

1 EX-10.20 21 dex1020.htm COMMERCIAL LEASE -
2 THE BOARD OF TRUSTEES OF THE LELAND STAN-
3 FORD JR. UNIVERSITY

4 **Exhibit 10.20**

5 **COMMERCIAL LEASE**

6 THIS LEASE is entered into as of July 25, 2007 (the
7 “*Effective Date*”), by and between THE BOARD OF TRUS-
8 TEES OF THE LELAND STANFORD JUNIOR UNIVER-
9 SITY, a body having corporate powers under the laws of the
10 State of California (“*Landlord*”), and TESLA MOTORS,
11 INC., a Delaware corporation (“*Tenant*”).

12 **1. BASIC LEASE INFORMATION.** The following is

13 a summary of basic lease information.

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

16 and to the extent there is any conflict between the provi-
17 sions of this Article 1 and any other provisions of this Lease,
18 the other provisions shall control.

19 Any capitalized term not defined in this Lease shall have
20 the meaning set forth in the Glossary that appears at the end of
21 this Lease.

22

Address of Premises:	300 El Camino Real, Menlo Park, California
Term:	Five (5) years
Sched- uled 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

D. C. Toedt 4/7/14 9:13 PM

Comment [1]: This lease agreement is on file with the SEC at <http://goo.gl/JscaVm>

D. C. Toedt 4/7/14 9:14 PM

Comment [2]: This would be better titled “Commercial Lease AGREEMENT” – why?

D. C. Toedt 4/22/14 6:46 AM

Comment [3]: **QUESTION:** BASIC LEASE INFORMATION: What are some of the pros and cons of having such a section in a contract?

D. C. Toedt 4/7/14 9:16 PM

Comment [4]: INCORPORATES: Is this worth bothering with?

D. C. Toedt 4/22/14 6:48 AM

Comment [5]: **QUESTION:** What could go wrong here? Does this defeat the purpose of having a Basic Lease Information section?

D. C. Toedt 4/22/14 6:48 AM

Comment [6]: GLOSSARY: This is a variation of having the Definitions section just after the introductory paragraphs – note that it’s at the end of the document. **QUESTION:** Which works better – at the beginning, or at the end?

D. C. Toedt 4/22/14 9:21 AM

Comment [7]: NOTE: At this writing, the Tesla dealership has moved to Palo Alto (also on ECR) – see <http://www.teslamotors.com/paloalto>

D. C. Toedt 4/22/14 6:46 AM

Comment [8]: **QUESTION:** BASE RENT: What other kinds of rent might there be? (Hint: Look up “percentage rent.”)

month)

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

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

Security Deposit: \$5,000

23 Use: A dealership for the retail sales of new electric pas-
24 senger automobiles, with ancillary automobile repair work, au-
25 tomobile displays, sales offices and storage.

26 Addresses for Notice:

Landlord: Stanford University - Real Estate Office
2755 Sand Hill Road, Suite 100
Menlo Park, CA 94025
Attention: Director, Property Services

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

27 Brokers: None

D. C. Toedt 4/22/14 6:46 AM

Comment [9]: QUESTION: Is this the best way to set this up?

28

D. C. Toedt 4/22/14 6:46 AM

Comment [10]: QUESTION: Why specifically say "no brokers"?

29 **2. PREMISES**

30 Subject to the terms, covenants and conditions set
31 forth in this Lease,

32 Landlord hereby leases to Tenant

33 and Tenant hereby leases from Landlord

34 those premises (the "**Premises**") comprised of an
35 existing automobile showroom and automobile repair facility,

36 together with all other buildings and improvements,

37 including without limitation parking areas, side-

38 walks, driveways and landscaping located on that certain real

39 property described on the attached **Exhibit A**. A site plan gen-

40 erally depicting the Premises is attached as **Exhibit B**.

D. C. Toedt 4/22/14 6:50 AM

Comment [11]: QUESTION: LANDSCAPING LOCATED ON: Could this be improved to make it more clear?

41 **3. ACCEPTANCE**

42 The Premises as furnished by Landlord consist of
43 the improvements as they exist as of the Effective Date
44 and Landlord shall have no obligation for con-
45 struction work or improvements on or to any portion of the
46 Premises.

47 Prior to entering into this Lease, Tenant has made
48 a thorough and independent examination of the Premises and
49 all matters related to Tenant’s decision to enter into this Lease.

50 Tenant is thoroughly familiar with all aspects of
51 the Premises and is satisfied that it is in an acceptable condi-
52 tion and meet Tenant’s needs.

53 Tenant does not rely on, and Landlord does not
54 make, any express or implied representations or warranties as
55 to any matters including, without limitation,

56 (a) the physical condition of the Premises
57 including without limitation the structural compo-
58 nents of any improvements or any building systems within or
59 serving the improvements (including without limitation indoor
60 air quality),

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

63 (c) the use, habitability, merchantability, fitness or
64 suitability of the Premises for Tenant’s intended use,

65 (d) the likelihood of deriving business from Ten-
66 ant’s location or the economic feasibility of Tenant’s business,

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

69 (f) zoning, entitlements or any laws, ordinances or
70 regulations which may apply to Tenant’s use of the Premises
71 or business operations, or

D. C. Toedt 4/22/14 6:51 AM

Comment [12]: QUESTION: What’s the purpose of this recital? Does it matter that it doesn’t say “Tenant represents that it has made”?

D. C. Toedt 4/22/14 6:52 AM

Comment [13]: Note the express disclaimer of reliance.

D. C. Toedt 4/22/14 6:54 AM

Comment [14]: QUESTION: Why include such a laundry list?

D. C. Toedt 4/22/14 6:53 AM

Comment [15]: QUESTION: Given where the premises are located (that is, very close to the San Andreas Fault), might Stanford want to include any other language concerning its disclaimer of reps or warranties about the physical condition of the premises?

D. C. Toedt 4/22/14 6:54 AM

Comment [16]: QUESTION: Should Stanford be thinking about any particular laws, etc., given the nature of Tesla’s business?

72 (g) any other matter whatsoever.

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

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

79 Tenant shall, by entering into and occupying the
80 Premises, be deemed to have accepted the Premises and to
81 have acknowledged that the same are in good order, condition
82 and repair in all respects.

83 Upon the Commencement Date, tenant shall exe-
84 cute and deliver to Landlord the **Acceptance Form attached**
85 hereto as **Exhibit C**.

D. C. Toedt 4/22/14 6:55 AM

Comment [17]: QUESTION: Why attach the Acceptance Form?

86

87 **4. TERM**

88 **4.1 Term.** **The Premises are leased for a term (the**
89 **"Term")** commencing on the Commencement Date and expir-
90 ing on the Expiration Date.

D. C. Toedt 4/22/14 6:56 AM

Comment [18]: Note that this is not phrased as the term of the Agree-
ment, but rather as the term of the lease of the Premises.

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

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

98 The date upon which this Lease actually termi-
99 nates, whether by expiration of the Term or earlier termination
100 pursuant to the terms of this Lease, is sometimes referred to in
101 this Lease as the "Termination Date".

102

103 **4.2 Failure to Deliver Possession.** If for any rea-
104 son Landlord cannot deliver possession of the Premises to
105 Tenant on or prior to the Scheduled Date for Delivery of the
106 Premises,

107 then the validity of this Lease and the obligations
108 of Tenant under this Lease shall not be affected

109 and Tenant shall have no claim against Landlord
110 arising out of Landlord’s failure to deliver possession of the
111 Premises on the Scheduled Date for Delivery of the Premises.

112 Notwithstanding the foregoing, if Landlord fails to
113 deliver the Premises within thirty (30) days after the Com-
114 mencement Date, Tenant shall have the option to terminate
115 this Lease,

116 whereupon neither party shall have any further
117 rights or obligations hereunder.

118
119 **4.3 Extension Option.** In the event that Landlord
120 determines in its sole discretion

121 that Landlord does not intend to redevelop the
122 Premises or to use it for Landlord’s own purposes after the
123 Termination Date,

124 and that therefore the Premises will be available
125 for lease,

126 [then] Landlord shall provide Tenant with written
127 notice of such determination, setting forth the period of time
128 that Landlord has determined the Premises will remain availa-
129 ble for lease by Tenant (the “*Extension Period*”).

130 Tenant shall have the option (the “*Extension Op-*
131 *tion*”) to extend the Term for the Extension Period by deliver-
132 ing written notice to Landlord within thirty (30) days after re-
133 ceipt of Landlord’s notice.

D. C. Toedt 4/22/14 6:57 AM

Comment [19]: QUESTION: How would you summarize the basic business concept of this section 4.2? (Be sure to read the rest of this section.)

D. C. Toedt 4/22/14 8:57 AM

Comment [20]: QUESTION: “Any” further rights? What about forum selection, etc.? Does this override the survival clause?

D. C. Toedt 4/22/14 6:57 AM

Comment [21]: QUESTION: Why not call this a “Renewal Option”? (Hint: See the commentary to <http://www.commondraft.org/#TermExtendCls>.)

D. C. Toedt 4/22/14 8:57 AM

Comment [22]: QUESTION: What if Landlord just forgets about the property and doesn’t provide Tenant with the notice? What effect does that have on the Extension Option? **QUESTION:** As a practical matter, what could Tenant do if it wanted to extend the lease term? **COMMENT:** This sentence would have been clearer if the drafter had included “then” before “Landlord shall provide Tenant”

134 The Extension Option shall be void if an Event of
135 Default by Tenant exists, either at the time of exercise of the
136 Extension Option or the time of commencement of the Extension
137 Term.

138 The terms of this Lease during the Extension Pe-
139 riod shall be the same terms and conditions as during the orig-
140 inal Term, except that the Base Rent applicable to the Extension
141 Period shall be equal to the Prevailing Market Rent as of
142 the commencement of the Extension Period, as determined
143 pursuant to Exhibit D.

144 The Extension Option is personal to Tenant and
145 shall be inapplicable and null and void if Tenant assigns its in-
146 terest under this Lease,

147 or if either party exercises its termination right
148 under Section 4.4.

149 The Extension Option (if not previously exer-
150 cised) shall expire as of the Termination Date.

151
152 **4.4 Termination Right.**

153 (a) Either party shall have the right to ter-
154 minate this Lease during the initial Term (but not the Extension
155 Period) by providing written notice thereof to the other
156 party not less than six (6) months prior to the desired termina-
157 tion date (the "Early Termination Date").

158 The Early Termination Date must be a
159 date later than the second anniversary of the Commencement
160 Date.

161 In the event either party exercises the ter-
162 mination right, the Right of First Offer shall terminate and
163 have no further force or effect.

D. C. Toedt 4/22/14 6:59 AM

Comment [23]: QUESTION: What exactly is an Event of Default?

D. C. Toedt 4/22/14 8:58 AM

Comment [24]: This seems to be a leave-no-loose-ends provision.

D. C. Toedt 4/22/14 9:00 AM

Comment [25]: QUESTION: Why might the drafters have drafted this to give each party an early-termination right?

D. C. Toedt 4/22/14 8:58 AM

Comment [26]: QUESTION: EARLY TERMINATION EARLIEST DATE: Why do you think this provision is in the agreement?

D. C. Toedt 4/7/14 9:51 PM

Comment [27]: RIGHT OF FIRST OFFER: It'd be helpful if the agreement had a cross-reference to the section (which is § 4.5).

164 (b) If Landlord elects to terminate this
165 Lease and the Early Termination Date occurs during months
166 25 through 36 of the Term, inclusive, then Landlord shall re-
167 imburse Tenant the unamortized cost of any Alterations made
168 by Tenant in the Premises, less the sum of \$90,000.

169 If the Early Termination Date occurs dur-
170 ing months through 37 through 48 of the Term, inclusive, then
171 Landlord shall reimburse Tenant the unamortized cost of any
172 Alterations made by Tenant in the Premises, less the sum of
173 \$45,000.

174 If the Early Termination Date occurs dur-
175 ing months through 49 through 60 of the Term, inclusive, then
176 Landlord shall have no obligation to compensate Tenant for
177 such termination.

178 The reimbursement payment obligation of
179 Landlord hereunder is referred to as the “*Termination Fee*”.

180 (c) If Tenant elects to terminate this Lease,
181 then Landlord shall have no obligation to pay the Termination
182 Fee to Tenant.

183 (d) All Alterations made by Tenant in the
184 Premises shall comply with any and all requirements of Sec-
185 tion 9 below.

186 Additionally and not by way of limitation
187 of the foregoing, Landlord’s obligation to pay the Termination
188 Fee shall be subject to the following conditions:

189 (i) the cost of the Alterations shall not ex-
190 ceed a total aggregate sum of \$300,000, and any costs incurred
191 by Tenant in performing Alterations which exceed \$300,000
192 shall not be included in determining the Termination Fee;

D. C. Toedt 4/22/14 8:59 AM

Comment [28]: QUESTION: Is there a better way to present the information in this subdivision (b), instead of a prose narrative?

D. C. Toedt 4/22/14 9:01 AM

Comment [29]: QUESTION: Why is this first sentence here? How could this whole section be better phrased? (Hint: Consider the immediately-following sentence.)

193 (ii) the Termination Fee shall be based on
194 hard costs of construction only, as demonstrated by paid in-
195 voices provided by Tenant,

196 and shall not include any soft costs in-
197 curred by Tenant in performing the Alterations, such as archi-
198 tect fees or the Landlord's review and supervision fee; and

199 (iii) the term "*unamortized costs*" used
200 herein shall be based on a straight-line accounting calculation
201 based on the then-remaining balance of the Term in accord-
202 ance with generally accepted accounting principles.

203
204 **4.5 Right of First Offer for New Lease.** If at any
205 time during the Term Landlord determines in its sole discre-
206 tion that Landlord's redevelopment plans for the Premises will
207 include a retail car dealership, then Landlord shall offer to
208 Tenant the opportunity to lease the Premises (the "*Right of*
209 *First Offer*"), as provided in this Section.

210 At such time as the redevelopment planning has
211 proceeded to the point that Landlord is prepared to negotiate a
212 new lease of the Premises, Landlord shall deliver written no-
213 tice to Tenant of the material terms upon which Landlord
214 would be willing to lease the Premises to Tenant (the "*Offer*
215 *Notice*").

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

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

222 The Right of First Offer is **personal** to Tenant and
223 shall be inapplicable and null and void if Tenant assigns its in-

D. C. Toedt 4/22/14 9:02 AM

Comment [30]: QUESTION: What's the difference between a "right of first offer" and a "right of first refusal"? (Hint: See generally <http://smallbusiness.chron.com/right-first-offer-vs-right-first-refusal-26182.html>)

224 terest under this Lease, or if Tenant’s anticipated use of the
225 Premises will no longer be as set forth in the Basic Lease In-
226 formation.

227

228 5. RENT

229 5.1 **Base Rent.** Commencing upon the Com-
230 mencement Date, and thereafter during the Term, Tenant shall
231 pay to Landlord the monthly Base Rent specified in Article 1
232 on or before the first day of each month,
233 in advance,
234 at the address specified for Landlord in Article 1,
235 or at such other place as Landlord designates in writing,
236 without any prior notice or demand
237 and without any deductions or setoff whatsoever
238 (except as otherwise expressly provided in this Lease).

239 If the Commencement Date occurs on a day other
240 than the first day of a calendar month, or the Termination Date
241 occurs on a day other than the last day of a calendar month,
242 then the Base Rent for such fractional month will be prorated
243 on the basis of the actual number of days in such month.

244

245 5.2 **Rent Adjustment.** On each anniversary of the
246 Commencement Date (each, an “*Adjustment Date*”), the Base
247 Rent shall be increased as set forth in Article 1.

248

249 5.3 **Additional Rent.** All sums due from Tenant
250 to Landlord or to any third party under the terms of this Lease
251 (other than Base Rent) shall be additional rent (“*Additional*
252 *Rent*”),

253 including all sums incurred by Landlord due to
254 Tenant’s failure to perform its obligations under this Lease.

D. C. Toedt 4/22/14 9:03 AM

Comment [31]: QUESTION: How will this “if-then” condition be determined?

D. C. Toedt 4/22/14 9:04 AM

Comment [32]: COMMENT: Many lease agreements contain automatic rent escalation clauses.

D. C. Toedt 4/22/14 9:04 AM

Comment [33]: QUESTION: What if any consequences might there be for characterizing these various sums as “Rent”? (Hint: See lines 257-59.)

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

257 Landlord will have the same remedies for a de-
258 fault in the payment of any Additional Rent as for a default in
259 the payment of Base Rent.

260 Together, Base Rent and Additional Rent are
261 sometimes referred to in this Lease as “Rent”.

262
263 **5.4 Late Payment.** Any unpaid Rent shall bear in-
264 terest from the date due until paid at the maximum interest rate
265 allowed by law (the “Interest Rate”).

266 In addition, Tenant recognizes that late payment
267 of any Rent will result in administrative expense to Landlord,
268 the extent of which expense is difficult and economically im-
269 practicable to determine.

270 Therefore, Tenant agrees that if Tenant fails to
271 pay any Rent within five (5) days after its due date, an addi-
272 tional late charge of five percent (5%) of the sums so overdue
273 shall become immediately due and payable.

274 Tenant agrees that the late payment charge is a
275 reasonable estimate of the additional administrative costs and
276 detriment that will be incurred by Landlord as a result of such
277 failure by Tenant.

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

282
283 **6. USE OF PREMISES AND CONDUCT OF BUSI-**
284 **NESS**

D. C. Toedt 4/22/14 9:05 AM

Comment [34]: COMMENT: Many provisions concerning interest also include “savings” clauses designed to limit the possible effects of usury statutes.

D. C. Toedt 4/22/14 9:05 AM

Comment [35]: QUESTION: Why is this cast as “administrative costs” and not as something else?

285 **6.1 Permitted Use.** Tenant may use and occupy
286 the Premises during the Term solely for the uses specified and
287 permitted in Article 1 and for no other purpose without the
288 prior written consent of Landlord,

289 such consent to be granted or withheld in Land-
290 lord's **sole and unfettered** discretion.

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

293

294 **6.2 Prohibited Uses.** Tenant shall not use the
295 Premises or allow the Premises to be used for any illegal or
296 **immoral** purpose,

297 or so as to create waste,

298 or constitute a private or public nuisance.

299 Tenant shall not place any loads upon the floors,
300 walls, or ceiling which endanger the structure,

301 or place any Hazardous Material in the drainage
302 system of the Premises,

303 or overload existing electrical or other mechanical
304 systems.

305 Tenant shall not use any machinery or equipment
306 which causes any unreasonable noise or vibration.

307 No waste materials or refuse shall be dumped up-
308 on or permitted to remain upon any part of the Premises ex-
309 cept in trash containers placed inside exterior enclosures for
310 that purpose.

311 No loudspeaker **or other device, system or appa-**
312 **ratus** shall be used at the Premises without the prior written
313 consent of Landlord.

314 No explosives or firearms shall be brought onto
315 the Premises without the prior written consent of Landlord,

D. C. Toedt 4/22/14 9:06 AM

Comment [36]: QUESTION: Is this UTTERLY within Landlord's discre-
tion?

D. C. Toedt 4/22/14 9:06 AM

Comment [37]: Note that "Applicable laws" is defined very broadly.

D. C. Toedt 4/22/14 9:07 AM

Comment [38]: QUESTION: So, no computers? No cell phones?

316 which Landlord may withhold in its sole and ab-
317 solute discretion.

318

319 **7. NET LEASE; NO COUNTERCLAIM OR**

320 **ABATEMENT**

321 **7.1 Net Lease.** The Rent due hereunder shall be
322 absolutely net to Landlord

323 and shall be paid without assertion of any coun-
324 terclaim, offset, deduction or defense

325 and without abatement, suspension, deferment or
326 reduction (except as otherwise provided in this Lease).

327 Landlord shall not be expected or required under
328 any circumstances or conditions whatsoever, whether now ex-
329 isting or hereafter arising, and whether now known or un-
330 known to the parties, to make any payment of any kind what-
331 soever with respect to the Premises

332 or be under any obligation or liability hereunder,
333 except if and solely to the extent expressly so pro-
334 vided elsewhere in this Lease.

335

336 **7.2 Real Property Taxes.** Without limiting the
337 foregoing, Additional Rent shall include, and Tenant agrees to
338 bear, discharge and pay

339 as the same become due, and before delinquency,
340 all taxes, assessments, rates, charges, license fees,
341 municipal liens, levies, excises or imposts, whether general or
342 special, or ordinary or extraordinary,

343 of every name, nature and kind whatsoever,
344 including all governmental charges of every name,
345 nature or kind that may be levied, assessed, charged or im-
346 posed or maybe or become a lien or charge

D. C. Toedt 4/22/14 9:08 AM

Comment [39]: QUESTION: What does "net to Landlord" mean?

D. C. Toedt 4/22/14 9:09 AM

Comment [40]: QUESTION: Are the drafters mixing different concepts here?

347 upon the Premises or any part thereof;
348 or upon the rent or income of Tenant;
349 or upon the use or occupancy of the Premises;
350 or any document creating or transferring an estate
351 or interest in the Premises;
352 upon any of the buildings or improvements exist-
353 ing at any time during the Term upon the Premises;
354 or upon the leasehold of Tenant;
355 or upon Landlord by reason of its ownership of
356 the Premises
357 (but not including any franchise, transfer, inher-
358 itance, or capital stock taxes or income taxes measured by the
359 net income of Landlord
360 unless, due to a change in the method of
361 taxation, any of such taxes is levied or assessed
362 against Landlord as a substitute for, in whole or in
363 part, any other tax that would otherwise be the re-
364 sponsibility of Tenant).

365 If at any time during the Term, under any Appli-
366 cable Laws, any tax is levied or assessed against Landlord di-
367 rectly, in substitution in whole or in part for real property tax-
368 es,

369 [then] Tenant covenants and agrees to pay and
370 discharge such tax. All of the foregoing taxes, assessments and
371 other charges which are the responsibility of Tenant are herein
372 referred to as "**Property Taxes**."

373 Notwithstanding the foregoing, Tenant shall have
374 no obligation to pay

375 (a) any portion of an increase in Property
376 Taxes, if any, attributable to a reassessment for assessment

D. C. Toedt 4/22/14 9:10 AM

Comment [41]: How about just "will pay"?

377 year 2007-2008 as a result of Landlord's recent acquisition of
378 the ground lease interest in the Premises; or

379 (b) any environmental assessment, charges
380 or liens arising in connection with the remediation of Hazard-
381 ous Materials from the Premises, the causation of which arose
382 prior to the delivery of the Premises to Tenant, or to the extent
383 caused by Landlord or any of Landlord's agents,

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

387 (d) property transfer taxes, stamp or record-
388 ing taxes attributable to Landlord's transfer of ownership of
389 the Premises or any interest of Landlord therein.

390 **7.3 Project Costs.** In addition to Minimum Rent,
391 Tenant shall pay or fund when due all Property Taxes, insur-
392 ance premiums and deductibles, debt service, permit and li-
393 cense fees, costs of utilities and services, maintenance, repair,
394 replacement, rebuilding, restoration, management, marketing
395 and leasing services, operations and other costs
396 of any type whatsoever
397 accruing at any time during the Term
398 in connection with the ownership, marketing, leas-
399 ing, operation, management, maintenance, repair, replacement,
400 restoration, use, occupancy or enjoyment of the Premises
401 (collectively, "**Project Costs**").

402 Tenant shall pay all Project Costs directly,
403 and shall contract directly for all required ser-
404 vices, utilities

405 (including without limitation water, gas, electrici-
406 ty, sewer service, waste pick-up, telephone and other electron-

407 ic telecommunication services) and other items described
408 herein;
409 **provided, however,** that Landlord shall have the
410 right to contract for any such services, utilities or other items
411 if Tenant has failed to do so,
412 or has failed to make any payment of Project
413 Costs which is due and owing.

414 Tenant shall provide Landlord, upon written re-
415 quest, with copies of invoices, receipts, canceled checks
416 and/or other documentation reasonably substantiating Tenant's
417 payment of all Project Costs.

418 **7.4 Taxes on Tenant's Property and Business.**

419 Tenant shall pay prior to delinquency all taxes levied or as-
420 sessed by any local, state or federal authority upon the conduct
421 of Tenant's business in the Premises or upon Tenant's Proper-
422 ty (as defined in Section 9.4)

423 and shall deliver satisfactory evidence of such
424 payment to Landlord.

425 **If the assessed value of the Premises is increased**
426 **by the inclusion of a value placed upon Tenant's Property,**

427 Tenant shall pay to Landlord, upon written demand, the taxes
428 so levied against Landlord, or the portion of Landlord's taxes
429 resulting from said increase in assessment, **as determined from**
430 **time to time by Landlord.**

431 **8. REPAIRS, MAINTENANCE AND SERVICES**

432 **8.1 Maintenance and Repairs.** During the Term,
433 Tenant shall, at its own cost and expense and without any cost
434 or expense to Landlord, keep and maintain the Premises and
435 all improvements and appurtenant facilities thereon or related
436 thereto,
437

D. C. Toedt 4/22/14 9:13 AM

Comment [42]: QUESTION: Is there any way to bypass litigation if the parties get into a dispute about this?

438 including without limitation the structural compo-
439 nents, roof, fixtures and building systems of the improve-
440 ments, grounds, sidewalks, parking and landscaped areas, in
441 good condition and repair.

442 Tenant shall promptly make all repairs, replace-
443 ments and alterations (whether structural or nonstructural,
444 foreseen or unforeseen, or ordinary or extraordinary) neces-
445 sary to maintain the Premises and the improvements in good
446 condition and repair,

447 and in compliance with all Applicable Laws
448 and to avoid any structural damage or injury to the
449 Premises or the improvements.

450 **8.2 No Obligation Of Landlord To Repair.**

451 Landlord shall not be obligated to make any repairs, replace-
452 ments or renewals of any kind, nature or description whatso-
453 ever to the Premises or the improvements

454 (except to the extent caused by Landlord's willful
455 misconduct or gross negligence),

456 and Tenant hereby expressly waives any right to
457 terminate this Lease and any right to make repairs at Land-
458 lord's expense under Sections 1932(1), 1941 and 1942 of the
459 California Civil Code, or any amendments thereof, or any sim-
460 ilar law, statute or ordinance now or hereafter in effect.

461 **8.3 Security.** Tenant shall be solely responsible
462 for the security of the Premises and of Tenant, its employees,
463 agents, contractors and invitees (collectively, "*Tenant's*
464 *Agents*") while in or about the Premises.

465 Any security services provided to the Premises by
466 Landlord shall be at Landlord's sole discretion

467 and Landlord shall not be liable to Tenant or Ten-
468 ant's Agents for any failure to provide security services or any

D. C. Toedt 4/22/14 9:14 AM

Comment [43]: QUESTION: What might this clause contemplate?

D. C. Toedt 4/22/14 9:14 AM

Comment [44]: QUESTION: "Willful misconduct or gross negligence" – are these terms at all precise?

D. C. Toedt 4/22/14 9:15 AM

Comment [45]: NOTE that state law might well prescribe certain repair duties for a landlord. QUESTION: Can these duties be waived?

469 loss, injury or damage suffered as a result of a failure to pro-
470 vide security services.

471 **8.4 Tenant’s Failure to Repair.** If Tenant fails
472 for any reason to repair or maintain the Premises as required
473 by this Lease to Landlord’s reasonable satisfaction,

474 and does not cure such failure

475 (a) within thirty (30) days after receipt of
476 Landlord’s written notice, or

477 (b) if the nature of the cure will reasonably
478 require more than thirty (30) days to perform, within a reason-
479 able time so long as Tenant promptly commences and diligent-
480 ly prosecutes such cure to completion,

481 then Landlord shall have the right, but not the ob-
482 ligation, to enter onto the Premises and perform such repairs

483 or maintenance

484 without liability to Tenant (except to the extent of

485 Landlord’s gross negligence or willful misconduct) for any
486 loss or damage to Tenant’s furnishings, fixtures, equipment or
487 other personal property or for interference with Tenant’s busi-
488 ness arising therefrom.

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

492 9. ALTERATIONS

493 **9.1 Alterations by Tenant.** Tenant shall not make
494 or permit any alterations to the building systems,

495 and shall not make or permit any alterations, in-
496 stallations, additions or improvements, structural or otherwise
497 (collectively, “*Alterations*”)

498 in or to the Premises

499 without Landlord’s prior written consent,

D. C. Toedt 4/22/14 9:22 AM

Comment [46]: QUESTION: Why might the Landlord want the right to barge in and fix things?

D. C. Toedt 4/22/14 9:24 AM

Comment [47]: QUESTION: Suppose the Landlord barges in during the middle of a busy Saturday and shuts off the water – does Tenant have any recourse? **QUESTION:** Practically speaking, what could Tenant do to avoid having this happen?

500 which Landlord shall not unreasonably withhold,
501 condition or delay.

502 Landlord shall respond to any request by Tenant
503 to make any Alteration within ten (10) business days after re-
504 ceipt of such request for consent from Tenant.

505 Notwithstanding the foregoing, Landlord's con-
506 sent shall not be required

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

510 (b) in the case of other Alterations that do not ex-
511 ceed a total price of Twenty-Five Fifty Thousand Dollars
512 (\$25,000) per project and do not affect any building systems
513 or the structural integrity of the buildings.

514 All Alterations shall be done at Tenant's sole cost
515 and expense,

516 including without limitation the cost and expense
517 of obtaining all permits and approvals required for any Altera-
518 tions.

519 Tenant shall reimburse Landlord within ten
520 (10) days after written demand as additional Rent for any out-
521 of-pocket expenses incurred by Landlord in connection with
522 Alterations elected to be made and/or any repairs or replace-
523 ments required to be made by Tenant,

524 including, without limitation, any reasonable fees
525 charged by Landlord's contractors and/or consultants to re-
526 view plans and specifications prepared by Tenant.

527 **9.2 Project Requirements.** The following provi-
528 sions of this Section 9.2 shall apply to all Alterations, whether
529 or not requiring Landlord's approval (unless otherwise noted):

D. C. Toedt 4/22/14 9:17 AM

Comment [48]: QUESTION: What if there's a disagreement about whether Landlord's withholding is "unreasonable"?

D. C. Toedt 4/22/14 9:18 AM

Comment [49]: Note the subtle difference in wording between this exception and the exception in subdivision (b).

D. C. Toedt 4/22/14 9:18 AM

Comment [50]: "Cost and expense" is redundant.

D. C. Toedt 4/22/14 9:24 AM

Comment [51]: NOTE: Failure to capitalize a defined term could lead to a court's holding that the term was intended to mean something else. (There's a recent case to that effect but I can't locate a cite.)

D. C. Toedt 4/22/14 9:25 AM

Comment [52]: QUESTION: Do Landlord's contractors have any incentives to keep their fees reasonable?

530 (a) Prior to entering into a contract for Al-
531 terations requiring Landlord's approval,
532 Tenant shall obtain Landlord's written ap-
533 proval,
534 which approval shall not be unreasonably
535 withheld, conditioned or delayed,
536 of the identity of each of the design archi-
537 tect and the general contractor.

538 (b) Before commencing the construction
539 of any Alterations, Tenant shall procure or cause to be pro-
540 cured the insurance coverage described below

541 and provide Landlord with certificates of
542 such insurance in form reasonably satisfactory to Landlord.

543 All such insurance shall comply with the
544 following requirements of this Section and of Section 13.2.

545 (i) During the course of construc-
546 tion, to the extent not covered by property insurance main-
547 tained by Tenant pursuant to Section 13.2,

548 comprehensive "all risk" builder's
549 risk insurance, including vandalism and malicious mischief,
550 excluding earthquake and flood,

551 covering all improvements in place
552 on the Premises, all materials and equipment stored at the site
553 and furnished under contract,

554 and all materials and equipment that
555 are in the process of fabrication at the premises of any third
556 party or that have been placed in transit to the Premises when
557 such fabrication or transit is at the risk of, or when title to or
558 an insurable interest in such materials or equipment has passed
559 to, Tenant or its construction manager, contractors or subcon-
560 tractors (excluding any contractors', subcontractors' and con-

D. C. Toedt 4/22/14 9:26 AM

Comment [53]: QUESTION: What exactly does "approval ... of the identity of each of the design architects" mean?

D. C. Toedt 4/22/14 9:28 AM

Comment [54]: QUESTION: What's the concern here, as in, why require builder's risk insurance? (Hint: Can you think of any recent events in Houston that might provide an object lesson?)

561 struction managers' tools and equipment, and property owned
562 by the employees of the construction manager, any contractor
563 or any subcontractor),

564 such insurance to be written on a
565 completed value basis in an amount not less than the full esti-
566 mated replacement value of Alterations.

567 (ii) Commercial general liability in-
568 surance covering Tenant, Landlord and each construction
569 manager, contractor and subcontractor engaged in any work
570 on the Premises,

571 which insurance may be effected by
572 endorsement, if obtainable, on the policy required to be carried
573 pursuant to Section 13.2,

574 including insurance for completed
575 operations, elevators, owner's, construction manager's and
576 contractor's protective liability,

577 products completed operations for
578 one (1) year after the date of acceptance of the work by Ten-
579 ant,

580 broad form blanket contractual lia-
581 bility,

582 broad form property damage and
583 full form personal injury (including but not limited to bodily
584 injury),

585 covering the performance of all
586 work at or from the Premises by Tenant, its construction man-
587 ager, contractors and subcontractors,

588 and in a liability amount not less
589 than the amount at the time carried by prudent owners of com-
590 parable construction projects,

D. C. Toedt 4/22/14 9:28 AM

Comment [55]: COMMENT: This looks like a drafting error.

591 but in any event not less than Three
592 Million Dollar (\$3,000,000) combined single limit,
593 which policy shall include thereun-
594 der for the mutual benefit of Landlord and Tenant, bodily inju-
595 ry liability and property damage liability, and automobile in-
596 surance on any non-owned, hired or leased automotive equip-
597 ment used in the construction of any work.

598 (iii) Workers' Compensation Insur-
599 ance approved by the State of California, in the amounts and
600 coverages required under workers' compensation, disability
601 and similar employee benefit laws applicable to the Premises,
602 and Employer's Liability Insurance with limits not less than
603 One Million Dollars (\$1,000,000) or such higher amounts as
604 may be required by law.

605
606 (c) All construction and other work in
607 connection with any Alterations shall be done at Tenant's sole
608 cost and expense and in a prudent and first class manner.

609 Tenant shall construct the Alterations in
610 accordance with all Applicable Laws, and with plans and
611 specifications that are in accordance with the provisions of this
612 Article 9 and all other provisions of this Lease.

613 (d) Prior to the commencement of any Al-
614 teration in excess of Ten Thousand Dollars (\$10,000), Land-
615 lord shall have the right to post in a conspicuous location on
616 the Premises and to record in the public records a notice of
617 Landlord's nonresponsibility. Tenant covenants and agrees to
618 give Landlord at least ten (10) days prior written notice of the
619 commencement of any such Alteration in order that Landlord
620 shall have sufficient time to post such notice.

D. C. Toedt 4/22/14 9:29 AM

Comment [56]: COMMENT: This should have been its own subpara-
graph to avoid possible confusion about the required amount.

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

623 (f) Tenant shall prepare and maintain
624 (i) on a current basis during construction,
625 annotated plans and specifications showing clearly all chang-
626 es, revisions and substitutions during construction, and
627 (ii) upon completion of construction of the
628 Alterations, as-built drawings showing clearly all changes, re-
629 visions and substitutions during construction,

630 including, without limitation, field chang-
631 es and the final location of all mechanical equipment, utility
632 lines, ducts, outlets, structural members, walls, partitions and
633 other significant features.

634 These as-built drawings and annotated
635 plans and specifications shall be kept at the Premises
636 and Tenant shall update them as often as
637 necessary to keep them current.

638 The as-built drawings and annotated plans
639 and specifications shall be made available for copying and in-
640 spection by Landlord at all reasonable times.

641 (g) Upon completion of the construction of
642 any Alterations in excess of Ten Thousand Dollars (\$10,000)
643 during the Term, Tenant shall file for recordation, or cause to
644 be filed for recordation, a notice of completion and shall de-
645 liver to Landlord evidence satisfactory to Landlord of payment
646 of all costs, expenses, liabilities and liens arising out of or in
647 any way connected with such construction (except for liens
648 that are contested in the manner provided herein).

649 **9.3 Ownership of Improvements.** Except as pro-
650 vided in Section 9.4, all Alterations, and any other appurte-
651 nances, fixtures, improvements, equipment, additions and

D. C. Toedt 4/22/14 9:31 AM

Comment [57]: QUESTION: To what extent might 20-20 hindsight be an issue in interpreting this clause?

D. C. Toedt 4/22/14 9:31 AM

Comment [58]: QUESTION: Is it immediately obvious whether this "including" clause applies to the as-built plans and specs, or to ALL plans and specs?

D. C. Toedt 4/22/14 9:32 AM

Comment [59]: QUESTION: What about the architects' copyright?

652 property permanently attached to or installed in or on the
653 Premises at the commencement of or during the Term,
654 shall at the end of the Term become Landlord's
655 property without compensation to Tenant,
656 **or** be removed in accordance with this Section.

657 Upon written request by Tenant, Landlord shall
658 notify Tenant in writing at the time of Landlord's approval of
659 the Alterations whether or not the proposed Alterations will be
660 required to be removed by Tenant at the end of the Term
661 and Tenant shall have no obligation to remove any
662 Alterations that Landlord has not designated in writing for re-
663 moval.

664 Tenant shall repair or pay the cost of repairing any
665 damage to the Premises caused by the removal of Alterations.

666 If Tenant fails to perform its repair obligations,
667 without limiting any other right or remedy, Landlord may on
668 five (5) business days prior written notice to Tenant perform
669 such obligations at Tenant's expense and Tenant shall reim-
670 burse Landlord within twenty (20) days after demand for all
671 out-of-pocket costs and expenses incurred by Landlord in
672 connection with such repair. Tenant's obligations under this
673 Section shall survive the termination of this Lease.

674
675 **9.4 Tenant's Personal Property.** All inventory,
676 furniture, trade fixtures, furnishings, equipment and articles of
677 movable personal property installed in or on the Premises by
678 or for the account of Tenant (except for ceiling and related fix-
679 tures, HVAC equipment and floor coverings, which shall be-
680 come the property of Landlord at the end of the Term), and
681 which can be removed without structural or other material
682 damage to the Premises (collectively, "*Tenant's Property*")

683 shall be and remain the property of Tenant and may be re-
684 moved by it at any time during the Term.

685 Tenant shall remove from the Premises all Ten-
686 ant's Property on or before the Termination Date,

687 except such items as the parties have agreed pur-
688 suant to the provisions of this Lease or by separate agreement
689 are to remain and to become the property of Landlord.

690 Tenant shall repair or pay the cost of repairing any
691 damage to the Premises resulting from such removal, and the
692 provisions of Section 9.3 above shall apply in the event Tenant
693 fails to do so.

694 Any items of Tenant's Property which remain in
695 the Premises after the Termination Date may, on five
696 (5) business days prior written notice to Tenant, at the option
697 of Landlord, be deemed abandoned and in such case may ei-
698 ther be retained by Landlord as its property or be disposed of,
699 without accountability, at Tenant's expense in such manner as
700 Landlord may see fit.

701 **10. LIENS**

702 Tenant shall keep the Premises free from any liens
703 arising out of any work performed, material furnished or obli-
704 gations incurred by or for Tenant.

705 If Tenant shall not, within ten (10) days following
706 notice of the imposition of any such lien, cause the lien to be
707 released of record by payment or posting of a proper bond,
708 Landlord shall have, in addition to all other remedies provided
709 in this Lease and by law, the right but not the obligation to
710 cause any such lien to be released by such means as it shall
711 deem proper, including payment of the claim giving rise to
712 such lien.

D. C. Toedt 4/22/14 6:37 AM

Comment [60]: Not the best plain-English phrasing here

713 All such sums paid by Landlord and all expenses
714 incurred by it in connection therewith (including, without limi-
715 tation, reasonable counsel fees) shall be payable to Landlord
716 by Tenant upon demand with interest from the date incurred at
717 the Interest Rate.

718 Landlord shall have the right at all times to post
719 and keep posted on the Premises any notices permitted or re-
720 quired by law or that Landlord shall deem proper for the pro-
721 tection of Landlord and the Premises from mechanics' and
722 materialmen's liens.

723 **11. COMPLIANCE WITH LAWS AND INSUR-**
724 **ANCE REQUIREMENTS**

725 **11.1 Applicable Laws.** Tenant, at Tenant's cost
726 and expense, shall comply with all applicable laws, statutes,
727 codes, ordinances,
728 orders,
729 rules, regulations,
730 conditions of approval,
731 and requirements,
732 of all federal, state, county, municipal and other
733 governmental authorities and the departments, commissions,
734 boards, bureaus, instrumentalities,
735 and officers thereof,
736 and all administrative or judicial orders or decrees
737 and all permits, licenses, approvals and other enti-
738 tlements issued by governmental entities,
739 and rules of common law,
740 relating to or affecting the Premises or the use,
741 operation or occupancy of the Premises, whether now existing
742 or hereafter enacted (collectively, "*Applicable Laws*"). With-

D. C. Toedt 4/22/14 6:38 AM

Comment [61]: Landlords' counsel rightly pay attention to the prospect of having tenants' contractors file M&M liens and thereby cloud title to the rented premises.

D. C. Toedt 4/22/14 6:39 AM

Comment [62]: Notice how broadly this is stated.

743 out limiting the foregoing, Tenant shall be solely responsible
744 for compliance with
745 and shall make or cause to be made all such im-
746 provements and alterations to the Premises (including, without
747 limitation, removing barriers and providing alternative ser-
748 vices)
749 as shall be required to comply with all applicable
750 building codes, laws and ordinances relating to public accom-
751 modations, including the **Americans with Disabilities Act** of
752 1990, 42 U.S.C. §§ 12111 et seq. (the “**ADA**”), and the ADA
753 Accessibility Guidelines promulgated by the Architectural and
754 Transportation Barriers Compliance Board, the public ac-
755 commodation title of the Civil Rights Act of 1964, 42 U.S.C.
756 §§ 2000a et. seq., the Architectural Barriers Act of 1968, 42
757 U.S.C. §§ 4151 et. seq., as amended, Title V of the Rehabilita-
758 tion Act of 1973, 29 U.S.C. §§ 790 et. seq., the Minimum
759 Guidelines and Requirements for Accessible Design, 36
760 C.F.R. Part 1190, the Uniform Federal Accessibility Stand-
761 ards, and Title 24 of the California Code of Regulations,
762 as the same may be amended from time to time,
763 or any similar or successor laws, ordinances and
764 regulations, now or hereafter adopted.
765 Tenant’s liability shall be primary and Tenant
766 shall indemnify Landlord in accordance with Section 13.1 in
767 the event of any failure or alleged failure of Tenant to comply
768 with Applicable Laws.
769 Any work or installations made or performed by
770 or on behalf of Tenant or any person or entity claiming
771 through or under Tenant pursuant to the provisions of this Sec-
772 tion shall be made in conformity with and subject to the provi-
773 sions of Article 9.

774 **11.2 Insurance Requirements.** Tenant shall not
775 do anything, or permit anything to be done, in or about the
776 Premises that would:

777 (a) invalidate or be in conflict with the provisions
778 of or cause any increase in the applicable rates for any fire or
779 other insurance policies covering the Premises or any property
780 located thereon (unless Tenant pays for such increased costs),
781 or

782 (b) result in a refusal by fire insurance companies
783 of good standing to insure the Premises or any such property
784 in amounts reasonably satisfactory to Landlord, or

785 (c) subject Landlord to any liability or responsibil-
786 ity for injury to any person or property by reason of any busi-
787 ness operation being conducted in the Premises.

788 Tenant, at Tenant's expense, shall comply with all
789 rules, orders, regulations or requirements of the American In-
790 surance Association (formerly the National Board of Fire Un-
791 derwriters) and with any similar body that shall hereafter per-
792 form the function of such Association.

793 **12. HAZARDOUS MATERIALS**

794 **12.1 Definitions.** As used in this Lease, the fol-
795 lowing terms shall have the following meanings:

796 (a) "***Environmental Activity***" means any
797 use, treatment, keeping, storage, holding, release, emission,
798 discharge, manufacturing, generation, processing, abatement,
799 removal, disposition, handling, transportation, deposit, leak-
800 ing, spilling, injecting, dumping or disposing of any Hazard-
801 ous Materials from, into, on or under the Premises, and shall
802 exclude the mere discovery of a pre-existing contamination,
803 but include the exacerbation of any pre-existing contamination
804 by Tenant or any of Tenant's Agents.

805 (b) “*Environmental Laws*” mean all Ap-
806 plicable Laws, now or hereafter in effect, relating to environ-
807 mental conditions, industrial hygiene or Hazardous Materials
808 on, under or about the Premises, including without limitation
809 the Comprehensive Environmental Response, Compensation
810 and Liability Act of 1980, as amended, 42 U.S.C. Sec-
811 tion 9601, et seq., the Hazardous Materials Transportation
812 Act, 49 U.S.C. Section 1801, et seq., the Solid Waste Disposal
813 Act, 42 U.S.C. Section 6901, et seq., the Clean Water Act, 33
814 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C.
815 Section 7401, et seq., the Toxic Substances Control Act, 15
816 U.S.C. Section 2601 through 2629, the Safe Drinking Water
817 Act, 42 U.S.C. Sections 300f through 300j, and any similar
818 state and local laws and ordinances and the regulations now or
819 hereafter adopted and published and/or promulgated pursuant
820 thereto.

821 (c) “*Hazardous Material*” means any
822 chemical, substance, medical or other waste, living organism or
823 combination thereof which is or may be hazardous to the envi-
824 ronment or human or animal health or safety- due to its radio-
825 activity, ignitability, corrosivity, reactivity, explosivity, toxic-
826 ity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness
827 or other harmful or potentially harmful properties or effects.
828 Hazardous Materials shall include, without limitation, petrole-
829 um hydrocarbons, including MTBE, crude oil or any fraction
830 thereof, asbestos, radon, polychlorinated biphenyls (PCBs),
831 methane, lead, urea, formaldehyde foam insulation, microbial
832 matter (including mold) and all substances which now or in
833 the future may be defined as “hazardous substances,” “hazard-
834 ous wastes,” “extremely hazardous wastes,” “hazardous mate-
835 rials,” “toxic substances,” “infectious wastes,” “biohazardous

836 wastes,” “medical wastes,” “radioactive wastes” or which are
837 otherwise listed, defined or regulated in any manner pursuant
838 to any Environmental Laws.

839 (d) “*Tenant’s Hazardous Materials*”

840 means any Hazardous Materials resulting from the Environ-
841 mental Activity by Tenant or any of Tenant’s Agents.

842 **12.2 Environmental Release.** Landlord hereby
843 informs Tenant that detectable amounts of Hazardous Materi-
844 als may have come to be located on, beneath and/or in the vi-
845 cinity of the Premises.

846 Tenant has made such investigations and inquiries
847 as it deems appropriate to ascertain the effects, if any, of such
848 substances and contaminants on its operations and persons us-
849 ing the Premises.

850 Landlord makes no representation or warranty
851 with regard to the environmental condition of the Premises.

852 Tenant hereby releases Landlord and Landlord’s
853 officers, directors, trustees, agents and employees

854 from any and all claims, demands, debts, liabili-
855 ties, and causes of action of whatever kind or nature,

856 whether known or unknown or suspected or un-
857 suspected

858 which Tenant or any of Tenant’s Agents may
859 have, claim to have, or which may hereafter accrue against the
860 released parties or any of them,

861 arising out of or relating to or in any way connect-
862 ed with Hazardous Materials presently in, on or under, or now
863 or hereafter emanating from or migrating onto the Premises

864 (except to the extent caused by the willful mis-
865 conduct or gross negligence of Landlord or Landlord’s Agents
866 during the Term.

D. C. Toedt 4/22/14 9:36 AM

Comment [63]: COMMENT: “Hereby informs” – that’s a nice way to forestall a later “you didn’t tell me about X” claim.

D. C. Toedt 4/22/14 9:37 AM

Comment [64]: QUESTION: Is an advance release enforceable? How else might this be phrased?

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

871 A general release does not extend to claims which the cred-
872 itor does not know or suspect to exist in his favor at the
873 time of executing the release, which if known by him must
874 have materially affected his settlement with the debtor.

875 **12.3 Use of Hazardous Materials.** Tenant shall
876 not cause or permit any Hazardous Materials to be used,
877 stored, discharged, released or disposed of in the Premises or
878 cause any Hazardous Materials to be used, stored, discharged,
879 released or disposed of in, from, under or about, the Premises,
880 or any other land or improvements in the vicinity of the Prem-
881 ises, excepting only the types and minor quantities of Hazard-
882 ous Materials which are normally used in connection with
883 Tenant's permitted use of the Premises and then only in strict
884 accordance with all Applicable Laws, including all Environ-
885 mental Laws.

886 As of the Commencement Date, Tenant shall pro-
887 vide Landlord a complete list of all Hazardous Materials (in-
888 cluding MSDS sheets for all such Hazardous Materials) used
889 or stored by Tenant or any of Tenant's Agents or subtenants at
890 the Premises, excluding standard janitorial and office prod-
891 ucts.

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

894 Without limiting the foregoing, Tenant shall, at its
895 own expense, procure, maintain in effect and comply with all
896 conditions of any and all permits, licenses, and other govern-

D. C. Toedt 4/22/14 9:38 AM

Comment [65]: QUESTION: Will this waiver be enforceable?

D. C. Toedt 4/22/14 9:39 AM

Comment [66]: QUESTION: How likely is it that Tenant will actually comply?

897 mental and regulatory approvals required for Tenant’s use of
898 Hazardous Materials at the Premises,
899 including, without limitation, discharge of appro-
900 priately treated materials or wastes into or through any sani-
901 tary sewer serving the Premises.

902 Tenant shall in all respects handle, treat, deal with
903 and manage any and all Tenant’s Hazardous Materials **in total**
904 **conformity** with all Environmental Laws and prudent industry
905 practices regarding management of such Hazardous Materials.

906 **12.4 Remediation of Hazardous Materials.** Tenant
907 shall, upon demand of Landlord, and at Tenant’s sole cost and
908 expense, promptly take all actions to remediate the Premises
909 from the effects of any Tenant’s Hazardous Materials.

910 Such actions shall include, but not be limited to, the
911 investigation of the environmental condition of the Premises,
912 the preparation of any feasibility studies, reports or remedial
913 plans, and the performance of any cleanup, remediation, con-
914 tainment, operation, maintenance, monitoring or restoration
915 work, whether on or off of the Premises, Tenant shall take all
916 actions necessary to remediate the Premises from the effects of
917 such Tenant’s Hazardous Materials to a condition allowing the
918 current use of the Premises, notwithstanding any lesser stand-
919 ard of remediation allowable. under Applicable Laws.

920 All work shall be performed by one or more contrac-
921 tors selected by Tenant and reasonably approved in advance
922 and in writing by Landlord.

923 Tenant shall proceed **continuously** and diligently with
924 such investigatory and remedial actions, **provided that** in all
925 cases such actions shall be in accordance with all Applicable
926 Laws.

D. C. Toedt 4/22/14 9:39 AM

Comment [67]: QUESTION: Is “total conformity” a realistic standard?

D. C. Toedt 4/22/14 9:40 AM

Comment [68]: COMMENT: Looks like this comma should be a period.

D. C. Toedt 4/22/14 9:40 AM

Comment [69]: QUESTION: What exactly does “continuously” mean – does it require 24x7x365 work?

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

929 Tenant shall pay all costs in connection with such in-
930 vestigatory and remedial activities, including but not limited to
931 all power and utility costs, and any and all taxes or fees that
932 may be applicable to such activities.

933 Tenant shall promptly provide to Landlord copies of
934 testing results and reports that are generated in connection
935 with the above activities and any that are submitted to any
936 governmental entity.

937 Promptly upon completion of such investigation and
938 remediation, Tenant shall permanently seal or cap all monitor-
939 ing wells and test holes in accordance with sound engineering
940 practice and in compliance with Applicable Laws, remove all
941 associated equipment, and restore the Premises to the maxi-
942 mum extent possible, which shall include, without limitation,
943 the repair of any surface damage, including paving, caused by
944 such investigation or remediation.

945 **12.5 Indemnity.** Tenant shall indemnify, defend
946 (by counsel reasonably acceptable to Landlord), protect and
947 hold Landlord and Landlord's trustees, directors, officers,
948 agents and employees and their respective successors and as-
949 signs (collectively, "**Landlord's Agents**"), free and harmless
950 from and against any and all claims, liabilities, penalties, for-
951 feitures, losses or expenses (including reasonable attorneys'
952 and consultants' fees and oversight and response costs) to the
953 extent arising from (a) Environmental Activity by Tenant or
954 Tenant's Agents; or (b) failure of Tenant or Tenant's Agents
955 to comply with any Environmental Law with respect to Ten-
956 ant's Environmental Activity; or (c) Tenant's failure to re-

957 move Tenant's Hazardous Materials as required in Sec-
958 tion 12.4.

959 **Tenant's obligations hereunder shall include,** but
960 not be limited to,

961 the burden and expense of defending all claims,
962 suits and administrative proceedings (with counsel reasonably
963 approved by Landlord), even if such claims, suits or proceed-
964 ings are groundless, false or fraudulent;

965 conducting all negotiations of any description;

966 and promptly paying and discharging when due

967 any and all judgments, penalties, fines or other sums due

968 against or from Landlord or the Premises.

969 Prior to retaining counsel to defend such claims,
970 suits or proceedings, Tenant shall obtain Landlord's written
971 approval of the identity of such counsel, which approval shall
972 not be unreasonably withheld, conditioned or delayed. In the
973 event Tenant's failure to surrender the Premises at the expira-
974 tion or earlier termination of this Lease free of Tenant's Haz-
975 ardous Materials prevents Landlord from reletting the Premis-
976 es, or reduces the fair market and/or rental value of the Prem-
977 ises or any portion thereof, Tenant's indemnity obligations
978 shall include all losses to Landlord arising therefrom.

979 **12.6 No Lien.** Tenant shall not suffer any lien to
980 be recorded against the Premises as a consequence of any
981 Tenant's Hazardous Materials, including any so-called state,
982 federal or local "super fund" lien related to the remediation of
983 any Tenant's Hazardous Materials in or about the Premises.

984 **12.7 Investigation.** Landlord shall have the right to
985 enter and conduct an inspection of the Premises, including in-
986 vasive tests, at any reasonable time and upon reasonable ad-
987 vance notice, to determine whether Tenant is complying with

988 the terms of this Lease, including but not limited to the com-
989 pliance of the Premises and the activities thereon with Envi-
990 ronmental Laws (the “*Environmental Investigation*”). Land-
991 lord shall have the right, but not the obligation, to retain at its
992 expense an independent professional consultant to enter the
993 Premises to conduct such an inspection, and to review any re-
994 port prepared by or for Tenant concerning such compliance. In
995 the event the Environmental Investigation identifies any defi-
996 ciencies in the compliance of the Premises with Environmen-
997 tal Laws due to any Environmental Activity by Tenant or Ten-
998 ant’s Agents, Tenant shall promptly correct any such deficien-
999 cies identified in the Environmental Investigation, and docu-
1000 ment to Landlord that corrective action has been taken. In such
1001 event, Tenant shall also reimburse Landlord for the reasonable
1002 cost of the Environmental Investigation. If the Environmental
1003 Investigation identifies any such deficiency in compliance of
1004 the Premises with Environmental Laws due to any Environ-
1005 mental Activity by Tenant or Tenant’s Agents, then, within
1006 nine (9) months of the date of the Environmental Investiga-
1007 tion, Landlord may request a detailed review of the status of
1008 such violation by a consultant selected by Landlord (the “*Sup-*
1009 *plemental Investigation*”). Tenant shall pay for the reasonable
1010 cost of any Supplemental Investigation. A copy of the Sup-
1011 plemental Investigation shall be promptly supplied to Land-
1012 lord and Tenant when it becomes available.

1013 **12.8 Right to Remediate.** Should Tenant fail to
1014 perform or observe any of its obligations or agreements per-
1015 taining to Hazardous Materials or Environmental Laws, then
1016 Landlord shall have the right, but not the obligation, without
1017 limitation of any other rights of Landlord hereunder, to enter
1018 the Premises personally or through Landlord’s agents, em-

1019 ployees and contractors and perform the same. Tenant agrees
1020 to indemnify Landlord for the costs thereof and liabilities
1021 therefrom as set forth above in this Article 12.

1022 **12.9 Notices.** Tenant shall immediately notify
1023 Landlord of any inquiry, test, claim, investigation or enforce-
1024 ment-proceeding by or against Tenant or the Premises known
1025 to Tenant concerning any Hazardous Materials. Tenant shall
1026 immediately notify Landlord of any release or discharge of
1027 Hazardous Materials on, in under or about the Premises. Ten-
1028 ant acknowledges that Landlord, as the owner of the Premises,
1029 shall have the sole right at its election and at Tenant's ex-
1030 pense, to negotiate, defend, approve and appeal any action
1031 taken or order issued with regard to Tenant's Hazardous Mate-
1032 rials by any applicable governmental authority.

1033 **12.10 Surrender.** Tenant shall surrender the
1034 Premises to Landlord, upon the expiration or earlier termina-
1035 tion of the Lease, free of Tenant's Hazardous Materials in ac-
1036 cordance with the provisions of this Article 12.

1037 **12.11 Survival; Insurance.** The provisions of this
1038 Article 12 shall survive the expiration or earlier termination of
1039 this Lease. The provisions of Article 13 (insurance) shall not
1040 limit in any way Tenant's obligations under this Article 12.

1041
1042 **13. INDEMNITY; INSURANCE**

1043 **13.1 Indemnity.** Tenant shall indemnify, protect,
1044 defend and save and hold Landlord and Landlord's Agents
1045 harmless from and against any and all losses, costs, liabilities,
1046 claims, judgments, liens, damages (including consequential
1047 damages) and expenses, including, without limitation, reason-
1048 able attorneys' fees and costs, and reasonable investigation
1049 costs, incurred in connection with or arising from:

1050 (a) any default by Tenant in the observance or per-
1051 formance of any of the terms, covenants or conditions of this
1052 Lease on Tenant's part to be observed or performed, or

1053 (b) the use or occupancy or manner of use or oc-
1054 cupancy of the Premises by Tenant and Tenant's Agents,

1055 (c) the condition of the Premises, and any occur-
1056 rence on the Premises (including injury to or death of any per-
1057 son, or damage to property) from any cause whatsoever, and

1058 (d) any acts or omissions or negligence of Tenant
1059 or of Tenant's Agents, in, on or about the Premises.

1060 In case any action or proceeding be brought, made
1061 or initiated against Landlord relating to any matter covered by
1062 Tenant's indemnification obligations under this Section or un-
1063 der Section 12.5,

1064 Tenant, upon notice from Landlord, shall at its
1065 sole cost and expense, resist or defend such claim, action or
1066 proceeding by counsel reasonably approved by Landlord.

1067 Notwithstanding the foregoing, Landlord may re-
1068 tain its own counsel to defend or assist in defending any claim,
1069 action or proceeding involving potential liability of Five Mil-
1070 lion Dollars (\$5,000,000) or more,

1071 and Tenant shall pay the reasonable fees and dis-
1072 bursements of such counsel.

1073 Tenant's obligations under this Section shall sur-
1074 vive the expiration or earlier termination of this Lease.

1075 Notwithstanding anything to the contrary con-
1076 tained in this Lease, Landlord shall not be indemnified for any
1077 losses, damages, liabilities, judgments, actions, claims, attor-
1078 neys' fees, costs and expenses arising from the gross negli-
1079 gence or willful misconduct of Landlord and Landlord's
1080 Agents.

D. C. Toedt 4/22/14 9:58 AM

Comment [70]: QUESTION: What are the economic incentives for Land-
lord's separate counsel?

1081 **13.2 Insurance.** Tenant shall procure at its sole
1082 cost and expense and keep in effect during the Term:

1083 (a) all risk, fire, earthquake, flood and oth-
1084 er perils, including extended coverage insurance on all build-
1085 ings and other improvements.

1086 The amount of such insurance shall be the
1087 Full Insurable **Replacement** Value.

1088 Each such policy shall specify that pro-
1089 ceeds shall be payable whether or not any improvements are
1090 actually rebuilt.

1091 Each such policy shall include an en-
1092 dorsement protecting the named **and additional insureds**
1093 **against becoming a co- insured** under the policy.

1094 Tenant hereby waives as against Landlord
1095 any and all claims and demands, of whatever nature, for dam-
1096 ages, loss or injury to the improvements and to the property of
1097 Tenant in, upon or about the Premises caused by or resulting
1098 from fire and/or other insured perils.

1099 **“Full Insurable Replacement Value”**
1100 means 100% of the actual costs to replace the building and
1101 improvements (without deduction for depreciation but with
1102 standard exclusions such as foundations, excavations, paving
1103 and landscaping, as applicable to specific perils),

1104 including the costs of demolition and de-
1105 bris removal and including materials and equipment not in
1106 place but in transit to or delivered to the Premises.

1107 The Full Insurable Replacement Value
1108 shall be determined by Landlord.

1109 Tenant shall maintain coverage at the cur-
1110 rent Full Insurable Replacement Value throughout the Term,

D. C. Toedt 4/22/14 9:59 AM

Comment [71]: QUESTION: What if the parties get into a dispute about this?

1111 subject to reasonable deductibles approved by Landlord in
1112 writing.

1113 (b) commercial general liability insurance
1114 covering Tenant's operations in the Premises and the use and
1115 occupancy of the Premises and any part thereof by Tenant.

1116 Such insurance shall include broad form
1117 contractual liability insurance coverage insuring Tenant's ob-
1118 ligations under this Lease.

1119 Such coverage shall be written on an "oc-
1120 currence" form

1121 and shall have a minimum combined sin-
1122 gle limit of liability of not less than five million dollars
1123 (\$5,000,000.00).

1124 Tenant's policy shall be written to apply to
1125 all bodily injury, property damage, personal injury and other
1126 covered loss (however occasioned) occurring during the policy
1127 term,

1128 with at least the following endorsements to
1129 the extent such endorsements are generally available:

1130 (i) deleting any employee exclusion on
1131 personal injury coverage,

1132 (ii) including employees as additional in-
1133 sureds,

1134 (iii) providing broad form property dam-
1135 age coverage and products completed operations coverage
1136 (where applicable), and

1137 (iv) deleting any liquor liability exclu-
1138 sions.

1139 Such insurance shall name Landlord and
1140 any other party designated by Landlord as an additional in-
1141 sured,

1142 shall specifically include the liability as-
1143 sumed hereunder by Tenant,
1144 shall provide that it is primary insurance,
1145 shall provide for severability of interests,
1146 shall further provide that an act or omis-
1147 sion of one of the named insureds which would void or other-
1148 wise reduce, coverage shall not reduce or void the coverage as
1149 to any insured,

1150 shall afford coverage for claims based on
1151 acts, omissions, injury or damage which occurred or arose (or
1152 the onset of which occurred or arose in whole or in part during
1153 the policy period),

1154 and shall provide that Landlord will re-
1155 ceive thirty (30) days' written notice from the insurer prior to
1156 any cancellation or material change of coverage;

1157 (c) commercial property insurance, includ-
1158 ing sprinkler leakages, vandalism and malicious mischief and
1159 plate glass damage covering all the items specified as Tenant's
1160 Property and all other property of every description including
1161 stock-in-trade, furniture, fittings, installations, alterations, ad-
1162 ditions, partitions and fixtures or anything in the nature of a
1163 leasehold improvement made or installed by or on behalf of
1164 the Tenant in the Premises

1165 in an amount of not less than one hundred
1166 percent (100%) of the full replacement cost thereof as shall
1167 from time to time be determined by Tenant in form reasonably
1168 satisfactory to Landlord;

1169 (d) Worker's Compensation Insurance in
1170 the amounts and coverages required under worker's compen-
1171 sation, disability and similar employee benefit laws applicable
1172 to Tenant and/or the Premises from time to time, and Employ-

1173 er's Liability Insurance, with limits of not less than one mil-
1174 lion dollars (\$1,000,000) or such higher amounts as may be
1175 required by law;

1176 (e) business income insurance with extra
1177 expense insurance in an amount sufficient to insure payment
1178 of Rent for a period of not less than twelve (12) months during
1179 any interruption of Tenant's business by reason of the Premis-
1180 es or Tenant's Property being damaged by casualty; and

1181 (f) any other form or forms of insurance as
1182 Landlord may reasonably require from time to time in
1183 amounts and for insurable risks against which a prudent tenant
1184 would protect itself to the extent landlords of comparable
1185 buildings in the vicinity of the Premises require their tenants
1186 to carry such other form(s) of insurance.

1187 **13.3 Policies.** All policies of insurance required of
1188 Tenant shall be issued by insurance companies with general
1189 policyholders' rating of not less than A, as rated in the most
1190 current available "Best's Insurance Reports," and not prohibit-
1191 ed from doing business in the State of California, and shall,
1192 with the exception of Workers Compensation Insurance, in-
1193 clude as additional insureds Landlord, and such other persons
1194 or entities as Landlord specifies from time to time. Such poli-
1195 cies, with the exception of Worker's Compensation Insurance,
1196 shall be for the mutual and joint benefit and protection of
1197 Landlord, Tenant and others specified by Landlord. Executed
1198 copies of Tenant's policies of insurance or certificates thereof
1199 shall be delivered to Landlord within ten (10) days prior to the
1200 delivery of possession of the Premises to Tenant and thereafter
1201 within thirty (30) days prior to the expiration of the term of
1202 each such policy. All commercial general liability and proper-
1203 ty damage policies shall contain a provision that Landlord and

1204 any other additional insured, although named as additional in-
1205 sureds, shall

1206

1207 -16-

1208

1209 nevertheless be entitled to recover under said policies for a
1210 covered loss occasioned by it, its servants, agents and employ-
1211 ees, by reason of Tenant's negligence. As often as any policy
1212 shall expire or terminate, renewal or additional policies shall
1213 be procured and maintained by Tenant in like manner and to
1214 like extent. All such policies of insurance shall provide that
1215 the company writing said policy will give to Landlord thirty
1216 (30) days notice in writing in advance of any cancellation or
1217 lapse or of the effective date of any reduction in the amounts
1218 of insurance. All commercial general liability, property dam-
1219 age and other casualty policies shall be written on an occur-
1220 rence basis. Landlord's coverage shall not be contributory.

1221 **13.4 Landlord's Rights.** Should Tenant fail to
1222 take out and keep in force each insurance policy required un-
1223 der this Article 13, or should such insurance not be approved
1224 by Landlord and should the Tenant not rectify the situation
1225 within two (2) business days after written notice from Land-
1226 lord to Tenant, Landlord shall have the right, without assum-
1227 ing any obligation in connection therewith, to purchase such
1228 insurance at the sole cost of Tenant, and all costs incurred by
1229 Landlord shall be payable to Landlord by Tenant within twen-
1230 ty (20) days after demand as Additional Rent and without
1231 prejudice to any other rights and remedies of Landlord under
1232 this Lease.

1233 **13.5 Waiver of Subrogation.** Notwithstanding
1234 anything to the contrary contained herein, to the extent permit-

1235 ted by their respective policies of insurance and to the extent
1236 of insurance proceeds received (or which would have been re-
1237 ceived had the party carried the insurance required by this
1238 Lease) with respect to the loss, Landlord and Tenant each
1239 hereby waive any right of recovery against the other party and
1240 against any other party maintaining a policy of insurance with
1241 respect to the Premises or any portion thereof or the contents
1242 of the Premises or the buildings located thereon for any loss or
1243 damage sustained by such other party with respect to the
1244 Premises or the buildings or other improvements thereon, or
1245 any portion thereof, or the contents of the same or any opera-
1246 tion therein, whether or not such loss is caused by the fault or
1247 negligence of such other party. Either party shall notify the
1248 other party if the policy of insurance carried by it does not
1249 permit the foregoing waiver.

1250 **13.6 No Liability.** No approval by Landlord of
1251 any insurer, or the terms or conditions of any policy, or any
1252 coverage or amount, of insurance, or any deductible amount
1253 shall be construed as a representation by Landlord of the sol-
1254 vency of the insurer or the sufficiency of any policy or any
1255 coverage or amount of insurance or deductible and Tenant as-
1256 sumes full risk and responsibility for any inadequacy of insur-
1257 ance coverage or any failure of insurers.

1258 **14. ASSIGNMENT AND SUBLETTING**

1259 **14.1 Consent Required.** Tenant shall not directly
1260 or indirectly, voluntarily or by operation of law, sell, assign,
1261 encumber, pledge or otherwise transfer or hypothecate all or
1262 any part of its interest in or rights with respect to the Premises
1263 or its leasehold estate (collectively, "*Assignment*"), or permit
1264 all or any portion of the Premises to be occupied by anyone
1265 other than itself or sublet all or any portion of the Premises

1266 (collectively, "**Sublease**") without Landlord's prior written
1267 consent, which consent may be withheld in Landlord's sole
1268 and absolute discretion.

1269 **14.2 Notice.** If Tenant desires to enter into a Sub-
1270 lease of all or any portion of the Premises or Assignment of
1271 this Lease (except as provided in Section 14.8), it shall give
1272 written notice (the "**Transfer Notice**") to Landlord of its inten-
1273 tion to do so, which notice shall contain (a) the name and ad-
1274 dress of the proposed assignee, subtenant or occupant (the
1275 "**Transferee**"), (b) the nature of the proposed Transferee's
1276 business to be carried on in the Premises, (c) the terms and
1277 provisions of the proposed Assignment or Sublease, and
1278 (d) such financial information as Landlord may reasonably re-
1279 quest concerning the proposed Transferee.

1280
1281 -17-

1282

1283 **14.3** approval within fifteen (15) business days af-
1284 ter receipt of the Transfer Notice. If Landlord approves the
1285 proposed Assignment or Sublease, Tenant may, not later than
1286 thirty (30) days thereafter, enter into the Assignment or Sub-
1287 lease with the proposed Transferee upon the terms and condi-
1288 tions set forth in the Transfer Notice.

1289 **14.4 Excess Rent.** For any Assignment or Sub-
1290 lease (other than a Permitted Transfer under Section 14.7), fif-
1291 ty percent (50%) of the Excess Rent received by Tenant shall
1292 be paid to Landlord as and when received by Tenant. "**Excess**
1293 **Rent**" means the gross revenue received from the Transferee
1294 during the Sublease term or with respect to the Assignment,
1295 less (a) the gross revenue received by Landlord from Tenant
1296 during the period of the Sublease term or concurrently with or

1297 after the Assignment; (b) any reasonably documented tenant
1298 improvement allowance or other economic concession (plan-
1299 ning allowance, moving expenses, etc.), paid by Tenant to or
1300 on behalf of the Transferee; (d) customary and reasonable ex-
1301 ternal brokers' commissions to the extent paid and document-
1302 ed; (e) reasonable attorneys' fees; and (f) reasonable costs of
1303 advertising the space for Sublease or Assignment (collective-
1304 ly, "**Transfer Costs**"). Tenant shall not be required to pay to
1305 Landlord any Excess Rent until Tenant has recovered its
1306 Transfer Costs.

1307 **14.5 Right of First Refusal.** Except for Permitted
1308 Transfers, if Tenant desires to assign Tenant's interest in the
1309 Premises or to sublease any portion of the Premises (collec-
1310 tively, a "**Transfer**"), Tenant's Transfer Notice shall also in-
1311 clude a written offer that includes all of the substantial busi-
1312 ness terms that Tenant has offered to a Transferee and shall of-
1313 fer to Transfer to Landlord, Tenant's interest in the portion of
1314 the Premises offered to the Transferee on such terms and con-
1315 ditions (the "**Offer**"). Landlord shall have fifteen (15) days
1316 from Landlord's receipt of the Offer to accept the Offer by
1317 written notice to Tenant or to approve or disapprove the
1318 Transfer as provided in Section 14.3. If Landlord accepts the
1319 Offer, Landlord and Tenant shall consummate the Transfer
1320 within fifteen (15) days after Landlord's written notice of ac-
1321 ceptance. The Transfer shall be consummated by Tenant's de-
1322 livery to Landlord of a good and sufficient assignment of lease
1323 or sublease. If Landlord does not accept the Offer, but ap-
1324 proves the Transfer, then in the event the terms of the Transfer
1325 are materially changed during subsequent negotiations to be
1326 more favorable to the Transferee, Tenant shall again deliver to
1327 Landlord an Offer in accordance with this Section, offering

1328 the interest to Landlord on such more favorable terms. Land-
1329 lord shall then have another period of fifteen (15) days after
1330 receipt of such Offer to accept such Offer.

1331 **14.6 No Release.** No Sublease or Assignment by
1332 Tenant nor any consent by Landlord thereto shall relieve Ten-
1333 ant of any obligation to be performed by Tenant under this
1334 Lease.

1335 Any Sublease or Assignment that is not in com-
1336 pliance with this Article shall be null and void

1337 and, at the option of Landlord, shall constitute an
1338 Event of Default by Tenant under this Lease,

1339 and Landlord shall be entitled to pursue any right
1340 or remedy available to Landlord under the terms of this Lease
1341 or under the laws of the State of California.

1342 The acceptance of any Rent or other payments by
1343 Landlord from a proposed Transferee shall not constitute con-
1344 sent to such Sublease or Assignment by Landlord or a recogni-
1345 tion of any Transferee, or a waiver by Landlord of any failure
1346 of Tenant or other Transferor to comply with this Article.

1347 **14.7 Assumption of Obligations.** Any Transferee
1348 shall, from and after the effective date of the Assignment, as-
1349 sume all obligations of Tenant under this Lease with respect to
1350 the Transferred Space and shall be and remain liable jointly
1351 and severally with Tenant for the

1352

1353 -18-

1354

1355 payment of Base Rent and Additional Rent, and for the per-
1356 formance of all of the terms, covenants, conditions and agree-
1357 ments herein contained on Tenant's part to be performed for
1358 the Term. No Assignment shall be binding on Landlord unless

1359 Tenant delivers to Landlord a counterpart of the Assignment
1360 and an instrument that contains a covenant of assumption rea-
1361 sonably satisfactory in substance and form to Landlord, and
1362 consistent with the requirements of this Section.

1363 **15. DEFAULT**

1364 **15.1 Event of Default.** The occurrence of any of
1365 the following shall be an “*Event of Default*” on the part of
1366 Tenant:

1367 (a) Failure to pay any part of the Base
1368 Rent or Additional Rent, or any other sums of money that
1369 Tenant is required to pay under this Lease

1370 where such failure continues for a period
1371 of five (5) days after written notice of default from Landlord
1372 to Tenant.

1373 Landlord’s notice to Tenant pursuant to
1374 this subsection shall be deemed to be the notice required under
1375 California Code of Civil Procedure Section 1161.

1376 (b) Failure to perform any other covenant,
1377 condition or requirement of this Lease

1378 when such failure shall continue for a pe-
1379 riod of thirty (30) days after written notice thereof from Land-
1380 lord to Tenant;

1381 provided that if the nature of the default is
1382 such that more than thirty (30) days are reasonably required
1383 for its cure, then an Event of Default shall not be deemed to
1384 have occurred if Tenant shall commence such cure within said
1385 thirty (30) day period and thereafter diligently and continuous-
1386 ly prosecute such cure to completion.

1387 Landlord’s notice to Tenant pursuant to
1388 this subsection shall be deemed to be the notice required under
1389 California Code of Civil Procedure Section 1161.

D. C. Toedt 4/22/14 7:05 AM

Comment [72]: COMMENT: This is conventionally known as a “notice and cure” provision.

D. C. Toedt 4/22/14 7:01 AM

Comment [73]: “Provided that” is poor phrasing.

D. C. Toedt 4/22/14 7:01 AM

Comment [74]: COMMENT: This is repetitive of the same language in subdivision (a).

1390 (c) The abandonment or vacating of the
1391 Premises by Tenant.

1392 (d) Tenant shall admit in writing its inabil-
1393 ity to pay its debts generally as they become due,

1394 file a petition in bankruptcy, insolvency,
1395 reorganization, dissolution or liquidation under any law or
1396 statute of any government or any subdivision thereof either
1397 now or hereafter in effect,

1398 or Tenant shall make an assignment for
1399 the benefit of its creditors,

1400 consent to or acquiesce in the appointment
1401 of a receiver of itself or of the whole or any substantial part of
1402 the Premises.

1403 (e) A court of competent jurisdiction shall
1404 enter an order, judgment or decree appointing a receiver of
1405 Tenant or of the whole or any substantial part of the Premises
1406 and such order, judgment or decree shall
1407 not be vacated, set aside or stayed within thirty (30) days after
1408 the date of entry of such order, judgment, or decree,

1409 or a stay thereof shall be thereafter set
1410 aside.

1411 (f) A court of competent jurisdiction shall
1412 enter an order, judgment or decree approving a petition filed
1413 against Tenant under any bankruptcy, insolvency, reorganiza-
1414 tion, dissolution or liquidation law or statute of the federal or
1415 state government or any subdivision of either now or hereafter
1416 in effect,

1417 and such order, judgment or decree shall
1418 not be vacated, set aside or stayed within thirty (30) days from
1419 the date of entry of such order, judgment or decree,

D. C. Toedt 4/22/14 7:02 AM

Comment [75]: QUESTION: Is this term enforceable? Why or why not?
(Careful)

D. C. Toedt 4/22/14 7:03 AM

Comment [76]: This refers to an involuntary petition in bankruptcy,
which can be filed by creditors in certain circumstances.

1420 or a stay thereof shall be thereafter set

1421 aside.

1422 **15.2 Remedies.** Upon the occurrence of an Event of

1423 Default, Landlord shall have the following rights and reme-

1424 dies:

1425 (a) The right to terminate this Lease upon
1426 written notice to Tenant,

1427 in which event Tenant shall immediately
1428 surrender possession of the Premises in accordance with Arti-
1429 cle 20.

1430 (b) The right to bring a summary action
1431 for possession of the Premises.

1432 (c) The rights and remedies described in
1433 California Civil Code Section 1951.2, pursuant to which
1434 Landlord may recover from Tenant upon a termination of the
1435 Lease,

1436 (i) the worth at the time of award of the
1437 unpaid rent which has been earned at the time of termination;

1438 (ii) the worth at the time of award of the
1439 amount by which the unpaid rent which would have been
1440 earned after termination until the time of award Exceeds the
1441 amount of such rental loss that Tenant proves could have been
1442 reasonably avoided;

1443 (iii) the worth at the time of the award of
1444 the amount by which the unpaid rent for the balance of the
1445 term after the time of award exceeds the amount of such rental
1446 loss that Tenant proves could be reasonably avoided; and

1447 (iv) any other amount necessary to com-
1448 pensate Landlord for all the detriment proximately caused by
1449 Tenant's failure to perform its obligations under this Lease or

D. C. Toedt 4/22/14 7:06 AM

Comment [77]: QUESTION: Are these Landlord's *exclusive* rights?

D. C. Toedt 4/22/14 7:06 AM

Comment [78]: QUESTION: Is "Exceeds" really a defined term? (I haven't looked for the definition.)

1450 which in the ordinary course of events would be likely to re-
1451 sult therefrom.

1452 The “worth at the time of award” of the
1453 amounts referred to in (i) and (ii) above is computed by allow-
1454 ing interest at the rate of ten percent (10%) per annum.

1455 The “worth at the time of award” of the
1456 amount referred to in (iii) above shall be computed by dis-
1457 counting such amount at the discount rate of the Federal Re-
1458 serve Bank of San Francisco at the time of award plus one
1459 percent (1%).

1460 The detriment proximately caused by Ten-
1461 ant’s failure to perform its obligations under this Lease or
1462 which in the ordinary course of events would be likely to re-
1463 sult therefrom includes, without limitation,

1464 (1) the unamortized portion of any broker-
1465 age or real estate agent’s commissions paid in connection with
1466 the execution of this Lease,

1467 (2) any direct costs or expenses incurred
1468 by Landlord in recovering possession of the Premises, main-
1469 taining or preserving the Premises after such default,

1470 (3) preparing the Premises for reletting to
1471 a new tenant (excluding the costs of any tenant improve-
1472 ments),

1473 (4) any repairs or alterations to the Prem-
1474 ises for such reletting,

1475 (5) leasing commissions, architect’s fees
1476 and any other costs necessary or appropriate either to relet the
1477 Premises or, if reasonably necessary in order to relet the Prem-
1478 ises, to adapt them to another beneficial use by Landlord and

1479 (6) such amounts in addition to or in lieu
1480 of the foregoing as may be permitted from time to time by

D. C. Toedt 4/22/14 7:07 AM

Comment [79]: Note the sky-high interest rate.

1481 Applicable Law to the extent that such payment would not re-
1482 sult in a duplicative recovery.

1483 (d) The rights and remedies described in
1484 California Civil Code Section 1951.4 which allow Landlord to
1485 continue this Lease in effect and to enforce all of Landlord's
1486 rights and remedies under this Lease, including the right to re-
1487 cover Base Rent, Additional Rent and other charges payable
1488 hereunder as they become due.

1489 Acts of maintenance or preservation, ef-
1490 forts to relet the Premises or the appointment of a receiver up-
1491 on Landlord's initiative to protect its interest under this Lease
1492 shall not constitute a termination of Tenant's right to posses-
1493 sion.

1494 (e) The right and power, as attorney-in-
1495 fact for Tenant, to sublet the Premises, to collect rents from all
1496 subtenants and to provide or arrange for the provision of all
1497 services and fulfill all obligations of Tenant under any permit-
1498 ted subleases. Landlord is hereby authorized on behalf of Ten-
1499 ant, but shall have absolutely no obligation, to provide such
1500 services and fulfill such obligations and to incur all such ex-
1501 penses and costs as Landlord deems necessary. Landlord is
1502 hereby authorized, but not obligated, to relet the Premises or
1503 any part

1504

1505 -20-

1506

1507 thereof on behalf of Tenant, to incur such expenses as may be
1508 necessary to effect a relet and make said relet for such term or
1509 terms, upon such conditions and at such rental as Landlord in
1510 its reasonable discretion may deem proper. Tenant shall be li-
1511 able immediately to Landlord for all costs and expenses Land-

D. C. Toedt 4/22/14 7:08 AM

Comment [80]: Here's "Additional Rent" again.

1512 lord incurs in reletting the Premises including, without limita-
1513 tion, brokers' commissions, expenses of remodeling the Prem-
1514 ises required by the reletting, and the cost of collecting rents
1515 and fulfilling the obligations of Tenant to any subtenant. If
1516 Landlord relets the Premises or any portion thereof, such relet-
1517 ting shall not relieve Tenant of any obligation hereunder, ex-
1518 cept that Landlord shall apply the rent or other proceeds actu-
1519 ally collected by it as a result of such reletting against any
1520 amounts due from Tenant hereunder to the extent that such
1521 rent or other proceeds compensate Landlord for the nonper-
1522 formance of any obligation of Tenant hereunder. Such pay-
1523 ments by Tenant shall be due at such times as are provided
1524 elsewhere in this Lease, and Landlord need not wait until the
1525 termination of this Lease, by expiration of the Term or other-
1526 wise, to recover them by legal action or in any other manner.
1527 Landlord may execute any sublease made pursuant to this Sec-
1528 tion in its own name, and the tenant thereunder shall be under
1529 no obligation to see to the application by Landlord of any rent
1530 or other proceeds, nor shall Tenant have any right to collect
1531 any such rent or other proceeds. Landlord shall not by any
1532 reentry or other act be deemed to have accepted any surrender
1533 by Tenant of the Premises or Tenant's interest therein, or be
1534 deemed to have otherwise terminated this Lease, or to have re-
1535 lieved Tenant of any obligation hereunder, unless Landlord
1536 shall have given Tenant express written notice of Landlord's
1537 election to do so as set forth herein.

1538 **(f)** The right to enjoin, and any other rem-
1539 edy or right now or hereafter available to a Landlord against a
1540 defaulting tenant under the laws of the State of California or
1541 the equitable powers of its courts, and not otherwise specifi-
1542 cally reserved herein.

1543 (g) If this Lease provides for a postpone-
1544 ment of deferral of any Rent, or for commencement of pay-
1545 ment of Rent to a date later than the Commencement Date, or
1546 for a period of “free” Rent or any other Rent concession (col-
1547 lectively, “*Abated Rent*”), the right upon an Event of Default
1548 to demand immediate payment of the value of the Abated
1549 Rent.

1550 **15.3 Cumulative Remedies.** The various rights
1551 and remedies reserved to Landlord, including those not specif-
1552 ically described herein, shall, to the extent that the exercise of
1553 such right and/or remedy does not result in a duplicative re-
1554 covery, be cumulative and shall be in addition to every other
1555 right or remedy provided for in this Lease or now or hereafter
1556 existing at law or in equity and the exercise of the rights or
1557 remedies provided for in this Lease or now or hereafter exist-
1558 ing at law or in equity shall not preclude the simultaneous or
1559 later exercise by Landlord of any or all other rights and reme-
1560 dies.

1561 **15.4 Waiver of Redemption by Tenant.** Tenant
1562 hereby waives any right to relief against forfeiture of this
1563 Lease pursuant to California Code of Civil Procedure Sec-
1564 tion 1179.

1565 **15.5 Landlord’s Right to Cure.** If Tenant shall
1566 fail or neglect to do or perform any covenant or condition re-
1567 quired under this Lease and such failure shall not be cured
1568 within any applicable grace period, Landlord may, on five
1569 (5) business days written notice to Tenant, but shall not be re-
1570 quired to, make any payment payable by Tenant hereunder,
1571 discharge any lien, take out, pay for and maintain any insur-
1572 ance required hereunder, or do or perform or cause to be done
1573 or performed any such other act or thing (entering upon the

1574 Premises for such purposes, if Landlord shall so elect), and
1575 Landlord shall not be or be held liable or in any way responsi-
1576 ble for any loss, disturbance, inconvenience, annoyance or
1577 damage resulting to Tenant on account thereof. Tenant shall
1578 repay to Landlord within twenty (20) days after demand the
1579 entire out-of-pocket cost and expense incurred by Landlord in
1580 connection with the cure, including,

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1584 without limitation, compensation to the agents, consultants
1585 and contractors of Landlord and reasonable attorneys' fees and
1586 expenses. Landlord may act upon shorter notice or no notice at
1587 all if necessary in Landlord's reasonable judgment to meet an
1588 emergency situation or governmental or municipal time limita-
1589 tion or to protect Landlord's interest in the Premises. Landlord
1590 shall not be required to inquire into the correctness of the
1591 amount of validity or any tax or lien that may be paid by
1592 Landlord and Landlord shall be duly protected In paying the
1593 amount of any such tax or lien claimed and in such event
1594 Landlord also shall have the full authority, in Landlord's sole
1595 judgment and discretion and without prior notice to or approv-
1596 al by Tenant, to settle or compromise any such lien or tax.
1597 Any act or thing done by Landlord pursuant to the provisions
1598 of this Section shall not be or be construed as a waiver of any
1599 such failure by Tenant, or as a waiver of any term, covenant,
1600 agreement or condition herein contained or of the performance
1601 thereof.

1602 **15.6 Landlord's Default.** Landlord shall be in de-
1603 fault under this Lease if Landlord fails to perform obligations
1604 required of Landlord within thirty (30) days after written no-

1605 tice by Tenant to Landlord and to the holder of any first mort-
1606 gage or deed of trust covering the Premises whose name and
1607 address shall have heretofore been furnished to Tenant in writ-
1608 ing, specifying wherein Landlord has failed to perform such
1609 obligations; provided, however, that if the nature of Land-
1610 lord's obligations is such that more than thirty (30) days are
1611 required for performance, then Landlord shall not be in default
1612 if Landlord commences performance within such thirty
1613 (30) day period and thereafter diligently prosecutes the same
1614 to completion. Tenant shall be entitled to actual (but not con-
1615 sequential) damages in the event of an uncured default by
1616 Landlord, but the provisions of Article 17 shall apply to any
1617 Landlord default and Tenant shall not have the right to termi-
1618 nate this Lease as a result of a Landlord default.

1619 **16. LANDLORD'S RESERVED RIGHTS**

1620 **16.1 Alterations to Premises.** Landlord reserves
1621 the right, at any time and from time to time, to make altera-
1622 tions, additions, repairs, replacements or improvements to all
1623 or any part of the Premises, for any reasonable purpose, and
1624 no such change shall entitle Tenant to any abatement of rent or
1625 damages; provided, however, that Landlord shall use reasona-
1626 ble efforts not to materially adversely affect Tenant's use of
1627 the Premises.

1628 **16.2 Access.** Landlord reserves (for itself and its
1629 agents, consultants, contractors and employees) the right to
1630 enter the Premises at all reasonable times and, except in cases
1631 of emergency, after giving Tenant reasonable notice, to in-
1632 spect the Premises (including, without limitation, environmen-
1633 tal testing); to supply any service to be provided by Landlord
1634 hereunder; to show the Premises to prospective purchasers or
1635 mortgagees; to show the Premises to prospective tenants dur-

1636 ing the last year of the Term; to post notices of nonresponsibil-
1637 ity; and to repair or maintain the Premises in the event Land-
1638 lord so elects as a result of Tenant's failure to do so, without
1639 abatement of , Rent, and may for that purpose erect, use and
1640 maintain necessary structures in and throughout the Premises
1641 where reasonably required by the character of the work to be
1642 performed. Tenant hereby waives any claim for damages for
1643 any injury or inconvenience to or interference with Tenant's
1644 business, any loss of occupancy or quiet enjoyment of the
1645 Premises or any other loss occasioned thereby, except to the
1646 extent caused by the gross negligence or willful misconduct of
1647 Landlord in the exercise of its rights and provided that Land-
1648 lord shall use reasonable efforts not to materially adversely af-
1649 fect Tenant's use of the Premises. All locks for all of the doors
1650 in, upon and about the Premises, excluding Tenant's vaults
1651 and safes or special security areas (designated in advance in
1652 writing by Tenant) shall at all times be keyed to a master sys-
1653 tem and Landlord shall at all times have and retain a key with
1654 which to unlock all of said doors. Landlord shall have the right
1655 to use any and all

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1659 means that Landlord may deem necessary or proper to open
1660 said doors in an emergency in order to obtain entry to any por-
1661 tion of the Premises, and any such entry to the Premises or
1662 portions thereof obtained by Landlord by any of said means,
1663 or otherwise, shall not under any circumstances be construed
1664 or deemed to be a forcible or unlawful entry into, or a detainer
1665 of, the Premises, or an eviction, actual or constructive, of Ten-
1666 ant from the Premises or any portion thereof.

1667 **16.3 Easements.** Landlord reserves the right to
1668 grant or relocate all easements and rights of way which Land-
1669 lord in its sole discretion may deem necessary or appropriate;
1670 provided that Tenant's rights to use the Premises is not mate-
1671 rially impeded.

1672 **16.4 Use of Additional Areas.** Landlord reserves
1673 the exclusive right to use any air space above the Premises,
1674 and the land beneath the Premises; provided that such use
1675 shall not materially impede Tenant's use of and access to the
1676 Premises.

1677 **16.5 Subordination.** This Lease shall be subject
1678 and subordinate at all times to: (a) all reciprocal easement
1679 agreements, and any ground leases or underlying leases which
1680 may now exist or hereafter be executed affecting the Premises,
1681 and (b) the lien of any mortgage or deed of trust which may
1682 now exist or hereafter be executed in any amount for which
1683 the Premises, or any ground leases or underlying leases, or
1684 Landlord's interest or estate in any of said items, is specified
1685 as security. Notwithstanding the foregoing, Landlord shall
1686 have the right to subordinate or cause to be subordinated to
1687 this Lease any of the items referred to in clause (a) or
1688 (b) above, subject to compliance with the condition precedent
1689 set forth below. In the event that any ground lease or underly-
1690 ing lease terminates for any reason or any mortgage or deed of
1691 trust is foreclosed or a conveyance in lieu of foreclosure is
1692 made for any reason, (i) no person or entity which as a result
1693 of the foregoing succeeds to the interest of Landlord under this
1694 Lease, (a "**Successor**") shall be liable for any default by Land-
1695 lord or any other matter that occurred prior to the date the
1696 Successor succeeded to Landlord's interest in this Lease, and
1697 (ii) Tenant shall, notwithstanding any subordination, attorn to

1698 and become the tenant of the Successor, at the option of the
1699 Successor. Tenant covenants and agrees, however, to execute
1700 and deliver, upon demand by Landlord and in the form rea-
1701 sonably requested by Landlord, any additional documents evi-
1702 dencing the priority or subordination of this Lease with respect
1703 to any such ground leases, underlying leases, reciprocal ease-
1704 ment agreements or similar documents or instruments, or with
1705 respect to the lien of any such mortgage or deed of trust and
1706 Tenant's failure to execute and deliver any such document
1707 within ten (10) business days after such demand by Landlord
1708 shall constitute an Event of Default without further notice.
1709 Landlord shall obtain the written agreement of the mortgagee
1710 or trustee named in any mortgage, deed of trust or other en-
1711 cumbrance, and any landlord under any ground lease or under-
1712 lying lease, that so long as an Event of Default by Tenant is
1713 not in existence, neither this Lease nor any of Tenant's rights
1714 hereunder shall be terminated or modified, nor shall Tenant's
1715 possession of the Premises be disturbed or interfered with, by
1716 any trustee's sale or by an action or proceeding to foreclose
1717 said mortgage, deed of trust or other encumbrance.

1718 **17. LIMITATION OF LANDLORD'S LIABILITY**

1719 **17.1 Limitation.** Landlord shall not be responsi-
1720 ble for or liable to Tenant and Tenant hereby releases Land-
1721 lord, waives all claims against Landlord and assumes the risk
1722 for any injury, loss or damage to any person or property in or
1723 about the Premises by or from any cause whatsoever (other
1724 than Landlord's gross negligence or willful misconduct) in-
1725 cluding, without limitation, (a) acts or omissions of persons
1726 occupying adjoining premises, (b) theft or vandalism,
1727 (c) burst, stopped or leaking water, gas, sewer or steam pipes,
1728 (d) loss of utility

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1732 service, (e) accident, fire or casualty, (f) nuisance, and
1733 (g) work done by Landlord on the Premises. There shall be no
1734 abatement of Rent and no liability of Landlord by reason of
1735 any injury to or interference with Tenant's business arising
1736 from the making of any repairs, alterations or improvements to
1737 any portion of the Premises or to fixtures, appurtenances and
1738 equipment in the Premises. If, as a result of the gross negli-
1739 gence or willful misconduct of Landlord, the Premises should
1740 become untenable for Tenant's use as a consequence of the
1741 cessation of utilities or other services, interference with access
1742 to the Premises, legal restriction or the presence of any Haz-
1743 ardous Materials that are not located on, in or under the Prem-
1744 ises as of the Commencement Date, and In the event any of
1745 the foregoing prevents Tenant's intended use of the Premises
1746 for a period of seven (7) days or more, Tenant shall be entitled
1747 to an equitable abatement of Base Rent and Additional Rent
1748 from the date of the first occurrence through the time in which
1749 the Premises are again tenantable for Tenant's intended use. If
1750 such interruption continues for a period of thirty
1751 (30) consecutive days or more, Tenant shall be entitled to ter-
1752 minate this Lease, upon written notice to Landlord, whereupon
1753 the parties shall have no further rights or obligations under this
1754 Lease.

1755 **17.2 Sale of Property.** It is agreed that Landlord
1756 may at any time sell, assign or transfer its interest as landlord
1757 in and to this Lease, and may at any time sell, assign or trans-
1758 fer its interest in and to the Premises. In the event of any trans-
1759 fer of Landlord's interest in this Lease or in the Premises, the

1760 transferor shall be automatically relieved of any and all of
1761 Landlord's obligations and liabilities accruing from and after
1762 the date of such transfer; provided that the transferee assumes
1763 all of Landlord's obligations under this Lease. Tenant hereby
1764 agrees to attorn to Landlord's assignee, transferee, or purchas-
1765 er from and after the date of notice to Tenant of such assign-
1766 ment, transfer or sale, in the same manner and with the same
1767 force and effect as though this Lease were made in the first in-
1768 stance by and between Tenant and the assignee, transferee or
1769 purchaser.

1770 **17.3 No Personal Liability.** In the event of any
1771 default by Landlord hereunder, Tenant shall look only to
1772 Landlord's interest in the Premises and rents therefrom and
1773 any available insurance proceeds for the satisfaction of Ten-
1774 ant's remedies, and no other property or assets of Landlord or
1775 any trustee, partner, member, officer or director thereof, dis-
1776 closed or undisclosed, shall be subject to levy, execution or
1777 other enforcement procedure for the satisfaction of Tenant's
1778 remedies under or with respect to this Lease.

1779 **18. DESTRUCTION**

1780 **18.1 Damage or Destruction; Duty to Restore.**
1781 If the Premises or the improvements, or any portion thereof,
1782 are damaged or destroyed at any time during the Term and this
1783 Lease is not terminated by either party pursuant to and in ac-
1784 cordance with this Section 18, Tenant, as promptly as practi-
1785 cable and with all due diligence (given the time required to ob-
1786 tain insurance proceeds and to obtain construction permits),
1787 shall cause the repair, reconstruction and replacement of the
1788 improvements as nearly as possible given the circumstances
1789 and then-Applicable Law to their condition immediately prior
1790 to such damage or destruction and, except as otherwise ap-

1791 proved in writing by Landlord or precluded by then-
1792 Applicable Law, to their same general appearance.

1793 **18.2 Performance of Repairs and Restoration.**

1794 All repairs and restoration shall be performed in accordance
1795 with the provisions of Section 9 of this Lease (as applicable).
1796 Except as otherwise provided herein, all insurance proceeds,
1797 less actual costs and expenses incurred in connection with the
1798 collection thereof, shall be applied to the costs of repair and
1799 restoration of the Premises and the improvements in accord-
1800 ance with the provisions of this

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1803

1804 Section 18 and in compliance with Section 9 (as applicable).

1805 All such insurance proceeds shall be held by Landlord, or at
1806 the request of the holder of any mortgagor, by a trust company
1807 reasonably satisfactory to Landlord and such holder. Insurance
1808 proceeds shall be made available to Tenant in monthly draws
1809 during the repair of the Premises, which shall be available up-
1810 on submission by Tenant of written request accompanied by
1811 reasonably detailed invoices and customary lien releases from
1812 Tenant's contractor. Tenant shall pay any amount by which
1813 the insurance proceeds received as a result of such damage,
1814 less the costs and expenses incurred in connection with the
1815 collection thereof, are insufficient to pay the entire cost of
1816 such repair and restoration.

1817 **18.3 Option to Terminate Upon Damage or De-**

1818 **struction.** In the event of (a) any damage to or destruction of
1819 the Premises or the improvements or any portion thereof at
1820 any time during the Term and the cost to repair and restore the
1821 same to substantially the same condition as existed immediate-

1822 ly prior to such occurrence is reasonably estimated to exceed
1823 twenty-five percent (25%) of full replacement cost of all im-
1824 provements on the Premises and is not covered by any insur-
1825 ance obtained or required to be obtained by Tenant pursuant to
1826 Article 13, or (b) any damage to or destruction of the Premises
1827 or the improvements occurring during the last twelve months
1828 of the Term, then Tenant shall have the option to terminate
1829 this Lease, exercisable as provided below.

1830 **18.4 Termination; Tenant's Obligation to Re-**
1831 **store; Arbitration.** Tenant may exercise its option to termi-
1832 nate this Lease pursuant to this Section 18 by giving written
1833 notice to Landlord within ninety (90) days after the occurrence
1834 of the event of damage or destruction. If Tenant elects to ter-
1835 minate this Lease pursuant to this Section 18, Tenant shall sur-
1836 render the Premises to Landlord in accordance with the provi-
1837 sions of Section 20, except to the extent the damage or de-
1838 struction prevents Tenant from so doing. Tenant's obligations
1839 under this Section 18 shall survive the termination of this
1840 Lease. All proceeds of insurance payable with respect to dam-
1841 age to, or destruction of the improvements and other property
1842 located on the Premises, after payment of costs and expenses
1843 of collection thereof, shall first be applied to the costs of dem-
1844 olition, removal, restoration, and remediation, as appropriate,
1845 depending on the extent of the damage or destruction, with the
1846 balance, if any, of such insurance proceeds, to be distributed
1847 as provided in Section 18.5.

1848 **18.5 Excess Proceeds.** If there are proceeds of in-
1849 surance in excess of that required to repair, restore, reconstruct
1850 or demolish the Premises and the improvements as required
1851 herein, upon receipt by Landlord of satisfactory evidence that
1852 the work of repair, restoration, reconstruction or demolition

1853 required has been fully completed and paid for in accordance
1854 with the provisions of this Lease, and that the last day for fil-
1855 ing any mechanic's or materialmen's liens has passed without
1856 the filing of any, or if filed, any such lien has been released,
1857 any remaining insurance proceeds shall be paid to Landlord
1858 and the holders of mortgages as their interest may appear.

1859 **18.6 Right to Participate in Settlement.** Land-
1860 lord and Tenant shall both have the right to participate in the
1861 settlement or compromise of any insurance proceeds.

1862 **18.7 No Damages.** If Landlord is required or
1863 elects to make any repairs, reconstruction or restoration of any
1864 damage or destruction to the Premises under any of the provi-
1865 sions of this Article 18, Tenant shall not be entitled to any
1866 damages by reason of any inconvenience or loss sustained by
1867 Tenant as a result thereof. There shall be no reduction, change
1868 or abatement of any rental or other charge payable by Tenant
1869 to Landlord hereunder, or in the method of computing, ac-
1870 counting for or paying the same. Tenant hereby waives the
1871 provisions of Section 1932(2) and Section 1933(4) of the Cali-
1872 fornia Civil Code, or any other statute or law that may be in
1873 effect at the time of a casualty under which a lease is automat-
1874 ically terminated or a tenant is given the right to terminate a
1875 lease due to a casualty.

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1879 **19. EMINENT DOMAIN**

1880 **19.1 Taking.** If all or any part of the Premises
1881 shall be taken as a result of the exercise, of the power of emi-
1882 nent domain or any transfer in lieu thereof, this Lease shall
1883 terminate as to the part so taken as of the date of taking or as

1884 of the date of final judgment, whichever is earlier, and, in the
1885 case of a partial taking if at least twenty-five percent (25%) of
1886 the Premises, or if the extent and nature of such taking sub-
1887 stantially handicaps, impedes or impairs Tenant's use of the
1888 balance of the Premises, either Landlord or Tenant shall have
1889 the right to terminate this Lease as to the balance of the Prem-
1890 ises by written notice to the other within thirty (30) days after
1891 such date.

1892 **19.2 Award.** In the event of any taking, Landlord
1893 shall be entitled to any and all compensation, damages, in-
1894 come, rent, awards, or any interest therein whatsoever which
1895 may be paid or made in connection therewith, and Tenant shall
1896 assign to Landlord any right to compensation or damages for
1897 the condemnation of its leasehold interest; provided that Ten-
1898 ant may file a claim for (a) Tenant's relocation expenses, and
1899 (b) the taking of Tenant's Property.

1900 (a) In the event of a partial taking of the
1901 Premises which does not result in a termination of this Lease,
1902 Landlord shall repair, restore or reconstruct the Premises to a
1903 useable state; provided that Landlord shall not be required to
1904 expend any sums other than those received pursuant to Sec-
1905 tion 19.2.

1906 (b) During the period between the date of
1907 the partial taking and the completion of any necessary repairs,
1908 reconstruction or restoration, Tenant shall be entitled to a re-
1909 duction of Base Rent by a proportionate amount based upon
1910 the extent of interference with Tenant's operations in the
1911 Premises.

1912 **19.3 Temporary Taking.** Notwithstanding any
1913 other provision of this Article, if a taking occurs with respect
1914 to all or any portion of the Premises for a period of six

1915 (6) months or less, this Lease shall remain unaffected thereby
1916 and Tenant shall continue to pay Base Rent and Additional
1917 Rent and to perform all of the terms, conditions and covenants
1918 of this Lease, provided that Tenant shall have the right to ter-
1919 minate this Lease if the taking continues beyond twelve
1920 (12) months. In the event of any such temporary taking, and if
1921 this Lease is not terminated, Tenant shall be entitled to receive
1922 that portion of any award which represents compensation for
1923 the use or occupancy of the Premises during the Term up to
1924 the total Base Rent and Additional Rent owing by Tenant for
1925 the period of the taking, and Landlord shall be entitled to re-
1926 ceive the balance of any award.

1927 **19.4 Sale in Lieu of Condemnation.** A voluntary
1928 sale by Landlord of all or any part of the Premises to any pub-
1929 lic or quasi-public body, agency or person, corporate or oth-
1930 erwise, having the power of eminent domain, either under
1931 threat of condemnation or while condemnation proceedings
1932 are pending, shall be deemed to be a taking under the power of
1933 eminent domain for the purposes of this Article.

1934 **19.5 Waiver.** Except as provided in this Article,
1935 Tenant hereby waives and releases any right it may have under
1936 any Applicable Law to terminate this Lease as a result of a
1937 taking, including without limitation Sections 1265.120 and
1938 1265.130 of the California Code of Civil Procedure, or any
1939 similar law, statute or ordinance now or hereafter in effect.

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1943 **20. SURRENDER**

1944 **20.1 Surrender.** Upon the Termination Date,
1945 Tenant shall surrender the Premises to Landlord in as good or-

1946 der and repair as on the Commencement Date, reasonable
1947 wear and tear and damage by casualty excepted, free and clear
1948 of all letting and occupancies and free of Hazardous Materials
1949 as required pursuant to Article 12. Subject to Article 9, upon
1950 any termination of this Lease all improvements, except for
1951 Tenant's Property, shall automatically and without further act
1952 by Landlord or Tenant, become the property of Landlord, free
1953 and clear of any claim or interest therein by Tenant, and with-
1954 out payment therefore by Landlord.

1955 **20.2 Holding Over.** Any holding over after the
1956 expiration of the Term with the consent of Landlord shall be
1957 construed to automatically extend the Term on a month-to-
1958 month basis at a Base Rent equal to the greater of (a) 150% of
1959 the then-current Base Rent, and (b) prevailing rate at which
1960 Landlord is then offering space in buildings reasonably deter-
1961 mined by Landlord to be comparable to the Premises, and
1962 shall otherwise be on the terms and conditions of this Lease to
1963 the extent applicable. Any holding over without Landlord's
1964 consent shall entitle Landlord to exercise any or all of its rem-
1965 edies provided in Article 15, notwithstanding that Landlord
1966 may elect to accept one or more payments of Base Rent and
1967 Operating Expenses from Tenant.

1968 **20.3 Quitclaim.** At the expiration or earlier termi-
1969 nation of this Lease, Tenant shall execute, acknowledge and
1970 deliver to Landlord, within ten (10) days after written demand
1971 from Landlord to Tenant, any quitclaim deed or other docu-
1972 ment required by any reputable title company, licensed to op-
1973 erate in the State of California, to remove the cloud or encum-
1974 brance created by this Lease from the Premises.

1975 **21. FINANCIAL STATEMENTS**

2007 **22. TENANT CERTIFICATES**

2008 Tenant, at any time and from time to time within
2009 ten (10) business days after receipt of written notice from
2010 Landlord, shall execute, acknowledge and deliver to Landlord
2011 or to any party designated by Landlord (including prospective
2012 lenders, purchasers, ground lessees and others similarly situat-
2013 ed), a certificate of Tenant stating, to the best of Tenant's
2014 knowledge: (a) that Tenant has accepted the Premises, (b) the
2015 Commencement Date and Expiration Date of this Lease,
2016 (c) that this Lease is unmodified and in full force and effect
2017 (or, if there have been modifications, that same is in full force
2018 and effect as modified and stating the modifications),
2019 (d) whether or not there are then existing any defenses against
2020 the enforcement of any of the obligations of Tenant under this
2021 Lease (and, if so, specifying same), (e) whether or not there
2022 are then existing any defaults by Landlord in the performance
2023 of its obligations under this Lease (and, if so, specifying
2024 same), (f) the dates, if any, to which the Base Rent and Oper-
2025 ating Expenses have been paid, and (g) any other factual in-
2026 formation relating to the rights and obligations under this
2027 Lease that may reasonably be required by any of such persons.
2028 Failure to deliver such certificate when due shall constitute an
2029 Event of Default. At the request of Tenant, Landlord shall ex-
2030 ecute, acknowledge and deliver to Tenant a certificate with
2031 similar types of information and in the time period set forth
2032 above. Failure by either Landlord or Tenant to execute,
2033 acknowledge and deliver such certificate shall be conclusive
2034 evidence that this Lease is in full force and effect and has not
2035 been modified except as may be represented by the requesting
2036 party.

2037 **23. SIGNS**

2038 Tenant shall have the right, at Tenant's sole cost
2039 and expense, to install signage on the Premises, subject to the
2040 prior written consent of Landlord, not to be unreasonably
2041 withheld, and, if required, the approval of the City of Menlo
2042 Park. Any signage shall be removed by Tenant at the expira-
2043 tion or earlier termination of this Lease if so required by Land-
2044 lord.

2045 **24. INABILITY TO PERFORM**

2046 If Landlord is unable to fulfill or is delayed in ful-
2047 filling any of Landlord's obligations under this Lease, by rea-
2048 son of acts of God, accidents, breakage, repairs, strikes, lock-
2049 outs, other labor disputes, inability to obtain utilities or mate-
2050 rials or by any other reason beyond Landlord's reasonable
2051 control (and excluding failure or delay as a result of Land-
2052 lord's willful misconduct or gross negligence), then no such
2053 inability or delay by Landlord shall constitute an actual or
2054 constructive eviction, in whole or in part, or entitle Tenant to
2055 any abatement or diminution of Base Rent or Additional Rent,
2056 or relieve Tenant from any of its obligations under this Lease,
2057 or impose any liability upon Landlord or Landlord's Agents
2058 by reason of inconvenience, annoyance, interruption, injury or
2059 loss to or interference with Tenant's business or use and occu-
2060 pancy or quiet enjoyment of the Premises or any loss or dam-
2061 age occasioned thereby. If Tenant is unable to fulfill or is de-
2062 layed in fulfilling any of Tenant's obligations under this Lease
2063 (other than the payment of Rent), by reason of acts of God,
2064 accidents, breakage, repairs, strikes, lockouts, other labor dis-
2065 putes, inability to obtain utilities or materials or by any other
2066 reason beyond Tenant's reasonable control, then such inability
2067 or delay by Tenant shall excuse the performance of Tenant for
2068 a period equal to the duration of such prevention, delay or

2069 stoppage. Tenant hereby waives and releases any right to ter-
2070 minate this Lease under Section 1932(1) of the California Civ-
2071 il Code, or any similar law, statute or ordinance now or hereaf-
2072 ter in effect.

2073

2074 -28-

2075

2076 **25. NOTICES**

2077 Notices or other communications given or re-
2078 quired to be given under this Lease shall be effective only if
2079 rendered or given in writing, sent by certified mail with a re-
2080 turn receipt requested, or delivered in person or by reputable
2081 overnight courier (e.g., Federal Express, DHL, etc.): (a) to
2082 Tenant (i) at Tenant’s address set forth in Article 1, if sent pri-
2083 or to the Commencement Date, or (ii) at the Premises and at
2084 the “copy to” address specified in Article 1 if sent subsequent
2085 to the Commencement Date, or (iii) at the place where Tenant
2086 designates subsequent to Tenant’s vacating, deserting, aban-
2087 doning or surrendering the Premises; or (b) to Landlord at
2088 Landlord’s address set forth in Article 1; or (c) to such other
2089 address as either Landlord or Tenant may designate as its new
2090 address for such purpose by notice given to the other in ac-
2091 cordance with the provisions of this Article. Any such notice
2092 or other communication shall be deemed to have been ren-
2093 dered or given five (5) days after the date mailed, if sent by
2094 certified mail, or upon the date of delivery in person or by
2095 courier, or when delivery is attempted but refused.

2096 **26. QUIET ENJOYMENT**

2097 Landlord covenants that so long as an Event of
2098 Default by Tenant is not in existence, upon paying the Base
2099 Rent and Additional Rent and performing all of its obligations

2100 under this Lease, Tenant shall peaceably and quietly enjoy the
2101 Premises, subject to the terms and provisions of this Lease.

2102 **27. AUTHORITY**

2103 If Tenant is a corporation, limited liability compa-
2104 ny or a partnership, Tenant represents and warrants as follows:

2105 Tenant is an entity as identified in Article 1, duly formed and
2106 validly existing and in good standing under the laws of the
2107 state of organization specified in Article 1 and qualified to do
2108 business in the State of California. Tenant has the power, legal
2109 capacity and authority to enter into and perform its obligations
2110 under this Lease and no approval or consent of any person is
2111 required in connection with the execution and performance
2112 hereof. The execution and performance of Tenant's obliga-
2113 tions under this Lease will not result in or constitute any de-
2114 fault or event that would be, or with notice or the lapse of time
2115 would be, a default, breach or violation of the organizational
2116 instruments governing Tenant or any agreement or any order
2117 or decree of any court or other governmental authority to
2118 which Tenant is a party or to which it is subject. Tenant has
2119 taken all necessary action to authorize the execution, delivery
2120 and performance of this Lease and this Lease constitutes the
2121 legal, valid and binding obligation of Tenant. Upon Land-
2122 lord's request, Tenant shall provide Landlord with evidence
2123 reasonably satisfactory to Landlord confirming the foregoing
2124 representations and warranties.

2125 Landlord represents and warrants as follows:

2126 Landlord has the power, legal capacity and authority to enter
2127 into and perform its obligations under this Lease and no ap-
2128 proval or consent of any person is required in connection with
2129 the execution and performance hereof. The execution and per-
2130 formance of Landlord's obligations under this Lease will not

2131 result in or constitute any default or event that would be, or
2132 with notice or the lapse of time would be, a default, breach or
2133 violation of the organizational instruments governing Land-
2134 lord or any agreement or any order or decree of any court or
2135 other governmental authority to which Landlord is a party or
2136 to which it is subject. Landlord has taken all necessary action
2137 to authorize the execution, delivery and performance of this
2138 Lease and this Lease constitutes the legal, valid and binding
2139 obligation of Landlord.

2140

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2142

2143 28. BROKERS

2144 Landlord and Tenant each warrant that no broker
2145 has been involved in the procurement of this Lease; and each
2146 party hereby agrees to indemnify, defend and hold the other
2147 harmless from and against any and all liabilities arising from
2148 any breach of the foregoing warranty or any claims by a third
2149 party for a brokerage commission or finder's fee arising out of
2150 this transaction.

2151 29. MISCELLANEOUS

2152 **29.1 Entire Agreement.** This Lease, including the
2153 exhibits which are incorporated herein and made a part of this
2154 Lease, contains the entire agreement between the parties and
2155 all prior negotiations and agreements are merged herein. Ten-
2156 ant hereby acknowledges that neither Landlord nor Landlord's
2157 Agents have made any representations or warranties with re-
2158 spect to the Premises or this Lease except as expressly set
2159 forth herein, and no rights, easements or licenses are or shall
2160 be acquired by Tenant by implication or otherwise unless ex-
2161 pressly set forth herein.

2162 **29.2 No Waiver.** No failure by Landlord or Ten-
2163 ant to insist upon the strict performance of any obligation of
2164 Tenant or Landlord under this Lease or to exercise any right,
2165 power or remedy consequent upon a breach thereof, no ac-
2166 ceptance of full or partial Base Rent or Additional Rent during
2167 the continuance of any such breach by Landlord, or payment
2168 of Base Rent or Additional Rent by Tenant to Landlord, and
2169 no acceptance of the keys to or possession of the Premises pri-
2170 or to the expiration of the Term by any employee or agent of
2171 Landlord shall constitute a waiver of any such breach or of
2172 such term, covenant or condition or operate as a surrender of
2173 this Lease. No waiver of any breach shall affect or alter this
2174 Lease, but each and every term, covenant and condition of this
2175 Lease shall continue in full force and effect with respect to any
2176 other then-existing or subsequent breach thereof. The consent
2177 of Landlord or Tenant given in any instance under the terms of
2178 this Lease shall not relieve Tenant or Landlord, as applicable,
2179 of any obligation to secure the consent of the other in any oth-
2180 er or future instance under the terms of this Lease.

2181 **29.3 Modification.** Neither this Lease nor any
2182 term or provisions hereof may be changed, waived, discharged
2183 or terminated orally, and no breach thereof shall be waived, al-
2184 tered or modified, except by a written instrument signed by the
2185 party against which the enforcement of the change, waiver,
2186 discharge or termination is sought.

2187 **29.4 Successors and Assigns.** The terms, cove-
2188 nants and conditions contained in this Lease shall bind and in-
2189 ure to the benefit of Landlord and Tenant and, except as oth-
2190 erwise provided or limited herein, their respective personal
2191 representatives and successors and assigns.

2223 reclaim brought by either against the other on any matter
2224 whatsoever arising out of or in any way connected with this
2225 Lease, the relationship of Landlord with Tenant, or Tenant's
2226 use or occupancy of the Premises, including any claim of inju-
2227 ry or damage, and any emergency and other statutory remedy
2228 with respect thereto.

2229 **29.9 (Reserved).**

2230 **29.10 Light and Air.** Tenant covenants and
2231 agrees that no diminution of light, air or view by any structure
2232 that may hereafter be erected (whether or not by Landlord)
2233 shall entitle Tenant to any reduction of the Base Rent or Addi-
2234 tional Rent under this Lease, result in any liability of Landlord
2235 to Tenant, or in any other way affect this Lease or Tenant's
2236 obligations hereunder.

2237 **29.11 Lease Memorandum.** Neither Landlord or
2238 Tenant shall record this Lease or a short form memorandum
2239 hereof without the consent of the other.

2240 **29.12 Confidentiality.** The parties agree that nei-
2241 ther of them shall make public the terms and conditions of this
2242 Lease to any person other than a party's accountants, attor-
2243 neys, lenders, brokers, prospective ground lessees, investors,
2244 consultants or financial advisors without first obtaining the
2245 written permission from the other party, except to the extent
2246 otherwise required by Applicable Law.

2247 **29.13 Terms.** The words "Landlord" and "Ten-
2248 ant" as used herein shall include the plural as well as the sin-
2249 gular. If there is more than one Tenant or Landlord, the obliga-
2250 tions under this Lease imposed on Tenant or Landlord shall be
2251 joint and several. The captions preceding the articles of this
2252 Lease have been inserted solely as a matter of convenience

2253 and such captions in no way define or limit the scope or intent
2254 of any provision of this Lease.

2255 **29.14 Review and Approval.** The review, ap-
2256 proval, inspection or examination by Landlord of any item to
2257 be reviewed, approved, inspected or examined by Landlord
2258 under the terms of this Lease or the exhibits attached hereto
2259 shall not constitute the assumption of any responsibility by
2260 Landlord for either the accuracy or sufficiency of any such
2261 item or the quality of suitability of such item for its intended
2262 use. Any such review, approval, inspection or examination by
2263 Landlord is for the sole purpose of protecting Landlord's in-
2264 terests in the Premises and under this Lease, and no third par-
2265 ties, including, without limitation, Tenant or any person or en-
2266 tity claiming through or under Tenant, or the contractors,
2267 agents, servants, employees, visitors or licensees of Tenant or
2268 any such person or entity, shall have any rights hereunder with
2269 respect to such review, approval, inspection or examination by
2270 Landlord.

2271
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2273

2274 **29.15 No Beneficiaries.** This Lease shall not con-
2275 fer or be deemed to confer upon any person or entity other
2276 than the parties hereto, any right or interest, including without
2277 limitation, any third party status or any right to enforce any
2278 provision of this Lease.

2279 **29.16 Time of the Essence.** Time is of the es-
2280 sence in respect of all provisions of this Lease in which a defi-
2281 nite time for performance is specified.

2282 **29.17 Modification of Lease.** In the event of any
2283 ruling or threat by the Internal Revenue Service, or opinion of

2284 counsel, that all or part of the Rent paid or to be paid to Land-
2285 lord under this Lease will be subject to the income tax or unre-
2286 lated business taxable income, Tenant agrees to modify this
2287 Lease to avoid such tax; provided that such modifications will
2288 not result in any increase in Rent, or any increased obligations
2289 of Tenant under this Lease. Landlord will pay all Tenant's rea-
2290 sonable costs incurred in reviewing and negotiating any such
2291 lease modification, including reasonable attorneys' and ac-
2292 countants' fees.

2293 **29.18 Construction.** This Lease has been negoti-
2294 ated extensively by Landlord and Tenant with and upon the
2295 advice of their respective legal counsel, all of whom have par-
2296 ticipated in the drafting hereof. Consequently, Landlord and
2297 Tenant agree that no party shall be deemed to be the drafter of
2298 this Lease and in the event this Lease is ever construed by a
2299 court of law, such court shall not construe this Lease or any
2300 provision of this Lease against any party as the drafter of the
2301 Lease.

2302 **29.19 Use of Name.** Tenant acknowledges and
2303 agrees that the names "*The Leland Stanford Junior Universi-*
2304 *ty*," "*Stanford*" and "*Stanford University*," and all variations
2305 thereof, are proprietary to Landlord. Tenant shall not use any
2306 such name or any variation thereof or identify Landlord in any
2307 promotional advertising or other promotional materials to be
2308 disseminated to the public or any portion thereof or use any
2309 trademark, service mark, trade name or symbol of Landlord or
2310 that is associated with it, without Landlord's prior written con-
2311 sent, which may be given or withheld in Landlord's sole dis-
2312 cretion.

2313 **29.20 Survival.** The obligations of this Lease
2314 shall survive the expiration of the Term to the extent necessary

2315 to implement any requirement for the performance of obliga-
2316 tions or forbearance of an act by either party hereto which has
2317 not been completed prior to the termination of this Lease.
2318 Such survival shall be to the extent reasonably necessary to
2319 fulfill the intent thereof, or if specified, to the extent of such
2320 specification, as same is reasonably necessary to perform the
2321 obligations and/or forbearance of an act set forth in such term,
2322 covenant or condition. Notwithstanding the foregoing, in the
2323 event a specific term, covenant or condition is expressly pro-
2324 vided for in such a clear fashion as to indicate that such per-
2325 formance of an obligation or forbearance of an act is no longer
2326 required, then the specific shall govern over this general pro-
2327 visions of this Lease.

2328 **29.21 Counterparts.** This Lease may be executed
2329 in counterparts, each of which shall be an original, and all of
2330 which together shall constitute one original of the Lease.

2331

2332 -32-

2333

2334 IN WITNESS WHEREOF, Landlord and Tenant
2335 have executed this Lease as of the date first above written.

2336

LANDLORD:

TENANT:

THE BOARD OF TRUS-
TEES OF THE LELAND
STANFORD JUNIOR UNI-
VERSITY

TESLA MOTORS, INC., a
Delaware corporation

By: /s/ Leonie F. Batkin

By: /s/ Elon Musk

Its: Director, Property Ser-

Its: CEO

vices

By: /s/ Darryl Siry

Its: VP, Sales Marketing

2337

2338

-33-

2339

2340

GLOSSARY

2341

DEFINITIONS

2342 As used In this Lease, the following terms shall have the

2343 following meanings, applicable, as appropriate, to both the

2344 singular and plural form of the terms defined below:

2345 “**Abated Rent**” is defined in Section 15.2(g).

2346 “**ADA**” is defined in Section 11.1.

2347 “**Additional Rent**” is defined in Section 5.3.

2348 “**Alterations**” is as defined in Section 9.3.

2349 “**Applicable Laws**” are defined in Section 11.1.

2350 “**Assignment**” is defined in Section 14.1.

2351 “**Base Rent**” means the amount stated in Article 1, to be
2352 adjusted and payable in accordance with Article 5.

2353 “**Business Days**” means Monday through Friday, ex-
2354 cluding Saturdays, Sundays and federal and state legal holi-
2355 days.

2356 “**Commencement Date**” means the date specified in Ar-
2357 ticle 1.

2358 “**Early Termination Date**” is defined in Section 4.4.

2359 “**Effective Date**” is defined in the introductory para-
2360 graph of this Lease.

2361 “**Environmental Activity**” is defined in Section 12.1(a).

2362 “**Environmental Investigation**” is defined in Sec-
2363 tion 12.7.

2426 scribed herein; thence from said true point of beginning, along
2427 the said Northeasterly line of El Camino Real, North 50° 17'
2428 53" West 62.43 feet and North 50° 25' West 337.57 feet;
2429 thence leaving said line of El Camino Real, North 39° 35' 00"
2430 East 188.83 feet to the Southwesterly boundary line of that
2431 certain 40 foot wide strip of land containing 2.33 acres, as de-
2432 scribed in that certain Deed from The Board of Trustees of
2433 The Leland Stanford Junior University to the Southern Pacific
2434 Railroad Company, dated March 26, 1902 and recorded in
2435 Book 92 of Deeds at page 374, Records of San Mateo County,
2436 California; thence South 51° 35' 10" East along said last men-
2437 tioned line, 400.08 feet; thence South 39° 35' 00" West
2438 197.12 feet to the point of beginning.

2439

2440

Exhibit B

2442

2443

2444

Exhibit C

2445

ACCEPTANCE FORM

2446

This Acceptance form is executed with reference

2447

to that certain Lease dated as of _____, 2007 by and between

2448

THE BOARD OF TRUSTEES OF THE LELAND STAN-

2449

FORD JUNIOR UNIVERSITY ("*Landlord*"), and TESLA

2450

MOTORS, a _____ ("*Tenant*"). Terms defined in the Lease

2451

and the exhibits thereto shall have the same meaning when

2452

used herein.

2453

Tenant hereby certifies to Landlord that Tenant

2454

has inspected the Premises as of _____ (the "*Date of Inspec-*

2455

tion"). Tenant further acknowledges that Tenant hereby ac-

2456

cepts the Premises in its existing "AS-IS", "WHERE-IS" con-

2457

dition, and "WITH ALL FAULTS".

2458

The person executing this Acceptance Form on

2459

behalf of Tenant represents and warrants to Landlord that such

2460

person is duly authorized to execute this Acceptance Form and

2461

that this Acceptance Form has been duly authorized, executed

2462

and delivered on behalf of Tenant.

2463

THIS ACCEPTANCE FORM is executed by

2464

Tenant as of the Date of Inspection.

2465

TENANT:

By:

Its:

By:

Its:

2466

2467

Exhibit D

2468

DETERMINATION OF PREVAILING MARKET RENT

2469

The term "*Prevailing Market Rent*" means the base

2470

monthly rent (net of all expenses) for space of comparable size

2471

and location to the Premises and in buildings similar in age

2472

and quality to the Building, taking into account any additional

2473

rent and all other payments or escalations then being charged

2474

and allowances and economic concessions being given in the

2475

for such comparable space over a comparable term. The Pre-

2476

vailing Market Rent shall be determined by Landlord and

2477

Landlord shall give Tenant written notice of such determina-

2478

tion not later than thirty (30) days after delivery by Tenant of

2479

Tenant's notice of exercise of the Option. If Tenant disputes

2480

Landlord's determination of the Prevailing Market Rent, Ten-

2481

ant shall so notify Landlord within ten (10) days following

2482

Landlord's notice to Tenant of Landlord's determination and,

2483

in such case, the Prevailing Market Rent shall be determined

2484

as follows:

2485

(a) Within thirty (30) days following Landlord's

2486

notice to Tenant of the Prevailing Market Rent, Landlord and

2487

Tenant shall meet no less than two (2) times, at a mutually

2488

agreeable time and place, to attempt to agree upon the Prevail-

2489

ing Market Rent.

2490

(b) If within this 30-day period Landlord and Ten-

2491

ant cannot reach agreement as to the Prevailing Market Rent,

2492

they shall each select one appraiser to determine the Prevailing

2493

Market Rent. Each such appraiser shall arrive at a determina-

2494

tion of the Prevailing Market Rent and submit his or her con-

2495 clusions to Landlord and Tenant within thirty (30) days after
2496 the expiration of the 30-day consultation period described in
2497 (a) above.

2498 (c) If only one appraisal is submitted within the
2499 requisite time period, it shall be deemed to be the Prevailing
2500 Market Rent. If both appraisals are submitted within such time
2501 period, and if the two appraisals so submitted differ by less
2502 than ten (10) percent of the higher of the two, the average of
2503 the two shall be the Prevailing Market Rent. If the two ap-
2504 praisals differ by more than ten (10) percent of the higher of
2505 the two, then the two appraisers shall immediately select a
2506 third appraiser who will within thirty (30) days of his or her
2507 selection make a determination of the Prevailing Market Rent
2508 and submit such determination to Landlord and Tenant. This
2509 third appraisal will then be averaged with the closer of the two
2510 previous appraisals and the result shall be the Prevailing Mar-
2511 ket Rent.

2512 (e) All appraisers specified pursuant hereto shall
2513 be members of the American Institute of Real Estate Apprais-
2514 ers with not less than five (5) years experience appraising of-
2515 fice, research and development and industrial properties in
2516 California. Each party shall pay the cost of the appraiser se-
2517 lected by such party and one-half of the cost of the third ap-
2518 praiser plus one-half of any other costs incurred in the deter-
2519 mination.

2520