

GROUND LEASE AGREEMENT

Between

**OHLONE COMMUNITY COLLEGE DISTRICT,
a community college district duly organized and existing under the
Constitution and laws of the State of California**

(“Landlord”)

and

[_____]

(“Tenant”)

_____, 2017

GROUND LEASE

THIS GROUND LEASE AGREEMENT (hereinafter referred to as "Lease") is made and entered into this ____ day of _____, 20__ (the "Commencement Date"), by and between Ohlone Community College District, a community college district duly organized and existing under the Constitution and laws of the State of California, ("Ohlone College" or "Landlord"), and _____, a _____ ("Tenant").

RECITALS

A. Ohlone College owns approximately 15 acres of surplus land located in the front of the campus along Mission Boulevard, Fremont, CA with the common street address 43600 Mission Boulevard, Fremont, CA ("Property"), the legal description of which is set forth in Exhibit A, attached hereto and incorporated herein by this reference; and

B. On October 12, 2016, the Ohlone College Board of Trustees ("Board") approved Resolution No. 10/16-17 authorizing the issuance of Intent to Lease Property and Request for Bids (the "Resolution") in regard to the proposed lease and private development of the Property; and

C. Further to the Resolution, Ohlone College released Request for Proposal #101316 ("RFP") on October 13, 2016 seeking proposals from private developers to develop the Property under an exclusively negotiated ground lease between Ohlone College, as landlord, and the developer, as tenant; and

D. On March 7, 2017, SteelWave submitted a development proposal to develop a mixed-use multifamily and commercial project on the Property (collectively, the "Project") as further described in the Development Plan; and

E. On April 12, 2017, the Board awarded the RFP to SteelWave and approved the 60-day exclusive negotiations period with SteelWave to allow the parties to negotiate mutually agreeable terms regarding scope, rent, design, timeline for construction, and other project details in a ground lease; and

F. On June ____, 2017, Ohlone College, as Landlord, and SteelWave, as Tenant, entered into that certain Agreement to Enter into Ground Lease and Escrow Instructions ("Agreement to Enter into Ground Lease") for the purpose of allowing SteelWave a period of time to conduct site investigation, real estate and land use entitlement due diligence activities preliminary to entering into this Lease ("Due Diligence Review"); and

G. SteelWave has completed the Due Diligence Review and has determined that the Property is suitable for development of the Project; and

H. Ohlone College, as Landlord, and SteelWave, as Tenant, now desire to enter into this Lease to consummate the lease of the Property as provided in the Agreement to Enter into Ground Lease;

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, the parties agree as follows:

1. DEFINITIONS; PROPERTY

1.1 **Definitions.** Capitalized terms in this Lease shall have the following meanings:

“**Agreement to Enter Into Ground Lease**” has the meaning set forth in Recital F, above.

“**Advance Rent Payment**” has the meaning set forth Section 3.3.

“**Affiliates**” has the meaning as set forth in Section 8.1.3.

“**Assessments**” has the meaning set forth in Section 4.2.2.

“**Award**” has the meaning as set forth in Section 12.1.

“**Base Rent**” means the rent that is payable as set forth in Section 3.1.

“**CO Date**” means the earlier of (i) the first day of the month immediately following the month in which a final certificate(s) of occupancy (or equivalent, including a temporary certificate of occupancy (“**TCO**”)) for the entirety of the Improvements is issued by the City of Fremont, California; provided, however, that the issuance of a TCO for any part of the Improvements shall only be effective for these purposes if such a TCO(s) grant(s) Tenant the right to have the portion of the Improvements that are the subject of such TCO occupied by a tenant(s); and (ii) _____, 20___; provided, however, that the CO Date set forth in clause (ii) of this definition of CO Date shall be extended in the event that any Force Majeure Events occur.

“**Commencement Date**” has the meaning set forth in the preamble of this Lease.

“**Construction Period**” means the period of time from the Commencement Date to the CO Date.

“**CPI**” means the Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items, San Francisco-Oakland (1982-84 equals 100), of the Bureau of Labor Statistics of the United States Department of Labor, or the official successor of said Index. If said Index is changed so that the base year differs from the base year used in the last Index published prior to the commencement of the term of this Lease, the former Index shall be converted to the new Index in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If said Index is discontinued or revised during the Term of this Lease, such other government index or computation with which it is replaced, as determined by said Department or said Bureau, or, failing such determination, such other government index or computation which is most similar to said Index, shall be used in order to obtain substantially the same result as would be obtained if said Index had not been discontinued or revised; provided, that in the event the parties are unable to agree upon such other government index or computation, it shall be selected by arbitration.

“**CPI Adjustment**” means the percentage obtained by dividing (i) the CPI most recently published prior to the applicable Lease Year by (ii) the CPI most recently published prior to the preceding Lease Year (which, in any event, shall not be less than zero (0.00)).

“**Default**” has the meaning as set forth in Section 16.1.

“**Default Notice**” has the meaning as set forth in Section 7.6.1.

“**Development Plan**” means the plan for development of the Property set forth on Exhibit B.

“**Development Work**” has the meaning set forth in Section 6.1 of this Lease.

“**Eighth Rent Term**” means the period of time commencing on the seventieth (70th) anniversary of the CO Date and ending on the day prior to the eightieth (80th) anniversary of the CO Date.

“**Environmental Law(s)**” has the meaning as set forth in Section 23.1(b).

“**Existing Structures**” has the meaning set forth in Section 6.1.1 of this Lease.

“**Extension Option**” has the meaning set forth in Section 2.3.2.

“**Fifth Rent Term**” means the period of time commencing on the fortieth (40th) anniversary of the CO Date and ending on the day prior to the fiftieth (50th) anniversary of the CO Date.

“**First Rent Term**” means the period of time commencing on the CO Date and ending on the day prior to the tenth (10th) anniversary of the CO Date.

“**Force Majeure Events**” shall mean any of the following: (i) acts of declared or undeclared war by a foreign enemy; (ii) riots; (iii) casualty or condemnation; (iv) floods or hurricanes; (v) earthquakes; (vi) acts of God; (vii) governmental delays; (viii) unavailability of materials; (ix) strikes, lockouts or other labor trouble; (x) acts or omissions of Landlord, and (xi) any other event or circumstance not within the reasonable control of Tenant.

“**Fourth Rent Term**” means the period of time commencing on the thirtieth (30th) anniversary of the CO Date and ending on the day prior to the fortieth (40th) anniversary of the CO Date.

“**Hazardous Substances**” has the meaning as set forth in Section 23.1(a).

“**Improvements**” shall mean the mixed-use multifamily and commercial improvements (and any other improvements) which may be constructed by Tenant on the Property from time to time during the Term.

“**Indemnitee**” has the meaning as set forth in Section 8.1.2.

“**Indemnitor**” has the meaning as set forth in Section 8.1.2.

“**Initial Term**” has the meaning set forth in Section 2.3.1 of this Lease.

“**Institutional Investor**” has the meaning set forth in Section 7.3.1.

“**Landlord**” has the meaning set forth in the first paragraph of this Lease.

“**Landlord Default**” has the meaning as set forth in Section 16.7.

“**Landlord’s Estate**” shall mean all of Landlord’s right, title, and interest in and to (a) its fee estate in the Property, subject to this Lease; (b) its reversionary interest in the Improvements, if any, and (c) all Base Rent and other benefits due Landlord hereunder.

“**Lease**” has the meaning set forth in the first paragraph of this Lease.

“**Lease Year**” means each year of a Rent Term.

“**Leasehold Mortgage**” has the meaning set forth in Section 7.1 and 7.3.3 of this Lease.

“**Leasehold Mortgages**” has the meaning set forth in Section 7.1 and 7.3.2 of this Lease.

“**Lender**” has the meaning set forth in Section 7.1 of this Lease.

“**Mezzanine Loan**” has the meaning set forth in Section 7.3.4.

“**Mezzanine Loan Requirements**” has the meaning set forth in Section 7.3.4.

“**Mezzanine Lender**” has the meaning set forth in Section 7.3.4.

“**New Lease**” has the meaning as set forth in Section 7.8.

“**Ninth Rent Term**” means the period of time commencing on the eightieth (80th) anniversary of the CO Date and ending on the day prior to the ninetieth (90th) anniversary of the CO Date.

“**Notice of Intended Taking**” has the meaning as set forth in Section 12.1.

“**Notice of Termination**” has the meaning set forth in Section 7.8 of this Lease.

“**Option Term**” has the meaning set forth in Section 2.3.2(a).

“**Partial Taking**” has the meaning as set forth in Section 12.1.

“**Permitted Exceptions**” has the meaning set forth in Section 1.2.

“**Permitted Hazardous Substances**” has the meaning as set forth in Section 23.1(a).

“**Permitted Transferee**” has the meaning as set forth in Section 13.1.

“**Project**” shall mean the construction of the Improvements as set forth herein.

“**Property**” has the meaning set forth in the first paragraph of this Lease.

“**Recognized Leasehold Mortgagee**” has the meaning set forth in Section 7.2.1.

“**Recognized Lender**” has the meaning set forth in Section 7.2.1.

“**Recognized Mezzanine Lender**” has the meaning set forth in Section 7.2.1.

“**Rent Term**” means, individually, the First through Tenth Rent Terms, inclusive.

“**Security Deposit**” has the meaning set forth in Section 3.3 of this Lease.

“**Schedule of Performance**” means the schedule attached hereto as Exhibit G.

“**Second Rent Term**” means the period of time commencing on the tenth (10th) anniversary of the CO Date and ending on the day prior to the twentieth (20th) anniversary of the CO Date.

“**Security Instrument**” has the meaning set forth in Section 7.1 of this Lease.

7.2.1. “**Senior Recognized Leasehold Mortgage**” has the meaning set forth in Section

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“**Senior Recognized Lender**” has the meaning set forth in Section 7.2.1.

7.2.1. “**Senior Recognized Mezzanine Lender**” has the meaning set forth in Section

“**Seventh Rent Term**” means the period of time commencing on the sixtieth (60th) anniversary of the CO Date and ending on the day prior to the seventieth (70th) anniversary of the CO Date.

“**Sixth Rent Term**” means the period of time commencing on the fiftieth (50th) anniversary of the CO Date and ending on the day prior to the sixtieth (60th) anniversary of the CO Date.

“**Sublease**” has the meaning as set forth in Section 13.5.

“**Substantial Taking**” has the meaning as set forth in Section 12.1.

“**Subtenant**” has the meaning as set forth in Section 13.5.

“**Taking**” has the meaning as set forth in Section 12.1.

“**Taking Date**” has the meaning as set forth in Section 12.1.

“**Taxes**” has the meaning set forth in Section 4.2.1.

“**Tenant**” has the meaning set forth in the first paragraph of this Lease.

“**Tenant’s Estate**” shall mean all of Tenant’s right, title and interest in its leasehold estate in the Property, its ownership interest in all improvements on the Property, and all of its other interests under this Lease.

“**Tenant’s Work**” has the meaning set forth in Section 2.1.2 of this Lease.

“**Tenth Rent Term**” means the period of time commencing on the ninetieth (90th) anniversary of the CO Date and ending on the last day of the Term.

“**Term**” shall mean the Initial and any and all Option Term(s).

“**Termination Notice Period**” has the meaning as set forth in Section 7.6.1.

“**Third Rent Term**” means the period of time commencing on the twentieth (20th) anniversary of the CO Date and ending on the day prior to the thirtieth (30th) anniversary of the CO Date.

“**Total Taking**” has the meaning as set forth in Section 12.1.

“**Transfer**” has the meaning as set forth in Section 13.2.

“**Transfer Request**” has the meaning as set forth in Section 13.4.1.

1.2 Property; Reservations and Temporary and Permanent Access Rights. For and in consideration of Tenant’s covenant to pay the rental and other sums for which provision is made in this Lease, and the performance of the other obligations of Tenant hereunder, Landlord leases to Tenant and Tenant leases from Landlord, an exclusive right to possess and use, as tenant, the Property, together with all rights of Landlord, if any, appurtenant to the Property and all rights in and to the streets adjacent to the Property (excluding any reversionary rights in and to streets or rights-of-way which may subsequently be vacated or abandoned), and together with all existing rights of air, light and view, subject to the matters set forth on Exhibit C attached hereto and incorporated herein (“**Permitted Exceptions**”). Not included herein are any mineral rights, water rights or any other right to excavate or withdraw minerals, gas, oil or other material except as specifically granted herein. As between Landlord and Tenant, the right to name or change the name of the Property and the Project and/or any constituent parts thereof shall vest exclusively in Tenant..

2. DELIVERY OF PROPERTY; TERM

2.1 Delivery of Property.

2.1.1. Landlord shall deliver possession of the Property to Tenant on the Commencement Date. Tenant hereby accepts the Property on an “as is” basis. Neither the Landlord, nor any employee, agent or representative of the Landlord has made any representation, warranty or covenant, expressed or implied, with respect to the Property, the Project, its physical condition, the condition of any improvements, any environmental laws or regulations, or any other matter, affecting the use, value, occupancy or enjoyment of the Property other than as set forth expressly in the Agreement to Enter Into Ground Lease and this Ground Lease, and, except as otherwise set forth expressly in the Agreement to Enter Into Ground Lease and this Ground Lease, the Tenant understands and agrees that the Landlord is making no such representation, warranty or covenant, expressed or implied; it being expressly understood that the Property is being leased in an "AS IS" condition with respect to all matters.

2.1.2. Upon acceptance of possession of the Property, Tenant may do any demolition which it may reasonably desire and shall perform its initial construction, which shall result in the construction of the Project and construction, maintenance, repair, replacement and/or renovation of the Improvements (collectively, “**Development Work**”). In doing Development Work, Tenant shall comply with Section 6 hereof and shall exercise all commercially reasonable efforts to comply with the Schedule of Performance (subject to the occurrence of any Force Majeure Events). As set forth in Section 6, Landlord shall cooperate with Tenant (including the prompt signing of applications or petitions) in obtaining any necessary permits. Landlord shall join in any grants or easements for any public utilities and facilities, or access roads, or other facilities useful or necessary for the Development Work and the operation of the Project and other improvements or the construction thereof.

2.2 **Fee Mortgages.** Landlord shall not grant any mortgage, deed of trust or other similar encumbrance upon its fee interest in the Property.

2.3 **Term.**

2.3.1. Initial Term. The initial term (the “**Initial Term**”) of this Lease shall commence on the Commencement Date, and shall expire eighty (80) years from the Commencement Date, unless extended as set forth herein below.

2.3.2. Option to Extend. Provided that, at the time of the exercise of an Extension Option (defined below), Tenant is not in breach of its obligations under this Lease beyond any applicable notice and cure periods provided in this Lease, Tenant shall have an option to extend the Term on three (3) occasions (each such right, an “**Extension Option**”), as follows:

(a) The first extension of the Term shall be for a period of ten (10) years. The second extension of the Term shall be for a period of nine (9) years (each such period of time, an “**Option Term**”).

(b) Written notification to Landlord exercising each such option to extend the Term must be delivered to Landlord at least one (1) year, but not more than

five (5) years, prior to the expiration of the Term. Provided Tenant has properly and timely exercised an Extension Option, the Term of this Lease shall be extended for the period of the applicable Option Term, and all terms, covenants and conditions of this Lease shall remain unmodified and in full force and effect, except that the Base Rent shall be modified as set forth below. Promptly following each such exercise of an Extension Option, Tenant, at its election, may prepare a notice of the exercise of such Extension Option and of the extension of the Option Term in recordable form and cause the same to be recorded in the Official Records of the County of Alameda, California. If Landlord is required to execute and have acknowledged such notice in order for such notice to be so recorded, Landlord shall promptly take all acts necessary to cause such notice to be executed, acknowledged and recorded (provided, however, that Landlord shall not be obligated to incur any third-party fees and/or costs in connection therewith unless such fees and/or costs are agreed to be paid for by Tenant; provided, however, to the extent that such fees and/or costs are not reasonable or normally and customarily incurred in connection with such matter, such fees and/or costs shall be paid by Landlord). Any failure to prepare, execute and/or deliver such notice(s), shall not affect the exercise by Tenant of an Extension Option and the commensurate extension of the Term.

3. BASE RENT

3.1 Base Rent. During the Term, Tenant shall pay to Landlord as rent the following amounts (“**Base Rent**”) during the time periods set forth below. All such amounts shall be payable in advance on the first day of each calendar month (prorated for any partial month):

RENT TERM	RENT TERM BASE RENT
During the: Construction Period:	Fifty-Three Thousand Four Hundred Thirty-Nine Dollars (\$53,439.00) per month
First Rent Term	One Hundred Six Thousand Eight Hundred Seventy-Eight Dollars (\$106,878.00) per month
Second through Tenth Rent Terms, Inclusive	<p>The monthly Base Rent for the Second through Tenth Rent Terms (if the Term is extended for the Ninth and/or Tenth Rent Terms as set forth herein), shall be an amount calculated as follows:</p> <p>To calculate the Base Rent for each such term, the Base Rent for the immediately prior Rent Term shall be increased each of the ten (10) Lease Years in such Rent Term by an amount equal to the cumulative and annually compounded CPI Adjustment in such Base Rent that occurs during such Lease Year; provided, however, that notwithstanding the calculation of such cumulative and annually compounded increase, the annual percentage increase in the Base Rent for any such Lease Year shall in any event not be more than three and one-half percent (3.5%) than the Base Rent for the immediately preceding Lease Year or less than the Base Rent for the immediately preceding Lease Year. The Base Rent for the pertinent Rent Term shall then be divided by twelve (12), which shall then be the monthly Base Rent to be paid during such Rent Term. An example of the calculation of the Base Rent for the Second through Tenth Rent Terms, inclusive, is attached hereto as <u>Exhibit D</u>.</p>

3.2 Advance Rent Payment. Prior to the Commencement Date, Tenant has paid to Landlord the sum of Five Hundred Thousand Dollars (\$500,000.00) (“**Advance Rent Payments**”) pursuant to the terms of that certain Agreement to Enter Into Ground Lease by and between Landlord and Tenant. The Advance Rent Payments will be credited against Tenant’s obligation for Base Rent during the Construction Period until fully applied.

3.3 Security Deposit. Upon application of the full amount of the Advance Rent Payment to the payment of Base Rent pursuant to the terms of Section 3.2, Tenant shall deposit with Landlord a security deposit (the “**Security Deposit**”) in the sum of an amount equal to three (3) months of the Base Rent for the First Rent Term, receipt of which is acknowledged by Landlord, to be held and applied by Landlord in the following manner:

3.3.1. If, at any time during the term of this Lease, any of the rent payable by Tenant to Landlord under this Lease should be overdue and unpaid (in excess of the Advance Rent Payments), or if any other sums payable by Tenant to Landlord under the terms of this Lease should be overdue and unpaid, Landlord may, at Landlord's option,

appropriate and apply any portion of the Security Deposit, up to the whole amount of that deposit, to the payment of the overdue rent or sums. In the event of any such appropriation and application by Landlord, Tenant shall promptly, on receipt of written demand by Landlord, restore the amount so appropriated or applied to the Security Deposit. Tenant's failure to do so within fifteen (15) days after receipt of the written demand by Landlord, shall constitute a breach of this Lease by Tenant.

3.3.2. Should Tenant, at any time during the term of this Lease, be in default in the performance of any of the terms, covenants, and conditions of this Lease, Landlord may, after termination of this Lease, appropriate and apply any portion of the Security Deposit, up to the whole amount of the Security Deposit, that may be required to compensate Landlord for damages caused by Tenant's breach to the payment of those damages to Landlord.

3.3.3. Should Tenant fully and faithfully perform all the terms, covenants, and conditions of this Lease, including the prompt payment of rent as required, Landlord shall, on expiration or earlier termination of this lease, return the full amount of the Security Deposit without interest (except as set forth hereinbelow) to Tenant.

3.3.4. Notwithstanding the foregoing,

(a) at any time after the issuance of a certificate of occupancy (or equivalent) plus a one (1) year period thereafter, if Tenant has timely paid all monetary obligations under this Lease on or before the due date thereof, Tenant shall have the right to reduce the security deposit to one (1) times the monthly Base Rent. In such event, Landlord shall cooperate with Tenant in effectuating such reduction in the amount of the Security Deposit.

(b) Tenant shall have the right to maintain the Security Deposit in form of cash or in the form of a certificate of deposit, letter of credit or other investment instrument reasonably acceptable to Landlord with respect to form, content and issuer (or Tenant's lender(s) if so required by such lender(s)). Any cash security deposit shall be deposited in an account at a commercial bank as reasonably directed by Tenant and, so long as no Default by Tenant exists under the Lease, Tenant shall be entitled to any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit. Provided that no Default then exists under the Lease, at the end of each lease year Tenant shall be entitled to a credit against the Base Rent for all unexpended interest accruing to Tenant's benefit with respect to the Security Deposit during such lease year pursuant to the immediately preceding sentence.

(c) Any letter of credit procured by Tenant and delivered to Landlord shall provide for notice to Landlord by the issuer thereof no less than thirty (30) days prior to the expiration of the term of such letter of credit in the event that the issuer thereof is not irrevocably committed to renew the term of such letter of credit. In the event that, twenty (20) days prior to the expiration of such letter of credit, Tenant has not provided Landlord with satisfactory evidence of its renewal or replacement, or has not provided Landlord with adequate replacement security, Landlord may draw down upon

the letter of credit and hold the funds as security for Tenant's obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Tenant within any applicable notice and cure period and/or any other Default of Tenant under this Lease.

4. OTHER EXPENSES.

During the term of this Lease, Tenant shall pay the following:

4.1 Utilities. From and after the Commencement Date, Tenant shall pay all charges for electricity, water, gas, telephone and all other utility services used on the Property. Tenant shall indemnify, defend and hold Landlord harmless against and from any loss, liability or expense resulting from any failure of Tenant to pay all such charges when due.

4.2 Taxes and Assessments.

4.2.1. The term "**Taxes,**" as used herein, shall mean all taxes and other governmental charges, general and special, ordinary and extraordinary, of any kind whatsoever, applicable or attributable to the Property, the Improvements and Tenant's use and enjoyment thereof, excluding Assessments which shall be paid as defined below. Tenant shall pay when due all Taxes commencing with the Commencement Date and continuing throughout the Term. Any Taxes payable after the end of the Term shall be apportioned and prorated between Tenant and Landlord on a daily basis, and the portion thereof that is attributable to the period after the end of the Term shall be paid by Landlord.

4.2.2. The term "**Assessments,**" as used herein, shall mean all assessments for public improvements or benefits which heretofore or during the Term shall be assessed, levied, imposed upon, or become due and payable, or a lien upon the Property, any improvements constructed thereon, the leasehold estate created hereby, or any part thereof. Tenant shall not cause or suffer the imposition of any Assessment upon the Property other than in connection with the Project, without the prior written consent of Landlord. (For the avoidance of doubt, an assessment made pursuant to an assessment district that covers areas other than the Property, but includes the Property, shall be deemed to be in connection with the Project.) In the event any Assessment is proposed which affects the Property other than in connection with the Project, Tenant shall promptly notify Landlord of such proposal after Tenant has knowledge or receives notice thereof. Tenant shall pay when due installments of all Assessments levied with respect to the Property and the leasehold estate created hereby commencing with the Commencement Date and continuing throughout the Term.

4.3 Payment Date and Proof. All payments by Tenant for Taxes and/or Assessments shall be made by Tenant prior to delinquency. Tenant shall furnish to Landlord receipts or other appropriate evidence establishing the payment of such amounts. Tenant may comply with this requirement by retaining a tax service to notify Landlord when the taxes have been paid.

4.4 Failure to Pay. In the event Tenant fails to pay any of the expenses or amounts specified in this Section 4, after written notice from Landlord to Tenant and the provision to Tenant of a reasonable opportunity to cure such non-payment as provided in Section 16, Landlord may, but shall not be obligated to do so, pay any such amount and the amounts so paid shall immediately be due and payable by Tenant to Landlord and shall thereafter bear interest at the rate specified in Section 22.7 below.

4.5 No Counterclaim or Abatement of Base Rent; Tax Contests.

4.5.1. Base Rent and any other sums payable by Tenant hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, and the obligations and liabilities of Tenant hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any taking of the Property or any part thereof; (b) any restriction of or prevention of or interference with any use of the Property or any part thereof; (c) any Permitted Exception, (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Landlord, or any action taken with respect to this Lease by any trustee or receiver of Landlord, or by any court, in any such proceeding; (e) any claim which Tenant has or might have against Landlord; (f) any failure on part of Landlord to perform or comply with any of the terms hereof or of any other agreement with Tenant; or (g) any other occurrence whatsoever, whether similar or dissimilar to the remedy consequent upon a breach thereof, and no submission by Tenant or acceptance by Landlord of full or partial rent during the continuance of any such breach, shall constitute a waiver for any such breach or of any such term. No waiver of any breach shall affect or alter this Lease, which shall constitute in full force and effect, or the respective rights of Landlord and Tenant with respect to any other then existing or subsequent breach

4.5.2. Right to Contest. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to contest any Tax imposed against the Property or the Project or Tenant's possessory interest therein; provided, however, that the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Tenant. Nothing in this Lease shall require Tenant to pay any Tax as long as it contests the validity, applicability or amount of such Tax in good faith, and so long as it does not allow the portion of the Property affected by such Tax to be forfeited to the entity levying such Tax as a result of its nonpayment. If any law, rule or regulation requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest.

5. USE

5.1 Use. The Property is leased to Tenant for constructing, maintaining and operating the Improvements, including, without any limitation, the financing, leasing and transfer of Tenant's leasehold estate and the Project in accordance with the term hereof.

5.2 Appearance of Property. During the term hereof, Tenant shall operate, maintain and repair the Property in a manner and to the standard that comparable properties in the City of Fremont are being operated, maintained and repaired. In addition, Tenant shall maintain the Property in a clean, orderly and neat fashion, and shall neither commit waste nor permit any waste to be committed thereon. Tenant shall not burn any trash in or about the Property or permit any accumulation of trash. Tenant shall store all trash, refuse and waste material so as not to constitute a health or fire hazard or nuisance, in adequately covered containers which are located within the Property and which are not visible to the general public.

6. IMPROVEMENTS CONSTRUCTED BY TENANT

6.1 Construction.

6.1.1. Right To Construct Improvements. Landlord agrees that Tenant shall have the right to demolish any structures and improvements located on the Property as of the Commencement Date (the “**Existing Structures**”) at any time, at Tenant’s sole cost and expense (subject to the provisions of Section 6.1.2) and without payment to Landlord of any additional sum, and to cause the Existing Structures to be removed from the Property for disposal. Tenant intends during the Term of this Lease, and is authorized by Landlord pursuant to the terms of this Lease, to undertake the Development Work in substantial accordance with the Permits (as defined in the Agreement to Enter Into Ground Lease). At any time and from time to time during the Term, Tenant may make, at its sole cost and expense and without the prior consent of Landlord, changes and alterations to such improvements.

6.1.2. Landlord’s Cooperation in the Construction of the Improvements. Landlord shall cooperate with and assist Tenant, to the extent reasonably requested by Tenant, in Tenant’s efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the undertaking and performance of the Development Work. Such cooperative efforts may include Landlord’s joinder in any application for such approval, consent, permit or variance, where joinder therein by Landlord is required or helpful; provided, however, that Tenant shall reimburse Landlord for Landlord’s actual third party out-of-pocket costs incurred in connection with such joinder or cooperative efforts (other than the costs of any brokers, including brokerage commissions). Notwithstanding the foregoing, Tenant and Landlord acknowledge that the approvals given by Landlord under this Lease in no way release Tenant from obtaining, at Tenant’s expense, all permits, licenses and other approvals required by law for the construction of Improvements on the Premises and operation and other use of such Improvements on the Premises; and that Landlord’s duty to cooperate and Landlord’s approvals under this Lease do not in any way modify or limit the exercise of Landlord’s governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease.

6.1.3. Construction Requirements. No change or alteration to the Property or the Improvements shall be undertaken until Tenant shall have procured and paid for all required permits, licenses and authorizations. All changes and alterations shall be made in a good and workmanlike manner and in compliance with all applicable building and

zoning codes and other legal requirements. Upon completion of construction of the Improvements, Tenant shall furnish Landlord with a certificate of substantial completion executed by the architect for the Improvements, and a complete set of “as built” plans for the Improvements. Tenant shall thereafter furnish Landlord with copies of the updated plans showing all material changes and modifications to the Improvements. Tenant shall also furnish to Landlord copies of Certificates of Occupancy or other similar documents issued to certify completion of construction in compliance with applicable requirements.

6.1.4. Performance and Payment Bonds.

(a) Prior to commencement of the Development Work, or any portion thereof, Tenant shall deposit with Landlord certificates or other satisfactory evidence that the general contractor has procured one or more bonds “as co-obligee” for a total amount not less than one hundred percent (100%) of the total construction cost of the initial Development Work, naming Landlord as co-obligee (or Tenant’s construction lender as the obligee if so required by such lender), in form and content and with a surety or sureties reasonably satisfactory to Landlord (or Tenant’s construction lender if so required by such lender), guaranteeing the full and faithful performance of the construction contract for such construction free and clear of all mechanics’ and materialmen’s liens and the full payment of all subcontractors, labor and materialmen, including without restricting the generality of the foregoing, all architects and interior designers, except that with respect to architects and interior designers, no such bond shall be required if Tenant delivers to Landlord a waiver of lien from such architect or interior designer.

(b) Alternative Security. In lieu of providing the bonds, certificates or other satisfactory evidence described in Section 6.1.4(a), Tenant may provide to Landlord (or Tenant’s construction lender if so required by such lender) any of the following alternative security: (i) a certificate of deposit, cash or United States governmental security, (ii) a letter of credit (in form and content reasonably acceptable to Landlord (or in a form acceptable to Tenant’s construction lender if so required by such lender), or (iii) a set aside letter from Tenant’s construction lender. The foregoing security shall be in an amount equal to one hundred percent (100%) of the construction contract price, and shall permit Landlord (or Tenant’s construction lender if so required by such lender) to draw thereon to complete the construction of the Improvements if the same have not been completed by Tenant. In addition, Landlord shall accept in lieu of such bonds, certificates or other satisfactory evidence, so-called “Subguard” insurance in such amount, on such terms and issued by such carrier as approved by Landlord (or Tenant’s construction lender if so required by such lender), in combination with such other security, such as a completion guaranty, as reasonably acceptable to Landlord (or Tenant’s construction lender if so required by such lender). Any alternative security provided by Tenant pursuant to this subsection may name Landlord and Tenant’s construction lender as co-beneficiaries.

6.2 Fixtures and Equipment. In constructing the Improvements upon the Property, Tenant and its subtenants may place or install in the Project such trade fixtures and equipment as Tenant or its subtenants shall deem reasonably desirable for the conduct of business therein.

Personal property, trade fixtures and equipment used in the conduct of business by Tenant and its subtenants (as distinguished from fixtures and equipment used in connection with the operation and maintenance of the Improvements) placed by Tenant or its subtenants on or in the Improvements shall not become part of the real property, even if nailed, screwed or otherwise fastened to the improvements or buildings of the Project, but shall retain their status as personal property. Such personal property may be removed by Tenant or its subtenants at any time so long as any damage to the property of Landlord occasioned by such removal is thereupon repaired. All other fixtures, equipment and improvements (including but not limited to the Improvements and all fixtures and equipment necessary for its operation and maintenance) constructed or installed upon the Property shall be deemed to be the property of Tenant and, upon the end of the Term, shall become part of the Property and become the sole and exclusive property of Landlord, free of any and all claims of Tenant or any person or entity claiming by or through the Tenant. In the event Tenant or subtenants do not remove their personal property and trade fixtures which they are permitted by this Section 6.2 to remove from the Improvements within forty-five (45) days following the end of the Term, Landlord may at its election (i) require Tenant to remove such property at Tenant's sole expense, and Tenant shall be liable for any damage to the property of Landlord caused by such removal, (ii) treat said personal property and trade fixtures as abandoned, retaining said properties as part of the Property, or (iii) have the personal property and trade fixtures removed and stored at Tenant's expense. Tenant shall promptly reimburse Landlord for any damage caused to the Property by the removal of personal property and trade fixtures, whether removal is by Tenant or Landlord.

6.3 Mechanics and Labor Liens.

6.3.1. Tenant shall not permit any claim of lien made by any mechanic, materialmen, laborer, or other similar liens to stand against the Landlord's fee interest in the Property for work or labor done, services performed, or materials used or furnished to be used in or about the Property for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by Tenant, its agents, or subtenants. Tenant shall cause any such claim of lien to be fully discharged within thirty (30) days after the date of filing thereof, provided, however, that Tenant may contest any such lien and, in the event that Tenant, in good faith, disputes the validity or amount of any such claim of lien, and if Tenant shall post an undertaking as may be required or permitted by law or is otherwise sufficient to prevent the lien, claim or encumbrance from attaching to the fee interest in the Property, Tenant shall not be deemed to be in breach of this Section 6.3 so long as Tenant is diligently pursuing a resolution of such dispute with continuity and, upon entry of final judgment resolving the dispute, if litigation or arbitration results therefrom, discharges said lien.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, NO WORK PERFORMED BY, THROUGH, UNDER OR FOR TENANT PURSUANT TO THIS LEASE SHALL BE DEEMED TO BE FOR THE IMMEDIATE USE OR BENEFIT OF LANDLORD TO THE END THAT NO MECHANIC'S OR OTHER LIENS SHALL BE ALLOWED AGAINST THE ESTATE OF LANDLORD BY REASON OF ANY CONSENT GIVEN BY LANDLORD TO TENANT TO IMPROVE THE PROPERTY.

6.4 Development Rights. Tenant shall not represent to any person, governmental body or other entity that Tenant is the fee owner of the Property, nor shall Tenant execute any petition, application, permit, plat or other document on behalf of Landlord, without Landlord's express prior written consent (which Landlord shall not unreasonably withhold, condition or delay). Tenant shall notify Landlord immediately in writing of any proposed or pending governmental action of which Tenant becomes aware which affects the Property, its zoning or the right to develop the Property for any future use.

6.5 Hold Harmless. Tenant shall indemnify, defend and hold harmless Landlord and the Property from and against all liabilities, claims, fines, penalties, costs, damages or injuries to persons, damages to property, losses, liens, causes of action, suits, judgments and expenses (including court costs, attorneys' fees, expert witness fees and costs of investigation), of any nature, kind or description of any person or entity, directly or indirectly arising out of, caused by, or resulting from the cost of construction of the Improvements or repairs made at any time to the Improvements (including repairs, restoration and rebuilding). Tenant shall regularly and timely pay any and all amounts that are due and payable to third parties with respect to such work and will maintain its books and records, with respect to all aspects of such work and materials therefore, and will make them available for inspection by Landlord or its representatives as reasonably requested. Notwithstanding anything to the contrary set forth herein, Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any subtenant or other Person to improve the Property or any portion of the Property, by appropriate proceedings conducted in good faith and with due diligence, at no cost to Landlord. Nothing in this Lease shall require Tenant to pay any such amount or lien as long as it contests the validity, applicability or amount of such matter in good faith, and so long as it does not allow the portion of the Property affected by such lien to be forfeited.

6.6 Permits, Compliance with Codes. All building permits and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with construction of the Improvements and any subsequent improvements, repairs, replacements or renewals to the Property or Improvements shall be acquired as required by applicable laws, ordinances or regulations, including but not limited to, building codes and the ADA (Americans with Disabilities Act), by and at the sole cost and expense of Tenant. Tenant shall cause all work on the Property during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction. Tenant is responsible, at Tenant's sole cost and expense, to cause the improvements and the Property to comply with all applicable governmental laws, statutes, rules, regulations and/or ordinances that apply to the Property during the Lease Term, whether now in effect, or hereinafter adopted or enacted.

6.7 Completion of Improvements; Ownership of Improvements. Tenant shall submit to Landlord reproducible "as built" drawings of all Improvements constructed on the Property. During the Term of this Lease, the Improvements constructed by Tenant, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Tenant. At the expiration or earlier termination of this Lease, the Improvements and all

additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall automatically vest in the Landlord without further action of any party, without any obligation by the Landlord to pay any compensation therefor to Tenant and without the necessity of a deed from Tenant to the Landlord; provided, however, at Landlord's request, Tenant shall execute, acknowledge, and deliver to the Landlord a good and sufficient quitclaim deed with respect to any interest of Tenant in the Improvements. Throughout the term of this Lease, any liens, encumbrances or claims of third parties with respect to any of the foregoing, including any part of the Improvements' mechanical or electrical systems or the Improvements' elevators, shall be expressly subordinate and subject to the rights of Landlord under this sentence. Thirty (30) days prior to the expiration of the Term, Tenant shall delivery copies of all service contracts for the Project to the Landlord.

7. LEASEHOLD MORTGAGES AND MEZZANINE FINANCING

7.1 Leasehold Mortgage and Mezzanine Financing Authorized. Tenant, and its successors and assigns, shall have the right to mortgage, pledge, or conditionally assign its leasehold estate in the Property and its interest in all improvements thereon by way of one or more "**Leasehold Mortgages**" (as that term is defined below) (which may be of different priority and exist at the same time) and any and all collateral security agreements from time to time required by the holder of a Leasehold Mortgage (a "**Leasehold Mortgagee**"), including collateral assignments of this Lease, any subleases, assignments or pledges of rents, and any and all rights incidental to the Property, and security interests under the Uniform Commercial Code or any successor laws to secure the payment of any loan or loans obtained by Tenant with respect to the Property, subject to the limitations set forth in the definition of "Leasehold Mortgage" below. In addition, Tenant, and its successors and assigns, shall have the right to obtain one or more "Mezzanine Loans" as defined below, subject only to the limitations set forth in the definition of "Mezzanine Loan" below. Each pledge or other such security given in connection with a Mezzanine Loan and each Leasehold Mortgage as defined herein is sometimes referred to herein as a "**Security Instrument**", and each Leasehold Mortgagee and Mezzanine Lender is sometimes referred to herein as a "**Lender**". In no event shall the fee interest of Landlord in the Property or any Base Rent due to Landlord hereunder be subordinate to any Security Instrument.

7.2 Notice to Landlord.

7.2.1. If Tenant shall mortgage Tenant's leasehold estate to an Institutional Investor or enter or allow its members or partners to enter into a Mezzanine Loan for a term not beyond the end of the Term, and if the holder of any related Security Instrument shall provide Landlord with notice of such Security Instrument together with a true copy of such Security Instrument and the name and address of the Lender, Landlord and Tenant agree that, following receipt of such notice by Landlord, the provisions of this Section 7 shall apply in respect to each such Security Instrument held by an Institutional Investor. Each Leasehold Mortgagee who notifies Landlord in writing of its name and address for notice purposes shall be deemed a "**Recognized Leasehold Mortgagee**." The most senior Recognized Leasehold Mortgagee from time to time, as determined by Landlord based upon such notices from Leasehold Mortgagees shall be referred to in this Lease, and be entitled to the rights of, the "**Senior Recognized Leasehold Mortgagee**";

and the Recognized Leasehold Mortgage held by such Senior Recognized Leasehold Mortgagee shall be referred to in this Lease as the “**Senior Recognized Leasehold Mortgage**”; provided, however, that if the Senior Recognized Leasehold Mortgagee elects not to exercise its rights hereunder, the next most senior Recognized Leasehold Mortgagee will have the right to exercise the rights of a Senior Recognized Leasehold Mortgagee, provided, that, a Senior Recognized Leasehold Mortgagee may agree to permit a junior lender or lenders to exercise some or all of the rights of a Senior Recognized Leasehold Mortgagee. Each Mezzanine Lender who notifies Landlord in writing of its name and address for notice purposes, and with such notice furnishes to Landlord shall be deemed a “**Recognized Mezzanine Lender**”. Each Recognized Leasehold Mortgagee and Recognized Mezzanine Lender is sometimes referred to herein as a “**Recognized Lender**”. The most senior Recognized Mezzanine Lender from time to time, based upon such notices from Tenant or a notice from the then Senior Recognized Mezzanine Lender designating another Recognized Lender as the “Senior Recognized Mezzanine Lender”, shall, so long as its Mezzanine Loan satisfies the Mezzanine Loan Requirements and shall remain unsatisfied, or until written notice of satisfaction thereof is given by such Recognized Mezzanine Lender to Landlord (whichever shall first occur), be referred to in this Lease as, and each such Recognized Mezzanine Lender shall individually be entitled to the rights of, the “**Senior Recognized Mezzanine Lender**”. The Senior Recognized Leasehold Mortgagee and Senior Recognized Mezzanine Lender are referred to collectively herein as the “**Senior Recognized Lenders**”.

7.2.2. In the event of any assignment of a Recognized Leasehold Mortgage or Recognized Mezzanine Loan or in the event of a change of address or name for notice purposes of a Recognized Lender or of an assignee of any Recognized Lender, notice of the new name and address for notice purposes shall be provided to Landlord in substantially like manner.

7.2.3. In the event of any assignment of a Recognized Leasehold Mortgage or Recognized Mezzanine Loan or in the event of a change of address or name for notice purposes of a Recognized Lender or of an assignee of any Recognized Lender, notice of the new name and address for notice purposes shall be provided to Landlord, provided, however, any such assignee shall be an Institutional Investor as defined herein.

7.2.4. Promptly upon receipt of a communication purporting to constitute the notice provided for by Section 7.2.1 above, Landlord shall acknowledge by an instrument in recordable form receipt of such communication as constituting the notice provided by Section 7.2.1 above or, in the alternative, notify Tenant and the Leasehold Mortgagee of the rejection of such communication as not conforming with the provisions of Section 7.2.2 above, and specify the specific basis of such nonconformity.

7.2.5. Tenant and each Recognized Lender shall give Landlord prompt written notice of any default by Tenant under a Security Instrument; provided, however, that the failure of a Recognized Lender to deliver to Landlord written notice of a default by Tenant under a Security Instrument shall not invalidate or otherwise affect such notice in any manner whatsoever, or a Recognized Lender’s rights hereunder in any manner whatsoever.

7.3 **Definitions.**

7.3.1. The term “**Institutional Investor**” as used in Section 7 shall refer to any (i) savings bank, (ii) savings and loan association (iii) commercial bank, (iv) credit union, (v) insurance company, (vi) real estate investment trust, (vii) pension fund, (viii) commercial finance lender or other similar financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, or any affiliate of the foregoing or (ix) or such other lender as may be approved by Landlord in writing in advance which approval shall not be unreasonably withheld, delayed or conditioned. The term “Institutional Investor” shall also include other reputable and solvent lenders of substance which perform functions similar to any of the foregoing, and which have assets in excess of One Hundred Million Dollars (\$100,000,000) at the time the Leasehold Mortgage or Mezzanine Loan is made.

7.3.2. The term “**Leasehold Mortgage**” as used in this Section 7 shall include a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Tenant’s leasehold estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation which is held by an Institutional Investor.

7.3.3. The term “**Leasehold Mortgagee**” as used in this Section 7 shall refer to the Institutional Investor which is the holder of a Leasehold Mortgage in respect to which the notice provided for by Section 7.2 above, has been given and received and as to which the provisions of this Section 7 are applicable.

7.3.4. The term “**Mezzanine Loan**” shall mean one or more loans made to Tenant or to the owner of any ownership interest in Tenant which satisfies each of the following requirements (collectively, the “**Mezzanine Loan Requirements**”): (i) such loan is secured by a security interest in, pledge of, or other conditional right to the ownership interests in Tenant or in any entity which owns (directly or indirectly) an ownership interest in Tenant, and such other security given to the Mezzanine Lender as is customary for mezzanine loans and related to the foregoing collateral, which shall be the sole security for such Mezzanine Loan; (ii) such loan is made by an Institutional Lender (each a “**Mezzanine Lender**”); and (iii) such loan becomes due prior to the expiration of the Term, (iv) the documentation evidencing or relating thereto does not contain or secure obligations unrelated to the Property and (v) the documentation evidencing or relating to such loan has been approved in advance by Landlord as complying with this definition of a Mezzanine Loan.

7.4 Consent of Leasehold Mortgagee Required. No cancellation, surrender or modification of this Lease shall be effective as to any Recognized Lender unless consented to in writing by such each Senior Recognized Lender; provided, however, that nothing in this Section 7.4 shall limit or derogate from Landlord’s rights to terminate this Lease in accordance with the provisions of this Section 7.

7.5 Default Notice. Landlord, upon providing Tenant any notice of: (i) default under this Lease, or (ii) an intention to terminate this Lease, or (iii) demand to remedy a claimed default, shall contemporaneously provide a copy of such notice to each Senior Recognized

Lender for which Landlord has received a notice address. From and after such notice has been given to each Senior Recognized Lender, a Senior Recognized Lender shall have the same period, after the giving of such notice upon it, for remedying any default or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance, the additional periods of time specified in Sections 7.6 and 7.7 below, to remedy, commence remedying or cause to be remedied the defaults specified in any such notice. Landlord shall accept such performance by or at the instigation of such Senior Recognized Lender as if the same had been done by Tenant. Tenant authorizes each Senior Recognized Lender to take any such action at such Senior Recognized Lender's option and does hereby authorize entry upon the Property by the Leasehold Mortgagee for such purpose.

7.6 Notice to Leasehold Mortgagee.

7.6.1. Anything contained in this Lease to the contrary notwithstanding, if any default shall occur which entitles Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless Landlord shall notify each Senior Recognized Lender in writing (of which Landlord has been notified pursuant to Section 7.2.1 above) of Landlord's intent to so terminate this Lease (a "**Default Notice**") at least thirty (30) days in advance of the proposed effective date of such termination (which shall not be earlier than the date of expiration of all notice and cure periods that Tenant may have to cure such default), if such default is capable of being cured by the payment of money, and at least forty-five (45) days in advance of the proposed effective date of such termination (as such time period may be extended as set forth below), if such default is not capable of being cured by the payment of money. The provisions of Section 7.7 below shall apply if, during such thirty (30) or forty-five (45) day period (each such period a "**Termination Notice Period**"), any Senior Recognized Lender shall:

- (a) Notify Landlord of such Senior Recognized Lender's desire to nullify such notice;
- (b) Pay or cause to be paid all past due Base Rent, all past due additional rent, if any, all other past due monetary obligations then due and in arrears, and all Base Rent, additional rent and other monetary obligations as specified in the Termination Notice to such Senior Recognized Lender and which may become due during such thirty (30) period; and
- (c) Comply with all non-monetary requirements of this Lease then in default and, as determined by Landlord, reasonably susceptible of being complied with by such Senior Recognized Lender (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), and proceed to comply with reasonable diligence and continuity with such requirements reasonably susceptible of being complied with by such Senior Recognized Lender within the notice period, provided, however,
 - (i) that if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Senior

Recognized Lender commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Tenant commences to cure the default within Tenant's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Senior Recognized Lender's initial cure period shall commence upon the later of the end of Tenant's cure period or the date upon which Landlord notifies the Senior Recognized Lender that Tenant has failed or ceased to cure the default with due diligence; and,

(ii) provided, further, that such Senior Recognized Lender shall not be required during such forty-five (45) day period (as it may be extended pursuant to the terms hereof) to cure or commence to cure any default consisting of Tenant's failure to satisfy and discharge any lien, charge or encumbrance against the Tenant's interest in this Lease or the Property junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender.

(d) Any notice to be given by Landlord to a Senior Recognized Lender pursuant to any provision of this Section 7 shall be deemed properly addressed if sent to the Senior Recognized Lender who served the notice referred to in Section 7.2.1 above, unless notified of a change of Senior Recognized Lender ownership has been given to Landlord pursuant to Section 7.2.1 above. Such notices, demands and requests shall be given in the manner described in Section 19 below and shall in all respects be governed by the provisions of that Section.

7.7 Procedure on Default.

7.7.1. If Landlord has delivered to a Senior Recognized Lender a Default Notice, and a Senior Recognized Lender shall have proceeded in the manner provided for by Section 7.6.1 above, the specified date for the termination of this Lease as fixed by Landlord in its Default Notice shall be extended for a period of six (6) months, provided that such Senior Recognized Lender shall during such six (6) month period:

(a) Pay or cause to be paid the Base Rent, additional rent, if any, and other monetary obligations of Tenant under this Lease as the same become due, and continue to perform all of Tenant's other obligations under this Lease, excepting (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Property junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender, and (b) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Senior Recognized Lender (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure); and

(b) If not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Senior Leasehold Mortgage or other appropriate means and prosecute the same to completion with reasonable diligence and continuity. If such Senior Recognized Lender is enjoined or stayed from taking such

steps, the Leasehold Mortgagee shall use its best efforts to seek relief from such injunction or stay.

7.7.2. If at the end of such six (6) month period such Senior Recognized Lender is complying with Section 7.7.1 above, this Lease shall not then terminate, and the time for completion by such Senior Recognized Lender of such proceedings shall continue so long as such Leasehold Mortgagee continues to comply with the provisions of Section 7.7.1 above and, thereafter for so long as such Senior Recognized Lender proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Senior Leasehold Mortgage or by other appropriate means with reasonable diligence and continuity. Nothing in this Section 7.7, however, shall be construed to extend this Lease beyond the original term, nor to require a Senior Recognized Lender to continue such foreclosure proceedings after the default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosing proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

7.7.3. If a Senior Recognized Lender is complying with Section 7.7.1 above, upon (i) the acquisition of Tenant's leasehold herein by such Senior Recognized Lender or any other purchaser at a foreclosure sale or otherwise and (ii) the discharge of any lien, charge or encumbrance against the Tenant's interest in this Lease or the Property which is junior in priority to the lien of the Senior Recognized Lender held by such Senior Recognized Lender and which the Tenant is obligated to satisfy and discharge by reason of the terms of this Lease, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease, provided, however, that such Senior Recognized Lender or its designee or any other such party acquiring the Tenant's leasehold estate created hereby shall agree in writing to assume all obligations of the Tenant hereunder, subject to the provisions of this Section 7.

7.7.4. For the purposes of this Section 7, the making of a Security Instrument shall not be deemed to constitute a complete assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Lender, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created. The Lender, prior to foreclosure of the Security Instrument or other entry into possession of the leasehold estate, shall not be obligated to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder. The purchaser (including any Lender) at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Security Instrument, or the assignee or transferee in lieu of the foreclosure of any Security Instrument shall be deemed to be an assignee or transferee within the meaning of this Section 7, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment; provided, however:

(a) that (i) following any damage or destruction but prior to restoration of the Improvements (if so elected by Tenant to be performed as set forth in Section 11.1.1), Senior Recognized Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to restore the Improvements beyond the extent necessary to

preserve or protect the Improvements or construction already made, unless such Senior Recognized Lender assumes Tenant's obligations to Landlord by written agreement reasonably satisfactory to Landlord, to restore in the manner provided in this Lease, the Improvements or the part thereof to which the lien or title of such Senior Recognized Lender relates, and submitted evidence reasonably satisfactory to Landlord that it has the qualifications and financial responsibility necessary to perform such obligation, or, if determined not to be qualified, engages a qualified party to perform such obligation.

7.7.5. If a Recognized Leasehold Mortgagee, whether by foreclosure, assignment and/or deed in lieu of foreclosure, or otherwise, acquires Tenant's entire interest in the Property and all improvements thereon (or in the case of a Recognized Mezzanine Lender, acquires a controlling ownership interest in Tenant), the Recognized Lender shall have the right, without further consent of Landlord, to sell, assign or transfer Tenant's entire interest in the Property and all improvements thereon, and if such Recognized Lender is a Recognized Mezzanine Lender, the interests of any partner (or member) of Tenant, as applicable, to a Permitted Transferee and, otherwise, to a purchaser, assignee or transferee with the consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, and upon such sale, assignment or transfer such Recognized Lender or Recognized Mezzanine Lender shall be fully and completely released from its obligations under this Lease; provided that such purchaser, assignee or transferee has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease to be performed hereunder from and after the date of such purchase and assignment and the purchaser, assignee or transferee is a Permitted Transferee or has previously been approved in writing by Landlord, which approval shall not be unreasonably withheld. A transfer that is made in compliance with the terms of this Section 7.7 shall be deemed to be a permitted sale, transfer or assignment.

7.7.6. Tenant shall not transfer, sell or assign any redemption rights from any foreclosure sale to any person who is not a Permitted Transferee or otherwise approved by Landlord in accordance with the provisions of Section 13 below.

7.8 **New Lease.** The provisions of this Section 7.8 shall apply in the event of the termination of this Lease by reason of a default on the part of Tenant or the rejection of this Lease by Tenant in bankruptcy. If the Senior Recognized Lenders shall have waived in writing their rights under Sections 7.6 and 7.7 above within thirty (30) days after the Senior Recognized Lenders' receipt of notice required by Section 7.6.1 above, if the Senior Recognized Lenders are deemed to have waived their rights to proceed under Section 7.7 by their failure to proceed in the manner provided for by Section 7.6.1, Landlord shall provide each Senior Recognized Lenders with written notice that this Lease has been terminated ("**Notice of Termination**"), together with a statement of all sums which would at that time be due under this Lease for such termination, and of all other defaults, if any, then known to Landlord. Landlord agrees to enter into a new lease ("**New Lease**") of the Property with the Senior Recognized Lenders for the remainder of the term of this Lease, effective as of the date of termination of this Lease, at the Base Rent and additional rent, if any, and upon the terms, covenants and conditions (including all escalations of Base Rent, but excluding requirements which are not applicable or which have already been fulfilled) of this Lease, provided:

7.8.1. Such Recognized Lender shall make written request upon Landlord for such New Lease within sixty (60) days after the date such Recognized Lender receives Landlord's Notice of Termination of this Lease given pursuant to this Section 7.8.

7.8.2. Such Recognized Lender shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from Tenant or other party in interest under Tenant. Upon execution of such New Lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under this Section 7.8 or under the New Lease, an amount equal to the net income derived by Landlord from the Property during the period from the date of termination of this Lease to the date of the beginning of the lease term of such New Lease. In the event of a controversy as to the amount to be paid to Landlord pursuant to this Section 7.8, the payment of obligation shall be satisfied if Landlord shall be paid the amount not in controversy, and the Recognized Lender or its designee shall agree to pay any additional sum ultimately determined to be payable pursuant to arbitration as provided in Section 14 below, plus interest as allowed by law, and such obligation shall be adequately secured.

7.8.3. Such Recognized Lender or its designee shall agree to remedy any of Tenant's defaults of which said Recognized Lender was notified by Landlord's Notice of Termination and which, as determined by Landlord, are reasonably susceptible of being so cured by Recognized Lender or its designee (provided that the lack of funds, or the failure or the refusal to spend funds, shall not be an excuse for a failure to cure).

7.8.4. If a Senior Recognized Lender has made an election pursuant to the foregoing provisions of this Section to enter into a new lease, Landlord shall not execute, amend or terminate any Subleases of the Property during such sixty (60) day period without the prior written consent of the Senior Recognized Lender which has made such election.

7.8.5. Any such New Lease may, at the option of the Senior Recognized Lender so electing to enter into such New Lease, name as tenant a nominee or wholly owned subsidiary of such Senior Recognized Lender, or, in the case where the Senior Recognized Lender so electing to enter into such new lease is acting as agent for a syndication of lenders, an entity which is controlled by one or more of such lenders. If as a result of any such termination Landlord shall succeed to the interests of Tenant under any Sublease or other rights of Tenant with respect to the Property or any portion thereof, Landlord shall execute and deliver an assignment without representation, warranty or recourse of all such interests to the tenant under the new lease simultaneously with the delivery of such new lease.

7.8.6. The provisions of this Section 7.8 shall survive the termination of this Lease.

7.8.7. In the event that both the Senior Recognized Leasehold Mortgagee and the Senior Mezzanine Lender give such notice, the rights of the Senior Recognized Leasehold Mortgagee under this Section 7.8 shall prevail.

7.9 New Lease Priorities. If both the Senior Recognized Leasehold Mortgagee and the Senior Mezzanine Lender shall request a New Lease pursuant to Section 7.8 above, Landlord shall enter into such New Lease with the Senior Recognized Leasehold Mortgagee, or with the designee of such Leasehold Mortgagee. Landlord, without liability to Tenant or any Recognized Lender with an adverse claim, may rely upon a mortgagee's title insurance policy or preliminary commitment therefore, issued by a responsible title insurance company doing business within the State of California, as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

7.10 Lender Need Not Cure Specified Default. Nothing herein contained shall require any Recognized Lender or their designee as a condition to its exercise of right hereunder to cure any default of Tenant not reasonably susceptible of being cured by such Recognized Lender or its designee (provided that the lack of funds, or the failure or the refusal to spend funds, shall not be an excuse for a failure to cure), including but not limited to the default referred to in Section 15 below, in order to comply with the provisions of Sections 7.6 or 7.7 above, or as a condition of entering into a New Lease provided for by Section 7.8 above. No exercise of any of the rights by a Lender permitted to it under this Lease, its Security Instrument or otherwise, shall ever be deemed an assumption of and agreement to perform the obligations of Tenant under this Lease, unless and until (i) such Lender takes possession of the Property or any portion thereof, or, by foreclosure or otherwise, acquires Tenant's interest in the Property (or, in the case of a Mezzanine Lender, acquires a controlling interest in Tenant), and then, except as otherwise specifically provided herein, only with respect to those obligations arising during the period of such possession or the holding of such interest by such Lender; or (ii) such Lender, or any wholly-owned subsidiary to whom it may transfer Tenant's interest in the Property, expressly elects by notice to Landlord to assume and perform such obligations.

7.11 Eminent Domain. Tenant's share, as provided by Section 11 of this Lease, of the proceeds arising from an exercise of the power of Eminent Domain shall, subject to the provisions of Section 11 below, be disposed of as provided for by any Leasehold Mortgage.

7.12 Casualty Loss. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all property insurance policies required to be carried by Tenant hereunder on condition that the insurance proceeds are to be applied in the manner specified in the Leasehold Mortgage.

7.13 Arbitration/Legal Proceedings. Landlord shall give each Recognized Lender prompt notice of the commencement of any arbitration or legal proceedings between Landlord and Tenant involving obligations under this Lease. Each Recognized Lender shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do consent to such intervention. In the event any Recognized Lender shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Recognized Lender notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Recognized Lender s not intervening after receipt of notice of arbitration. In the

event Tenant shall fail to appoint an arbitrator after notice from Landlord, as provided in Section 14 below, a Recognized Lender (in order of seniority if there be more than one) shall have an additional period of thirty (30) days after notice by Landlord that Tenant has failed to appoint such arbitrator to make such appointment, and the arbitrator so appointed shall thereupon be recognized in all respects as if the arbitrator had been appointed by Tenant. In addition to the notice requirements in Section 7.2.5, in the event a Recognized Lender commences any judicial or non-judicial action to foreclose its Leasehold Mortgage or otherwise realize upon its security granted therein, written notice of such proceedings shall be provided to Landlord at the same time notice thereof is given Tenant.

7.14 No Merger. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgages shall otherwise expressly consent in writing, the fee title to the Property and the leasehold estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord or by Tenant or by a third party, by purchase or otherwise. The foregoing shall not apply in the event of termination of this Lease after default by Tenant, provided that no Recognized Lender shall have requested and been granted a New Lease pursuant to the provisions of Section 7.8 above.

7.15 Estoppel Certificate. Landlord and Tenant shall, at any time and from time to time hereafter, but not more frequently than twice in any one year period (or more frequently if such request is made in connection with any sale by Landlord of its fee interest or sale or mortgage by Tenant of Tenant's leasehold interest or permitted subletting by Tenant under this Lease) execute, acknowledge and deliver to Tenant (or at Tenant's request, to any prospective Lender, or other prospective transferee of Tenant's interest under this Lease) or to Landlord (or at Landlord's request, to any prospective transferee of Landlord's fee interest), as the case may be, within thirty (30) business days after a request, a certificate substantially in the form of Exhibit E stating to the best of such person's knowledge after a commercially reasonable inquiry (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Base Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of the certifying person, there are then existing any material defaults under this Lease (and if so, specifying the same) and (d) any other matter actually known to the certifying person, directly related to this Lease and reasonably requested by the requesting Party or customarily included in estoppel certificates for the transaction in question. In addition, if requested, at the request of the requesting person, the certifying person shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by the certifying person that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by the requesting person or a prospective Mortgagee, or other prospective transferee of such interest under this Lease.

7.16 Notices. Notices from Landlord to each Recognized Lender shall be mailed to the address furnished Landlord pursuant to Section 7.2 above and, those from each Recognized Lender to Landlord shall be mailed to the address designated pursuant to the provisions of

Section 19 below. Such notices, demands and requests shall be given in the manner described in Section 19 below, and shall in all respects be governed by the provisions of that section.

7.17 Erroneous Payments. No payment made to Landlord by a Recognized Lender shall constitute agreement that such payment was, in fact, due under the terms of this Lease, and a Recognized Lender having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided the Recognized Lender shall have made demand therefore not later than one year after the date of its payment.

7.18 Amendment of Lease. Landlord shall promptly make such reasonable amendments or modifications of this Lease as are requested by Tenant on behalf of any Lender or prospective Lender, and will execute and deliver instruments in recordable form evidencing the same, provided that there will be no change in the Term of this Lease or any material and adverse change in any of the substantive obligations, rights or remedies of Landlord.

7.19 Certain Tenant Rights. The right, if any, of the Tenant to treat the Lease as terminated in the event of the Landlord's bankruptcy under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code or any successor statute, and the right of the Tenant to modify, restate, terminate, surrender or cancel the Lease may not be exercised by the Tenant without the express prior written consent of the Senior Recognized Lenders; and, any exercise of the forgoing rights of the Tenant without the prior consent of the Senior Recognized Lenders may be voided at the option of a Senior Recognized Lender. Nothing in the preceding sentence shall create, or imply the existence of, any right of Tenant to treat the Ground Lease as terminated in the event of the Landlord's bankruptcy; any such rights are limited to those provided under the terms of the Ground Lease and applicable law.

7.20 Limitation on Liability. Notwithstanding anything to the contrary in the Lease no Recognized Lender or its assigns shall have any liability under the Lease beyond its interest in the Lease and the sub-rents, other income and all proceeds actually received by Recognized Lender or, if not actually received, income and proceeds held in trust to which Recognized Lender is otherwise entitled to receive, including, but not limited to Recognized Lender's interest in insurance proceeds and awards, arising from or in connection with the Property, even if it becomes Tenant.

7.21 No Subordination of Fee Interest or Rent. Under no circumstance whatsoever, shall Tenant place or suffer to be placed any lien or encumbrance on Landlord's fee interest in the Property in connection with any financing permitted hereunder, or otherwise. Landlord shall not subordinate its interest in the Property, nor its right to receive Rent, to any Leasehold Mortgagee.

8. TENANT'S INDEMNITY; LIABILITY AND CASUALTY INSURANCE

8.1 Indemnity.

8.1.1. Tenant shall indemnify, defend and save harmless Landlord from any and all liability, damage, expense, cause of action, suits, claims or judgments by an reason whatsoever caused, arising out of the use, occupation, and control of the Property by

Tenant, its subtenants, invitees, agents, employees, licensees or permittees except as may arise solely out of the willful or grossly negligent act of Landlord or Landlord's agents or employees. Landlord and Tenant agree that this provision shall not require Tenant to indemnify, defend and save Landlord harmless from Landlord's sole or concurrent negligence, if any.

8.1.2. All provisions of this Lease pursuant to which Tenant (the "**Indemnitor**") agrees to indemnify Landlord (the "**Indemnitee**") against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Property, (i) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents or employees, and (ii) to the extent caused by or resulting from the concurrent negligence of (a) the Indemnitee or the Indemnitee's agents or employees, and (b) the Indemnitor or the Indemnitor's agents or employees, shall apply only to the extent of the Indemnitor's negligence; PROVIDED, HOWEVER, the limitations on indemnity set forth in this Section 8.1.2 shall automatically and without further act by either Landlord or Tenant be deemed amended so as to remove any of the restrictions contained in this Section 8.1.2 no longer required by then applicable law. The indemnifications provided in this Article 8 shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employees' benefit acts.

8.1.3. Unless otherwise expressly provided in this Lease to the contrary, Landlord shall have no responsibility, control or liability with respect to any aspect of the Property or any activity conducted thereon from and after the Commencement Date during the Lease Term. Notwithstanding anything to the contrary in this Lease, to the greatest extent permitted by law, and except to the extent caused by Landlord's negligence or willful misconduct, Landlord shall not be liable for any injury, loss or damage suffered by Tenant or to any person or property occurring or incurred in or about the Property from any cause. Without limiting the foregoing, neither Landlord nor any of its partners, officers, trustees, affiliates, directors, employees, contractors, agents or representatives (collectively, "**Affiliates**") shall be liable for and there shall be no abatement of Base Rent for (i) any damage to Tenant's property, (ii) loss of or damage to any property by theft or any other wrongful or illegal act, or (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Property or from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Property or from any other cause whatsoever, (iv) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Property, or (v) any latent or other defect in the Property. This Section 8 shall survive the expiration or earlier termination of this Lease.

8.2 **Acquisition of Insurance Policies.** Tenant shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the

insurance described in this Section 8 (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of California satisfactory to Landlord reasonably covering and protecting Tenant. Such insurance may be provided by blanket policies covering multiple properties.

8.3 Types of Required Insurance. Subject to the requirements of any Lender, Tenant shall procure and maintain the following:

8.3.1. Commercial General Liability Insurance. Commercial liability insurance including contractual liability covering claims with respect to injuries or damages to persons or property sustained in, or about the Property and the Improvements, and the appurtenances thereto, including the sidewalks and alleyways adjacent thereto, with limits of liability (which limits shall be adjusted as provided in Section 22.8(a) below) no less than the following:

Bodily Injury and Property Damage Liability – Five Million Dollars (\$5,000,000) each occurrence; Five Million Dollars (\$5,000,000) Aggregate

Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section 8 for the Property and Improvements.

8.3.2. Physical Property Damage Insurance. Physical damage insurance covering all real and personal property located on or in, or constituting a part of, the Property (including but not limited to the Improvements) in an amount equal to at least one hundred percent (100%) of replacement value of all such property. Such insurance shall afford coverage for damages resulting from (i) fire, (ii) perils covered by extended coverage insurance as embraced in the Standard Bureau form used in the State of California, (iii) explosion of steam and pressure boilers and similar apparatus located in the Improvements, and (iv) flood damage if the Property is located within a flood plain. Tenant shall not be required to maintain insurance for war risks; provided, however, if Tenant shall obtain any such coverage, then, for as long as such insurance is maintained by Tenant, Landlord shall be entitled to the benefits of: (i) the first sentence of Section 8.4 below; and (ii) Section 8.4.4 below.

8.3.3. Builder's Risk Insurance. Builder's all-risk insurance in an amount not less than the hard costs of construction during construction of the Improvements and during any subsequent restorations, alterations or changes in the Improvements that may be made by Tenant at a hard cost in excess of One Million Dollars (\$1,000,000) per job (adjusted every Tenth Anniversary Date during the Term as provided in Section 22.8(a) below). The insurance coverage required under this Section 8.3.3 shall name any and all Leasehold Mortgagee(s) as loss payees.

8.3.4. Workmen's Compensation Insurance. Workmen's Compensation and Employer's Liability Insurance with respect to any work by employees of Tenant on or about the Property.

8.3.5. Business Interruption Insurance. Business interruption insurance or rental loss insurance as required by any lender to Tenant.

8.3.6. Mutual Waivers of Recovery. Landlord, Tenant, and all parties claiming under them, each mutually release and discharge each other from responsibility for that portion of any loss or damage paid or reimbursed by an insurer of Landlord or Tenant under any fire, extended coverage or other property insurance policy maintained by Tenant with respect to its Improvements or Property or by Landlord with respect to the Property (or which would have been paid had the insurance required to be maintained hereunder been in full force and effect), no matter how caused, including negligence, and each waives any right of recovery from the other including, but not limited to, claims for contribution or indemnity, which might otherwise exist on account thereof. Any fire, extended coverage or property insurance policy maintained by Tenant with respect to the Improvements or Property, or Landlord with respect to the Land, shall contain, in the case of Tenant's policies, a waiver of subrogation provision or endorsement in favor of Landlord, and in the case of Landlord's policies, a waiver of subrogation provision or endorsement in favor of Tenant, or, in the event that such insurers cannot or shall not include or attach such waiver of subrogation provision or endorsement, Tenant and Landlord shall obtain the approval and consent of their respective insurers, in writing, to the terms of this Lease. Tenant agrees to indemnify, protect, defend and hold harmless each and all of the Landlord from and against any claim, suit or cause of action asserted or brought by Tenant's insurers for, on behalf of, or in the name of Tenant, including, but not limited to, claims for contribution, indemnity or subrogation, brought in contravention of this paragraph. The mutual releases, discharges and waivers contained in this provision shall apply EVEN IF THE LOSS OR DAMAGE TO WHICH THIS PROVISION APPLIES IS CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF LANDLORD OR TENANT.

8.4 Terms of Insurance. The policies required under Section 8.3.1 above, shall name Landlord as additional insured and Tenant shall provide promptly to Landlord certificates of insurance with respect to such policies. Further, all policies of insurance described in Section 8.3.1 above, shall:

8.4.1. Be written as primary policies not contributing with and not in excess of coverage that Landlord may carry;

8.4.2. Contain an endorsement providing that such insurance may not be materially changed, amended or cancelled with respect to Landlord except after thirty (30) days prior written notice from Tenant to Landlord or, in the event of non-payment, after ten days (10) prior written notice from Tenant to Landlord;

8.4.3. Contain an endorsement containing express waiver of any right of subrogation by the insurance company against Landlord, its agents and employees;

8.4.4. Provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Tenant which might otherwise result in a forfeiture of said insurance; and

8.4.5. Provide that Landlord shall not be required to give notice of accidents or claims and that Landlord shall have no liability for premiums.

8.5 Landlord's Acquisition of Insurance. If Tenant at any time during the Term fails to procure or maintain such insurance or to pay the premiums therefore, after ten (10) days prior notice to Tenant and a reasonable opportunity to cure, Landlord shall have the right to procure such insurance (but shall be under no obligation to do so) and to pay any and all premiums thereon, and Tenant shall pay to Landlord upon demand the full amount so paid and expended by Landlord, together with interest thereon at the rate provided in Section 22.7 below, from the date of such expenditure by Landlord until repayment thereof by Tenant. Any policies of insurance obtained by Landlord covering physical damage to the Property or Improvements shall contain a waiver of subrogation against Tenant if and to the extent such waiver is obtainable and if Tenant pays to Landlord on demand the additional costs, if any, incurred in obtaining such waiver. Any insurance or self-insurance procured or maintained by Landlord shall be excess coverage, non-contributory and for the benefit of the Landlord only.

8.6 Proceeds. All proceeds of Tenant's insurance shall, except as provided otherwise in Section 8.7 below, be applied in accordance with the provision of Section 11 below.

8.7 Application of Proceeds of Physical Damage Insurance. With respect to any insurance policies as described in Section 8.3.2 (Physical Property Damage Insurance) above, the application of insurance proceeds from damage or loss to property shall be determined in accordance with Section 11 below and, subject to the rights of Leasehold Mortgagees pursuant to Leasehold Mortgages, in the event of any repair, replacement, restoration or rebuilding, be applied to the cost of such work.

9. REPAIRS

9.1 Acceptance of Property. TENANT ACCEPTS THE PROPERTY AND ANY IMPROVEMENTS THEREON AS IS WHERE IS IN THE CONDITION THEY ARE IN ON THE DATE THIS LEASE IS EXECUTED WITHOUT THE OBLIGATION OF LANDLORD TO MAKE ANY REPAIRS, ADDITIONS OR IMPROVEMENTS THERETO.

9.2 Landlord's Repairs. Landlord shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Property, or any part thereof, during the Term of this Lease or any extension thereof.

9.3 Tenant's Repairs and Operation. At all times during the Term of this Lease or any extension thereof, Tenant shall neither commit nor suffer any waste to the Property and shall, at its sole cost and expense, keep and maintain the Property in good order and repair and safe condition. Tenant shall make any and all additions to or alternations or repairs in and about the Property which may be required by, and shall otherwise observe and comply with, all public laws, ordinances and regulations which from time to time are applicable to the Property and/or the Improvements. All business operations conducted upon the Property shall comply with all applicable laws, statutes and ordinances.

9.4 Condition at End of Lease. Upon vacating the Property on the end of the Term, Tenant shall leave the Property and all Improvements in the state of repair and cleanliness

required to be maintained by Tenant during the Term of this Lease and shall peaceably surrender the same to Landlord.

10. QUIET POSSESSION

Landlord covenants that it is has full right, power and authority to make this Lease. Landlord covenants that Tenant, so long as Tenant is not in default hereunder and subject to the provisions of this Lease, shall have quiet and peaceful possession of the Property during the entire Term of this Lease.

11. DAMAGE OR DESTRUCTION

11.1 Effect of Damage or Destruction.

11.1.1. In the event of any material damage to or destruction of the Property or any improvements thereon (i.e. the cost of repairing or replacing the same equals or exceeds thirty percent (30%) of the replacement value of Tenant's Estate immediately preceding such damage or destruction) from any causes whatever, Tenant shall promptly give written notice thereof to Landlord. At its sole cost and expense, regardless of the availability of insurance proceeds, but subject to unavoidable delays and any permitting requirements of governmental authorities, promptly take such action as is reasonably necessary to assure that neither the damaged Property or the damaged Improvements, nor any part thereof, nor any debris or rubble resulting therefrom (i) impairs or impedes public access through and across the public streets and sidewalks adjacent to the Property, or (ii) constitutes a nuisance or otherwise presents a health or safety hazard. Tenant may, its sole discretion, repair or restore the Property or improvements as nearly as possible to its condition immediately prior to such damage or destruction or construct on the Property such other improvements as may be allowed by law. All such repair and restoration shall be performed in accordance with the requirements of Section 6 above. Unless this Lease is so terminated by mutual agreement, there shall be no abatement or reduction in Base Rent during such repair and restoration. Any insurance proceeds from Tenant's insurance payable by reason of such damage or destruction shall, subject to the rights of any Leasehold Mortgagee under any Leasehold Mortgage, be made available to pay the cost of such reconstruction. Insurance proceeds in excess of the cost of such reconstruction shall be paid to Tenant.

11.1.2. In the event i) such damage or destruction occurs within the last ten (10) years of the term of this Lease, ii) such damage or destruction cannot be substantially repaired within eighteen (18) months, or iii) the Improvements been damaged or destroyed by a casualty that was not required to be (and in fact was not) insured against by Tenant and the cost of repair and restoration exceeds five percent (5%) of the replacement value of Tenant's Estate immediately preceding such damage or destruction, Tenant may elect by written notice to Landlord, within ninety (90) days after the date of such damage or destruction, to terminate this Lease. In the event Tenant elects to terminate this Lease, the Term of this Lease shall terminate one hundred twenty (120) days after the date of such damage or destruction.

11.2 Insurance Proceeds. Any insurance proceeds from Tenant’s insurance payable shall, subject to the rights of any Leasehold Mortgagee under any Leasehold Mortgage, be allocated to Tenant, subject to Landlord’s claim against Tenant’s share of such proceeds from Tenant’s insurance in an amount equal to sums due from Tenant hereunder. In the event Tenant elects to restore the Property, any insurance proceeds from Tenant’s insurance payable by reason of such damage or destruction shall, subject to the rights of any Leasehold Mortgagee under any Leasehold Mortgage, be made available to Tenant to pay the costs of such reconstruction and any funds remaining shall be allocated to Tenant.

11.3 Clearing of Property. If any improvements are damaged or destroyed and Tenant has the right pursuant to Section 11.1 to terminate this Lease, then Tenant shall comply with Section 11.1.2 and shall surrender the Property to Landlord in accordance with the terms and provisions of Section 9.4.

12. CONDEMNATION

12.1 Definitions.

As used in this Article, the following words have the following meanings:

“**Award**” means the compensation paid for the Taking, as hereinafter defined, whether by judgment, agreement or otherwise.

“**Taking**” means the taking or damaging of the Property or the Improvements or any portion thereof as the result of the exercise of the power of eminent domain, or for any public or quasi-public use under any statute. Taking also includes a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation, in avoidance of an exercise of eminent domain, or while condemnation proceedings are pending.

“**Taking Date**”: means the date on which the condemning authority takes actual physical possession of the Property, the Improvements or any portion thereof, as the case may be.

“**Total Taking**”: means the taking of the title to all of the Property and the Tenant’s Estate.

“**Substantial Taking**” means the Taking of the fee title to a portion of the Property or title to Tenant’s Estate, or both, if one or more of the following conditions result:

(i) the portion of the Property and/or Tenant’s Estate not so taken cannot be repaired or reconstructed, as to constitute a rental residential development capable of producing net operating income generally proportionate to that which was produced by the Project immediately preceding the Taking;

(ii) such Taking, in the reasonable judgment of Tenant, prevents or impedes Tenant in the conduct of its business on the Property, in an economically viable manner; and

(iii) the cost of repairing or replacing the improvements exceeds fifty percent (50%) of the fair market value of Tenant's Estate immediately preceding such Taking.

"Partial Taking" means any Taking of title that is not either a Total or a Substantial Taking.

"Notice of Intended Taking" means any notice or notification on which a prudent person would rely as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes but is not limited to the service of a condemnation summons and complaint on a party to this Lease.

12.2 Total or Substantial Taking of Property. In the event of a Total Taking, except for a Taking for temporary use, Tenant's obligation to pay rent shall terminate on, and Tenant's interest in the Property and the Improvements shall terminate on, the Taking Date. In the event of a Taking, except for a Taking for temporary use, which Tenant considers to be a Substantial Taking, Tenant may, provided that all Leasehold Mortgagee(s) consent in writing thereto, deliver written notice to Landlord within sixty (60) days after Tenant receives Notice of Intended Taking, notifying Landlord of the Substantial Taking. If Tenant does not so notify Landlord, or any of Tenant's Leasehold Mortgagees refuse to consent thereto, the Taking shall be deemed a Partial Taking. If Landlord does not dispute Tenant's contention that there has been a Substantial Taking within ten (10) days of Landlord's receipt of Tenant's written notice, or if it is determined, by order of the judicial referee, that there has been a Substantial Taking, then the Taking shall be considered a Substantial Taking, and Tenant shall be entitled to terminate this Lease effective as of the Taking Date if (i) Tenant delivers possession of the Property and Improvements to Landlord within sixty (60) days after the Taking Date, (ii) Tenant complies with all Lease provisions concerning apportionment of the Award and (iii) Tenant has complied with all Lease provisions concerning surrender of the Property, including, without limitation, all applicable provisions concerning removal of improvements. If these conditions are not met, the Taking shall be treated as a Partial Taking.

12.3 Apportionment And Distribution of Total Taking and Substantial Taking. In the event of a Total Taking or Substantial Taking, Landlord and Tenant shall each formulate its own claim for an Award with respect to its respective interests, but will cooperate with the other party, to the extent possible, in an attempt to maximize the Award to be received by each, and Awards shall be distributed to Tenant (subject to the rights of any applicable Leasehold Mortgagee under its Leasehold Mortgage) to the extent that such Award is attributable to the Leasehold Interest, and to Landlord to the extent that such Award is attributable to Landlord's right, title, and interest in and to (a) the present value of its fee estate in the Property, subject to this Lease; (b) the present value of its reversionary interest in the Improvements, if any, and (c) the present value of all Base Rent due Landlord hereunder.

12.4 Partial Taking; Abatement and Restoration. If there is a Partial Taking of the Property, except for a Taking for temporary use, the following shall apply. This Lease shall remain in full force and effect on the portion of the Property and Improvements not Taken, except that, notwithstanding anything in this Lease which is or appears to be to the contrary, the Base Rent due under this Lease shall be reduced in the same ratio that the market value of the Tenant's Estate as improved immediately prior to the Taking is reduced by the Taking. The reduction in market value of the Tenant's Estate shall take into account and shall be determined subject to any permitted subleases then in effect, and shall be determined upon completion of any repairs, modifications, or alterations to the Improvements on the Property to be made hereunder following the Partial Taking. Within a reasonable time period after a Partial Taking, at Tenant's expense and in the manner specified in the provisions of this Lease relating to construction, maintenance, repairs, and alterations, Tenant shall reconstruct, repair, alter, or modify the Improvements on the Property so as to make them an operable whole to the extent allowed by governmental laws and restrictions. If Tenant does not repair, alter, modify, or reconstruct as required above, such failure shall, following written notice thereof to Tenant, constitute a Default by Tenant under this Lease and the portion of the Tenant's Award necessary for the repair, modification or reconstruction shall be promptly made available to Landlord to conduct such work.

12.5 Apportionment and Distribution of Award for Partial Taking. On a Partial Taking, all sums, including damages and interest, awarded for the fee title or the leasehold or both, shall be distributed first, as necessary to cover the cost of restoring the Improvements on the Property to a complete architectural unit of a quality equal to or greater than such Improvements before the Taking (to the extent allowed by governmental laws and restrictions), and, thereafter, for apportionment between Landlord and Tenant based upon the formula set forth in Section 12.3.

12.6 Taking for Temporary Use. If there is a Taking of the Property for temporary use for a period equal to or less than six (6) months, this Lease shall continue in full force and effect, Tenant shall continue to comply with Tenant's obligations under this Lease not rendered physically impossible by such Taking, neither the Term nor the Base Rent shall be reduced or affected in any way, but the Base Rent shall continue at the level of the last Base Rent paid prior to the Taking (including any subsequent increases in such Base Rent provided for under this Lease), and Tenant shall be entitled to any Award for the use or estate taken. If any such Taking is for a period extending beyond such six (6) month period, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings, as appropriate.

12.7 Notice of Taking; Representation.

12.7.1. The party receiving any notice of the kinds specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- (a) Notice of an intended Taking;
- (b) Service of any legal process relating to condemnation of the Property or the Improvements;

(c) Notice in connection with any proceedings or negotiations with respect to such a condemnation; or

(d) Notice of intent or willingness to make or negotiate a private purchase, sale, or transfer in lieu of condemnation.

12.7.2. The party receiving any notice Landlord, Tenant and all persons and entities holding under Tenant each shall have the right to represent their respective interest in each proceeding or negotiation with respect to a Taking and to make full proof of such parties' claims. No agreement, settlement, sale, or transfer to or with the condemning authority shall be made without the consent of Landlord, Tenant and the Senior Recognized Leasehold Mortgagee, if any. Landlord and Tenant each agree to execute and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.

12.8 Disputes in Division of Award. If the respective portions of any Award to be received by Landlord, Tenant and any Leasehold Mortgagee are not fixed in the proceedings for such Taking, and if Landlord, Tenant and any Leasehold Mortgagee do not agree in writing on such respective portions within thirty (30) days after the date of the final determination of the amount of such Award, the amounts of such respective portions shall be determined in the manner provided in Article 14 which determination shall be made consistent with and subject to the terms of this Lease. Upon the completion of such proceedings, such Award or Awards shall be paid to Landlord, Tenant and any Leasehold Mortgagee in accordance with the determination of the arbitrators and the order of distribution set forth in Section 12.3.

12.9 Separate Claims. Nothing contained in this Article 12 shall prevent either Landlord, Tenant or any Leasehold Mortgagee from filing or prosecuting separately their respective claims pursuant to this Article 12 for an Award or payment on account of the Takings to which this Article 12 applies, provided any such proceeding shall not reduce the amount of the Award provided to any other party pursuant to the terms of this Lease.

13. TRANSFER

13.1 No Transfer Without Landlord's Consent. Tenant shall not Transfer (as defined below) this Lease except to a Permitted Transferee, without the prior express written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, and no Transfer (whether voluntary or involuntary (except as otherwise set forth herein), by operation of law or otherwise (other than to a Permitted Transferee)) shall be valid or effective without such prior written consent. Any attempted Transfer in violation of this Lease shall be null and void. Should Landlord consent to a Transfer, (i) such consent shall not constitute a waiver of any of the restrictions or prohibitions of this Lease, including any then-existing default or breach, and such restrictions or prohibitions shall apply to each successive Transfer, and (ii) such Transfer shall relieve the transferring Tenant of its liability under this Lease and such transferring Tenant shall be released from performance of any of the terms, covenants and conditions of this Lease upon such Transfer, and thereafter the assignee Tenant shall be liable under this Lease. As used herein, "**Permitted Transferee**" means a person or entity with whom Landlord is not otherwise prevented by law from transacting business or entering into a contract,

which person or entity (i) possesses the experience and qualifications, including but not limited to residential and commercial project management experience (or a contractual agreement with a property management company possessing such experience and qualifications) necessary for the proper performance of Tenants obligations under this Lease following completion of the Project and (ii) possessing financial resources, including net worth typical of owners of similar projects.

13.2 Definition of Transfer. For purposes of this Lease, “**Transfer**” means (a) any sale, lease, sublease, assignment or other transfer by Tenant of all or any of its interest in or rights or obligations under this Lease or with respect to the Property, other than through (i) a transfer which this Lease expressly provides may be made without Landlord’s consent, (ii) Affiliate Transfers, (iii) Leasehold Mortgages and (iv) Subleases or (b) if Tenant is a corporation which is not publicly traded or a partnership, limited liability company or other entity, the issuance, transfer, assignment or hypothecation of any stock or interest in such corporation, partnership, limited liability company or other entity, directly or indirectly, to any individual or entity.

13.3 Affiliate Transfers. Notwithstanding the provisions of Sections 13.1 or 13.2, the following transactions shall not constitute a Transfer, shall not release Tenant from its obligations hereunder and shall not require the consent of Landlord:

13.3.1. the transfer of ownership of any ownership interests in Tenant to any Affiliate of Tenant or from one owner of ownership interests in Tenant to another owner of ownership interests in Tenant; or

13.3.2. the assignment of this Lease, the Tenant’s Estate or any Sublease of the Property to any Affiliate of Tenant or any Sublease to any apartment or retail tenant; or

13.3.3. the merger, consolidation, restructuring or sale of substantially all of the assets of Tenant or any Affiliate of Tenant, provided that the resulting entity has a net worth, calculated in accordance with GAAP, equal to or greater than the net worth of Tenant immediately prior to such transaction; or

13.3.4. the assignment to any trustee by way of a deed of trust in favor of any Leasehold Mortgagee, for the purpose of creating a Leasehold Mortgage, or to any such Leasehold Mortgagee or other purchaser in connection with a foreclosure of a Leasehold Mortgage; or

13.3.5. a transfer of ownership interests in Tenant or in constituent entities of Tenant for estate planning purposes (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor’s spouse, children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of the transferor, (iii) from such a trust or any trust that is an owner in a constituent entity of Tenant, to the settler or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this item, (iii) is the result of gift, devise, intestate succession or operation of law, (iv) in connection with a pledge by any partner, shareholder or member of a constituent entity of Tenant to a Mezzanine Lender as

security for a Mezzanine Loan or (v) in connection with a pledge by any partner, shareholder or member of a constituent entity of Tenant to an affiliate of such partner, shareholder or member; or

13.3.6. a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock or securities is/are traded publicly on a national stock exchange or is traded in the over-the-counter market and the price for which is regularly quoted in a recognized national quotation service; or

13.3.7. a mere change in the form, method or status of ownership (including, without limitation, the creation of single purpose entities) so long as the ultimate beneficial ownership interest of Tenant remains the same as that on the Commencement Date or as otherwise permitted in accordance with this Section 13.3 above; or

13.3.8. any transfer resulting from a Taking.

13.4 Conditions Precedent to Transfer. The following are conditions precedent to Tenant's right to Transfer this Lease:

13.4.1. Tenant shall give Landlord thirty (30) days prior written notice of the proposed Transfer with complete documentation as to (i) the identity of the proposed transferee; (ii) the proposed transferee's proposed use of the Property; (iii) the financial condition and history, business description and qualifications to operate the Improvements; and (iv) three (3) years audited financial statements with respect to the proposed transferee, including balance sheets and income statements (if, however, audited financial statements are not available, Tenant shall submit unaudited financial statements certified by the proposed transferee) and such other financial information as Landlord may reasonably request concerning the proposed transferee (the foregoing documentation regarding the financial condition of a proposed transferee may be satisfied by delivery of such regarding the proposed transferee's parent, constituent owners, advisors, etc. if such proposed transferee is a newly formed single purpose entity) (collectively, the "**Transfer Request**"). Within fifteen (15) days of the receipt of the Transfer Request, Landlord will notify Tenant in writing of the Landlord's consent or rejection of the proposed Transfer. If Landlord does not notify Tenant of its consent or rejection of the proposed Transfer within fifteen (15) days of the receipt of the Transfer Request, Tenant shall send a second notice, indicating that Landlord's failure to notify Tenant of its consent or rejection within ten (10) business days of such notice shall be deemed to be a consent of the Transfer Request and in the event Landlord does not deliver written notice of rejection within such ten (10) business days, Landlord shall be deemed to have consented to the proposed Transfer.

13.4.2. The proposed transferee (including, for the avoidance of doubt, a Permitted Transferee) shall assume all the covenants and conditions to be performed by Tenant pursuant to this Lease after the date of such Transfer by execution of an instrument in form and substance reasonably satisfactory to Landlord. Upon

consummation of any Transfer of Tenant's Estate, the transferee shall cause to be recorded in the Official Records an appropriate instrument reflecting such Transfer.

13.4.3. No uncured Default shall exist hereunder on the date of Transfer.

13.5 Tenant's Right to Sublease. This Lease was granted, in part, to allow Tenant to improve and develop the Property with the Improvements and to derive profit therefrom via the subleasing of residential and commercial space located therein. Therefore, Tenant may sublease leasable space located within the Improvements or on the Property during the Term of this Lease without the consent of Landlord, provided that the subleasing of such space is pursuant to written sublease agreements (each, a "**Sublease**") executed by Tenant and the subtenant thereunder (each, a "**Subtenant**") who will occupy such space.

13.6 Subleases. Each of the following shall apply to any and all Subleases for the Improvements:

13.6.1. Each Sublease shall contain a provision reasonably satisfactory to Landlord, requiring the subtenant to attorn to Landlord (if so required by Landlord) upon a Default by Tenant hereunder and notice to subtenant that Tenant has defaulted under this Lease and subtenant is instructed to make subtenant's rental payments to Landlord.

13.6.2. Each Sublease is expressly subordinate to the interests and rights of Landlord in the Property and under this Lease, and requires the subtenant to take no action in contravention of the terms of this Lease.

13.6.3. Each Sublease is of a duration less than the Term of this Lease.

13.6.4. Subject to the rights of any Recognized Lender, as additional security for the performance of Tenant's obligations hereunder, Tenant hereby grants to Landlord a security interest in and to all of Tenant's right to receive any rentals or other payments under such subleases and this Lease shall constitute a security agreement for such purposes under laws of the State of California. Tenant shall execute such financing statements as may be reasonably required to perfect such security interest.

13.6.5. Each sublease shall contain rules and regulations concerning prohibited uses of the subleased premises substantially in the form attached hereto as Exhibit H.

13.7 Assignment by Landlord. If Landlord sells or otherwise transfers the Property, or if Landlord assigns its interest in this Lease, such purchaser, transferee or assignee thereof shall be deemed to have assumed Landlord's obligations hereunder which arise on or after the date of sale or transfer, and Landlord shall thereupon be relieved of all liabilities hereunder accruing from and after the date of such transfer of assignment, but this Lease shall otherwise remain in full force and effect.

14. MEDIATION: ARBITRATION

14.1 Issues Subject to Arbitration; Mediation First. Any controversy which shall arise between Landlord and Tenant regarding the provisions hereof relating to the amount of

insurance to be maintained by Tenant, the allocation of any condemnation award, the degree of damage or destruction suffered by the Improvements, escalation of rents, amounts owed to Landlord under Section 7.8 hereof, or should Landlord assert that the Tenant is in default in the performance of any of the terms, covenants, and conditions of this Lease and that the Landlord intends to apply all or any portion of the Security Deposit to compensate Landlord for damages for Tenant's default, shall be subject to arbitration pursuant to this Section 14. Prior to commencing arbitration as provided below, the parties shall first engage in mediation through the rules and procedures of the American Arbitration Association in effect at the time mediation commences. The mediation shall take place in a county in Northern California (other than the County of San Francisco and Marin) in which neither Landlord or Tenant have their principal place of business (a "**Neutral County**"). The failure of a party to participate in mediation shall preclude such party from any recovery of any fees and expenses associated with the arbitration proceeding, regardless of such parties status as "prevailing" party.

14.2 Appointment of Arbitrators. Such arbitration shall be before one (1) disinterested qualified arbitrator if one can be agreed upon, otherwise before three (3) disinterested qualified arbitrators, one named by Landlord, one named by Tenant, and one by the two thus chosen; provided, that if said two arbitrators cannot agree upon a third arbitrator within fifteen (15) days, then said third arbitrator shall be appointed by the Presiding Judge of the Superior Court of the Neutral County upon motion of either Landlord or Tenant. The appointment of arbitrators shall be signified in writing by each party to the other. If Landlord or Tenant shall fail to so appoint an arbitrator for a period of twenty-five (25) days after written notice from the other party to make such appointment, then the arbitrator appointed by the party not in default hereunder shall appoint a second arbitrator and the two so appointed shall appoint a third arbitrator. A "disinterested arbitrator" shall be a person who shall not have direct or indirect financial or other interest in the decisions to be made by the arbitrator(s) and who shall not be an officer, director, employee, or agent of Landlord or Tenant. In the case of arbitrations relating to the determination of values of real property, a qualified arbitrator shall mean a real property appraiser who has a professional designation as an "MAI" or SREA," or a member of a similarly recognized professional organization with at least ten (10) years' experience with the type of real property at issue, in the area in which the Property is located. Otherwise, a qualified arbitrator shall mean a person generally familiar with the subject matter of the controversy.

14.3 Arbitration Procedure. The arbitrator or arbitrators shall determine the controversy in accordance with the laws of the State of California as applied to the facts found by arbitrator(s) and in accordance with the rules of the California Arbitration Act and the rules and procedures of the American Arbitration Association in effect at the time of commencement of the arbitration. The arbitrator or arbitrators shall make awards in strict conformity with such rules and shall have no power to depart from or change any of the provisions thereof. All arbitration proceedings hereunder shall be conducted in the Neutral County. The arbitrator or arbitrators, after being duly sworn to perform all duties with impartiality and fidelity shall proceed to determine the question or questions submitted. The decision of the arbitrator or arbitrators shall be rendered within thirty (30) days after appointment, and such decision shall be in writing and in duplicate, one counterpart thereof to be delivered to each of the parties hereto. The award of the arbitrator or arbitrators shall be binding, final and conclusive on the parties, and judgment on such award rendered may be entered in any court having jurisdiction thereof. Fees of the arbitrator or arbitrators and the expenses incident to the proceedings shall be borne equally

between Landlord and Tenant. Fees of the respective counsel engaged by the parties, and fees of expert witnesses or other witnesses called for the parties shall be paid by the respective party engaging such counsel or calling or engaging such witness. Except as specifically provided in this Section 14, no other dispute or controversy between Landlord or Tenant shall be determined by arbitration.

15. INSOLVENCY

If a receiver or trustee is appointed to take possession of all or substantially all of the assets of Tenant where possession is not restored to Tenant within one hundred twenty (120) days; or if any action is taken or suffered by Tenant pursuant to an insolvency, bankruptcy or reorganization act (unless such is dismissed within one hundred twenty (120) days); or if Tenant makes a general assignment for the benefit of its creditors; and if such assignment continues for a period of one hundred twenty (120) days, it shall, at Landlord's option, constitute a default by Tenant and Landlord shall be entitled to the remedies set forth in Section 16 below, which may be exercised by Landlord without prior notice or demand upon Tenant. Notwithstanding the foregoing, as long as there is a Recognized Lender, neither the bankruptcy nor the insolvency of Tenant shall operate or permit Landlord to terminate this Lease as long as all Base Rent and all other charges of whatsoever nature payable by Tenant continue to be paid in accordance with the terms of this Lease.

16. BREACH

16.1 Breach and Default by Tenant. In addition to Section 15, the occurrence of any of the following shall constitute a default (a "Default") under this Lease:

16.1.1. Failure to make any payments of Base Rent or other payments due under this Lease if the failure to pay is not cured within ten (10) business days after written notice of such default has been given by Landlord; or

16.1.2. Failure to perform any other provision of this Lease if the failure to perform is not cured within thirty (30) days after written notice of such failure has been given by Landlord. If the failure cannot reasonably be cured within such thirty (30) day period (provided that the lack of funds, or the failure or refusal to spend funds, shall not be an excuse for a failure to cure), then the Tenant shall not be in default under this Lease if it pays all Base Rent and all other items required to be paid under this Lease and commences to cure any such non-monetary default within such thirty (30) day period and diligently and in good faith continuously prosecutes the cure of such default to completion.

16.2 Notice of Breach or Default. Any notice which Landlord is required to give pursuant to Section 16.1 as a condition to the exercise by Landlord of any right to terminate this Lease shall be in addition to, and not in lieu of, any notice required under applicable law.

16.3 Landlord's Remedies. In the event of a Tenant Default, subject to the rights of any Recognized Lender under Article 7, Landlord shall have cumulatively, or in the alternative, all rights and remedies provided by law or equity and, in addition, all of the following contractual remedies, provided that Tenant's liability hereunder shall be limited to actual

damages sustained by Landlord as a result of the Tenant Default and shall not in any event include any consequential, indirect or punitive damages:

16.3.1. Termination. Landlord may, at its election, terminate this Lease by giving Tenant written notice of termination. On the giving of such notice: (a) all of Tenant's rights under this Lease, and in the Property, the Tenant Estate and the Improvements shall terminate and be of no further force and effect; (b) Tenant shall promptly surrender and vacate the Property and the Improvements; and (c) Landlord may reenter and take possession of the Property and the Improvements. Termination shall not relieve Tenant from its obligation to pay any sums then due to Landlord, or from any claim for damages previously accrued or then-accruing against Tenant up to the date of termination. To the fullest extent permitted by applicable law, Tenant hereby waives all rights of redemption and reinstatement in the event this Lease is terminated under this Section 16.3.1.

16.3.2. Damages Upon Lease Termination. If Landlord terminates this Lease pursuant to the provisions of Section 16.3.1, then, without limiting any other remedy available to Landlord, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of award of the unpaid Base Rent and all other amounts which had accrued up to the date of such termination, (ii) the worth at the time of award of the unpaid Base Rent which would have been earned under this Lease after such termination up to the date of such award (if this Lease were not so terminated), less the amount of such Base Rent loss that the Tenant proves could have been reasonably avoided; (iii) the worth at the date of award of the unpaid Base Rent which would have been earned under this Lease for the balance of the Term occurring after the date of award (if this Lease were not so terminated), less the amount of such Base Rent loss that the Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom (including, but not limited to those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, attorney's fees, court costs, and all other unpaid amounts hereunder), all of which shall be deemed to be Base Rent hereunder. The "worth at the time of award" of the amount referred to in clause (iii) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

16.3.3. Keep Lease in Effect. Without terminating this Lease, so long as Landlord does not deprive Tenant of possession of the Property and allows Tenant to assign or sublet subject only to Landlord's rights set forth herein, Landlord may continue this Lease in effect and bring suit from time to time for Base Rent and other sums due, and for any subsequent Tenant Default of the same or other covenants and agreements herein. No act by or on behalf of Landlord under this provision shall constitute a termination of this Lease unless Landlord gives Tenant written notice of termination pursuant to Section 16.3.1.

16.3.4. Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to Section 16.3.3, Landlord may thereafter elect to terminate this

Lease and all of Tenant's rights in or to the Property and the Improvements pursuant to Section 16.3.1, unless prior to such termination, Tenant has cured all Tenant Defaults giving rise to Landlord's right to terminate this Lease.

16.4 Costs. If Landlord incurs any reasonable cost or expense occasioned by a Tenant Default or a breach by Tenant of a covenant or representation that, if not cured within the applicable cure period, if any, would become a Tenant Default (including but not limited to reasonable attorneys' fees and costs), then Landlord shall be entitled to receive such costs, including without limitation, that portion of any brokers' fees relating to the remaining term of this Lease which are incurred by Landlord in connection with re-letting the whole or any part of the Property or the Improvements; the costs of removing and storing Tenant's or other occupant's property; the costs of repairing, altering, remodeling or otherwise putting the Property and the Improvements into a condition meeting the requirements of this Lease or the requirements of a Sublease; and all other reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies, including reasonable attorneys' fees whether or not suit is actually filed.

16.5 Cumulative Remedies. The remedies given to Landlord herein shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law or equity, or elsewhere provided in this Lease. Tenant's liability for damages under this Lease shall be limited to actual damages sustained by Landlord and shall not include any consequential, indirect or punitive damages.

16.6 Waiver of Breach. No waiver by a Party of any Default by the other Party shall constitute a waiver of any other Default by such Party, whether of the same or any other covenant or condition hereunder. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise. The acceptance of Base Rent or any other payment by Landlord after the occurrence of a Tenant Default shall not constitute a waiver of such Tenant Default or any other Tenant Default that may exist at such time, regardless of Landlord's knowledge of any such Tenant Default at the time of accepting such Base Rent, nor shall the acceptance of Base Rent or any other payment by Landlord after termination or expiration of this Lease constitute a reinstatement, extension, or renewal of this Lease or a revocation of any notice or other act by Landlord.

16.7 Landlord Default and Tenant Remedies. Landlord's failure to perform or observe any of the covenants, provisions or conditions contained in this Lease on its part to be performed or observed shall constitute a "**Landlord Default**": (a) if such failure can reasonably be cured within sixty (60) days after Landlord's receipt of written notice from Tenant respecting such failure and such failure is not cured within such sixty (60) day period; or (b) if such failure cannot reasonably be cured within said sixty (60) day period and Landlord fails to promptly commence to cure such failure upon receipt of Tenant's written notice with respect to the same, or thereafter fails to continue to make diligent and reasonable efforts to cure such failure. In the event of a Landlord Default, Tenant's remedies shall be limited to those available at law and in equity, and Landlord's liability hereunder shall be limited to actual damages sustained by Tenant as a result of the Landlord Default and shall not include any consequential, indirect or punitive damages.

17. LANDLORD MAY INSPECT THE PROPERTY

Tenant shall permit Landlord and its agents to enter into and upon the Property and the Improvements with 48 hours advance written notice to Tenant for the purpose of inspecting the same, except in the case of an emergency for which advance notice shall not be required, and for the purpose of posting notices of non-responsibility.

18. HOLDING OVER

This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Tenant without the express written consent of Landlord shall not constitute a renewal or extension of this Lease or give Tenant any rights in or to the Property, and such occupancy shall be construed to be a tenancy from month-to-month on all the same terms and conditions as set forth herein, insofar as they are applicable to a month-to-month tenancy, except that the rent shall increase to an amount equal to Two Hundred Percent (200%) of the amount of Base Rent due for the last month of the term of this Lease. Tenant may seek damages from Tenant as a result of Tenant's holding over.

19. NOTICES

Whenever, pursuant to this Lease, notice or demand shall or may be given to either of the parties or their assignees by the other, and whenever either of the parties shall desire to give to the other any notice or demand with respect to this Lease or the Property, each such notice or demand shall be in writing, and any laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served by mailing the same to the other party by certified mail, return receipt requested, or by overnight nationally- recognized courier service provided a receipt is required, at its Notice Address set forth below, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).

At the date of the execution of this Lease, the address of Tenant is:

c/o SteelWave, LLC,
4000 E. Third Avenue, Suite 500
Foster City, California 94404
Attention: Paul J. Meyer
Facsimile: (650) 235-2589
Email: pmeyer@steelwavellc.com

With a Copy to:

c/o SteelWave, LLC,
4000 E. Third Avenue, Suite 500
Foster City, California 94404
Attention: Dennis Cavallari

Facsimile: (650) 235-2589
Email: dcavallari@steelwavellc.com

with a copy to:

Cox, Castle & Nicholson
50 California St., 32nd Fl.
San Francisco, California 94111
Attention: Richard H. Rosenthal
Facsimile: (425) 262-5199
Email: rrosenthal@coxcastle.com

and the address of Landlord is:

Ohlone Community College District
Attention: Susan Yeager, Vice President,
Office of Administrative Services,
43600 Mission Boulevard, Room 19-101, Bldg. 19
Fremont, CA 94539
Facsimile: (510) 659-6045
E-mail: syeager@ohlone.edu

with a copy to:

Stradling Yocca Carlson & Rauth
Attention: Sean Absher
44 Montgomery Street, Suite 4200
San Francisco, CA 94104
Facsimile: (415) 283-1441
E-mail: sabsher@sycr.com

20. SUCCESSORS

The covenants and agreements contained in this Lease shall be binding on the parties hereto and on their respective successors and assigns, to the extent the Lease is assignable, and upon any person, firms, corporation coming into ownership or possession of any interests in the Property by operation of law or otherwise, and shall be construed as covenants running with the land.

21. TERMINATION

Upon the termination of this Lease by expiration of time or otherwise, the rights of Tenant and of all persons, firms, corporations and entities claiming under Tenant in and to the Property (and all improvements thereon, unless specified otherwise in Section 6.2 above) shall cease.

22. MISCELLANEOUS

22.1 Section Headings. The section headings used in this Lease are for convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease.

22.2 Amendments. Any amendments or additions to this Lease shall be made in writing executed by the parties hereto, and neither Landlord nor Tenant shall be bound by verbal or implied agreements.

22.3 Waiver. The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance of Base Rent by Landlord following a breach by Tenant of any provision of this Lease shall not constitute a waiver of any right of Landlord with respect to such breach. Landlord shall be deemed to have waived any right hereunder only if Landlord shall expressly do so in writing.

22.4 Cumulative Remedies. Each right, power and remedy of Landlord provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all such other rights, powers or remedies.

22.5 Time of Essence. Time is expressly declared to be of the essence of this Lease and each and every covenant of Tenant hereunder.

22.6 Late Charge and Interest. In the event Tenant fails to make any payment of Base Rent due hereunder upon the date due, Landlord shall be entitled to collect from Tenant a late charge equal to five percent (5%) of the amount of the delinquent payment. In the event Landlord pays any sum or incurs any expense which Tenant is obligated to pay hereunder, or which is made on behalf of Tenant, Landlord shall be entitled to receive reimbursement thereof from Tenant upon demand, together with interest thereon from the date of expenditure at the maximum rate allowed by California law.

22.7 Entire Agreement. This Lease contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, Landlord or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

22.8 Escalation.

(a) **Standard of Measurement.** The dollar amounts listed in Sections 8.3.1 and 8.3.3 above, shall be adjusted on the tenth anniversary following the Commencement Date and every tenth (10th) anniversary date thereafter] (“**Anniversary Date**”) during the Term of this Lease to a dollar amount which bears the same ratio to the original dollar amount set forth herein as the following described index figure published for the latest date prior to the date such adjustment is to be effective bears to such index

figure published for the latest month prior to the date hereof. The index figure to be utilized in calculating such adjustment shall be the CPI.

(b) Any provision in Section 22.8(a) above notwithstanding, under no circumstances shall the dollar amounts identified in Section 22.8(a) above, be less than Landlord in the sections referenced therein.

22.9 Language. The word “Tenant” when used herein, shall be applicable to one (1) or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if, there be more than one (1), the obligations hereof shall be joint and several. The words “persons” whenever used shall include individuals, firms, associations and corporations. This Lease, and its terms, have been freely negotiated by Landlord and Tenant. The language in all parts of this Lease shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed strictly for or against Landlord or Tenant.

22.10 Invalidity. If any provision of this Lease shall prove to be invalid, void or illegal, it shall in no way affect, impair or invalidate any other provision hereof.

22.11 Applicable Law. This Lease shall be interpreted and construed under and pursuant to the laws of the State of California. Any reference to a statute enacted by the State of California shall refer to that statute as presently enacted and any subsequent amendments thereto, unless the reference to said statute specifically provides otherwise.

22.12 Provisions Independent. Unless otherwise specifically indicated, all provisions set forth in this Lease are independent of one another, and the obligations or duty of either party hereto under any one provision is not dependent upon either party performing under the terms of any other provision.

22.13 Date of Execution. The date this Lease is executed shall be deemed to be the day and year first written above.

22.14 Survival. All obligations of Tenant to be performed after the Termination Date shall not cease upon the termination of this Lease, and but shall continue as obligations until fully performed.

22.15 Recordation. A memorandum of lease in the form attached hereto as Exhibit E shall be promptly recorded by Tenant in the county in which the Property is located. Tenant shall provide Landlord with a true copy of the recorded document, showing the date of recordation and file number.

22.16 Net Lease.

(a) **Fully Net Lease.** This Lease is intended, and is hereby declared to be, a fully “net” lease, it being the intention of the parties hereto that Landlord shall have and enjoy the rent herein reserved to it without deduction therefrom free of any expense, charge or other deduction whatsoever, with respect to the Property and the ownership, operation, management, maintenance, repair, use or occupation thereof during the Term.

Nothing herein contained shall be construed, however, so as to require Tenant to pay or be liable for any gift, inheritance, property, franchise, income, profit, capital or similar tax, or any other tax in lieu of any of the foregoing, imposed upon Landlord, or the successors or assigns of Landlord, unless such tax shall be imposed or levied upon or with respect to rents payable to Landlord herein in lieu of real property taxes upon the property.

(b) No Reduction of Base Rent. No abatement, diminution or reduction of the rental or other charges payable by Tenant under this Lease shall be claimed by or allowed to Tenant for any inconvenience, interruption, cessation or loss of business or otherwise caused directly or indirectly by any present or future laws, rules, requirements, orders, directives, ordinances or regulations of the United Landlord of America, or of the County or City government or any other municipal, government or lawful authority whatsoever, by damage to or destruction of any portion of or all of the improvements by fire, the elements or any other cause whatsoever, or by priorities, rationing, or curtailment of labor or materials or by war or any matter or things resulting therefrom or by any other cause or causes, except as otherwise specifically provided in this Lease.

22.17 Limitation of Liability.

(a) Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual partners, directors, officers, trustees, members or shareholders of Landlord or Landlord's members or partners, and Tenant shall not seek recourse against the individual partners, directors, officers, trustees, members or shareholders of Landlord or against Landlord's members or partners or against any other persons or entities having any interest in Landlord, or against any of their personal assets for satisfaction of any liability with respect to this Lease. Any liability of Landlord for a default by Landlord under this Lease, or a breach by Landlord of any of its obligations under the Lease, shall be limited solely to its interest in the Property, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord, its partners, directors, officers, trustees, members, shareholders or any other persons or entities having any interest in Landlord. Tenant's sole and exclusive remedy for a default or breach of this Lease by Landlord shall be either (i) an action for damages for breach of this Lease, (ii) an action for injunctive relief or (iii) an action for specific performance; Tenant hereby waiving and agreeing that Tenant shall have no offset rights or right to terminate this Lease on account of any breach or default by Landlord under this Lease. Under no circumstances whatsoever shall Landlord ever be liable to Tenant for punitive, consequential or special damages arising out of or relating to this Lease, common law or by way of tort. Tenant waives any and all rights it may have to such damages arising out of or relating to this Lease, including, but not limited to, damages incurred as a result of Landlord's breach of or default under this Lease, and/or Landlord's breach of common law, tort or statutory duties owed to Tenant, if any.

(b) Notwithstanding anything contained in this Lease to the contrary, the obligations of Tenant under this Lease (including any actual or alleged breach or default by Tenant) do not constitute personal obligations of the individual partners, directors, officers, trustees, members or shareholders of Tenant or Tenant's members or partners, and Landlord shall not seek recourse against the individual partners, directors, officers, trustees, members or shareholders of Tenant or against Tenant's members or partners or against any other persons or entities having any interest in Tenant, or against any of their personal assets for satisfaction of any liability with respect to this Lease. Any liability of Tenant for a default by Tenant under this Lease, or a breach by Tenant of any of its obligations under the Lease, shall be limited solely to its interest in the Lease and the improvements on the Property, and in no event shall any personal liability be asserted against Tenant in connection with this Lease nor shall any recourse be had to any other property or assets of Tenant, its partners, directors, officers, trustees, members, shareholders or any other persons or entities having any interest in Tenant.

22.18 No Partnership or Joint Venture. Nothing in this Lease shall be construed to render Landlord in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of Landlord and Tenant, nor shall this Lease be construed to authorize either to act as agent for the other.

23. HAZARDOUS SUBSTANCES

23.1 Definitions.

(a) “**Hazardous Substances**” means all of the following:

(i) Any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a “hazardous substance”, “hazardous material”, “hazardous waste”, “toxic substance”, “solid waste” or similarly defined substance, product, waste or other material pursuant to any Environmental Law (which Environmental Law shall include any and all regulations in the Code of Federal Regulations or any other regulations implemented under the authority of such Environmental Law), including all of the following and their state equivalents or implementing laws: (i) The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et. seq. (“CERCLA”); (ii) The Hazardous Materials Transportation Act, 49 U.S.C. §1801, et. seq.; (iii) Those substances listed on the United States Department of Transportation Table (49 C.F.R. 172.01 and amendments thereto); (iv) The Resource Conservation and Recovery Act, 42 U.S.C. §6901 et. seq. (“RCRA”); (v) The Toxic Substances Control Act, 15 U.S.C. §2601 et. seq.; (vi) The Clean Water Act, 33 U.S.C. §1251 et. seq.; (vii) The Clean Air Act, 42 U.S.C. §7401 et. seq.; (viii) Any other Federal, state or local law, regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; or any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above laws or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or Federal court;

- (ii) Notwithstanding any Environmental Law, petroleum, any petroleum by-products, waste oil, crude oil or natural gas;
- (iii) Any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive; and
- (iv) Any other substance, product, waste or material defined or to be treated or handled as a Hazardous Substance pursuant to the provisions of this Lease.

The term “**Hazardous Substances**” shall include the following “**Permitted Hazardous Substances**:” all (i) construction supplies, (ii) gardening supplies, (iii) gasoline, motor oil, or lubricants contained within vehicles or machinery operated on the Property or within the Improvements, (iv) general office supplies and products, cleaning supplies and products, and other commonly used supplies and products, in each case to the extent the same are [A] used in a regular and customary manner or in the manner for which they were designed; [B] customarily used in the ordinary course of business by Tenant or commonly used by subtenants under subleases; [C] used, stored and handled in such amounts as is normal and prudent for the user’s business conducted on the Property; and [D] used, handled, stored and disposed of in compliance with all applicable Environmental Laws and product labeling and handling instructions.

(b) “**Environmental Law(s)**” means any federal, state, or local laws, ordinances, rules, regulations, requirements, orders, formal guidelines, or permit conditions, in existence as of the Commencement Date of this Lease or as later enacted, promulgated, issued, modified or adopted, regulating or relating to Hazardous Substances, and all applicable judicial, administrative and regulatory judgments and orders and common law, including those relating to industrial hygiene, public safety, human health, or protection of the environment, or the reporting, licensing, permitting, use, presence, transfer, treatment, analysis, generation, manufacture, storage, discharge, Release, disposal, transportation, Investigation or Remediation of Hazardous Substances. Environmental Laws shall include, without limitation, all of the laws listed under the definition of Hazardous Substances.

23.2 Presence and Use of Hazardous Substances. Tenant shall not keep on or around the Property, for use, disposal, treatment, generation, storage or sale, any Hazardous Substances on the Property; provided, however, that Tenant, its subtenants and their permittees may use, store, handle and transport on the Property Permitted Hazardous Substances. Tenant, its subtenants and their permittees shall: (a) use, store, handle and transport such Permitted Hazardous Substances in accordance with all Environmental Laws, and (b) not construct, operate or use disposal facilities for Permitted Hazardous Substances on the Property or within any improvements located thereon. Landlord shall not generate, use, store, release, dump, transport, handle or dispose of any Hazardous Substances on the Property in violation of Environmental Laws.

23.3 Cleanup Costs, Default and Indemnification.

(a) Tenant shall be fully and completely liable to Landlord for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances, in or about the Property.

(b) Tenant shall indemnify, defend and save Landlord harmless from any and all of the costs, fee, penalties and charges assessed against or imposed upon Landlord (as well as Landlord's attorneys' fees and costs) as a result of Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances.

24. BROKER'S COMMISSION; AGENCY DISCLOSURE

Landlord and Tenant each represent and warrants to the other that no Real Estate Agent or Broker was involved in negotiating this transaction, except for (i) _____ of _____ who represented _____ ("_____ **Broker**") and whose commission shall be paid by _____. Landlord and Tenant each covenants to protect, defend, hold harmless and indemnify the other from and against any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with any other claim by any brokers or agents for brokerage commissions relating to this Lease alleged to be due because of negotiations, dealings or conversations with the indemnifying party.

25. RIGHT OF FIRST OFFER/RIGHT OF FIRST REFUSAL

During the Lease Term, (i) Tenant shall have a right of first offer to purchase the Property in accordance with Exhibit F, and (ii) Landlord shall have a right of first offer to purchase the Property in accordance with Exhibit I.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, this Ground Lease is executed as of the day and year first above written.

LANDLORD:

[_____]

By: _____

Name:

Title:

TENANT:

[_____]

By: _____

Name:

Title:

STATE OF)
) ss.
COUNTY OF)

On this ____ day of _____, 20____, before me, a Notary Public in and for the State of _____, personally appeared _____, to me known to be the _____, respectively, of _____, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she/they is/are authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

Notary Public in and for the State of _____
Residing at: _____
My commission expires: _____

STATE OF)
) ss.
COUNTY OF)

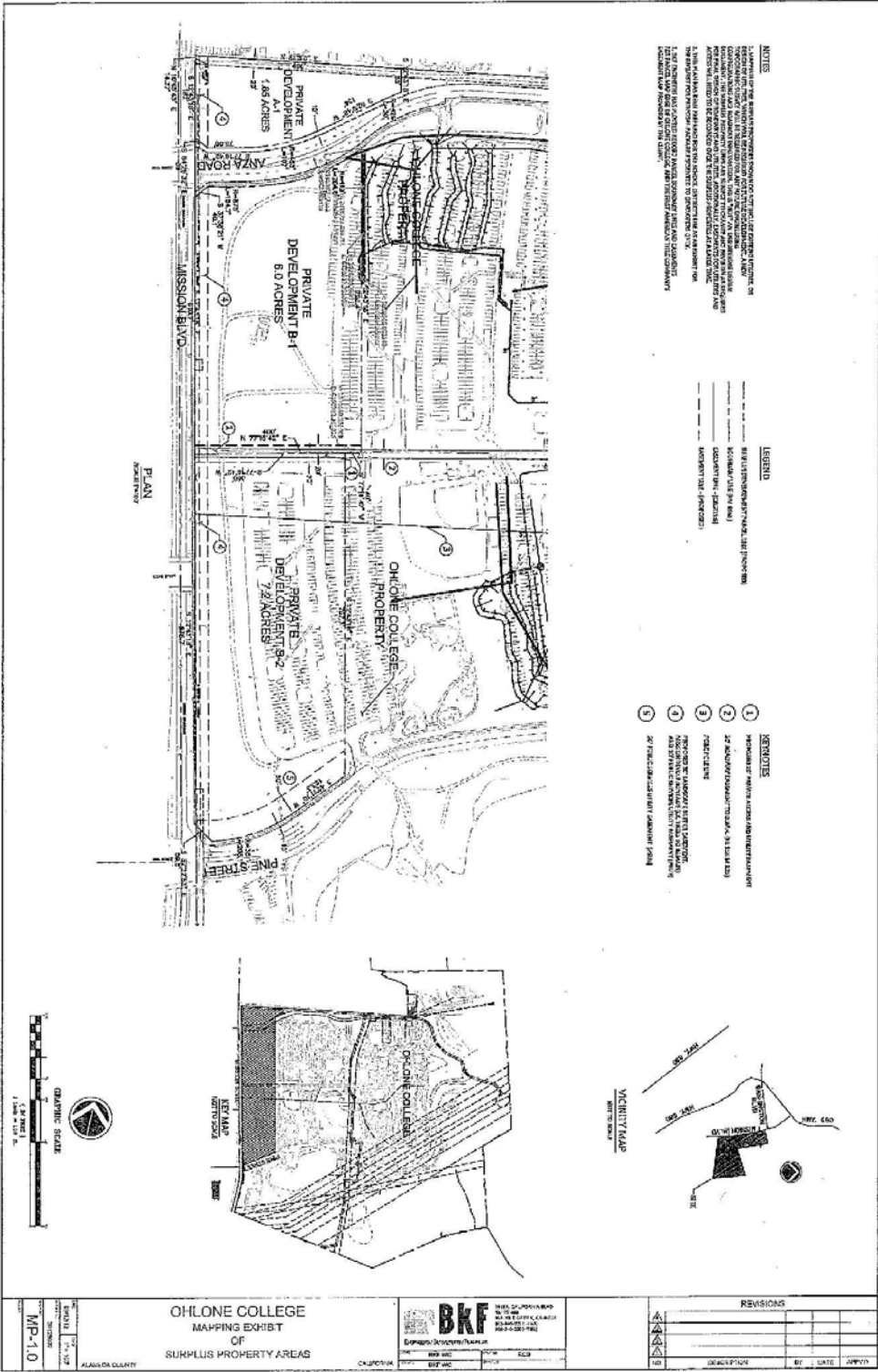
On this ____ day of _____, 20____, before me, a Notary Public in and for the State of _____, personally appeared _____, to me known to be the _____, respectively, of _____, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she/they is/are authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

Notary Public in and for the State of _____
Residing at: _____
My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA AND IS DESCRIBED IN THE ATTACHED MAPPING EXHIBIT PREPARED BY BKF DATED NOVEMBER 7, 2012. PRIOR TO CLOSING, THE PARTIES MAY AMEND THE LEGAL DESCRIPTION OF THE LAND TO PROVIDE FOR A METES AND BOUNDS OR RECORDED ENTITLEMENT MAP LEGAL DESCRIPTION OF THE LAND.



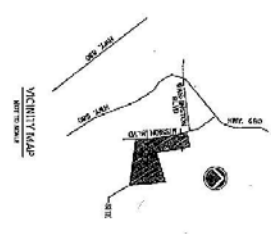
NOTES

1. ALL SURPLUS PROPERTY AREAS SHOWN ON THIS MAP ARE SUBJECT TO THE EXISTING ZONING REGULATIONS AND THE OHLONE COLLEGE BOARD OF TRUSTEES' POLICY ON THE SALE OF SURPLUS PROPERTY. THE OHLONE COLLEGE BOARD OF TRUSTEES HAS REVIEWED THIS MAP AND HAS DETERMINED THAT THE SURPLUS PROPERTY AREAS SHOWN ON THIS MAP ARE SUBJECT TO THE EXISTING ZONING REGULATIONS AND THE OHLONE COLLEGE BOARD OF TRUSTEES' POLICY ON THE SALE OF SURPLUS PROPERTY.

LEGEND

--- SURPLUS PROPERTY AREAS
 --- EXISTING ZONING
 --- EXISTING BUILDINGS
 --- EXISTING PARKING LOTS
 --- EXISTING ROADS

- NOTES**
- 1. PRIVATE DEVELOPMENT A-1
 - 2. PRIVATE DEVELOPMENT B-1
 - 3. PRIVATE DEVELOPMENT S-2
 - 4. OHLONE COLLEGE PROPERTY
 - 5. SURPLUS PROPERTY AREAS



<p>OHLONE COLLEGE MAPPING EXHIBIT OF SURPLUS PROPERTY AREAS</p>		<p>BKF BUREAU OF KINGS COUNTY ENGINEERING & SURVEYING 1000 W. 10TH ST. SACRAMENTO, CA 95811 TEL: (916) 441-1111 FAX: (916) 441-1112</p>	<p>REVISIONS</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>BY</th> <th>DATE</th> <th>APP'D.</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	NO.	DESCRIPTION	BY	DATE	APP'D.										
NO.	DESCRIPTION	BY	DATE	APP'D.														
<p>ALABAMA COUNTY MAP-1.0 SCALE: 1" = 100' DATE: 11/10/07</p>	<p>GRAPHIC SCALE 1" = 100' 1" = 100'</p>																	

EXHIBIT B
DEVELOPMENT PLAN

Total Unit Mix:

The project is situated on a 15.05 acre site. The proposed Development Plan is intended to include 275 for-rent residential units, totaling approximately 271,160 rentable square feet, with the following conceptual unit mix:

Unit Type	No. of Units	Avg. Unit Size	Unit Mix (%)
1 Bedroom / 1 Bathroom	87	680	32%
2 Bedroom / 2 Bathroom	168	1,101	61%
3 Bedroom / 2 Bathroom	20	1,350	7%
TOTAL/WEIGHTED AVG	275	986	100%

Inclusionary Housing Unit Mix and Rent Limits:

Of the 275 units, the following units are intended to be reserved for senior (3%, or 8 units) and faculty/staff (3%, or 8 units) housing, subsidized at the “Moderate” income level. Rent Limits will be adjusted per year based on HUD Income and Rent Limits for Alameda County. These 16 inclusionary housing units will become market rate units on the twentieth (20th) anniversary of the CO Date.

Unit Type	No. of Units	Rent Limits	Avg. Unit Size	Unit Mix (%)
1 Bedroom / 1 Bathroom	5	\$2,349	720	31%
2 Bedroom / 2 Bathroom	10	\$2,817	1,020	63%
3 Bedroom / 2 Bathroom	1	\$3,255	1,350	6%
TOTAL/WEIGHTED AVG	16	\$2,698	947	100%

Inclusionary Housing Subsidy from Ohlone College Ground Lease:

The proposed Moderate Inclusionary housing rent limits are lower than the prevailing market rate rents included in the original proposal. Therefore, in order for Steelwave to maintain its minimum financing threshold yield, it has been determined the Moderate Inclusionary units have a negative effect of \$4,221 per month or \$50,652 per year on the proposed ground lease terms. If Ohlone requires the Moderate inclusionary housing, the monthly and annual ground lease payments will be discounted by \$4,221/month (\$50,562 annually). The moderate inclusionary rent levels will be adjusted every ten years to the then current moderate level HUD/Alameda County Moderate rents.

Commercial Space:

In addition to the proposed residential units, the project includes 17,970 square feet of commercial space, of which 8,100 square feet is conceptually allocated for convenient retail (“Convenient Retail”). SteelWave intends to exert commercially reasonable efforts to offer right of first look of Convenient Retail to local service providers, grocery stores, food producers and other like-kind local businesses, provided that the terms of the commercial leases are consistent with the market.

EXHIBIT C
PERMITTED EXCEPTIONS
[TO BE ADDED AT CLOSING]

EXHIBIT D

EXAMPLE OF THE CALCULATION OF BASE RENT FOR THE SECOND THROUGH TENTH RENT TERMS

For purposes of illustration, assume that the amount of the First Rent Term Base Rent is \$106,878/mo., or \$1,282,536/year (say \$1.3MM), that the CO Date is March 1, that the First Rent Term commenced on March 1, 2020 and that the Second Rent Term commences on March 1, 2030. Assume further that in even Lease Years during the First Rent Term that the CPI Adjustment was 3%/annum and that in odd Lease Years during the First Rent Term that the CPI Adjustment was 4%/annum. The Second Rent Term Base Rent would be calculated as follows:

LEASE YEAR	DEEMED BASE RENT	INCREASE RATE	SUBSEQUENT LEASE YEAR DEEMED BASE RENT
3/1/20-2/28/21	\$1.3MM	3.5%	\$1,345,500
3/1/21-2/28/22	\$1,345,500	3.0%	\$1,385,865
3/1/22-2/28/23	\$1,385,865	3.5%	\$1,434,370
3/1/23-2/28/24	\$1,434,370	3.0%	\$1,477,401
3/1/24-2/28/25	\$1,477,401	3.5%	\$1,529,110
3/1/25-2/28/26	\$1,529,110	3.0%	\$1,574,983
3/1/26-2/28/27	\$1,574,983	3.5%	\$1,630,108
3/1/27-2/28/28	\$1,630,108	3.0%	\$1,687,162
3/1/29-2/28/29	\$1,687,162	3.5%	\$1,746,212
3/1/29-2/28/30	\$1,746,212	3.0%	\$1,798,599

Second Rent Term Base Rent = \$1,798,599/annum, or \$149,883/month

EXHIBIT E
FORM OF ESTOPPEL CERTIFICATE

RECORDING REQUESTED BY:

First American Title Company

WHEN RECORDED MAIL TO:

Attn:

THIS SPACE FOR RECORDER'S USE ONLY

APN:

GROUND LEASE ESTOPPEL CERTIFICATE

*THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(ADDITIONAL RECORDING FEE APPLIES)*

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____, LLC
c/o _____

_____, _____
Attention: _____

GROUND LEASE ESTOPPEL CERTIFICATE

DATE: _____, _____

RE: _____
(the "**Ground Lease**") covering certain real property located in Fremont, California and described on **Exhibit A** attached hereto and made a part hereof (the "**Property**").

THIS GROUND LEASE ESTOPPEL CERTIFICATE (this "**Instrument**") is executed and delivered as of _____, by _____, in connection with _____. Capitalized terms used herein shall have the meaning set forth in the Ground Lease unless otherwise defined herein. _____ hereby certifies, declares and agrees as follows:

1. **Ground Lease.** Pursuant to the terms of the Ground Lease, Landlord has leased to Tenant and Tenant has leased from Landlord, the Property. To the best of _____ knowledge after a commercially reasonable inquiry, the Ground Lease is in full force and effect and the documents and instruments comprising the Ground Lease as hereinabove described, together with this Instrument, represent all of the documents and instruments that constitute the Ground Lease, and other than as described above, the Ground Lease has not been modified, supplemented, or amended, orally or in writing in any other manner having any continuing operative effect [or, if there have been modifications, that the Ground Lease is in full force and effect as modified, and stating the modifications, or if the Ground Lease is not in full force and effect, so stating]. To the best of _____ knowledge after a commercially reasonable inquiry, no default has occurred under the Ground Lease and no condition exists which, but for the passage of time, the giving of notice, or both, would constitute a default under the terms of the Ground Lease. Except for the Ground Lease, there are no agreements between Landlord and Tenant in any way concerning the subject matter of the Ground Lease or the occupancy or use of the Property (other than that certain agreement entitled "Agreement To Enter Into Ground Lease" and agreements ancillary or related thereto). To the best of _____ knowledge after a commercially reasonable inquiry, other than as set forth above, the current interests of Landlord and Tenant under the Ground Lease have not been assigned [or, if there have been assignments, stating such assignments].

2. Lease Term. The term of the Ground Lease commenced on _____, 20____, and is scheduled to terminate on _____, 2____. Tenant has rights to extend the Ground Lease as follows: _____.
3. Rent. No rent under the Ground Lease beyond the current month has been paid in advance by Tenant.
4. Deposits. Tenant does not make any type of escrow deposits with Landlord. Landlord holds a security deposit from Tenant as follows:_____.
5. No Bankruptcy. No bankruptcy proceedings, whether voluntary or otherwise, are pending, or to Landlord's actual knowledge, threatened, against Landlord.
6. No Violations, Condemnation. _____ has not received any written notice of any pending eminent domain proceedings or other governmental actions that could affect the Property. _____ has not received any written notice that it, Tenant, _____ [identify the management company] is in violation of any law applicable to the Property (including, but not limited to, any environmental law or the Americans with Disabilities Act).
7. [Fee Encumbrances. Landlord has not entered into any agreement to subordinate the Ground Lease to any existing or future mortgages, deeds of trust or other liens on the fee interest in the Property.]
8. Insurance Coverage. As of the date hereof, Tenant has provided to Landlord, and Landlord has approved, current certificates and/or policies of insurance complying (as of the date hereof) with all of the terms and requirements regarding the same as set forth in the Ground Lease.
9. [Leasehold Mortgage; Leasehold Mortgagee. Landlord hereby acknowledges that the Deed of Trust, together with the other documents and instruments executed by Tenant in favor of Lender in connection with the Loan and the Deed of Trust, constitutes and shall be deemed to be a "Leasehold Mortgage" pursuant to the terms and conditions of the Ground Lease, and that Lender is and shall be deemed to be a "Leasehold Mortgagee", for all purposes under and as such terms are defined in the Ground Lease, subject to all of the terms and conditions of the Ground Lease applicable to a Leasehold Mortgagee thereunder.][*Conform to transaction*]
10. [Notice and Cure Rights. Landlord shall provide Lender with copies of all notices of default that are delivered to Tenant contemporaneously with the furnishing of such notices to Tenant to the extent provided in Section 19 of the Ground Lease. Landlord shall not terminate the Ground Lease as a result of a default on the part of Tenant under the Ground Lease pending the exercise of the cure and/or foreclosure rights of Lender as a Leasehold Mortgagee in accordance with Section 7.6.of the Restated Ground Lease. Landlord acknowledges that Lender has given Landlord effective notice of the name and address of Lender, as set forth below, pursuant to Section 7.2 of the Ground Lease. Any notice, demand, request, or other instrument given by Landlord to Lender shall be delivered to Lender at the address specified below: [*Conform to transaction*]

c/o _____

Attention: _____

With a copy to:

c/o _____

Attention: _____]

11. Miscellaneous. If there is a conflict between the terms of the Ground Lease and this Ground Lease Estoppel Certificate, the terms of this Ground Lease Estoppel Certificate shall prevail. The captions of the sections of this instrument are for convenience only and shall not have any interpretive meaning.
12. Recording. This instrument may be recorded (at Tenant's sole cost and expense) in the Official Records.
13. Counterparts. This Instrument and any subsequent modifications, amendments, waivers, consents or supplements thereof, if any, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all such counterparts together, shall constitute one and the same instrument.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, _____ has executed this Ground Lease Estoppel Certificate as of the date set forth on the first page of this Ground Lease Estoppel Certificate.

By: _____
Name: _____
Title: _____

EXHIBIT A

THE PROPERTY

The land situated in the City of Fremont, County of Alameda, State of California, and is described as follows:

EXHIBIT F

RIGHT OF FIRST OFFER

(Tenant)

Subject to the terms and conditions set forth in this Exhibit E and the requirements of law, Tenant shall have the right of first offer (the “Right of First Offer”) to purchase the Property on the terms and conditions set forth in this Exhibit E. If the Property is part of a portfolio or “packaged” sale, Tenant may exercise its Right of First Offer on the Property and not the other properties included in such portfolio or packaged sale.

1. Right of First Offer. If during the Lease Term (a) Landlord shall determine to offer all or any portion of the Property to the market for sale, then (b) before taking the Property to the market, Landlord shall notify Tenant of the terms upon which Landlord intends to offer the Property for sale to the market (such notification from Landlord to Tenant is referred to herein as the “**ROFO Purchase Notice**”).

2. Exercise of Right of First Offer. Tenant shall have sixty (60) days after receipt of the ROFO Notice (the “**ROFO Exercise Period**”) to exercise its Right of First Offer to purchase the Property for the economic terms set forth in the ROFO Purchase Notice. Tenant’s exercise of its Right of First Offer shall be deemed effective if Tenant provides written notice of its election to Landlord during the ROFO Exercise Period. If Tenant rejects the terms set forth in the ROFO Purchase Notice or fails timely to respond thereto (which shall be deemed rejection), then for a period of three (3) months after delivery of the ROFO Purchase Notice (“**Three Month Period**”), Landlord shall be entitled to open an escrow to sell, exchange, convey or otherwise transfer the Property to any third party for a price that is not less than ninety five percent (95%) of the purchase price offered in the ROFO Purchase Notice. If Landlord fails to open an escrow to sell, exchange, convey or otherwise transfer the Property to a third party within the Three Month Period and close such sale, exchange, conveyance or transfer with the same party within three (3) months following the opening of the escrow, or desires or seeks to sell the Property for a price that is less than ninety five percent (95%) of the purchase price offered in the ROFO Purchase Notice, or is on terms materially different from the terms set forth in the ROFO Purchase Notice, Landlord's right to sell the Property shall be null and void, and all the provisions of this Exhibit E shall again apply to any subsequent sale, exchange, conveyance or transfer of such interest.

3. Tenant Rights to Purchase Binding Upon Successors and Assigns. Tenant’s Right of First Offer shall be binding upon Landlord’s successors during the Term of the Lease and shall not be extinguished by Tenant’s election not to, or failure to, exercise any such right in the event of a proposed sale of the Property. Notwithstanding the foregoing, the Right of First Offer shall not apply in the event of the following transfers of all or any portion of the Property:

(a) transfers to any entity owned by or under common ownership with Landlord; or

(b) collateral security transfers in connection with any debt or equity financing, or transfers pursuant to a foreclosure or a deed in lieu thereof.

EXHIBIT G
SCHEDULE OF PERFORMANCE
(TO BE ADDED AT CLOSING)

EXHIBIT H
RULES AND REGULATIONS FOR SUBLESSEES
(TO BE ADDED AT CLOSING)

EXHIBIT I
RIGHT OF FIRST OFFER
(Landlord)

Subject to the terms and conditions set forth in this Exhibit I and the requirements of law, Landlord shall have the right of first offer (the “Right of First Offer”) to purchase the Leasehold Estate on the terms and conditions set forth in this Exhibit I. If the Leasehold Estate is part of a portfolio or “packaged” sale, Landlord may exercise its Right of First Offer only on the Leasehold Estate and not the other properties included in such portfolio or packaged sale.

1. Right of First Offer. If during the Lease Term (a) Tenant shall determine to offer all or any portion of the Leasehold Estate to the market for sale, then (b) before taking the Leasehold Estate to the market, Tenant shall notify Landlord of the terms upon which Tenant intends to offer the Leasehold Estate for sale to the market (such notification from Tenant to Landlord is referred to herein as the “**ROFO Purchase Notice**”).

2. Exercise of Right of First Offer. Landlord shall have sixty (60) days after receipt of the ROFO Notice (the “**ROFO Exercise Period**”) to exercise its Right of First Offer to purchase the Leasehold Estate for the economic terms set forth in the ROFO Purchase Notice. Landlord’s exercise of its Right of First Offer shall be deemed effective if Landlord provides written notice of its election to Tenant during the ROFO Exercise Period. If Landlord rejects the terms set forth in the ROFO Purchase Notice or fails timely to respond thereto (which shall be deemed rejection), then Tenant shall be entitled to open an escrow to sell, exchange, convey or otherwise transfer the Property to any third party.

3. Landlord Rights to Purchase Binding Upon Successors and Assigns. Landlord’s Right of First Offer shall be binding upon Tenant’s successors during the Term of the Lease; provided, however, such right shall be extinguished by Landlord’s election not to, or failure to, exercise any such right in the event of a proposed sale of the Property.

4. Notwithstanding the foregoing, the Right of First Offer shall not apply in the event of the following transfers of all or any portion of the Property:

- (a) transfers to any entity owned by or under common ownership with Tenant;
- or
- (b) collateral security transfers in connection with any debt or equity financing, or transfers pursuant to a foreclosure or a deed in lieu thereof.

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