a prudent tenant would  
759 protect itself to the extent landlords of comparable buildings in the vicinity of the Premises  
760 require their tenants to carry such other form(s) of insurance.

761 **13.3 Policies.** All policies of insurance required of Tenant shall be issued by insurance  
762 companies with general policyholders' rating of not less than A, as rated in the most current  
763 available "Best's Insurance Reports," and not prohibited from doing business in the State of  
764 California,

765 and shall, with the exception of Workers Compensation Insurance, include as  
766 additional insureds Landlord, and such other persons or entities as Landlord specifies from time  
767 to time.

Commented [DT68]: Duplicate of 13.2(b).

768 Such policies, with the exception of Worker's Compensation Insurance, shall be for  
 769 the mutual and joint benefit and protection of Landlord, Tenant and others specified by  
 770 Landlord.

Commented [DT69]: Unclear what this means.

771 Executed copies of Tenant's policies of insurance or certificates thereof shall be  
 772 delivered to Landlord within ten (10) days prior to the delivery of possession of the Premises to  
 773 Tenant and thereafter within thirty (30) days prior to the expiration of the term of each such  
 774 policy.

775 All commercial general liability and property damage policies shall contain a  
 776 provision that Landlord and any other additional insured, although named as additional insureds,  
 777 shall nevertheless be entitled to recover under said policies for a covered loss occasioned by it,  
 778 its servants, agents and employees, by reason of Tenant's negligence.

779 As often as any policy shall expire or terminate, renewal or additional policies shall  
 780 be procured and maintained by Tenant in like manner and to like extent.

781 All such policies of insurance shall provide that the company writing said policy will  
 782 give to Landlord thirty (30) days notice in writing in advance of any cancellation or lapse or of the  
 783 effective date of any reduction in the amounts of insurance.

Commented [DT70]: Duplicate.

784 All commercial general liability, property damage and other casualty policies shall be  
 785 written on an occurrence basis.

Commented [DT71]: Duplicate.

786 Landlord's coverage shall not be contributory.

Commented [DT72]: Duplicate.

787 **13.4 Landlord's Rights.** Should Tenant fail to take out and keep in force each  
 788 insurance policy required under this Article 13, or should such insurance not be approved by  
 789 Landlord and should the Tenant not rectify the situation within two (2) business days after  
 790 written notice from Landlord to Tenant,

Commented [DT73]: Landlord self-help

Commented [DT74]: "Take out" seems archaic

791 [then] Landlord shall have the right, without assuming any obligation in connection  
 792 therewith, to purchase such insurance at the sole cost of Tenant, and all costs incurred by  
 793 Landlord shall be payable to Landlord by Tenant within twenty (20) days after demand as  
 794 Additional Rent and without prejudice to any other rights and remedies of Landlord under this  
 795 Lease.

796 **13.5 Waiver of Subrogation.** Notwithstanding anything to the contrary contained  
 797 herein,

798 to the extent permitted by their respective policies of insurance and to the extent of  
799 insurance proceeds received (or which would have been received had the party carried the  
800 insurance required by this Lease) with respect to the loss,

801 Landlord and Tenant each hereby waive any right of recovery against the other party  
802 and against any other party maintaining a policy of insurance with respect to the Premises or any  
803 portion thereof or the contents of the Premises or the buildings located thereon for any loss or  
804 damage sustained by such other party with respect to the Premises or the buildings or other  
805 improvements thereon, or any portion thereof, or the contents of the same or any operation  
806 therein, whether or not such loss is caused by the fault or negligence of such other party.

Commented [DT75]: Note.

807 Either party shall notify the other party if the policy of insurance carried by it does  
808 not permit the foregoing waiver.

809 **13.6 No Liability.** No approval by Landlord of any insurer, or the terms or conditions  
810 of any policy, or any coverage or amount, of insurance, or any deductible amount shall be  
811 construed as a representation by Landlord of the solvency of the insurer or the sufficiency of any  
812 policy or any coverage or amount of insurance or deductible

Commented [DT76]: Not an informative subheading.

813 and Tenant assumes full risk and responsibility for any inadequacy of insurance  
814 coverage or any failure of insurers.

#### 815 14. ASSIGNMENT AND SUBLETTING

816 **14.1 Consent Required.** Tenant shall not directly or indirectly, voluntarily or by  
817 operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any  
818 part of its interest in or rights with respect to the Premises or its leasehold estate (collectively,  
819 "Assignment"), or permit all or any portion of the Premises to be occupied by anyone other than  
820 itself or sublet all or any portion of the Premises (collectively, "Sublease") without Landlord's  
821 prior written consent, which consent may be withheld in Landlord's sole and absolute discretion.

Commented [DT77]: Typical.

822 **14.2 Notice.** If Tenant desires to enter into a Sublease of all or any portion of the  
823 Premises or Assignment of this Lease (except as provided in Section 14.8), it shall give written  
824 notice (the "Transfer Notice") to Landlord of its intention to do so, which notice shall contain  
825 (a) the name and address of the proposed assignee, subtenant or occupant (the "Transferee"),  
826 (b) the nature of the proposed Transferee's business to be carried on in the Premises, (c) the  
827 terms and provisions of the proposed Assignment or Sublease, and (d) such financial information  
828 as Landlord may reasonably request concerning the proposed Transferee.

829

830 **14.3** approval within fifteen (15) business days after receipt of the Transfer Notice. If  
831 Landlord approves the proposed Assignment or Sublease, Tenant may, not later than thirty  
832 (30) days thereafter, enter into the Assignment or Sublease with the proposed Transferee upon  
833 the terms and conditions set forth in the Transfer Notice.

**Commented [DT78]:** This is how it's shown in the SEC's online version (i.e., a missing line, it seems).

834 **14.4 Excess Rent.** For any Assignment or Sublease (other than a Permitted Transfer  
835 under Section 14.7), fifty percent (50%) of the Excess Rent received by Tenant shall be paid to  
836 Landlord as and when received by Tenant. "**Excess Rent**" means the gross revenue received from  
837 the Transferee during the Sublease term or with respect to the Assignment, less (a) the gross  
838 revenue received by Landlord from Tenant during the period of the Sublease term or  
839 concurrently with or after the Assignment; (b) any reasonably documented tenant improvement  
840 allowance or other economic concession (planning allowance, moving expenses, etc.), paid by  
841 Tenant to or on behalf of the Transferee; (d) customary and reasonable external brokers'  
842 commissions to the extent paid and documented; (e) reasonable attorneys' fees; and  
843 (f) reasonable costs of advertising the space for Sublease or Assignment (collectively, "**Transfer**  
844 **Costs**"). Tenant shall not be required to pay to Landlord any Excess Rent until Tenant has  
845 recovered its Transfer Costs.

**Commented [DT79]:** Landlord wants its cut of any sublease profit.

846 **14.5 Right of First Refusal.** Except for Permitted Transfers, if Tenant desires to assign  
847 Tenant's interest in the Premises or to sublease any portion of the Premises (collectively, a  
848 "**Transfer**"),

**Commented [DT80]:** Q: Is a prospective subtenant likely to want to consummate a deal?

849 Tenant's Transfer Notice shall also include a written offer that includes all of the  
850 substantial business terms that Tenant has offered to a Transferee

851 and shall offer to Transfer to Landlord, Tenant's interest in the portion of the  
852 Premises offered to the Transferee on such terms and conditions (the "**Offer**").

853 Landlord shall have fifteen (15) days from Landlord's receipt of the Offer to accept  
854 the Offer by written notice to Tenant or to approve or disapprove the Transfer as provided in  
855 Section 14.3.

856 If Landlord accepts the Offer, Landlord and Tenant shall consummate the Transfer  
857 within fifteen (15) days after Landlord's written notice of acceptance.

858 The Transfer shall be consummated by Tenant's delivery to Landlord of a good and  
859 sufficient assignment of lease or sublease.

860 If Landlord does not accept the Offer, but approves the Transfer, then in the event  
 861 the terms of the Transfer are materially changed during subsequent negotiations to be more  
 862 favorable to the Transferee, Tenant shall again deliver to Landlord an Offer in accordance with  
 863 this Section, offering the interest to Landlord on such more favorable terms.

864 Landlord shall then have another period of fifteen (15) days after receipt of such  
 865 Offer to accept such Offer.

866 **14.6 No Release.** No Sublease or Assignment by Tenant nor any consent by Landlord  
 867 thereto shall relieve Tenant of any obligation to be performed by Tenant under this Lease.

**Commented [DT81]:** Tenant is still on the hook.

868 Any Sublease or Assignment that is not in compliance with this Article shall be null  
 869 and void and, at the option of Landlord, shall constitute an Event of Default by Tenant under this  
 870 Lease, and Landlord shall be entitled to pursue any right or remedy available to Landlord under  
 871 the terms of this Lease or under the laws of the State of California.

872 **The acceptance of any Rent or other payments** by Landlord from a proposed  
 873 Transferee shall not constitute consent to such Sublease or Assignment by Landlord or a  
 874 recognition of any Transferee, or a waiver by Landlord of any failure of Tenant or other  
 875 Transferor to comply with this Article.

**Commented [DT82]:** Landlord's business people might unwittingly accept rent from a transferee.

876 **14.7 Assumption of Obligations.** Any Transferee shall, from and after the effective  
 877 date of the Assignment, assume all obligations of Tenant under this Lease with respect to the  
 878 Transferred Space and shall be and remain **liable jointly and severally with Tenant** for the  
 879 payment of Base Rent and Additional Rent, and for the performance of all of the terms,  
 880 covenants, conditions and agreements herein contained on Tenant's part to be performed for  
 881 the Term.

**Commented [DT83]:** So even an assignment by Tenant won't be enough to get Tenant off the hook.

882 No Assignment shall be binding on Landlord unless Tenant delivers to Landlord a  
 883 counterpart of the Assignment and an instrument that contains a covenant of assumption  
 884 reasonably satisfactory in substance and form to Landlord, and consistent with the requirements  
 885 of this Section.

## 886 15. DEFAULT

887 **15.1 Event of Default.** The occurrence of any of the following shall be an "**Event of**  
 888 **Default**" on the part of Tenant:

**Commented [DT84]:** Terminology: An "Event of Default" doesn't happen until a cure period has expired — IF there IS a cure period for the breach in question ....

889 (a) Failure to pay any part of the Base Rent or Additional Rent, or any other  
 890 sums of money that Tenant is required to pay under this Lease **where such failure continues for a**

891 period of five (5) days after written notice of default from Landlord to Tenant. Landlord's notice  
 892 to Tenant pursuant to this subsection shall be deemed to be the notice required under California  
 893 Code of Civil Procedure Section 1161.

**Commented [DT85]:** Uncured payment failure.

894 (b) Failure to perform any other covenant, condition or requirement of this  
 895 Lease when such failure shall continue for a period of thirty (30) days after written notice thereof  
 896 from Landlord to Tenant;

897 provided that if the nature of the default is such that more than thirty  
 898 (30) days are reasonably required for its cure, then an Event of Default shall not be deemed to  
 899 have occurred if Tenant shall commence such cure within said thirty (30) day period and  
 900 thereafter diligently and continuously prosecute such cure to completion.

**Commented [DT86]:** "It's enough to start on a cure that would take longer than the cure period."

901 Landlord's notice to Tenant pursuant to this subsection shall be deemed to  
 902 be the notice required under California Code of Civil Procedure Section 1161.

903 (c) The abandonment or vacating of the Premises by Tenant.

904 (d) Tenant shall admit in writing its inability to pay its debts generally as they  
 905 become due, file a petition in bankruptcy, insolvency, reorganization, dissolution or liquidation  
 906 under any law or statute of any government or any subdivision thereof either now or hereafter in  
 907 effect,

**Commented [DT87]:** Q: What effect under the Bankruptcy Code?

908 or Tenant shall make an assignment for the benefit of its creditors, consent to  
 909 or acquiesce in the appointment of a receiver of itself or of the whole or any substantial part of  
 910 the Premises.

911 (e) A court of competent jurisdiction shall enter an order, judgment or decree  
 912 appointing a receiver of Tenant or of the whole or any substantial part of the Premises and such  
 913 order, judgment or decree shall not be vacated, set aside or stayed within thirty (30) days after  
 914 the date of entry of such order, judgment, or decree, or a stay thereof shall be thereafter set  
 915 aside.

**Commented [DT88]:** A receivership would likely be a different proceeding (state law) than a bankruptcy filing (federal law).

916 (f) A court of competent jurisdiction shall enter an order, judgment or decree  
 917 approving a petition filed against Tenant under any bankruptcy, insolvency, reorganization,  
 918 dissolution or liquidation law or statute of the federal or state government or any subdivision of  
 919 either now or hereafter in effect, and such order, judgment or decree shall not be vacated, set  
 920 aside or stayed within thirty (30) days from the date of entry of such order, judgment or decree,  
 921 or a stay thereof shall be thereafter set aside.

**Commented [DT89]:** Involuntary bankruptcy — creditors can force someone into bankruptcy.

922                   **15.2 Remedies.** Upon the occurrence of an Event of Default, Landlord shall have the  
923 following rights and remedies:

924                   **(a)** The right to terminate this Lease upon written notice to Tenant, in which  
925 event Tenant shall immediately surrender possession of the Premises in accordance with  
926 Article 20.

**Commented [DT90]:** Instead of repeatedly saying, "The right to [do X]," just say "Landlord may [do X]."

927                   **(b)** The right to bring a summary action for possession of the Premises.

928                   **(c)** The rights and remedies described in California Civil Code Section 1951.2,  
929 pursuant to which Landlord may recover from Tenant upon a termination of the Lease,

930                   **(i)** the worth at the time of award of the unpaid rent which has been earned  
931 at the time of termination;

**Commented [DT91]:** This is earned rent.

932                   **(ii)** the worth at the time of award of the amount by which the unpaid rent  
933 which would have been earned after termination until the time of award exceeds the amount of  
934 such rental loss that Tenant proves could have been reasonably avoided;

**Commented [DT92]:** Pre-judgment rent

935                   **(iii)** the worth at the time of the award of the amount by which the unpaid  
936 rent for the balance of the term after the time of award exceeds the amount of such rental loss  
937 that Tenant proves could be reasonably avoided; and

**Commented [DT93]:** Puts the burden of proof on Tenant.

938                   **(iv)** any other amount necessary to compensate Landlord for all the  
939 detriment proximately caused by Tenant's failure to perform its obligations under this Lease or  
940 which in the ordinary course of events would be likely to result therefrom.

941                   The "worth at the time of award" of the amounts referred to in (i) and  
942 (ii) above is computed by allowing interest at the rate of ten percent (10%) per annum.

943                   The "worth at the time of award" of the amount referred to in (iii) above shall  
944 be computed by discounting such amount at the discount rate of the Federal Reserve Bank of  
945 San Francisco at the time of award plus one percent (1%).

946                   The detriment proximately caused by Tenant's failure to perform its  
947 obligations under this Lease or which in the ordinary course of events would be likely to result  
948 therefrom includes, without limitation,

949                   (1) the unamortized portion of any brokerage or real estate agent's  
950 commissions paid in connection with the execution of this Lease,



951 (2) any direct costs or expenses incurred by Landlord in recovering possession  
952 of the Premises, maintaining or preserving the Premises after such default,

953 (3) preparing the Premises for reletting to a new tenant (excluding the costs  
954 of any tenant improvements),

955 (4) any repairs or alterations to the Premises for such reletting,

956 (5) leasing commissions, architect's fees and any other costs necessary or  
957 appropriate either to relet the Premises or, if reasonably necessary in order to relet the  
958 Premises, to adapt them to another beneficial use by Landlord and

959 (6) such amounts in addition to or in lieu of the foregoing as may be  
960 permitted from time to time by Applicable Law to the extent that such payment would not result  
961 in a duplicative recovery.

962 (d) The rights and remedies described in California Civil Code Section 1951.4  
963 which allow Landlord to continue this Lease in effect and to enforce all of Landlord's rights and  
964 remedies under this Lease, including the right to recover Base Rent, Additional Rent and other  
965 charges payable hereunder as they become due.

966 Acts of maintenance or preservation, efforts to relet the Premises or the  
967 appointment of a receiver upon Landlord's initiative to protect its interest under this Lease shall  
968 not constitute a termination of Tenant's right to possession.

969 (e) The right and power, as attorney-in-fact for Tenant, to sublet the  
970 Premises, to collect rents from all subtenants and to provide or arrange for the provision of all  
971 services and fulfill all obligations of Tenant under any permitted subleases.

972 Landlord is hereby authorized on behalf of Tenant, but shall have absolutely  
973 no obligation, to provide such services and fulfill such obligations and to incur all such expenses  
974 and costs as Landlord deems necessary.

975 Landlord is hereby authorized, but not obligated, to relet the Premises or any  
976 part thereof on behalf of Tenant, to incur such expenses as may be necessary to effect a relet  
977 and make said relet for such term or terms, upon such conditions and at such rental as Landlord  
978 in its reasonable discretion may deem proper.

979 Tenant shall be liable immediately to Landlord for all costs and expenses  
980 Landlord incurs in reletting the Premises including, without limitation, brokers' commissions,

**Commented [DT94]:** Interesting choice here — possibly California law protects tenants' rights, and this is a Landlord workaround?

981 expenses of remodeling the Premises required by the reletting, and the cost of collecting rents  
982 and fulfilling the obligations of Tenant to any subtenant.

983 If Landlord relets the Premises or any portion thereof, such reletting shall not  
984 relieve Tenant of any obligation hereunder, except that Landlord shall apply the rent or other  
985 proceeds actually collected by it as a result of such reletting against any amounts due from  
986 Tenant hereunder to the extent that such rent or other proceeds compensate Landlord for the  
987 nonperformance of any obligation of Tenant hereunder.

988 Such payments by Tenant shall be due at such times as are provided  
989 elsewhere in this Lease, and Landlord need not wait until the termination of this Lease, by  
990 expiration of the Term or otherwise, to recover them by legal action or in any other manner.

991 Landlord may execute any sublease made pursuant to this Section in its own  
992 name,

993 and the tenant thereunder shall be under no obligation to see to the  
994 application by Landlord of any rent or other proceeds,

995 nor shall Tenant have any right to collect any such rent or other proceeds.

996 Landlord shall not by any reentry or other act be deemed to have accepted  
997 any surrender by Tenant of the Premises or Tenant's interest therein, or be deemed to have  
998 otherwise terminated this Lease, or to have relieved Tenant of any obligation hereunder, unless  
999 Landlord shall have given Tenant express written notice of Landlord's election to do so as set  
1000 forth herein.

1001 **(f)** The right to enjoin, and any other remedy or right now or hereafter  
1002 available to a Landlord against a defaulting tenant under the laws of the State of California or the  
1003 equitable powers of its courts, and not otherwise specifically reserved herein.

1004 **(g)** If this Lease provides for a postponement or deferral of any Rent, or for  
1005 commencement of payment of Rent to a date later than the Commencement Date, or for a  
1006 period of "free" Rent or any other Rent concession (collectively, "**Abated Rent**"), the right upon  
1007 an Event of Default to demand immediate payment of the value of the Abated Rent.

1008 **15.3 Cumulative Remedies.** The various rights and remedies reserved to Landlord,  
1009 including those not specifically described herein, shall, to the extent that the exercise of such  
1010 right and/or remedy does not result in a duplicative recovery, be cumulative and shall be in  
1011 addition to every other right or remedy provided for in this Lease or now or hereafter existing at

1012 law or in equity and the exercise of the rights or remedies provided for in this Lease or now or  
1013 hereafter existing at law or in equity shall not preclude the simultaneous or later exercise by  
1014 Landlord of any or all other rights and remedies.

1015 **15.4 Waiver of Redemption by Tenant.** Tenant hereby waives any right to relief  
1016 against forfeiture of this Lease pursuant to California Code of Civil Procedure Section 1179.

1017 **15.5 Landlord's Right to Cure.** If Tenant shall fail or neglect to do or perform any  
1018 covenant or condition required under this Lease and such failure shall not be cured within any  
1019 applicable grace period,

1020 Landlord may, on five (5) business days written notice to Tenant, but shall not be  
1021 required to, make any payment payable by Tenant hereunder, discharge any lien, take out, pay  
1022 for and maintain any insurance required hereunder, or do or perform or cause to be done or  
1023 performed any such other act or thing (entering upon the Premises for such purposes, if Landlord  
1024 shall so elect),

1025 and Landlord shall not be or be held liable or in any way responsible for any loss,  
1026 disturbance, inconvenience, annoyance or damage resulting to Tenant on account thereof.

1027 Tenant shall repay to Landlord within twenty (20) days after demand the entire out-  
1028 of-pocket cost and expense incurred by Landlord in connection with the cure,

1029 including, without limitation, compensation to the agents, consultants and  
1030 contractors of Landlord and reasonable attorneys' fees and expenses.

1031 Landlord may act upon shorter notice or no notice at all if necessary in Landlord's  
1032 reasonable judgment to meet an emergency situation or governmental or municipal time  
1033 limitation or to protect Landlord's interest in the Premises.

1034 Landlord shall not be required to inquire into the correctness of the amount of  
1035 validity or any tax or lien that may be paid by Landlord and Landlord shall be duly protected in  
1036 paying the amount of any such tax or lien claimed

1037 and in such event Landlord also shall have the full authority, in Landlord's sole  
1038 judgment and discretion and without prior notice to or approval by Tenant, to settle or  
1039 compromise any such lien or tax.

Commented [DT95]: More  
Landlord "self-help"

Commented [DT96]: "If Landlord  
has to clean up Tenant's tax mess,  
Landlord can assume the  
correctness of the tax(es) in  
question."

1040 Any act or thing done by Landlord pursuant to the provisions of this Section shall not  
1041 be or be construed as a waiver of any such failure by Tenant, or as a waiver of any term,  
1042 covenant, agreement or condition herein contained or of the performance thereof.

1043 **15.6 Landlord's Default.** Landlord shall be in default under this Lease if Landlord fails  
1044 to perform obligations required of Landlord within thirty (30) days after written notice by Tenant  
1045 to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose  
1046 name and address shall have heretofore been furnished to Tenant in writing, specifying wherein  
1047 Landlord has failed to perform such obligations;

Commented [DT97]: "Wherein"?

1048 provided, however, that if the nature of Landlord's obligations is such that more than  
1049 thirty (30) days are required for performance, then Landlord shall not be in default if Landlord  
1050 commences performance within such thirty (30) day period and thereafter diligently prosecutes  
1051 the same to completion.

1052 Tenant shall be entitled to actual (but not consequential) damages in the event of an  
1053 uncured default by Landlord, but the provisions of Article 17 shall apply to any Landlord default  
1054 and Tenant shall not have the right to terminate this Lease as a result of a Landlord default.

## 1055 **16. LANDLORD'S RESERVED RIGHTS**

1056 **16.1 Alterations to Premises.** Landlord reserves the right, at any time and from time  
1057 to time, to make alterations, additions, repairs, replacements or improvements to all or any part  
1058 of the Premises, for any reasonable purpose,

1059 and no such change shall entitle Tenant to any abatement of rent or damages;

1060 provided, however, that Landlord shall use reasonable efforts not to materially  
1061 adversely affect Tenant's use of the Premises.

1062 **16.2 Access.** Landlord reserves (for itself and its agents, consultants, contractors and  
1063 employees) the right to enter the Premises at all reasonable times

1064 and, except in cases of emergency, after giving Tenant reasonable notice,

1065 to inspect the Premises (including, without limitation, environmental testing);

1066 to supply any service to be provided by Landlord hereunder;

1067 to show the Premises to prospective purchasers or mortgagees;

1068 to show the Premises to prospective tenants during the last year of the Term;

Commented [DT98]: This is pretty typical — ditto the next line.

1069 to post notices of nonresponsibility;

1070 and to repair or maintain the Premises in the event Landlord so elects as a result of  
1071 Tenant's failure to do so, without abatement of, Rent,

1072 and may for that purpose erect, use and maintain necessary structures in and  
1073 throughout the Premises where reasonably required by the character of the work to be  
1074 performed.

1075 Tenant hereby waives any claim for damages for any injury or inconvenience to or  
1076 interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or  
1077 any other loss occasioned thereby,

1078 except to the extent caused by the gross negligence or willful misconduct of Landlord  
1079 in the exercise of its rights

1080 and provided that Landlord shall use reasonable efforts not to materially adversely  
1081 affect Tenant's use of the Premises.

1082 All locks for all of the doors in, upon and about the Premises, excluding Tenant's  
1083 vaults and safes or special security areas (designated in advance in writing by Tenant) shall at all  
1084 times be keyed to a master system and Landlord shall at all times have and retain a key with  
1085 which to unlock all of said doors.

Commented [DT99]: Landlord must be able to get in.

1086 Landlord shall have the right to use any and all means that Landlord may deem  
1087 necessary or proper to open said doors in an emergency in order to obtain entry to any portion  
1088 of the Premises,

1089 and any such entry to the Premises or portions thereof obtained by Landlord by any  
1090 of said means, or otherwise, shall not under any circumstances be construed or deemed to be a  
1091 forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or  
1092 constructive, of Tenant from the Premises or any portion thereof.

Commented [DT100]: This probably comes from litigation experience of someone.

1093 **16.3 Easements.** Landlord reserves the right to grant or relocate all easements and  
1094 rights of way which Landlord in its sole discretion may deem necessary or appropriate; provided  
1095 that Tenant's rights to use the Premises is not materially impeded.

1096 **16.4 Use of Additional Areas.** Landlord reserves the exclusive right to use any air  
1097 space above the Premises, and the land beneath the Premises; provided that such use shall not  
1098 materially impede Tenant's use of and access to the Premises.

1099 **16.5 Subordination.** This Lease shall be subject and subordinate at all times to:  
 1100 (a) all reciprocal easement agreements, and any ground leases or underlying leases  
 1101 which may now exist or hereafter be executed affecting the Premises, and  
 1102 (b) the lien of any mortgage or deed of trust which may now exist or hereafter be  
 1103 executed in any amount for which the Premises, or any ground leases or underlying leases, or  
 1104 Landlord's interest or estate in any of said items, is specified as security.

1105 Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause  
 1106 to be subordinated to this Lease any of the items referred to in clause (a) or (b) above, subject to  
 1107 compliance with the condition precedent set forth below.

1108 In the event that any ground lease or underlying lease terminates for any reason or  
 1109 any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any  
 1110 reason,

1111 (i) no person or entity which as a result of the foregoing succeeds to the interest of  
 1112 Landlord under this Lease, (a "**Successor**") shall be liable for any default by Landlord or any other  
 1113 matter that occurred prior to the date the Successor succeeded to Landlord's interest in this  
 1114 Lease, and

1115 (ii) Tenant shall, notwithstanding any subordination, attorn to and become the  
 1116 tenant of the Successor, at the option of the Successor.

1117 Tenant covenants and agrees, however, to execute and deliver, upon demand by  
 1118 Landlord and in the form reasonably requested by Landlord, any additional documents  
 1119 evidencing the priority or subordination of this Lease with respect to any such ground leases,  
 1120 underlying leases, reciprocal easement agreements or similar documents or instruments, or with  
 1121 respect to the lien of any such mortgage or deed of trust

1122 and Tenant's failure to execute and deliver any such document within ten  
 1123 (10) business days after such demand by Landlord shall constitute an Event of Default without  
 1124 further notice.

1125 Landlord shall obtain the written agreement of the mortgagee or trustee named in  
 1126 any mortgage, deed of trust or other encumbrance, and any landlord under any ground lease or  
 1127 underlying lease, that so long as an Event of Default by Tenant is not in existence, neither this  
 1128 Lease nor any of Tenant's rights hereunder shall be terminated or modified, nor shall Tenant's

**Commented [DT101]:** Landlord wants flexibility in dealing with its own lenders, etc.

**Commented [DT102]:** No successor liability

**Commented [DT103]:** Tenant MUST let the Successor become the new Landlord.

**Commented [DT104]:** "Covenants and agrees" — how about just "will"?

**Commented [DT105]:** Cf. New Testament Greek, which uses "καί" ("and") as a kind of punctuation.

**Commented [DT106]:** Finally, a Tenant-favorable provision!

1129 possession of the Premises be disturbed or interfered with, by any trustee's sale or by an action  
1130 or proceeding to foreclose said mortgage, deed of trust or other encumbrance.

1131 **17. LIMITATION OF LANDLORD'S LIABILITY**

1132 **17.1 Limitation.** Landlord shall not be responsible for or liable to Tenant and Tenant  
1133 hereby releases Landlord, waives all claims against Landlord and assumes the risk for any injury,  
1134 loss or damage to any person or property in or about the Premises by or from any cause  
1135 whatsoever (other than Landlord's gross negligence or willful misconduct) including, without  
1136 limitation,

1137 (a) acts or omissions of persons occupying adjoining premises,

1138 (b) theft or vandalism,

1139 (c) burst, stopped or leaking water, gas, sewer or steam pipes,

1140 (d) loss of utility service,

1141 (e) accident, fire or casualty,

1142 (f) nuisance, and

1143 (g) work done by Landlord on the Premises.

1144 There shall be no abatement of Rent and no liability of Landlord by reason of any  
1145 injury to or interference with Tenant's business arising from the making of any repairs,  
1146 alterations or improvements to any portion of the Premises or to fixtures, appurtenances and  
1147 equipment in the Premises.

1148 If, as a result of the gross negligence or willful misconduct of Landlord, the Premises  
1149 should become untenable for Tenant's use as a consequence of the cessation of utilities or  
1150 other services, interference with access to the Premises, legal restriction or the presence of any  
1151 Hazardous Materials that are not located on, in or under the Premises as of the Commencement  
1152 Date,

1153 and In the event any of the foregoing prevents Tenant's intended use of the Premises  
1154 for a period of seven (7) days or more,

1155 Tenant shall be entitled to an equitable abatement of Base Rent and Additional Rent  
1156 from the date of the first occurrence through the time in which the Premises are again  
1157 tenantable for Tenant's intended use.

Commented [DT107]: Typical carve-out — cf. also the express-negligence rule.

Commented [DT108]: Landlords often want uninterrupted cash flow — even if the Premises are effectively unusable.

Commented [DT109]: Carve-out again.

Commented [DT110]: So there's a seven-day grace period for Landlord in which the Premises might be unusable.

1158 If such interruption continues for a period of thirty (30) consecutive days or more,  
 1159 Tenant shall be entitled to terminate this Lease, upon written notice to Landlord, whereupon the  
 1160 parties shall have no further rights or obligations under this Lease.

Commented [DT111]: A long time!

Commented [DT112]: CAUTION:  
Does this mean all liability for  
breach is gone?

1161 **17.2 Sale of Property.** It is agreed that Landlord may at any time sell, assign or  
 1162 transfer its interest as landlord in and to this Lease, and may at any time sell, assign or transfer  
 1163 its interest in and to the Premises.

1164 In the event of any transfer of Landlord's interest in this Lease or in the Premises,  
 1165 the transferor shall be automatically relieved of any and all of Landlord's obligations and  
 1166 liabilities accruing from and after the date of such transfer;

Commented [DT113]: This is the  
opposite of what happens if Tenant  
assigns the Lease.

1167 provided that the transferee assumes all of Landlord's obligations under this Lease.

1168 Tenant hereby agrees to attorn to Landlord's assignee, transferee, or purchaser from  
 1169 and after the date of notice to Tenant of such assignment, transfer or sale, in the same manner  
 1170 and with the same force and effect as though this Lease were made in the first instance by and  
 1171 between Tenant and the assignee, transferee or purchaser.

1172 **17.3 No Personal Liability.** In the event of any default by Landlord hereunder, Tenant  
 1173 shall look only to Landlord's interest in the Premises and rents therefrom and any available  
 1174 insurance proceeds for the satisfaction of Tenant's remedies,

Commented [DT114]: A "non-  
recourse" provision.

Cf. "separate property only"  
language.

1175 and no other property or assets of Landlord or any trustee, partner, member, officer  
 1176 or director thereof, disclosed or undisclosed, shall be subject to levy, execution or other  
 1177 enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this  
 1178 Lease.

## 1179 18. DESTRUCTION

1180 **18.1 Damage or Destruction; Duty to Restore.** If the Premises or the improvements,  
 1181 or any portion thereof, are damaged or destroyed at any time during the Term and this Lease is  
 1182 not terminated by either party pursuant to and in accordance with this Section 18, [

Commented [DT115]: Often  
covered in leases.

1183 THEN] Tenant, as promptly as practicable and with all due diligence (given the time  
 1184 required to obtain insurance proceeds and to obtain construction permits), shall cause the  
 1185 repair, reconstruction and replacement of the improvements as nearly as possible given the  
 1186 circumstances and then-Applicable Law to their condition immediately prior to such damage or  
 1187 destruction

Commented [DT116]: CAUTION: Be  
sure cross-references like this are  
correct. (This is unambiguous.)



1188 and, except as otherwise approved in writing by Landlord or precluded by then-  
1189 Applicable Law, to their same general appearance.

1190 **18.2 Performance of Repairs and Restoration.** All repairs and restoration shall be  
1191 performed in accordance with the provisions of Section 9 of this Lease (as applicable).

1192 Except as otherwise provided herein, all insurance proceeds, less actual costs and  
1193 expenses incurred in connection with the collection thereof, shall be applied to the costs of  
1194 repair and restoration of the Premises and the improvements in accordance with the provisions  
1195 of this Section 18 and in compliance with Section 9 (as applicable).

1196 All such insurance proceeds shall be held by Landlord, or at the request of the holder  
1197 of any mortgagor, by a trust company reasonably satisfactory to Landlord and such holder.

1198 Insurance proceeds shall be made available to Tenant in monthly draws during the  
1199 repair of the Premises, which shall be available upon submission by Tenant of written request  
1200 accompanied by reasonably detailed invoices and customary lien releases from Tenant's  
1201 contractor.

1202 Tenant shall pay any amount by which the insurance proceeds received as a result of  
1203 such damage, less the costs and expenses incurred in connection with the collection thereof, are  
1204 insufficient to pay the entire cost of such repair and restoration.

1205 **18.3 Option to Terminate Upon Damage or Destruction.** In the event of (a) any  
1206 damage to or destruction of the Premises or the improvements or any portion thereof at any  
1207 time during the Term and the cost to repair and restore the same to substantially the same  
1208 condition as existed immediately prior to such occurrence is reasonably estimated to exceed  
1209 twenty-five percent (25%) of full replacement cost of all improvements on the Premises and is  
1210 not covered by any insurance obtained or required to be obtained by Tenant pursuant to  
1211 Article 13, or (b) any damage to or destruction of the Premises or the improvements occurring  
1212 during the last twelve months of the Term, then Tenant shall have the option to terminate this  
1213 Lease, exercisable as provided below.

1214 **18.4 Termination; Tenant's Obligation to Restore; Arbitration.** Tenant may exercise  
1215 its option to terminate this Lease pursuant to this Section 18 by giving written notice to Landlord  
1216 within ninety (90) days after the occurrence of the event of damage or destruction.

1217 If Tenant elects to terminate this Lease pursuant to this Section 18, Tenant shall  
1218 surrender the Premises to Landlord in accordance with the provisions of Section 20, except to  
1219 the extent the damage or destruction prevents Tenant from so doing.

1220 Tenant's obligations under this Section 18 shall survive the termination of this Lease.

1221 All proceeds of insurance payable with respect to damage to, or destruction of the  
1222 improvements and other property located on the Premises, after payment of costs and expenses  
1223 of collection thereof, shall first be applied to the costs of demolition, removal, restoration, and  
1224 remediation, as appropriate, depending on the extent of the damage or destruction, with the  
1225 balance, if any, of such insurance proceeds, to be distributed as provided in Section 18.5.

1226 **18.5 Excess Proceeds.** If there are proceeds of insurance in excess of that required to  
1227 repair, restore, reconstruct or demolish the Premises and the improvements as required herein,  
1228 [THEN] upon receipt by Landlord of satisfactory evidence that the work of repair, restoration,  
1229 reconstruction or demolition required has been fully completed and paid for in accordance with  
1230 the provisions of this Lease, and that the last day for filing any mechanic's or materialmen's liens  
1231 has passed without the filing of any, or if filed, any such lien has been released, [FINALLY, THE  
1232 PUNCH LINE:] any remaining insurance proceeds shall be paid to Landlord and the holders of  
1233 mortgages as their interest may appear.

1234 **18.6 Right to Participate in Settlement.** Landlord and Tenant shall both have the  
1235 right to participate in the settlement or compromise of any insurance proceeds.

1236 **18.7 No Damages.** If Landlord is required or elects to make any repairs,  
1237 reconstruction or restoration of any damage or destruction to the Premises under any of the  
1238 provisions of this Article 18,

1239 [THEN] Tenant shall not be entitled to any damages by reason of any inconvenience  
1240 or loss sustained by Tenant as a result thereof.

1241 There shall be no reduction, change or abatement of any rental or other charge  
1242 payable by Tenant to Landlord hereunder, or in the method of computing, accounting for or  
1243 paying the same.

1244 Tenant hereby waives the provisions of Section 1932(2) and Section 1933(4) of the  
1245 California Civil Code, or any other statute or law that may be in effect at the time of a casualty  
1246 under which a lease is automatically terminated or a tenant is given the right to terminate a lease  
1247 due to a casualty.

1248

1249 **19. EMINENT DOMAIN**

Commented [DT117]: Another frequent topic.

1250 **19.1 Taking.** If all or any part of the Premises shall be taken as a result of the  
1251 exercise, of the power of eminent domain or any transfer in lieu thereof, this Lease shall  
1252 terminate as to the part so taken as of the date of taking or as of the date of final judgment,  
1253 whichever is earlier, and, in the case of a partial taking if at least twenty-five percent (25%) of the  
1254 Premises, or if the extent and nature of such taking substantially handicaps, impedes or impairs  
1255 Tenant's use of the balance of the Premises, either Landlord or Tenant shall have the right to  
1256 terminate this Lease as to the balance of the Premises by written notice to the other within thirty  
1257 (30) days after such date.

1258 **19.2 Award.** In the event of any taking, Landlord shall be entitled to any and all  
1259 compensation, damages, income, rent, awards, or any interest therein whatsoever which may be  
1260 paid or made in connection therewith, and Tenant shall assign to Landlord any right to  
1261 compensation or damages for the condemnation of its leasehold interest; provided that Tenant  
1262 may file a claim for (a) Tenant's relocation expenses, and (b) the taking of Tenant's Property.

1263 (a) In the event of a partial taking of the Premises which does not result in a  
1264 termination of this Lease, Landlord shall repair, restore or reconstruct the Premises to a useable  
1265 state; provided that Landlord shall not be required to expend any sums other than those  
1266 received pursuant to Section 19.2.

1267 (b) During the period between the date of the partial taking and the  
1268 completion of any necessary repairs, reconstruction or restoration, Tenant shall be entitled to a  
1269 reduction of Base Rent by a proportionate amount based upon the extent of interference with  
1270 Tenant's operations in the Premises.

1271 **19.3 Temporary Taking.** Notwithstanding any other provision of this Article, if a  
1272 taking occurs with respect to all or any portion of the Premises for a period of six (6) months or  
1273 less, this Lease shall remain unaffected thereby and Tenant shall continue to pay Base Rent and  
1274 Additional Rent and to perform all of the terms, conditions and covenants of this Lease,

1275 provided that Tenant shall have the right to terminate this Lease if the taking  
1276 continues beyond twelve (12) months.

1277 In the event of any such temporary taking, and if this Lease is not terminated, Tenant  
1278 shall be entitled to receive that portion of any award which represents compensation for the use  
1279 or occupancy of the Premises during the Term up to the total Base Rent and Additional Rent

1280 owing by Tenant for the period of the taking, and Landlord shall be entitled to receive the  
1281 balance of any award.

1282 **19.4 Sale in Lieu of Condemnation.** A voluntary sale by Landlord of all or any part of  
1283 the Premises to any public or quasi-public body, agency or person, corporate or otherwise,  
1284 having the power of eminent domain, either under threat of condemnation or while  
1285 condemnation proceedings are pending, shall be deemed to be a taking under the power of  
1286 eminent domain for the purposes of this Article.

1287 **19.5 Waiver.** Except as provided in this Article, Tenant hereby waives and releases  
1288 any right it may have under any Applicable Law to terminate this Lease as a result of a taking,  
1289 including without limitation Sections 1265.120 and 1265.130 of the California Code of Civil  
1290 Procedure, or any similar law, statute or ordinance now or hereafter in effect.

## 1291 **20. SURRENDER**

1292 **20.1 Surrender.** Upon the Termination Date, Tenant shall surrender the Premises to  
1293 Landlord in as good order and repair as on the Commencement Date, reasonable wear and tear  
1294 and damage by casualty excepted, free and clear of all letting and occupancies and free of  
1295 Hazardous Materials as required pursuant to Article 12.

1296 Subject to Article 9, upon any termination of this Lease all improvements, except for  
1297 Tenant's Property, shall automatically and without further act by Landlord or Tenant, become  
1298 the property of Landlord, free and clear of any claim or interest therein by Tenant, and without  
1299 payment therefore by Landlord.

**Commented [DT118]:** Landlord owns most Tenant-paid-for improvements.

1300 **20.2 Holding Over.** Any holding over after the expiration of the Term with the  
1301 consent of Landlord shall be construed to automatically extend the Term on a month-to-month  
1302 basis at a Base Rent equal to the greater of

1303 (a) 150% of the then-current Base Rent, and

1304 (b) prevailing rate at which Landlord is then offering space in buildings reasonably  
1305 determined by Landlord to be comparable to the Premises,

**Commented [DT119]:** Month to month at a 50% increase in Base Rent — or more.

1306 and shall otherwise be on the terms and conditions of this Lease to the extent  
1307 applicable.

1308 Any holding over without Landlord's consent shall entitle Landlord to exercise any or  
1309 all of its remedies provided in Article 15, notwithstanding that Landlord may elect to accept one  
1310 or more payments of Base Rent and Operating Expenses from Tenant.

1311 **20.3 Quitclaim.** At the expiration or earlier termination of this Lease, Tenant shall  
1312 execute, acknowledge and deliver to Landlord, within ten (10) days after written demand from  
1313 Landlord to Tenant, any quitclaim deed or other document required by any reputable title  
1314 company, licensed to operate in the State of California, to remove the cloud or encumbrance  
1315 created by this Lease from the Premises.

Commented [DT120]: Seems like belt-and-suspenders.

## 1316 **21. FINANCIAL STATEMENTS**

1317 Tenant shall tender to Landlord within ten (10) business days after receipt of a written  
1318 request any information reasonably requested by Landlord regarding the financial stability, credit  
1319 worthiness or ability of Tenant to pay the Rent due under this Lease.

1320 Landlord shall be entitled to rely upon the information provided in determining whether or  
1321 not to enter into this Lease or for the purpose of any financing or other transaction subsequently  
1322 undertaken by Landlord.

Commented [DT121]: Why "rely"?

1323 Tenant hereby represents and warrants to Landlord the following:

1324 (a) that all documents provided by Tenant to Landlord in connection with the negotiation  
1325 of this Lease are true and correct copies of the originals,

1326 (b) Tenant has not withheld any information from Landlord that is material to Tenant's  
1327 credit worthiness, financial condition or ability to perform its obligations hereunder,

1328 (c) all information supplied by Tenant to Landlord is true, correct and accurate, and

1329 (d) no part of the information supplied by Tenant to Landlord contains any misleading or  
1330 fraudulent statements.

1331 A default under this Article shall be a non-curable default by Tenant and Landlord shall be  
1332 entitled to pursue any right or remedy available to Landlord under the terms of this Lease or  
1333 available to Landlord under the laws of the State of California.

1334 Landlord shall a be entitled to disclose Tenant's financial information to (1) its agents,  
1335 employees and consultants, (2) potential purchasers of an interest in the Premises, and  
1336 (3) lenders contemplating making a loan to the Landlord to be secured by the Premises,

1337 provided that such recipients are advised of the confidential nature of such information  
1338 and agree to maintain such confidentiality.

1339

1340 **22. TENANT CERTIFICATES**

1341 Tenant, at any time and from time to time within ten (10) business days after receipt  
1342 of written notice from Landlord, shall execute, acknowledge and deliver to Landlord or to any  
1343 party designated by Landlord (including prospective lenders, purchasers, ground lessees and  
1344 others similarly situated), a certificate of Tenant stating, to the best of Tenant's knowledge:

1345 (a) that Tenant has accepted the Premises,

1346 (b) the Commencement Date and Expiration Date of this Lease,

1347 (c) that this Lease is unmodified and in full force and effect (or, if there have been  
1348 modifications, that same is in full force and effect as modified and stating the modifications),

1349 (d) whether or not there are then existing any defenses against the enforcement of  
1350 any of the obligations of Tenant under this Lease (and, if so, specifying same),

1351 (e) whether or not there are then existing any defaults by Landlord in the  
1352 performance of its obligations under this Lease (and, if so, specifying same),

1353 (f) the dates, if any, to which the Base Rent and Operating Expenses have been paid,  
1354 and

1355 (g) any other factual information relating to the rights and obligations under this  
1356 Lease that may reasonably be required by any of such persons.

1357 Failure to deliver such certificate when due shall constitute an Event of Default.

1358 At the request of Tenant, Landlord shall execute, acknowledge and deliver to Tenant  
1359 a certificate with similar types of information and in the time period set forth above.

1360 Failure by either Landlord or Tenant to execute, acknowledge and deliver such  
1361 certificate shall be conclusive evidence that this Lease is in full force and effect and has not been  
1362 modified except as may be represented by the requesting party.

1363 **23. SIGNS**

Commented [DT122]: This is commonly referred to as an "estoppel certificate."

Commented [DT123]: This could get burdensome.

Commented [DT124]: So, lack of an estoppel certificate is considered to be a certificate? Would a third party likely accept silence as equivalent?

Commented [DT125]: Signage is a typical subject — some leases are very restrictive about sign designs.

1364 Tenant shall have the right, at Tenant's sole cost and expense, to install signage on  
1365 the Premises, subject to the prior written consent of Landlord, not to be unreasonably withheld,  
1366 and, if required, the approval of the City of Menlo Park.

1367 Any signage shall be removed by Tenant at the expiration or earlier termination of  
1368 this Lease if so required by Landlord.

1369 **24. INABILITY TO PERFORM**

1370 If Landlord is unable to fulfill or is delayed in fulfilling any of Landlord's obligations  
1371 under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other  
1372 labor disputes, inability to obtain utilities or materials or by any other reason beyond Landlord's  
1373 reasonable control (and excluding failure or delay as a result of Landlord's willful misconduct or  
1374 gross negligence),

1375 then no such inability or delay by Landlord shall constitute an actual or constructive  
1376 eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Base Rent or  
1377 Additional Rent,

1378 or relieve Tenant from any of its obligations under this Lease,

1379 or impose any liability upon Landlord or Landlord's Agents by reason of  
1380 inconvenience, annoyance, interruption, injury or loss to or interference with Tenant's business  
1381 or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned  
1382 thereby.

1383 If Tenant is unable to fulfill or is delayed in fulfilling any of Tenant's obligations  
1384 under this Lease (other than the payment of Rent), by reason of acts of God, accidents, breakage,  
1385 repairs, strikes, lockouts, other labor disputes, inability to obtain utilities or materials or by any  
1386 other reason beyond Tenant's reasonable control, then such inability or delay by Tenant shall  
1387 excuse the performance of Tenant for a period equal to the duration of such prevention, delay or  
1388 stoppage.

1389 Tenant hereby waives and releases any right to terminate this Lease under  
1390 Section 1932(1) of the California Civil Code, or any similar law, statute or ordinance now or  
1391 hereafter in effect.

1392 **25. NOTICES**

**Commented [DT126]:** This seems redundant in view of other provisions earlier ....

1393 Notices or other communications given or required to be given under this Lease shall  
 1394 be effective only if rendered or given in writing, sent by certified mail with a return receipt  
 1395 requested, or delivered in person or by reputable overnight courier (e.g., Federal Express, DHL,  
 1396 etc.):

Commented [DT127]: Evidentiary problem here?

1397 (a) to Tenant (i) at Tenant's address set forth in Article 1, if sent prior to the  
 1398 Commencement Date, or (ii) at the Premises and at the "copy to" address specified in Article 1 if  
 1399 sent subsequent to the Commencement Date, or (iii) at the place where Tenant designates  
 1400 subsequent to Tenant's vacating, deserting, abandoning or surrendering the Premises; or

1401 (b) to Landlord at Landlord's address set forth in Article 1; or

1402 (c) to such other address as either Landlord or Tenant may designate as its new  
 1403 address for such purpose by notice given to the other in accordance with the provisions of this  
 1404 Article.

Commented [DT128]: Need notice to effect a change of address for notice.

1405 Any such notice or other communication shall be deemed to have been rendered or  
 1406 given five (5) days after the date mailed, if sent by certified mail, or upon the date of delivery in  
 1407 person or by courier, or when delivery is attempted but refused.

Commented [DT129]: Mailbox Rule — bad idea.

## 1408 26. QUIET ENJOYMENT

Commented [DT130]: Tenant will absolutely want this.

1409 Landlord covenants that so long as an Event of Default by Tenant is not in existence,  
 1410 upon paying the Base Rent and Additional Rent and performing all of its obligations under this  
 1411 Lease, Tenant shall peaceably and quietly enjoy the Premises, subject to the terms and provisions  
 1412 of this Lease.

## 1413 27. AUTHORITY

1414 If Tenant is a corporation, limited liability company or a partnership, Tenant  
 1415 represents and warrants as follows:

Commented [DT131]: The "a" (indefinite article) seems inappropriate here.

1416 Tenant is an entity as identified in Article 1, duly formed and validly existing and in  
 1417 good standing under the laws of the state of organization specified in Article 1 and qualified to  
 1418 do business in the State of California.

1419 Tenant has the power, legal capacity and authority to enter into and perform its  
 1420 obligations under this Lease and no approval or consent of any person is required in connection  
 1421 with the execution and performance hereof.



1422           The execution and performance of Tenant's obligations under this Lease will not  
1423 result in or constitute any default or event that would be, or with notice or the lapse of time  
1424 would be, a default, breach or violation of the organizational instruments governing Tenant or  
1425 any agreement or any order or decree of any court or other governmental authority to which  
1426 Tenant is a party or to which it is subject.

1427           Tenant has taken all necessary action to authorize the execution, delivery and  
1428 performance of this Lease and this Lease constitutes the legal, valid and binding obligation of  
1429 Tenant.

1430           Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably  
1431 satisfactory to Landlord confirming the foregoing representations and warranties.

1432           Landlord represents and warrants as follows: Landlord has the power, legal capacity  
1433 and authority to enter into and perform its obligations under this Lease and no approval or  
1434 consent of any person is required in connection with the execution and performance hereof.

1435           The execution and performance of Landlord's obligations under this Lease will not  
1436 result in or constitute any default or event that would be, or with notice or the lapse of time  
1437 would be, a default, breach or violation of the organizational instruments governing Landlord or  
1438 any agreement or any order or decree of any court or other governmental authority to which  
1439 Landlord is a party or to which it is subject.

1440           Landlord has taken all necessary action to authorize the execution, delivery and  
1441 performance of this Lease and this Lease constitutes the legal, valid and binding obligation of  
1442 Landlord.

1443 **28. BROKERS**

1444           Landlord and Tenant each warrant that no broker has been involved in the  
1445 procurement of this Lease;

1446           and each party hereby agrees to indemnify, defend and hold the other harmless  
1447 from and against any and all liabilities arising from any breach of the foregoing warranty or any  
1448 claims by a third party for a brokerage commission or finder's fee arising out of this transaction.

1449 **29. MISCELLANEOUS**

Commented [DT132]: Neither party wants any surprise demands for commissions.

1450                   **29.1 Entire Agreement.** This Lease, including the exhibits which are incorporated  
1451 herein and made a part of this Lease, contains the entire agreement between the parties and all  
1452 prior negotiations and agreements are merged herein.

1453                   Tenant hereby acknowledges that neither Landlord nor Landlord's Agents have made  
1454 any representations or warranties with respect to the Premises or this Lease except as expressly  
1455 set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by  
1456 implication or otherwise unless expressly set forth herein.

1457                   **29.2 No Waiver.** No failure by Landlord or Tenant to insist upon the strict  
1458 performance of any obligation of Tenant or Landlord under this Lease or to exercise any right,  
1459 power or remedy consequent upon a breach thereof, no acceptance of full or partial Base Rent  
1460 or Additional Rent during the continuance of any such breach by Landlord, or payment of Base  
1461 Rent or Additional Rent by Tenant to Landlord,

1462                   and no acceptance of the keys to or possession of the Premises prior to the  
1463 expiration of the Term by any employee or agent of Landlord

1464                   shall constitute a waiver of any such breach or of such term, covenant or condition or  
1465 operate as a surrender of this Lease.

1466                   No waiver of any breach shall affect or alter this Lease, but each and every term,  
1467 covenant and condition of this Lease shall continue in full force and effect with respect to any  
1468 other then-existing or subsequent breach thereof.

1469                   The consent of Landlord or Tenant given in any instance under the terms of this  
1470 Lease shall not relieve Tenant or Landlord, as applicable, of any obligation to secure the consent  
1471 of the other in any other or future instance under the terms of this Lease.

1472                   **29.3 Modification.** Neither this Lease nor any term or provisions hereof may be  
1473 changed, waived, discharged or terminated orally, and no breach thereof shall be waived, altered  
1474 or modified, except by a written instrument signed by the party against which the enforcement  
1475 of the change, waiver, discharge or termination is sought.

1476                   **29.4 Successors and Assigns.** The terms, covenants and conditions contained in this  
1477 Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise  
1478 provided or limited herein, their respective personal representatives and successors and assigns.

1479                   **29.5 Validity.** If any provision of this Lease or the application thereof to any person,  
1480 entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this

**Commented [DT133]:** Landlord's acceptance of rent won't constitute an "all is forgiven" action.

1481 Lease, or the application of such provision to persons, entities or circumstances other than those  
1482 as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this  
1483 Lease shall be valid and be enforced to the full extent permitted by law.

1484 **29.6 Jurisdiction.** This Lease shall be construed and enforced in accordance with the  
1485 laws of the State of California. Any action that in any way involves the rights, duties and  
1486 obligations of the parties under this Lease may (and if against Landlord, shall) be brought in the  
1487 courts of the State of California or the United States District Court for the District of California,  
1488 and the parties hereto hereby submit to the personal jurisdiction of said courts.

Commented [DT134]: Q: Where could Landlord sue Tenant?

1489 **29.7 Attorneys' Fees.** In the event that either Landlord or Tenant fails to perform  
1490 any of its obligations under this Lease or in the event a dispute arises concerning the meaning or  
1491 interpretation of any provision of this Lease, the defaulting party or the party not prevailing in  
1492 such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other  
1493 party in enforcing or establishing its rights hereunder, including, without limitation, court costs,  
1494 costs of arbitration and reasonable attorneys' fees.

Commented [DT135]: Q: How does this work under California law?

1495 **29.8 Waiver of Jury Trial.** Landlord and Tenant each hereby voluntarily and  
1496 knowingly waive and relinquish their right to a trial by jury in any action, proceeding or  
1497 counterclaim brought by either against the other on any matter whatsoever arising out of or in  
1498 any way connected with this Lease, the relationship of Landlord with Tenant, or Tenant's use or  
1499 occupancy of the Premises, including any claim of injury or damage, and any emergency and  
1500 other statutory remedy with respect thereto.

Commented [DT136]: Q: Is this valid in California?

1501 **29.9 (Reserved).**

1502 **29.10 Light and Air.** Tenant covenants and agrees that no diminution of light, air or  
1503 view by any structure that may hereafter be erected (whether or not by Landlord) shall entitle  
1504 Tenant to any reduction of the Base Rent or Additional Rent under this Lease, result in any  
1505 liability of Landlord to Tenant, or in any other way affect this Lease or Tenant's obligations  
1506 hereunder.

Commented [DT137]: So if Stanford builds skyscrapers all around the Premises, Tesla is out of luck.

1507 **29.11 Lease Memorandum.** Neither Landlord or Tenant shall record this Lease or a  
1508 short form memorandum hereof without the consent of the other.

Commented [DT138]: Q: Why not?

1509 **29.12 Confidentiality.** The parties agree that neither of them shall make public the  
1510 terms and conditions of this Lease to any person other than a party's accountants, attorneys,  
1511 lenders, brokers, prospective ground lessees, investors, consultants or financial advisors without

Commented [DT139]: Hmm ...

1512 first obtaining the written permission from the other party, except to the extent otherwise  
1513 required by Applicable Law.

1514 **29.13 Terms.** The words “Landlord” and “Tenant” as used herein shall include the  
1515 plural as well as the singular.

1516 If there is more than one Tenant or Landlord, the obligations under this Lease  
1517 imposed on Tenant or Landlord shall be joint and several.

1518 The captions preceding the articles of this Lease have been inserted solely as a  
1519 matter of convenience and such captions in no way define or limit the scope or intent of any  
1520 provision of this Lease.

1521 **29.14 Review and Approval.** The review, approval, inspection or examination by  
1522 Landlord of any item to be reviewed, approved, inspected or examined by Landlord under the  
1523 terms of this Lease or the exhibits attached hereto shall not constitute the assumption of any  
1524 responsibility by Landlord for either the accuracy or sufficiency of any such item or the quality of  
1525 suitability of such item for its intended use.

Commented [DT140]: A useful concept: “My review is for my benefit only, not yours”

1526 Any such review, approval, inspection or examination by Landlord is for the sole  
1527 purpose of protecting Landlord’s interests in the Premises and under this Lease, and no third  
1528 parties, including, without limitation, Tenant or any person or entity claiming through or under  
1529 Tenant, or the contractors, agents, servants, employees, visitors or licensees of Tenant or any  
1530 such person or entity, shall have any rights hereunder with respect to such review, approval,  
1531 inspection or examination by Landlord.

1532 **29.15 No Beneficiaries.** This Lease shall not confer or be deemed to confer upon any  
1533 person or entity other than the parties hereto, any right or interest, including without limitation,  
1534 any third party status or any right to enforce any provision of this Lease.

1535 **29.16 Time of the Essence.** Time is of the essence in respect of all provisions of this  
1536 Lease in which a definite time for performance is specified.

Commented [DT141]: Courts often look askance at “time is of the essence” provisions because they’re often included as mere boilerplate.

1537 **29.17 Modification of Lease.** In the event of any ruling or threat by the Internal  
1538 Revenue Service, or opinion of counsel, that all or part of the Rent paid or to be paid to Landlord  
1539 under this Lease will be subject to the income tax or unrelated business taxable income, Tenant  
1540 agrees to modify this Lease to avoid such tax; provided that such modifications will not result in  
1541 any increase in Rent, or any increased obligations of Tenant under this Lease.

Commented [DT142]: This is an unhelpful subheading.

1542 Landlord will pay all Tenant's reasonable costs incurred in reviewing and negotiating  
1543 any such lease modification, including reasonable attorneys' and accountants' fees.

1544 **29.18 Construction.** This Lease has been negotiated extensively by Landlord and  
1545 Tenant with and upon the advice of their respective legal counsel, all of whom have participated  
1546 in the drafting hereof. Consequently, Landlord and Tenant agree that no party shall be deemed  
1547 to be the drafter of this Lease and in the event this Lease is ever construed by a court of law,  
1548 such court shall not construe this Lease or any provision of this Lease against any party as the  
1549 drafter of the Lease.

Commented [DT143]: Q: What does this purport to disclaim?

1550 **29.19 Use of Name.** Tenant acknowledges and agrees that the names "*The Leland*  
1551 *Stanford Junior University*," "*Stanford*" and "*Stanford University*," and all variations thereof, are  
1552 proprietary to Landlord. Tenant shall not use any such name or any variation thereof or identify  
1553 Landlord in any promotional advertising or other promotional materials to be disseminated to  
1554 the public or any portion thereof or use any trademark, service mark, trade name or symbol of  
1555 Landlord or that is associated with it, without Landlord's prior written consent, which may be  
1556 given or withheld in Landlord's sole discretion.

Commented [DT144]: Trademark rights.

1557 **29.20 Survival.** The obligations of this Lease shall survive the expiration of the Term  
1558 to the extent necessary to implement any requirement for the performance of obligations or  
1559 forbearance of an act by either party hereto which has not been completed prior to the  
1560 termination of this Lease.

1561 Such survival shall be to the extent reasonably necessary to fulfill the intent thereof,  
1562 or if specified, to the extent of such specification, as same is reasonably necessary to perform the  
1563 obligations and/or forbearance of an act set forth in such term, covenant or condition.

1564 Notwithstanding the foregoing, in the event a specific term, covenant or condition is  
1565 expressly provided for in such a clear fashion as to indicate that such performance of an  
1566 obligation or forbearance of an act is no longer required, then the specific shall govern over this  
1567 general provisions of this Lease.

1568 **29.21 Counterparts.** This Lease may be executed in counterparts, each of which shall  
1569 be an original, and all of which together shall constitute one original of the Lease.

1570 IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first above  
1571 written.

LANDLORD:

TENANT:

THE BOARD OF TRUSTEES OF THE LELAND  
STANFORD JUNIOR UNIVERSITY

TESLA MOTORS, INC., a Delaware corporation

By: /s/ Leonie F. Batkin

By: /s/ Elon Musk

Its: Director, Property Services

Its: CEO

By: /s/ Darryl Siry

Its: VP, Sales Marketing

Commented [DT145]: Q: Why do you think there are two signature blocks here?

1572

**GLOSSARY**

1573

**DEFINITIONS**

Commented [DT146]: Note the extensive cross-references.

1574

As used In this Lease, the following terms shall have the following meanings, applicable, as appropriate, to both the singular and plural form of the terms defined below:

1576

**"Abated Rent"** is defined in Section 15.2(g).

1577

**"ADA"** is defined in Section 11.1.

1578

**"Additional Rent"** is defined in Section 5.3.

1579

**"Alterations"** is as defined in Section 9.3.

1580

**"Applicable Laws"** are defined in Section 11.1.

1581

**"Assignment"** is defined in Section 14.1.

1582

**"Base Rent"** means the amount stated in Article 1, to be adjusted and payable in accordance with Article 5.

1584

**"Business Days"** means Monday through Friday, excluding Saturdays, Sundays and federal and state legal holidays.

1586

**"Commencement Date"** means the date specified in Article 1.

1587

**"Early Termination Date"** is defined in Section 4.4.

1588

**"Effective Date"** is defined in the introductory paragraph of this Lease.

1589

**"Environmental Activity"** is defined in Section 12.1(a).

1590

**"Environmental Investigation"** is defined in Section 12.7.

1591 **"Environmental Laws"** are defined in Section 12.1(b).

1592 **"Event of Default"** is defined in Section 15.1.

1593 **"Excess Rent"** is defined in Section 14.4.

1594 **"Expiration Date"** means the date specified in Article 1.

1595 **"Extension Option"** is defined in Section 4.3.

1596 **"Extension Period"** is defined in Section 4.3.

1597 **"Hazardous Material"** is defined In Section 12.1(c).

1598 **"Initial Base Rent"** is defined in Article 1.

1599 **"Interest Rate"** is defined in Section 5.4.

1600 **"Landlord"** is defined in the introductory paragraph to this Lease.

1601 **"Landlord's Agents"** is defined in Section 12.4.

1602 **"Offer"** is defined in Section 14.5.

1603 **"Offer Notice"** is defined in Section 4.5.

1604 **"Premises"** is defined in Section 2.1.

1605 **"Property Taxes"** is defined in Section 7.2.

1606 **"Rent"** means Base Rent, Additional Rent, and all other sums due from Tenant under this  
1607 Lease.

Commented [DT147]: But "Rent" is defined in

1608 **"Right of First Offer"** is defined in Section 4.5.

1609 **"Scheduled Date for Delivery of the Premises"** is specified in Article 1.

1610 **"Security Deposit"** is defined in Article 1.

1611 **"Sublease"** is defined in Section 14.1.

1612 **"Successor"** is defined in Section 16.5.

1613 **"Supplemental Investigation"** is defined in Section 12.7.

1614 **"Tenant"** Is defined in the introductory paragraph to this Lease.

1615        “**Tenant’s Agents**” is defined in Section 8.3.

1616        “**Tenant’s Hazardous Materials**” is defined in Section 12.1(d).

1617        “**Tenant’s Property**” is defined in Section 9.6.

1618        “**Term**” is defined in Article 1 and Section 4.1.

1619        “**Termination Date**” is defined in Section 4.1.

1620        “**Termination Fee**” is defined in Section 4.4.

1621        “**Termination Notice**” is defined in Section 4.2.

1622        “**Transfer**” is defined in Section 14.5.

1623        “**Transfer Costs**” is defined in Section 14.4.

1624        “**Transfer Notice**” is defined in Section 14.2.

1625        “**Transferee**” is defined in Section 14.2.

1626



1627

**Exhibit A**

1628 A tract of land situated in the State of California, County of San Mateo, City of Menlo Park and is  
1629 described as follows:

1630 PARCEL I:

1631 Portion of that certain 14.80 acre tract of land as described in that certain Deed from Charles  
1632 Crocker, et al, to Leland Stanford, dated October 19, 1885 and recorded in Book 39 of Deeds at  
1633 page 354 Records of San Mateo County, California, more particularly described as follows:

1634 BEGINNING at a point on the Northeasterly line of El Camino Real, which point is distant 50 feet  
1635 measured at right angles, Northeasterly from the center line Station 593+50.00,

1636 said point of beginning being marked by an iron pipe monument;

1637 thence from said point of beginning, along the said Northeasterly line of El Camino Real, North  
1638 50° 17' 53" West 87.63 feet to the true point of beginning at the lands to be described herein;

1639 thence from said true point of beginning, along the said Northeasterly line of El Camino Real,  
1640 North 50° 17' 53" West 62.43 feet and North 50° 25' West 337.57 feet;

1641 thence leaving said line of El Camino Real, North 39° 35' 00" East 188.83 feet to the  
1642 Southwesterly boundary line of that certain 40 foot wide strip of land containing 2.33 acres,

1643 as described in that certain Deed from The Board of Trustees of The Leland Stanford Junior  
1644 University to the Southern Pacific Railroad Company, dated March 26, 1902 and recorded in  
1645 Book 92 of Deeds at page 374, Records of San Mateo County, California;

1646 thence South 51° 35' 10" East along said last mentioned line, 400.08 feet;

1647 thence South 39° 35' 00" West 197.12 feet to the point of beginning.

1648

**Commented [DT148]:** This is a so-called "metes and bounds" description.

1649

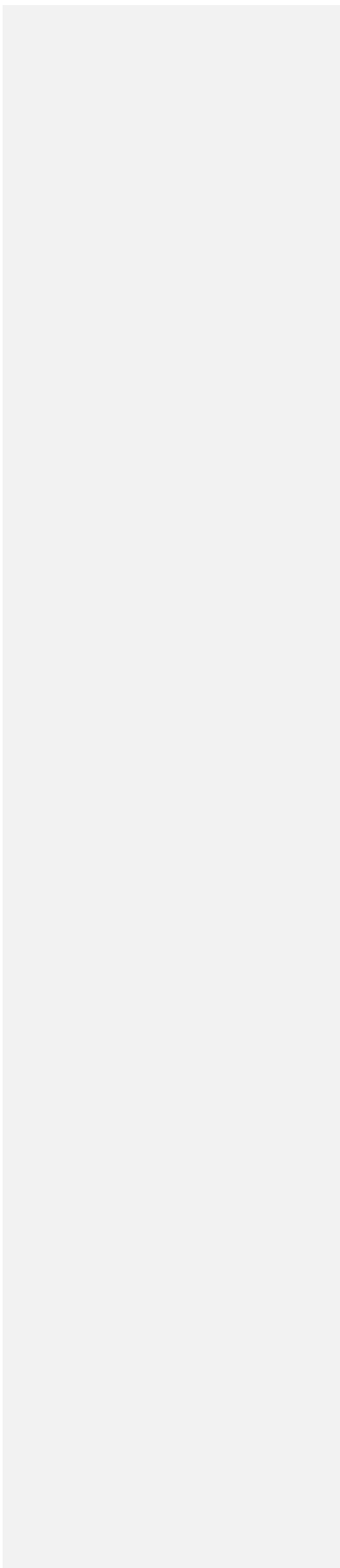
**Exhibit B**

1650

*[Intentionally omitted]*

1651

1652



1653

**Exhibit C**

1654

**ACCEPTANCE FORM**

1655

1656

1657

1658

This Acceptance form is executed with reference to that certain Lease dated as of \_\_\_\_\_, 2007 by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY ("**Landlord**"), and TESLA MOTORS, a \_\_\_\_\_ ("**Tenant**"). Terms defined in the Lease and the exhibits thereto shall have the same meaning when used herein.

1659

1660

Tenant hereby certifies to Landlord that Tenant has inspected the Premises as of \_\_\_\_\_ (the "**Date of Inspection**").

1661

1662

Tenant further acknowledges that Tenant hereby accepts the Premises in its existing "AS-IS", "WHERE-IS" condition, and "WITH ALL FAULTS".

1663

1664

1665

The person executing this Acceptance Form on behalf of Tenant represents and warrants to Landlord that such person is duly authorized to execute this Acceptance Form and that this Acceptance Form has been duly authorized, executed and delivered on behalf of Tenant.

Commented [DT149]: Some personal-liability potential here ....

1666

THIS ACCEPTANCE FORM is executed by Tenant as of the Date of Inspection.

1667

[SIGNATURE BLOCK OMITTED]

1668

1669

**Exhibit D**

1670

**DETERMINATION OF PREVAILING MARKET RENT**

1671 The term "**Prevailing Market Rent**" means the base monthly rent (net of all expenses) for  
1672 space of comparable size and location to the Premises and in buildings similar in age and quality  
1673 to the Building,

1674 taking into account any additional rent and all other payments or escalations then being  
1675 charged and allowances and economic concessions being given in the for such comparable space  
1676 over a comparable term.

1677 The Prevailing Market Rent shall be determined by Landlord

1678 and Landlord shall give Tenant written notice of such determination not later than thirty  
1679 (30) days after delivery by Tenant of Tenant's notice of exercise of the **Option**.

Commented [DT150]: "Option" is not a defined term.

1680 If Tenant disputes Landlord's determination of the Prevailing Market Rent, Tenant shall so  
1681 notify Landlord within ten (10) days following Landlord's notice to Tenant of Landlord's  
1682 determination

1683 and, in such case, the Prevailing Market Rent shall be determined as follows:

1684 (a) Within thirty (30) days following Landlord's notice to Tenant of the Prevailing  
1685 Market Rent, Landlord and Tenant shall meet no less than two (2) times, at a mutually agreeable  
1686 time and place, to attempt to agree upon the Prevailing Market Rent.

1687 (b) If within this 30-day period Landlord and Tenant cannot reach agreement as to  
1688 the Prevailing Market Rent, they shall each select one appraiser to determine the Prevailing  
1689 Market Rent.

1690 Each such appraiser shall arrive at a determination of the Prevailing Market Rent and  
1691 submit his or her conclusions to Landlord and Tenant within thirty (30) days after the expiration  
1692 of the 30-day consultation period described in (a) above.

1693 (c) If only one appraisal is submitted within the requisite time period, it shall be  
1694 deemed to be the Prevailing Market Rent,

1695 If both appraisals are submitted within such time period, and if the two appraisals so  
1696 submitted differ by less than ten (10) percent of the higher of the two, **the average of the two**  
1697 shall be the Prevailing Market Rent.

Commented [DT151]: Average out a difference of  $\leq 10\%$

1698                    If the two appraisals differ by more than ten (10) percent of the higher of the two,  
1699 then the two appraisers shall immediately select a third appraiser who will within thirty (30) days  
1700 of his or her selection make a determination of the Prevailing Market Rent and submit such  
1701 determination to Landlord and Tenant.

1702                    This third appraisal will then be averaged with the closer of the two previous  
1703 appraisals and the result shall be the Prevailing Market Rent.

**Commented [DT152]:** Throw out the one that's farthest.

1704                    (e) All appraisers specified pursuant hereto shall be members of the American  
1705 Institute of Real Estate Appraisers with not less than five (5) years experience appraising office,  
1706 research and development and industrial properties in California.

1707                    Each party shall pay the cost of the appraiser selected by such party and one-half of  
1708 the cost of the third appraiser plus one-half of any other costs incurred in the determination.