



JPB Board of Directors  
Meeting of January 9, 2020

Correspondence as of December 20, 2019

# Subject

- 1 Transit Oriented Development
- 2 Disadvantaged Business Enterprise Goals
- 3 Request for Information - Real Estate
- 4 Train Performance Data
- 5 Delays on Trains

**From:** Maegan Tell  
**To:** [Board \(@caltrain.com\)](mailto:Board@caltrain.com)  
**Cc:** [kcamacho@hlcsmc.org](mailto:kcamacho@hlcsmc.org); [khodayamamoto@greenbelt.org](mailto:khodayamamoto@greenbelt.org)  
**Subject:** I support a TOD Policy that prioritizes affordable homes  
**Date:** Friday, December 20, 2019 11:29:09 AM

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Dear Caltrain Board of Directors,

My name is Maegan and I am a resident of San Mateo County

**I support a system-wide Transit-Oriented Development Policy that prioritizes affordable homes on Caltrain land and that outlines a 20% requirement for affordable homes.**

In the current environment of high land prices and limited supply of land, it is expensive to build affordable homes. As the region's housing affordability crisis continues to worsen, it affects the well-being and financial security of low- and moderate-income residents. In addition, jobs in the region have continued to increase far faster than housing supply. The lack of affordable homes has led to ever-lengthening commutes, with resultant increases in traffic congestion, air pollution, and greenhouse gas emissions. These interrelated challenges call for bold, innovative solutions.

Caltrain has an incredible opportunity to create compact, walkable, affordable communities that can help sustain Caltrain's service for the years to come.

In addition to helping address our region's housing affordability challenges, new homes near Caltrain stations hold economic benefits for both Caltrain and the cities it serves, spurring economic growth and supporting local commercial development in nearby neighborhoods. New homes will help support long-term transit ridership as residents are five times more likely to use transit if they are able to live within a half mile of a major transit stop. Affordable homes can especially benefit Caltrain, as low-income residents are four times as likely to ride transit as their wealthier counterparts.

To address our region's affordability challenge, build a diverse base of regular riders, and support the creation of more economically diverse and inclusive communities, Caltrain should adopt an inclusionary housing policy that ensures that at least 20% of new homes developed on land controlled by the agency are affordable to low-income residents.

Please consider a TOD policy that benefits our community!

Sincerely,  
Maegan Tell  
960 Hillside Blvd  
Daly City, CA 94104

**From:** [Murphy, Seamus](#)  
**To:** [Board \(@caltrain.com\)](#); [Fitzpatrick, Brian](#)  
**Cc:** [Mau, Carter](#)  
**Subject:** RE: FYI from Caltrain Board email FW: Caltrain Transit-Oriented Development Policy  
**Date:** Friday, December 20, 2019 8:36:36 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Automatic acknowledgement is ok.

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**From:** Board (@caltrain.com) <BoardCaltrain@samtrans.com>  
**Sent:** Friday, December 20, 2019 8:34 AM  
**To:** Fitzpatrick, Brian <fitzpatrickb@samtrans.com>  
**Cc:** Mau, Carter <MauC@samtrans.com>; Murphy, Seamus <murphys@samtrans.com>  
**Subject:** FYI from Caltrain Board email FW: Caltrain Transit-Oriented Development Policy

Hello Brian, et al - FYI from Caltrain Board email below. Note – this will be included into the Board’s weekly correspondence later today. Please share/forward to whomever you think should know and let me know if anyone wishes to add any kind of response (beyond the automatic Outlook acknowledgement that it’s been received, etc)?

Thanks,

Dora

---

**From:** Kaitlin Chang <[KaitlinC@corasupport.org](mailto:KaitlinC@corasupport.org)>  
**Sent:** Thursday, December 19, 2019 2:46 PM  
**To:** Board (@caltrain.com) <[BoardCaltrain@samtrans.com](mailto:BoardCaltrain@samtrans.com)>  
**Cc:** Leora Tanjuatco Ross <[leora@hlcsmc.org](mailto:leora@hlcsmc.org)>; [khondayamamoto@greenbelt.org](mailto:khondayamamoto@greenbelt.org)  
**Subject:** Caltrain Transit-Oriented Development Policy

Hi,

My name is Kaitlin and I work for CORA – Community Overcoming Relationship Abuse. We are a nonprofit in San Mateo that helps survivors of domestic violence find safety, support, and healing after their traumatic experiences of escaping their abusive partner(s). One of our departments at CORA is our supportive housing department. Our clients often come to us with little to no income, no legal status, no credit or rental history, and other barriers that make it nearly impossible for them to afford a place on their own. To help them get back on their feet, we look for landlords and property owners who are willing to help our clients remove those barriers to help provide a safe place for our clients to call home.

With this Transit-Oriented Development Policy, our clients would be more likely to afford the affordable homes and units if they were built. Statistics show that between 22 and 57% of all homeless women reported that domestic violence was the cause of their homelessness, and 38% of

all DV survivors became homeless at some point in their lives. The biggest factor that determines whether a victim leaves or stays with their abuser is having a safe place to go that they can afford.

With this development policy and implementation of 20% affordable homes, Caltrain has the ability to help survivors get back on their feet and find safety for themselves and their children. Join the cause in preventing intimate partner abuse, and help build affordable housing for all.

Thank you.

Best,

**CORA** COMMUNITY OVERCOMING  
RELATIONSHIP ABUSE

Kaitlin Chang

Housing Development Specialist

Pronouns: She/Her/Hers

O: 650-652-0800 x 102

C: 650-732-0016

[www.corasupport.org](http://www.corasupport.org)



[Get tickets to hear acclaimed author Rachel Louise Snyder at our upcoming SpeakUp! event.](#)

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To: [board@caltrain.com](mailto:board@caltrain.com)

Cc: [leora@hlcsmc.org](mailto:leora@hlcsmc.org), [khondayamamoto@greenbelt.org](mailto:khondayamamoto@greenbelt.org)

**Subject line:** I support a TOD Policy that prioritizes affordable homes

**Email body:**

Dear Caltrain Board of Directors,

My name is Kaitlin Chang and I am a resident of San Mateo.

**I support a system-wide Transit-Oriented Development Policy that prioritizes affordable homes on Caltrain land and that outlines a 20% requirement for affordable homes.**

In the current environment of high land prices and limited supply of land, it is expensive to build affordable homes. As the region's housing affordability crisis continues to worsen, it affects the well-being and financial security of low- and moderate-income residents. In addition, jobs in the region have continued to increase far faster than housing supply. The lack of affordable homes has led to ever-lengthening commutes, with resultant increases in traffic congestion, air pollution, and greenhouse gas emissions. These interrelated challenges call for bold, innovative solutions.

Caltrain has an incredible opportunity to create compact, walkable, affordable communities that can help sustain Caltrain's service for the years to come.

In addition to helping address our region's housing affordability challenges, new homes near Caltrain stations hold economic benefits for both Caltrain and the cities it serves, spurring economic growth and supporting local commercial development in nearby neighborhoods. New homes will help support long-term transit ridership as residents are five times more likely to use transit if they are able to live within a half mile of a major transit stop. Affordable homes can especially benefit Caltrain, as low-income residents are four times as likely to ride transit as their wealthier counterparts.

To address our region's affordability challenge, build a diverse base of regular riders, and support the creation of more economically diverse and inclusive communities, Caltrain should adopt an inclusionary housing policy that ensures that at least 20% of new homes developed on land controlled by the agency are affordable to low-income residents.

Please consider a TOD policy that benefits our community!

Sincerely,

Kaitlin Chang  
2211 Palm Avenue  
San Mateo, CA 94403

**From:** Richard Stewart  
**To:** [Board \(@caltrain.com\)](mailto:Board@caltrain.com)  
**Subject:** Affordable Housing, Caltrans land  
**Date:** Thursday, December 19, 2019 2:22:08 PM

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Dear Caltrain Board of Directors,

My name is **Richard Stewart** and I am a resident of San Jose.

**I support a system-wide Transit-Oriented Development Policy that prioritizes affordable homes on Caltrain land and that outlines a 20% requirement for affordable homes.**

In the current environment of high land prices and limited supply of land, it is expensive to build affordable homes. As the region's housing affordability crisis continues to worsen, it affects the well-being and financial security of low- and moderate-income residents. In addition, jobs in the region have continued to increase far faster than housing supply. The lack of affordable homes has led to ever-lengthening commutes, with resultant increases in traffic congestion, air pollution, and greenhouse gas emissions. These interrelated challenges call for bold, innovative solutions.

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To address our region's affordability challenge, build a diverse base of regular riders, and support the creation of more economically diverse and inclusive communities, Caltrain should adopt an inclusionary housing policy that ensures that at least 20% of new homes developed on land controlled by the agency are affordable to low-income residents.

Please consider a TOD policy that benefits our community!

Sincerely,  
Richard A. Stewart  
**951 South 12th Street**  
**San Jose, California 95112**

Sent from my iPhone

**From:** [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))  
**To:** [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))  
**Cc:** [Brook, Jean](mailto:Brook, Jean)  
**Subject:** Confirmed receipt FW: DBE Goals  
**Date:** Friday, December 20, 2019 6:14:57 PM

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Dear Evita Thorton,

This email is to acknowledge receipt of your email and letter. Staff will be contacting you directly on this matter soon.

Best,

Dora

Dora Seamans, MPA, CMC  
Executive Officer/District Secretary  
SamTrans, Executive Administration  
1250 San Carlos Ave  
San Carlos, CA 94070  
Tel: 650-508-6242  
[Seamansd@samtrans.com](mailto:Seamansd@samtrans.com)

**From:** Evita Thornton, SFAACC <[admin@sfaacc.org](mailto:admin@sfaacc.org)>

**Sent:** Thursday, December 19, 2019 4:38 PM

**To:** [hARTNETTY@Samtrans.com](mailto:hARTNETTY@Samtrans.com)

**Cc:** Fred Jordan <[frederickjordan@aol.com](mailto:frederickjordan@aol.com)>; Matthew Ajiake <[majiake@sonikacorporation.com](mailto:majiake@sonikacorporation.com)>; Board (@samtrans.com) <[Board@samtrans.com](mailto:Board@samtrans.com)>; Board (@caltrain.com) <[BoardCaltrain@samtrans.com](mailto:BoardCaltrain@samtrans.com)>; Carl Davis <[svblackchamber@gmail.com](mailto:svblackchamber@gmail.com)>

**Subject:** DBE Goals

Dear Mr. Hartnett,

Please see the attached letter from Frederick Jordan, Chairman and Matthew Ajiake, President of the San Francisco African American Chamber regarding DBE goals.

Thank you for your attention to this matter.

Regards,

Evita Thornton  
Admin. Director  
San Francisco African American Chamber of Commerce  
415-749-6400



[www.SFAACC.org](http://www.SFAACC.org)





## SAN FRANCISCO AFRICAN AMERICAN CHAMBER OF COMMERCE

### BOARD OF DIRECTORS

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F. E. Jordan Associates, Inc.

Dr. Caesar Churchwell, DDS  
Vice Chairman  
Churchwell & Associates

Matthew Ajiake, President  
Sonika Corporation

Doug Parrish  
1<sup>st</sup> Vice President  
Reddipper, Inc.

Helena Jones Kim  
2<sup>nd</sup> Vice President  
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GlobalKonnect & Co.

Linda Fadeke Richardson, President  
ADR Continental Group

Myles C. Stevens, AIA, LA  
Stevens + Associates Architect

December 19, 2019

Jim Hartnett, General Manager/CEO  
San Mateo County Transit District  
1250 San Carlos Avenue  
San Carlos, CA 94070-1306

#### Re: DBE Goals

Dear Mr. Harnett:

The San Francisco African American Chamber of Commerce (SFAACC) and the Silicon Valley Black Chamber of Commerce (SVBCC) are writing you to express our disappointment about your agency's commitment to meeting your DBE goals. We are aware that your 14% DBE goals was reduced to 13.5% because you were not meeting that goal.

Your recent On-call Request for Proposals had no DBE goals, although we understand that your approach is to set these goals for each contract when you advertise them. We are not convinced that you would meet your DBE goals when your expectations of the contracting community are tantamount to a "do the best you can" approach.

As stakeholders of interest in your DBE fulfillment, we are concerned that your approach would continue to make it difficult for you to meet your agency goals and it continues to have adverse impacts on our constituents whose participation in your contracts—at least from our perspective at this time--have been abysmal. Further, we are unclear as to how you intend to meet your goals when your DBE requirements of prime contractors remains voluntary. In a sustainable development construct, we believe that what you do not quantify, you cannot measure and what you cannot measure becomes near impossible to report on or improve when there are gaps. We believe that your downward slide in DBE goals is indicative of these gaps.

We are therefore requesting a meeting with you to address our concerns as soon as your schedule permits as you have another RFP whose due date is January 8, 2020 for a five-year contract that continues to leave our constituents behind.

Sincerely,

Fredrick E. Jordan, P.E.  
Chairman of the Board

Matthew Ajiake, PhD  
President

Cc:

Copy emailed to: [board@samtrans.com](mailto:board@samtrans.com)

Copy emailed to: [board@caltrain.com](mailto:board@caltrain.com)

**From:** [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))  
**To:** [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))  
**Cc:** [Boland, Christine](mailto:Boland, Christine); [Brook, Jean](mailto:Brook, Jean)  
**Subject:** RE: Request for information  
**Date:** Friday, December 20, 2019 4:41:35 PM  
**Attachments:** [SDEV095859419122010270.pdf](#)  
[image001.png](#)

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Dear JPB Members – please scroll down to view Mr. LeBrun’s request and staff’s response below and attached:

**From:** Boland, Christine <BolandC@samtrans.com>  
**Sent:** Friday, December 20, 2019 10:53 AM  
**To:** 'ccss@msn.com' <ccss@msn.com>  
**Cc:** Seamans, Dora <SeamansD@samtrans.com>  
**Subject:** 4020 Campbell Avenue, Menlo Park - copy of lease

Good morning Mr. Lebrun,

This email will acknowledge your request for the following information:

1. Copy of the signed lease with option to purchase 4020 Campbell Avenue; Please find signed lease attached.
2. Name(s) and position(s) of SamTrans employee(s) involved in the transaction.

The staff member involved in the transaction was Gigi Harrington, Chief Financial Officer and David Miller, Legal Counsel, Hanson Bridgett.

In the future, for your convenience, you are welcome to request documents through [PRA@samtrans.com](mailto:PRA@samtrans.com) as the request arrives much faster to our office.

Please let me know if you need anything further. I hope you have an enjoyable holiday.

Kind regards,

Christine

**Christine Boland**

**Assistant District Secretary  
Executive Administration**

San Mateo County Transit District  
1250 San Carlos Avenue  
San Carlos, CA 94070  
650•622-7888  
[www.smctd.com](http://www.smctd.com)  
[bolandc@samtrans.com](mailto:bolandc@samtrans.com)



Best,

Dora

---

**From:** Roland Lebrun <ccss@msn.com>  
**Sent:** Friday, December 20, 2019 3:39 AM  
**To:** Board (@caltrain.com) <BoardCaltrain@samtrans.com>  
**Cc:** VTA Board Secretary <board.secretary@vta.org>; MTC Commission <info@mtc.ca.gov>; MTC-ABAG <mtc-abag@service.govdelivery.com>; SFCTA CAC <cac@sfcta.org>; cacsecretary [@caltrain.com] <jpbcacsecretary@samtrans.com>; Caltrain, Bac (@caltrain.com) <BAC@caltrain.com>; Steve Stamos, Clerk of the Board <clerk@sfcta.org>  
**Subject:** Re: Request for information

Dear Chair Gillett,

Pursuant to Government Code §6250 et seq, please refer to the legal council report (attached) of the September 2013 Board meeting

[http://www.caltrain.com/Assets/\\_\\_\\_Agendas+and+Minutes/JPB/Board+of+Directors/Minutes/2013/9-5-13+JPB+Minutes.pdf](http://www.caltrain.com/Assets/___Agendas+and+Minutes/JPB/Board+of+Directors/Minutes/2013/9-5-13+JPB+Minutes.pdf)

and provide the following information:

- 1) Copy of the signed lease with option to purchase 4020 Campbell Avenue
- 2) Name(s) and position(s) of SamTrans employee(s) involved in the transaction

Thank you in advance for your prompt attention to this matter.

Sincerely,

Roland Lebrun

cc

SFCTA Commissioners  
VTA Board of Directors  
MTC Commissioners  
SFCTA CAC  
Caltrain CAC  
Caltrain BPAC

## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this "First Amendment") is made as of August 29, 2013 (the "Effective Date"), by and between Campbell Avenue Portfolio, LLC, a Delaware limited liability company ("Landlord") and Peninsula Corridor Joint Powers Board ("Tenant").

### RECITALS

A. Landlord and Tenant entered into that certain Lease Agreement (NNN) dated as of May 17, 2013 (the "Lease"), with respect to that certain premises consisting of approximately 19,466 rentable square feet referred to as 4020 Campbell Avenue, Menlo Park, California 94025 (the "Premises").

B. Landlord and Tenant desire to amend the Lease in certain respects on the terms set forth in this First Amendment.

### TERMS AND CONDITIONS

NOW, THEREFORE, the parties agree as follows:

1. Lease Definitions. Capitalized terms defined in the Lease which are used in this First Amendment shall have the same meaning as in the Lease, except as otherwise provided in this First Amendment.
2. Exercise Notice. Tenant has a right of first offer to purchase the Premises pursuant to the terms and conditions set forth in Section 40 of the Lease. Landlord provided Landlord's Notice to Tenant on July 2, 2013. The parties hereby agree that with respect to the Landlord's Notice, Tenant shall have until 12:00pm Pacific time on September 6, 2013 to deliver its Exercise Notice notwithstanding the time periods set forth in Section 40.2 of the Lease.
3. Closing. In the event that the ROFO Option is duly exercised within the time period set forth in Section 2 hereof, Landlord and Tenant hereby agree that the Closing Date shall be identified in the Purchase and Sale agreement, but shall be no later than one hundred seventy four (174) days following the Exercise Date.
4. Continuing Effect. All of the terms and conditions of the Lease shall remain in full force and effect, as the Lease is amended by this First Amendment.
5. Conflicts. If any provision of this First Amendment conflicts with the Lease, the provisions of this First Amendment shall control.
6. Warranty of Authority. Each party represents and warrants to the other that the person signing this First Amendment is duly and validly authorized to do so on behalf of the entity it purports to so bind, and if such party is a limited liability company or a corporation, that such limited liability company or corporation has full right and authority to enter into this First Amendment and to perform all of its obligations hereunder.
7. Effectiveness. No binding agreement between the parties pursuant hereto shall arise or become effective until this First Amendment has been duly executed by both Tenant and Landlord and a fully executed copy of this First Amendment has been delivered to both Tenant and Landlord.

8. Counterparts. This First Amendment may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.


IN WITNESS WHEREOF, Landlord and Tenant have duly executed this First Amendment as of the date first set forth above.

**TENANT:**

**PENINSULA CORRIDOR JOINT POWERS BOARD**

By:   
Michael Scanlon  
Executive Director

**APPROVED AS TO FORM:**

By:   
Counsel

**LANDLORD:**

**CAMPBELL AVENUE PORTFOLIO, LLC,**  
a Delaware limited liability company

BY: 

ITS: CEO OF MANAGER

**LEASE AGREEMENT  
(NNN)  
Basic Lease Information**

**Lease Date:** May 17, 2013

**Landlord:** Campbell Avenue Portfolio, LLC

**Landlord's Address:** c/o Tarlton Properties, Inc.  
1530 O'Brien Drive, Suite C  
Menlo Park, California 94025

**Tenant:** Peninsula Corridor Joint Powers Board

**Tenant's Address:** 4020 Campbell Avenue  
Menlo Park, CA 94025

**Premises:** Approximately 19,466 rentable square feet of Building and the Lot on which the Building sits as shown on Exhibit A.

**Premises Address:** 4020 Campbell Avenue  
Menlo Park, CA

**Building:** Approximately 19,466 rentable square feet

**Term:** The date this Lease is fully-executed by both parties and the Premises is delivered to Tenant by Landlord (the "**Commencement Date**"), through last day of the month which is the Two Hundred and Fortieth Month thereafter (the "**Expiration Date**")

<b>Base Rent (¶3):</b>	<b>Months</b>	<b>NNN Rent/PSF/Month</b>	<b>NNN Rent/PSF/Month</b>
	1* - 12	\$1.95	\$37,958.70
	13 - 24	\$2.01	\$39,097.46
	25 - 36	\$2.07	\$40,270.38
	37 - 48	\$2.13	\$41,478.49
	49 - 60	\$2.19	\$42,722.84
	61 - 72	\$2.26	\$44,004.53
	73 - 84	\$2.33	\$45,324.67
	85 - 96	\$2.40	\$46,684.41
	97 - 108	\$2.47	\$48,084.94
	109 - 120	\$2.54	\$49,527.49
	121 - 132	\$2.62	\$51,013.31
	133 - 144	\$2.70	\$52,543.71
	145 - 156	\$2.78	\$54,120.02
	157 - 168	\$2.86	\$55,743.62
	169 - 180	\$2.95	\$57,415.93

<b>Base Rent (¶3):</b>	<b>Months</b>	<b>NNN Rent/PSF/Month</b>	<b>NNN Rent/PSF/Month</b>
	181 - 192	\$3.04	\$59,138.41
	193 - 204	\$3.13	\$60,912.56
	205 - 216	\$3.22	\$62,739.94
	217 - 228	\$3.32	\$64,622.14
	229 - 240	\$3.42	\$66,560.80

\*Tenant's Base Rent shall be abated for the first (1st) month of the Lease Term, if and for so long as Tenant is not in default under this Lease. The total abatement of the Base Rent pursuant to the foregoing shall be \$37,958.70. The foregoing abatement of the Base Rent payable by Tenant shall not be construed as an abatement of any other rent, Additional Rent, or charges payable under this Lease. If Tenant defaults under the terms of this Lease, and such default results in the termination of this Lease in accordance with the provisions of Articles 20 and 21 (Defaults and Remedies) of this Lease, then the amount of the abatement of the Base Rent through the date of such termination of this Lease (the "Abated Base Rent") shall become immediately due and payable as Additional Rent under this Lease as of the day prior to such termination. In such event, as a part of the recovery set forth in Article 21 of this Lease, Landlord shall be entitled to recover, in addition to any other amounts due from Tenant, the amount of the Abated Base Rent as Additional Rent due under this Basic Lease Information Section.

**Security Deposit (¶4):** Sixty-Six Thousand, Five Hundred Sixty and 80/100s (\$66,560.80)

**Permitted Uses(¶9):** Any legal permitted use consistent with the character and zoning criteria of the Property, including but not limited to a railroad control facility, general office, research and development, and lab.

**Parking Spaces:** All parking spaces located on the Premises as identified on Exhibit A.

**Broker (¶36):** CB Richard Ellis for Tenant  
Kidder Mathews for Landlord

**Exhibits:**

- Exhibit A - Premises*
- Exhibit B - Tenant Improvements*
- Exhibit C - Intentionally Deleted*
- Exhibit D - Intentionally Deleted*
- Exhibit E - Hazardous Materials Disclosure Certificate - Example*
- Exhibit F - Intentionally Deleted*
- Exhibit G - Tenant's Initial Hazardous Materials Disclosure Certificate*
- Exhibit H - Sample calculation of Purchase Price Floor*
- Exhibit I - Form SNDA*

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## LEASE AGREEMENT

**DATE:** This Lease is made and entered into as of the Lease Date set forth on Page 1. The Basic Lease Information set forth on Page 1 and this Lease are and shall be construed as a single instrument.

1. **Premises.** Landlord hereby leases the Premises to Tenant upon the terms and conditions contained herein. Landlord and Tenant hereby agree that for purposes of this Lease, as of the Lease Date, the rentable square footage area of the Building shall be deemed to be the number of rentable square feet as set forth in the Basic Lease Information on Page 1. So long as Tenant complies with the terms of this Lease and any Rules and Regulations that Landlord may deem necessary or desirable for the safety and security of the Premises and the occupants thereof, Tenant shall have access to the Building and the Premises 24 hours per day, 7 days per week, subject to full or partial closures which may be reasonably required from time to time for construction, maintenance, repairs or actual or threatened emergency or other events or circumstances which make it reasonably necessary to temporarily restrict or limit access.

2. **Adjustment of Commencement Date; Condition of the Premises.** Landlord shall deliver possession of the Premises to Tenant in broom clean condition, with all of the systems of the Premises, including, but not limited to, the mechanical, lighting, electrical, and plumbing systems in good operating condition. By taking possession of the Premises, Tenant shall be deemed to have accepted the Premises in good condition and state of repair. Tenant hereby acknowledges and agrees that neither Landlord nor Landlord's agents or representatives has made any representations or warranties as to the suitability, safety or fitness of the Premises for the conduct of Tenant's business, Tenant's intended use of the Premises or for any other purpose.

3. **Rent.** The word "Term" whenever used herein refers to the initial term of this Lease and any extension thereof. On or prior to the date that Tenant executes this Lease, Tenant shall deliver to Landlord the original executed Lease, the Base Rent (which shall be applied against the Rent payable for the first month Tenant is required to pay Base Rent), the Security Deposit, and all insurance certificates evidencing the insurance required to be obtained by Tenant under Section 12 of this Lease. Tenant agrees to pay Landlord, without prior notice or demand, or abatement, offset, deduction or claim, except as otherwise provided herein, the Base Rent described in the Basic Lease Information, payable in advance at Landlord's address specified in the Basic Lease Information on the Commencement Date and thereafter on the first (1st) day of each month throughout the balance of the Term of the Lease. In addition to the Base Rent set forth in the Basic Lease Information, Tenant shall pay Landlord in advance on the Commencement Date and thereafter on the first (1st) day of each month throughout the balance of the Term of this Lease, as Additional Rent, Operating Expenses, Tax Expenses and Utility Expenses. Tenant shall also pay to Landlord as Additional Rent hereunder, immediately on Landlord's demand therefor, any and all costs and expenses incurred by Landlord to enforce the provisions of this Lease, including, but not limited to, costs associated with the delivery of notices, delivery and recordation of notice(s) of default, reasonable attorneys' fees, expert fees, court costs and filing fees (collectively, the "Enforcement Expenses"). The term "Rent" whenever used herein refers to the aggregate of all these amounts. If Landlord permits Tenant to occupy the Premises without requiring Tenant to pay rental payments for a period of time, the

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waiver of the requirement to pay rental payments shall only apply to waiver of the Base Rent and Tenant shall otherwise perform all other obligations of Tenant required hereunder. The Rent for any fractional part of a calendar month at the commencement or termination of the Lease term shall be a prorated amount of the Rent for a full calendar month based upon a thirty (30) day month. The prorated Rent shall be paid on the Commencement Date and the first day of the calendar month in which the date of termination occurs, as the case may be.

4. **Security Deposit.** Upon Tenant's execution of this Lease, Tenant shall deliver to Landlord, as a Security Deposit for the performance by Tenant of its obligations under this Lease, the amount specified in the Basic Lease Information. If Tenant is in default, then following expiration of all applicable notice and cure periods, Landlord may, but without obligation to do so, use the Security Deposit, or any portion thereof, to the extent reasonably necessary to cure the default or to compensate Landlord for all damages sustained by Landlord resulting from Tenant's default, including, but not limited to the Enforcement Expenses. Tenant shall, within ten (10) days of written request therefor, pay to Landlord a sum equal to the portion of the Security Deposit so applied or used so as to replenish the amount of the Security Deposit held to increase such deposit to the amount initially deposited with Landlord. As soon as practicable after the termination of this Lease, Landlord shall return the Security Deposit to Tenant, less such amounts as are reasonably necessary, as determined solely by Landlord, to remedy Tenant's default(s) hereunder or to otherwise restore the Premises to a clean and safe condition, reasonable wear and tear excepted. If the cost to restore the Premises exceeds the amount of the Security Deposit, Landlord shall notify Tenant in writing of such deficiency and Tenant shall thereafter promptly deliver to Landlord any and all of such excess sums as reasonably determined by Landlord. Landlord shall not be required to keep the Security Deposit separate from other funds, and, unless otherwise required by law, Tenant shall not be entitled to interest on the Security Deposit. In no event or circumstance shall Tenant have the right to any use of the Security Deposit and, specifically, Tenant may not use the Security Deposit as a credit or to otherwise offset any payments required hereunder, including, but not limited to, Rent or any portion thereof. Tenant waives (i) California Civil Code Section 1950.7 and any and all other laws, rules and regulations applicable to security deposits in the commercial context ("Security Deposit Laws"), and (ii) any and all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws. Notwithstanding anything to the contrary herein, the Security Deposit may be retained and applied by Landlord (a) to offset Rent which is unpaid either before or after termination of this Lease, and (b) against other damages suffered by Landlord before or after termination of this Lease.

5. **Tenant Improvements.** Tenant hereby accepts the Premises as suitable for Tenant's intended use and as being in good operating order, condition and repair, "AS IS", except as specified in Exhibit B attached hereto. Landlord hereby consents to the scope of Tenant Improvements described on Exhibit B attached hereto. At Tenant's sole cost and expense, Tenant shall install and construct the Tenant Improvements described on Exhibit B attached in accordance with the terms, conditions, criteria and provisions set forth herein: Tenant, at Tenant's sole cost and expense, shall retain the architect/space planner reasonably acceptable to Landlord (the "**Architect**") to prepare the Construction Drawings (as hereinafter defined). Tenant shall, at Tenant's sole cost and expense, retain the engineering consultants reasonably acceptable to Landlord (the "**Engineers**") to prepare all plans and engineering

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working drawings relating to the Tenant Improvements. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "**Construction Drawings**." All Construction Drawings shall comply with the drawing format and specifications as reasonably determined by Landlord, and shall be subject to Landlord's approval prior to commencement of the construction of the Tenant Improvements. Tenant and the Architect shall prepare the final space plan for Tenant Improvements (collectively, the "**Final Space Plan**") and shall deliver the Final Space Plan to Landlord for Landlord's approval. Tenant shall obtain all necessary applicable building permits, certificates of occupancy and other approvals required from the appropriate municipal authorities for the Tenant Improvements. No material changes, modifications or alterations in the Construction Drawings may be made without the prior written consent of Landlord. A contractor selected by Tenant and reasonably acceptable to Landlord ("**Contractor**") shall construct the Tenant Improvements. Tenant shall independently retain Contractor to construct the Tenant Improvements in accordance with the Construction Drawings. With respect to any portion of the Tenant Improvements that are structural in nature, Landlord shall have the right, but not the obligation, to oversee the construction by Contractor for the purpose of ensuring completion of the structural portions of the Tenant Improvements in conformance with the Construction Drawings, and Tenant shall reimburse Landlord its reasonable costs for such oversight. Tenant shall keep the Premises and the property on which the Premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. Tenant acknowledges and agrees that neither Landlord nor any of Landlord's agents, representatives or employees has made any representations as to the suitability, fitness or condition of the Premises for the conduct of Tenant's business or for any other purpose, including without limitation, any storage incidental thereto. Any exception to the foregoing provisions must be made by express written agreement by both parties.

6. **Additional Rent.** It is intended by Landlord and Tenant that this Lease be a "triple net lease." The costs and expenses described in this Section 6 and all other sums, charges, costs and expenses specified in this Lease other than Base Rent are to be paid by Tenant to Landlord as additional rent (collectively, "**Additional Rent**").

6.1 **Operating Expenses.** In addition to the Base Rent set forth in Section 3, Tenant shall pay all Operating Expenses as Additional Rent. The term "**Operating Expenses**" as used herein shall mean the total amounts paid or payable by Landlord in connection with the ownership, maintenance, repair and operation of the Premises referred to in the Basic Lease Information. These Operating Expenses may include, but are not limited to:

6.1.1 Landlord's cost of repairs to, and maintenance of, the non-structural portions of the roof, including but not limited to the roof membrane and the surface and non-structural portions of the exterior walls of the Building;

6.1.2 Landlord's cost of repairs to, and maintenance of, the Tenant's Structural Improvements (as defined in Section 10.1 below);

6.1.3 Landlord's cost of maintaining the outside parking and paved areas, access and perimeter roads, sidewalks, rail spurs, landscaped areas and similar areas and facilities;

6.1.4 Landlord's annual cost of commercially reasonable insurance insuring against fire and extended coverage (including, if Landlord elects, "special risk" coverage), earthquake insurance, rental value insurance against loss of Rent in an amount equal to the amount of Rent for a period of at least six (6) months commencing on the date of loss, and subject to the provisions of Section 27 below, any deductible, and, with the prior approval of Tenant, all other insurance reasonably determined by Landlord;

6.1.5 Landlord's cost of: (i) modifications and/or new improvements to the non-structural portions of the Premises required by any rules, laws or regulations effective subsequent to the Commencement Date; (ii) reasonably necessary replacement improvements to the non-structural portions of the Premises after the Lease Date; and (iii) new improvements to the non-structural portions of the Premises that reduce operating costs or improve life/safety conditions, as reasonably agreed by Landlord and Tenant; provided, however, that except for capital improvements required because of Tenant's specific use of the Premises, if Landlord is required to or voluntarily makes such capital improvements, Landlord shall amortize the cost of said improvements over the useful life of said improvements calculated in accordance with generally accepted accounting principles (together with interest on the unamortized balance at the rate equal to the effective rate of interest on Landlord's bank line of credit at the time of completion of said improvements, but in no event in excess of ten percent (10%) per annum) as an Operating Expense in accordance with generally accepted accounting principles, except that with respect to capital improvements made to save Operating Expenses such amortization shall not be at a rate greater than the actual savings in Operating Expenses.

6.1.6 If Landlord elects to so procure, Landlord's reasonable cost of preventative maintenance, and repair contracts including, but not limited to, contracts for elevator systems (if applicable) and heating, ventilation and air conditioning systems, lifts for disabled persons, and trash or refuse collection;

6.1.7 Landlord's cost of fire protection services for the Premises if in Landlord's reasonable discretion such services are provided;

6.1.8 Landlord's establishment of reasonable reserves for replacements and/or repairs of improvements, equipment and supplies;

6.1.9 Landlord's cost of supplies, equipment, rental equipment and other similar items used in the operation and/or maintenance of the Premises; and

6.1.10 Landlord's cost for the repairs and maintenance items set forth in Section 11.2 below, provided that to the extent Laws effective after the date of

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this Lease require the construction of an addition or an alteration of the Premises, or reinforcement or other modifications that would constitute capital improvements or capital replacements that are not the result of the specific and unique use of the Premises by Tenant (e.g., governmentally mandated seismic modifications, and the cost of such capital improvements or replacements shall exceed \$10,000 to complete, such cost shall be amortized over the useful life of such capital improvement or capital replacement as reasonably determined by Landlord and Tenant shall pay the amortized amount allocable to the months remaining in the Term on a monthly basis.

6.1.11 The management fee charged for the management of the Building which shall not exceed three percent (3%) of the total gross receipts received by Landlord from operating the Building, including Base Rent and Additional Rent.

6.1.12 The following shall be excluded from the definition of Operating Expenses:

- (a) The costs of repairs to the Premises, if the costs of such repairs is reimbursed by the insurance carried by Landlord or subject to award under any eminent domain proceeding;
- (b) The costs incurred by Landlord for the repair of damage to the Premises to the extent that Landlord is reimbursed (as reduced by the costs of collection) by a third party or pursuant to a warranty;
- (c) The costs incurred by Landlord to repair structural portion of the Premises arising from a defect in the original construction or design of the Premises;
- (d) Costs incurred by Landlord to comply with notices of violation of the Americans With Disabilities Act, as amended, when such notices are for conditions existing prior to the Commencement Date;
- (e) Costs incurred to comply with Laws relating to the removal of Hazardous Materials (as defined in Section 29.2 below) which was in existence in or on the Premises prior to the Lease Commencement Date, and was of such a nature that a federal, State or municipal governmental authority, if it had then had knowledge of the presence of such Hazardous Material, in the state, and under the conditions that it then existed in or on the Premises, would have then required the removal of such Hazardous Material or other remedial or containment action with respect thereto; and costs incurred with respect to Hazardous Material, which Hazardous Material is brought into the Premises after the date hereof by Landlord if it is of such a nature, at that time, that a federal, State or municipal governmental authority, if it had then had knowledge of the presence of such Hazardous Material, in the state, and under the conditions, that then exists in the Premises, would have then required removal, remediation or other action with respect thereto;

(f) Marketing costs, real estate broker's or other leasing commissions, finders' fees, attorney's fees incurred in connection with negotiations or disputes with tenants, other occupants or prospective tenants or other occupants;

(g) Costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Premises;

(h) Legal fees incurred in connection with the renegotiation or enforcement of any lease in the Premises except to the extent directly due or recoverable from Tenant in the enforcement of this Lease;

(i) Advertising and promotional expenses incurred for the purpose of leasing space in the Premises;

(j) Any tenant improvement allowance given to any tenant (including Tenant), whether given by contribution or credit against rent or otherwise, and any abatements or credits to base rent or additional rent;

(k) The cost of the design, construction, renovation, redecorating or other preparation of tenant improvements for other tenants or prospective tenants of the Premises (including design fees for space planning and all third party fees and charges, permit, license and inspection fees), and moving expenses to move in or out, or relocate, Tenant or other tenants to or from the Premises or within the Premises, and allowances for any of the foregoing;

(l) Bad debt expenses, payments of late fees, prepayment fees or other charges on any mortgage or deed of trust recorded with respect to the Premises now or in the future, rental concessions or negative cash flow guaranties, or rental payments under any ground or underlying lease or leases except to the extent such rental payments are for the payment of any cost or expense which would otherwise be an Operating Expense hereunder;

(m) Wages, salaries, benefits and compensation paid to any employee of Landlord above the grade of property manager;

(n) Costs for or relating to sculpture, paintings or other art;

(o) Depreciation or amortization except as specifically permitted herein or except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation, or amortization would otherwise have been included in the charge for such third party's services;

(p) Any overhead or profit increment paid to Landlord or any of its affiliates (i.e., persons or companies controlled by, under common control

with, or which control, Landlord) for services on or to the Premises to the extent that the same exceeds the cost of overhead and profit increment included in the costs of such services which could be obtained from third parties on a competitive basis;

(q) Any Operating Expenses which are the responsibility of any particular tenant for which Landlord is entitled to be directly reimbursed by any tenant (including Tenant) as an additional charge in excess of base rent and such tenant's share of the Operating Expenses;

(r) All items and services for which Tenant pays directly to third parties or for which tenants reimburse Landlord;

(s) Expenses in connection with non-Premises standard services or benefits of a type which are not provided to Tenant but which are provided to other tenants or occupants of the Premises, or for which Tenant is charged directly but which are provided to another tenant or occupant of the Premises without direct charge;

(t) any costs or legal fees incurred in connection with any other tenant of the Premises;

(u) any costs, fines or penalties incurred as a result of any violation by Landlord or any other tenant of the Premises of the terms of any lease, any governmental rule or authority, or mortgage or tax penalties and interest incurred as a result of Landlord's negligent or willful failure to make payments and/or to file any income tax or information return(s) when due, unless such non-payment is due to Tenant's nonpayment of rent;

(v) costs, including legal costs, incurred in connection with the initial development, construction or improvement of the Premises;

(w) costs and expenses incurred in defending Landlord's title to or interest in the Premises or any portion thereof;

(x) costs associated with the operation of the business of the partnership or entity which constitutes Landlord, or the operation of any parent, subsidiary or affiliate of Landlord, as the same are distinguished from the costs of operation of the Premises, including without limitation partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee, costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Premises, and costs of any disputes between Landlord and its employees or disputes of Landlord with third-party building management;

(y) costs and expenses due to termination or underfunding of any plan under ERISA or any other law or regulation governing employee pension plans or other benefits;

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- (z) charitable or political contributions;
- (aa) cost of insurance premiums for insurance not customarily carried by owners of first class Building in the Menlo Park metropolitan area;
- (bb) any other expenses which are not specifically identified herein as being included in Operating Expenses, where such expenses would not normally be treated as a cost of operation (to be reimbursed by tenants) under generally accepted accounting principles and practice; and
- (cc) any costs or expenses necessitated by or resulting from the gross negligence or willful misconduct of Landlord, its agents, employees and/or contractors.

**6.2 Tax Expenses.** In addition to the Base Rent set forth in Section 3, Tenant shall pay all real property taxes applicable to the land and improvements included within the Lot on which the Premises are situated and one hundred percent (100%) of all personal property taxes now or hereafter assessed or levied against the Premises or Tenant's personal property. Tenant shall also pay one hundred percent (100%) of any increase in real property taxes attributable, in Landlord's sole discretion, to any and all alterations, Tenant Improvements or other improvements of any kind, which are above standard improvements customarily installed for similar buildings located in the vicinity, whatsoever placed in, on or about the Premises for the benefit of, at the request of, or by Tenant. The term "**Tax Expenses**" shall mean and include, without limitation, any form of tax and assessment (general, special, supplemental, ordinary or extraordinary), commercial rental tax, payments under any improvement bond or bonds, license fees, license tax, business license fee, rental tax, transaction tax, levy, or penalty imposed by authority having the direct or indirect power of tax (including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement district thereof) as against any legal or equitable interest of Landlord in the Premises, as against Landlord's right to rent or as against Landlord's business of leasing the Premises or the occupancy of Tenant or any other tax, fee, or excise, however described, including, but not limited to, any value added tax, or any tax imposed in substitution (partially or totally) of any tax previously included within the definition of real property taxes, or any additional tax the nature of which was previously included within the definition of real property taxes. The term Tax Expenses shall not include:

6.2.1 any excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, transfer taxes, gross receipts taxes, margin taxes, and other taxes to the extent applicable to Landlord's general or net income;

6.2.2 penalties incurred as a result of Landlord's negligence, inability or unwillingness to make payments of, and/or to file any tax or informational returns with respect to, any Direct Taxes, when due;

6.2.3 any special assessments which are levied or assessed by a special assessment district which is formed voluntarily by Landlord for the purpose of constructing or acquiring on-site or off-site improvements to the Building, or any portion thereof; or

6.2.4 any real estate taxes directly payable by Tenant or any other tenant in the Building under the applicable provisions in their respective leases.

6.3 [intentionally deleted].

6.4 **Payment of Expenses.** Landlord shall estimate the Operating Expenses and Tax Expenses for the calendar year in which the Lease commences. Commencing on the Commencement Date, one twelfth (1/12th) of this estimated amount shall be paid by Tenant to Landlord, as Additional Rent, and thereafter on the first (1st) day of each month throughout the remaining months of such calendar year. Thereafter, Landlord shall estimate such expenses as close as reasonably possible to the beginning of each calendar year during the Term of this Lease, but no later than April 1 of such year, and Tenant shall pay one twelfth (1/12th) of such estimated amount as Additional Rent hereunder on the first (1st) day of each month during such calendar year and for each ensuing calendar year throughout the Term of this Lease. If at any time during any such calendar year, it appears to Landlord that the Operating Expenses or Tax Expenses for such year will vary from Landlord's estimate, Landlord may, by written notice to Tenant, revise Landlord's estimate for such year and the Additional Rent payments by Tenant for such year shall thereafter be based upon such revised estimate. Landlord shall furnish to Tenant with such revised estimate written verification showing that the actual Operating Expenses or Tax Expenses are greater than Landlord's estimate. The increase in the monthly installments of Additional Rent resulting from Landlord's revised estimate shall not be retroactive, but the Additional Rent for each calendar year shall be subject to adjustment between Landlord and Tenant after the close of the calendar year, as provided herein. Tenant's obligation to pay Operating Expenses and Tax Expenses shall survive the expiration or earlier termination of this Lease.

6.5 **Annual Reconciliation.** By June 30th of each calendar year, or as soon thereafter as reasonably possible Landlord shall endeavor to furnish Tenant with an accounting of actual Operating Expenses and Tax Expenses. Within thirty (30) days of Landlord's delivery of such accounting, Tenant shall pay to Landlord the amount of any underpayment. Notwithstanding the foregoing, failure by Landlord to give such accounting by such date shall not constitute a waiver by Landlord of its right to collect any of Tenant's underpayment at any time. Landlord shall credit the amount of any overpayment by Tenant toward the next estimated monthly installment(s) falling due, or where the Term of the Lease has expired, refund the amount of overpayment to Tenant. If the Term of the Lease expires prior to the annual reconciliation of expenses Landlord shall have the right to reasonably estimate such expenses, and if Landlord determines that an underpayment is due, Tenant hereby agrees that Landlord shall be entitled to deduct such underpayment from Tenant's Security Deposit. If Landlord reasonably determines that an overpayment has been made by Tenant, Landlord shall refund said overpayment to Tenant as soon as practicable thereafter. Notwithstanding the foregoing, failure of Landlord to accurately

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estimate such expenses or to otherwise perform such reconciliation of expenses, including without limitation, Landlord's failure to deduct any portion of any underpayment from Tenant's Security Deposit, shall not constitute a waiver of Landlord's right to collect any of Tenant's underpayment at any time during the Term of the Lease or at any time after the expiration or earlier termination of this Lease.

6.6 **Audit.** After delivery to Landlord of at least thirty (30) days prior written notice, Tenant, at its sole cost and expense through any accountant designated by it, shall have the right to examine and/or audit the books and records evidencing such costs and expenses for the previous one (1) calendar year, during Landlord's reasonable business hours but not more frequently than once during any calendar year. Any such accounting firm designated by Tenant may not be compensated on a contingency fee basis. The results of any such audit (and any negotiations between the parties related thereto) shall be maintained strictly confidential by Tenant and its accounting firm and shall not be disclosed, published or otherwise disseminated to any other party other than to Landlord and its authorized agents. Landlord and Tenant shall use their best efforts to cooperate in such negotiations and to promptly resolve any discrepancies between Landlord and Tenant in the accounting of such costs and expenses. If Landlord's audit of the Operating Expenses and/or Tax Expenses for any year reveals a net overcharge of more than five percent (5%), Landlord promptly shall reimburse Tenant for the cost of the audit; otherwise, Tenant shall bear the cost of Tenant's audit.

7. **Utilities.** Utility Expenses and all other sums or charges set forth in this Section 7 are considered part of Additional Rent. In addition to the Base Rent set forth in Section 3 hereof, Tenant shall pay the cost of all water, sewer use, sewer discharge fees and sewer connection fees, gas, heat, electricity, refuse pickup, janitorial service, telephone and other utilities billed or metered separately to the Premises and/or Tenant. Tenant shall also pay any assessments or charges for utility or similar purposes included within any tax bill for the Lot on which the Premises are situated, including, without limitation, entitlement fees, allocation unit fees, and/or any similar fees or charges, and any penalties related thereto. For any such utility fees or use charges that are not billed or metered separately to Tenant, including without limitation, water and refuse pick up charges, Tenant shall pay to Landlord, as Additional Rent, without prior notice or demand, on the Commencement Date and thereafter on the first (1st) day of each month throughout the balance of the Term of this Lease the amount which is attributable to Tenant's use of the utilities or similar services, as reasonably estimated and determined by Landlord based upon factors such as size of the Premises and intensity of use of such utilities by Tenant such that Tenant shall pay the portion of such charges reasonably consistent with Tenant's use of such utilities and similar services ("**Utility Expenses**"). If Tenant disputes any such estimate or determination, then Tenant shall either pay the estimated amount or cause the Premises to be separately metered at Tenant's sole expense. Tenant shall pay to Landlord one-twelfth (1/12th) of the estimated amount of any Utility Expenses paid by Landlord and not directly paid by Tenant on the Commencement Date and thereafter on the first (1st) day of each month throughout the balance of the Term of this Lease and any reconciliation thereof shall be substantially in the same manner as specified in Section 6.5 above. Tenant acknowledges that the Premises may become subject to the rationing of utility services or restrictions on utility use as required by a public utility company, governmental agency or other similar entity having

jurisdiction thereof. Notwithstanding any such rationing or restrictions on use of any such utility services, Tenant acknowledges and agrees that its tenancy and occupancy hereunder shall be subject to such rationing restrictions as may be imposed upon Landlord, Tenant, the Premises, the Building or the Lot, and Tenant shall in no event be excused or relieved from any covenant or obligation to be kept or performed by Tenant by reason of any such rationing or restrictions. Tenant further agrees to timely and faithfully pay, prior to delinquency, any amount, tax, charge, surcharge, assessment or imposition levied, assessed or imposed upon the Premises, or Tenant's use and occupancy thereof. Notwithstanding anything to the contrary contained herein, if permitted by applicable Laws, Landlord shall have the right at any time and from time to time during the Term of this Lease to either contract for service from a different company or companies (each such company shall be referred to herein as an "Alternate Service Provider") other than the company or companies presently providing electricity service for the Building or the Lot (the "Electric Service Provider") or continue to contract for service from the Electric Service Provider, at Landlord's sole discretion. Tenant hereby agrees to cooperate with Landlord, the Electric Service Provider, and any Alternate Service Provider at all times and, as reasonably necessary, shall allow Landlord, the Electric Service Provider, and any Alternate Service Provider reasonable access to the Building's electric lines, feeders, risers, wiring, and any other machinery within the Premises.

8. **Late Charges.** Any and all sums or charges set forth in this Section 8 are considered part of Additional Rent. Tenant acknowledges that late payment (the second day of each month or any time thereafter) by Tenant to Landlord of Base Rent, Operating Expenses, Tax Expenses, Utility Expenses or other sums due hereunder, will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any note secured by any encumbrance against the Premises, and late charges and penalties due to the late payment of real property taxes on the Premises. Therefore, if any installment of Rent or any other sum due from Tenant is not received by Landlord within five (5) days following the date when the same is due, Tenant shall promptly pay to Landlord as an additional sum equal to five percent (5%) of such delinquent amount as a late charge. Any amount not paid within five (5) days after Tenant's receipt of written notice that such amount is due shall bear interest on such delinquent amount from the date due until paid at the rate equal to the prime rate plus two percent (2%), in addition to the late charge. If Tenant delivers to Landlord a check for which there are not sufficient funds, Landlord may, at its sole option, require Tenant to replace such check with a cashier's check for the amount of such check and all other charges payable hereunder. The parties agree that this late charge and the other charges referenced above represent a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge or other charges shall not constitute a waiver by Landlord of Tenant's default with respect to the delinquent amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord for any other breach of Tenant under this Lease. If a late charge or other charge becomes payable for any two (2) installments of Rent within any twelve (12) month period, then Landlord, at Landlord's sole option, can either require the Rent be paid quarterly in advance, or be paid monthly in advance by cashier's check or by electronic funds transfer.

9. Use of Premises.

9.1 **Compliance with Laws, Recorded Matters, and Rules and Regulations.**

The Premises are to be used solely for the purposes and uses specified in the Basic Lease Information and for no other uses or purposes without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed so long as the proposed use (i) does not involve the use of Hazardous Materials other than as expressly permitted under the provisions of Section 29 below, (ii) does not require any additional parking in excess of the parking spaces already licensed to Tenant pursuant to the provisions of Section 24 of this Lease, and (iii) is compatible and consistent with the other uses then being made in other similar types of buildings in the vicinity of the Building, as reasonably determined by Landlord. The use of the Premises by Tenant and its employees, representatives, agents, invitees, licensees, subtenants, customers or contractors (collectively, "**Tenant's Representatives**") shall be subject to, and at all times in compliance with, (a) any and all applicable laws, ordinances, statutes, orders and regulations as same exist from time to time (collectively, the "**Laws**"), (b) any and all documents, matters or instruments, including without limitation, any declarations of covenants, conditions and restrictions, and any supplements thereto, each of which has been or hereafter is recorded in any official or public records with respect to the Premises or any portion thereof (collectively, the "**Recorded Matters**"), and (c) the reasonable rules and regulations promulgated by Landlord now or hereafter enacted relating to parking and the operation of the Premises (collectively, the "**Rules and Regulations**"). Tenant agrees to, and does hereby, assume full and complete responsibility to ensure that the Premises are adequate to fully meet the needs and requirements of Tenant's intended operations of its business within the Premises, and Tenant's use of the Premises and that same are in compliance with all applicable Laws throughout the Term of this Lease. Additionally, Tenant shall be solely responsible for the payment of all costs, fees and expenses associated with any modifications, improvements or alterations to the Premises occasioned by the enactment of, or changes to, any Laws arising from Tenant's particular use of the Premises or alterations, improvements or additions made to the Premises by Tenant or at Tenant's request regardless of when such Laws became effective. Notwithstanding anything herein to the contrary, Landlord hereby represents that the Building is compliant with the Americans with Disabilities Act of 1990, as amended (the "**ADA**"), for general office use, specifically with Title III of the ADA, as of the Commencement Date. If this representation is found to be untrue, upon receipt of written notice from Tenant of the nature of the violation provided within one hundred eighty (180) days of the Commencement Date, Landlord shall, at its sole cost and expense, and not to be included as an Operating Expense hereunder, bring the Building into compliance with the ADA Title III. Tenant shall be solely responsible for complying with the ADA Title I relating to Tenant's employees during the Lease Term, with any alteration or modification required as the result of Tenant's Alterations or Improvements and/or as a result of any change in ADA laws enacted subsequent to the Commencement Date.

9.2 **Prohibition on Use.** Tenant shall not use the Premises or permit anything to be done in or about the Premises nor keep or bring anything therein which will in any way conflict with any of the requirements of the Board of Fire Underwriters or similar body now or hereafter constituted or in any way increase the existing rate of or affect any

policy of fire or other insurance upon the Building or any of its contents, or cause a cancellation of any insurance policy. No auctions may be held or otherwise conducted in, on or about the Premises without Landlord's written consent thereto, which consent may be given or withheld in Landlord's sole discretion. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of Landlord, other tenants or occupants of nearby buildings or other persons or businesses in the area, or injure or annoy other tenants, as determined by Landlord, in its reasonable discretion, for the benefit, quiet enjoyment and use by Landlord and all other tenants or occupants of the Building (if any) or other adjacent buildings; nor shall Tenant cause, maintain or permit any private or public nuisance in, on or about the Premises, including, but not limited to, any offensive odors, noises, fumes or vibrations. Tenant shall not damage or deface or otherwise commit or suffer to be committed any waste in, upon or about the Premises. Tenant shall not place or store, nor permit any other person or entity to place or store, any property, equipment, materials, supplies, personal property or any other items or goods outside of the Building for any period of time. Tenant shall not permit any animals, including, but not limited to, any household pets, to be brought or kept in or about the Premises. Tenant shall place no loads upon the floors, walls, or ceilings in excess of the maximum designed load permitted by the applicable Uniform Building Code or which may damage the Building or outside areas; nor place any harmful liquids in the drainage systems; nor dump or store waste materials, refuse or other such materials, or allow such to remain outside the Building area, except for any non-hazardous or non-harmful materials which may be stored in refuse dumpsters or in any enclosed trash areas provided. If Tenant fails to comply with such Laws, Recorded Matters, Rules and Regulations or the provisions of this Lease, in addition to all rights and remedies of Landlord hereunder including, but not limited to, the payment by Tenant to Landlord of all Enforcement Expenses and Landlord's costs and expenses, if any, to cure any of such failures of Tenant, if Landlord, at its sole option, elects to undertake such cure.

10. **Alterations and Additions; and Surrender of Premises.**

10.1 **Alterations and Additions.** Except for the Tenant Improvements specified on Exhibit B attached hereto, Tenant may, from time to time, at its own cost and expense and without the consent of Landlord make nonstructural alterations to the interior of the Premises which do not affect any of the Building systems (including but not limited to the plumbing, electrical, HVAC or life/fire/safety systems,) the cost of which in any one instance is Twenty-Five Thousand Dollars (\$25,000) or less, and the aggregate cost of all such work during the Term does not exceed One Hundred Thousand Dollars (\$100,000) in any calendar year, provided Tenant first notifies Landlord in writing of any such alterations. Otherwise, Tenant shall not install any signs, fixtures, improvements, nor make or permit any other alterations or additions to the Premises without the prior written consent of Landlord. If any such alteration or addition is expressly permitted by Landlord, Tenant shall deliver at least ten (10) days prior notice to Landlord, from the date Tenant intends to commence construction, sufficient to enable Landlord to post a Notice of Non-Responsibility. In all events, Tenant shall deliver to Landlord a complete set of plans and specifications for such work and shall obtain all permits or other governmental approvals prior to commencing any of such work and deliver a copy of same to Landlord.

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All alterations and additions shall be installed by a licensed contractor approved by Landlord, at Tenant's sole expense in compliance with all applicable Laws (including, but not limited to, the ADA as defined herein), Recorded Matters, and Rules and Regulations. If any alteration affects the Building structure, including, without limitation, the roof, sidewall or foundation or any of the Building systems (any such alteration shall be referred to herein as "**Tenant's Structural Improvements**"), in addition to all other rights hereunder, Landlord shall be entitled, but not obligated, to review and oversee the construction and completion of Tenant's Structural Improvements for the purpose of ensuring conformance with the plans and specifications approved by Landlord and Tenant shall reimburse Landlord for Landlord's reasonable oversight costs. As a condition to Landlord's consent to any structural improvements or alterations, Landlord may require Tenant to post and obtain a completion and indemnity bond or such other form of security as is acceptable to Landlord in Landlord's reasonable discretion, including, without limitation, a letter of credit, such security to be in an amount equal to one hundred ten percent (110%) of the cost of the work. Tenant shall keep the Premises and the property on which the Premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant.

**10.2 Surrender of Premises.** Upon the termination of this Lease, whether by forfeiture, lapse of time or otherwise, or upon the termination of Tenant's right to possession of the Premises, Tenant will at once surrender and deliver up the Premises, together with the fixtures (other than trade fixtures), additions and improvements which Landlord has notified Tenant, in writing, that Landlord will require Tenant not to remove, to Landlord in good condition and repair (including, but not limited to, replacing all light bulbs and ballasts not in good working condition) and in the condition in which the Premises existed as of the Commencement Date, except for reasonable wear and tear. Reasonable wear and tear shall not include any damage or deterioration to the floors of the Premises arising from the use of forklifts in, on or about the Premises (including, without limitation, any marks or stains of any portion of the floors), any damage or deterioration that would have been prevented by proper maintenance by Tenant or Tenant otherwise performing all of its obligations under this Lease or any deterioration in the condition or diminution of the value of any portion of the Premises in any manner whatsoever related to directly, or indirectly, Hazardous Materials as a result of the acts or omissions of Tenant or any of Tenant's Representatives. Landlord shall advise Tenant in writing at the time consent is granted whether Landlord requires Tenant to remove any alterations from the Premises prior to the expiration or sooner termination of the Lease. If Landlord so notifies tenant, Tenant shall promptly remove any such alterations from the Premises prior to the expiration or sooner termination of the Lease. Tenant shall remove all tenant signage, trade fixtures, furniture, furnishings and personal property situated in or about the Premises. Tenant shall also remove all additions, alterations, and other improvements installed by, or on behalf of Tenant and situated in or about the Premises if (a) if Tenant made any such additions, alterations or other improvements without obtaining Landlord's prior written consent or (b) in breach of Section 10.1. Tenant shall repair any damage caused by the installation or removal of such signs, trade fixtures, furniture, furnishings, fixtures, additions and improvements which are to be removed from the Premises by Tenant hereunder. Tenant shall ensure that the removal of such items and the repair of the

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Premises will be completed prior to such termination of this Lease. Notwithstanding anything to the contrary herein, Tenant shall, within twenty-four hours after the expiration of this Lease, at Tenant's expense and in compliance with the National Electric Code and other applicable laws, remove all electronic, fiber, phone and data cabling and related equipment that has been installed by or for the exclusive benefit of Tenant in or around the Premises (collectively, the "Cabling"); provided, however, Tenant shall not remove such Cabling if Tenant receives a written notice from Landlord at least fifteen (15) days prior to the expiration of the Lease authorizing such Cabling to remain in place, in which event the Cabling shall be surrendered with the Premises upon the expiration of the Lease.

## 11. Repairs and Maintenance.

11.1 **Tenant's Repairs and Maintenance Obligations.** Except for those portions of the Building to be maintained by Landlord, as provided in Sections 11.2 and 11.3 below, Tenant shall, at Tenant's sole cost and expense, keep and maintain the Premises and the adjacent dock and staging areas in good, clean and safe condition and repair to the reasonable satisfaction of Landlord including, but not limited to, repairing any damage caused by Tenant or Tenant's Representatives and replacing any property so damaged by Tenant or Tenant's Representatives. Without limiting the generality of the foregoing, Tenant shall be solely responsible for maintaining, repairing and replacing (a) all electrical wiring and equipment serving the Premises, (b) all interior lighting (including, without limitation, light bulbs and/or ballasts) and exterior lighting serving the Premises or adjacent to the Premises, (c) all glass, windows, window frames, window casements, interior and exterior doors, door frames and door closers, (d) all roll-up doors, ramps and dock equipment, including without limitation, dock bumpers, dock plates, dock seals, dock levelers and dock lights, (e) all Tenant signage, (f) all Tenant security systems, (g) all partitions, fixtures, equipment, interior painting, and interior walls and floors of the Premises and every part thereof (including, without limitation, any demising walls contiguous to any portion of the Premises).

11.2 **Reimbursable Repairs and Maintenance Obligations.** Subject to the provisions of Section 6 and Section 9 of this Lease and except for (i) the obligations of Tenant set forth in Section 11.1 above, (ii) the obligations of Landlord set forth in Section 11.3 below, and (iii) the repairs rendered necessary by the negligent acts or omissions of Tenant or any of Tenant's Representatives, Landlord agrees, at Landlord's expense, subject to reimbursement pursuant to Section 6 above, to keep in good repair the Tenant's Structural Improvements (as defined in Section 10.1), the plumbing and mechanical systems interior and exterior to the Premises, all mechanical systems, heating, ventilation and air conditioning systems serving the Premises and the Building, lifts for disabled persons serving the Building, sprinkler systems, fire protection systems for the Building, the non-structural portions of the roof, including but not limited to flashings, downspouts and roof membranes, exterior walls of the Building, signage (exclusive of tenant signage), and exterior electrical wiring and equipment, exterior lighting, exterior glass, exterior doors/entrances and door closers, exterior window casements, exterior painting of the Building, and underground utility and sewer pipes outside the exterior walls of the Building. Subject to reimbursement for the cost thereof in accordance with the provisions of Section 6 above, Landlord shall procure and maintain (a) the heating,

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ventilation and air conditioning systems preventative maintenance and repair contract(s); such contract(s) to be on a bi-monthly or quarterly basis, as reasonably determined by Landlord, and (b) the fire and sprinkler protection services and preventative maintenance and repair contract(s) (including, without limitation, monitoring services); such contract(s) to be on a bi-monthly or quarterly basis, as reasonably determined by Landlord.

**11.3 Landlord's Repairs and Maintenance Obligations.** Except for repairs rendered necessary by the acts or omissions of Tenant or any of Tenant's Representatives, Landlord agrees, at Landlord's sole cost and expense and not reimbursable by Tenant under Section 6, to (a) keep in good repair the structural portions of the floors, foundations and exterior perimeter walls of the Building (exclusive of glass and exterior doors), and (b) replace the structural portions of the roof of the Building (excluding the flashings, downspouts and roof membrane) but including the skylights as, and when, Landlord determines such replacement to be necessary in Landlord's sole discretion.

**11.4 Tenant's Failure to Perform Repairs and Maintenance Obligations.** Except for normal maintenance and repair of the items described above, Tenant shall have no right of access to or right to install any device on the roof of the Building nor make any penetrations of the roof of the Building without the express prior written consent of Landlord. If Tenant refuses or neglects to repair and maintain the Premises and the adjacent areas properly as required herein and to the reasonable satisfaction of Landlord, Landlord may, but without obligation to do so, at any time make such repairs and/or maintenance without Landlord having any liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures or other property, or to Tenant's business by reason thereof. In the event Landlord makes such repairs and/or maintenance, upon completion thereof Tenant shall pay to Landlord, as Additional Rent, the Landlord's costs for making such repairs and/or maintenance, upon presentation of a bill therefor, plus any Enforcement Expenses. The obligations of Tenant hereunder shall survive the expiration of the Term of this Lease or the earlier termination thereof. Tenant hereby waives any right to repair at the expense of Landlord under any applicable Laws now or hereafter in effect respecting the Premises.

## **12. Insurance.**

**12.1 Types of Insurance.** Tenant shall maintain in full force and effect at all times during the Term of this Lease, at Tenant's sole cost and expense, for the protection of Tenant and Landlord, as their interests may appear, policies of insurance issued by a carrier or carriers reasonably acceptable to Landlord and its lender(s) which afford the following coverages: (i) worker's compensation; (ii) employer's liability, with a minimum limit of \$100,000 per employee and \$500,000 per occurrence, or FELA insurance with a minimum limit of \$10,000,000, whichever is required by law; (iii) general liability insurance providing coverage against claims for bodily injury and property damage occurring in, on or about the Premises arising out of Tenant's and Tenant's Representatives' use and/or occupancy of the Premises or occasioned by any occurrence in, on, about or related to the Premises. Such insurance shall include coverage for blanket contractual liability, fire legal liability, personal injury, completed operations, products liability, personal and advertising. Such insurance shall have a combined single limit of not less than Two Million Dollars

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(\$2,000,000) per occurrence with a Three Million Dollar (\$3,000,000) aggregate limit and excess/umbrella insurance in the amount of Three Million Dollars (\$3,000,000). Such insurance shall be primary without right of contribution from the Landlord's insurance policies. Tenant shall provide for (iv) automobile liability insurance: a combined single limit of not less than \$2,000,000 per occurrence and insuring Tenant against liability for claims arising out of the ownership, maintenance, or use of any owned, hired or non-owned automobiles; (v) "all risk" or "special risk" property insurance, including without limitation, sprinkler leakage, boiler and machinery covering damage to or loss of any personal property, trade fixtures, inventory, fixtures and equipment located in, on or about the Premises, and in addition, coverage for business interruption of Tenant, together with, if the property of Tenant's invitees is to be kept in the Premises, coverage for the property of others in the Tenant's care, custody or control. Such insurance shall be written on a replacement cost basis (without deduction for depreciation) in an amount equal to one hundred percent (100%) of the full replacement value of the aggregate of the items referred to in this subparagraph (v); and (vi) such other insurance as Landlord deems commercially necessary and prudent or as may otherwise be required by any of Landlord's lenders.

**12.2 Insurance Policies.** Insurance required to be maintained by Tenant shall be written by companies having a "General Policyholders Rating" of at least A:X (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "A.M. Best's Rating Guides." Tenant shall deliver to Landlord certificates of insurance required herein for all insurance required to be maintained by Tenant hereunder prior to the Commencement Date. Tenant shall, at least fifteen (15) days prior to expiration of each policy, furnish Landlord with certificates of renewal or "binders" thereof. Each insurance policy supplied by Tenant shall provide at least thirty (30) days' written notice of cancellation or non-renewal except ten (10) days for non-payment of premium. Tenant must then provide at least thirty (30) days' prior written notice except ten (10) days for non-payment to Landlord, if any of the above policies are non-renewed or cancelled. Tenant shall have the right to provide insurance coverage which it is obligated to carry pursuant to the terms of this Lease under a blanket insurance policy, provided such blanket policy expressly affords coverage for the Premises and for Landlord as required by this Lease. Tenant shall have the right to self-insure any part of or all coverages and limits required by Landlord.

**12.3 Additional Insureds and Coverage.** Landlord, any property management company and/or agent of Landlord for the Premises and any lender(s) of Landlord having a lien against the Premises or any portion thereof shall be named as additional insureds under all of the policies required in Section 12.1(iii) above. Additionally, such policies shall provide for severability of interest. All insurance to be maintained by Tenant shall, except for workers' compensation and employer's liability insurance, be primary, without right of contribution from insurance maintained by Landlord. Any umbrella/excess liability policy shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of insurance maintained by Tenant shall not limit Tenant's liability under this Lease. It is the parties' intention that the insurance to be procured and maintained by Tenant as required herein shall provide coverage for damage

or injury arising from or related to Tenant's operations of its business and/or Tenant's or Tenant's Representatives' use of the Premises.

12.4 **Failure of Tenant to Purchase and Maintain Insurance.** In the event Tenant does not purchase the insurance required in this Lease or keep the same in full force and effect throughout the Term of this Lease (including any renewals or extensions), Tenant's self-insurance will be recognized as fulfilling all of Tenant's insurance obligations under this Lease.

12.5 **Landlord's Insurance.** Landlord shall obtain and carry in Landlord's name, as insured, as an Operating Expense of the Premises to the extent provided in Section 6, during the Term, "special risk" property insurance coverage (with rental loss insurance coverage for a period of one (1) year), earthquake insurance coverage insuring Landlord's interest in the Premises in an amount not less than the full replacement cost of the Building, commercial general liability and property damage insurance, insurance coverages required of Landlord by the beneficiary of any deed of trust which encumbers the Premises, and, with the prior approval of Tenant, insurance against such other risks or casualties as Landlord shall reasonably determine. The proceeds of any such insurance shall be payable solely to Landlord and Tenant shall have no right or interest therein. Landlord shall have no obligation to insure against loss by Tenant to the Tenant Improvements, Tenant's equipment, fixtures, furniture, inventory, or other personal property of Tenant in or about the Premises occurring from any cause whatsoever.

13. **Waiver of Subrogation.** Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss of, or damage to, either parties' property to the extent that such loss or damage is insured by an insurance policy required to be in effect at the time of such loss or damage. Each party shall obtain any special endorsements, if required by its insurer whereby the insurer waives its rights of subrogation against the other party. This provision is intended to waive fully, and for the benefit of the parties hereto, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The provisions of this Section 13 shall not apply in those instances in which such waiver of subrogation would invalidate such insurance coverage or would cause either party's insurance coverage to be voided or otherwise uncollectible.

14. **Limitation of Liability and Indemnity.** Except to the extent of damage resulting from the gross negligence or willful misconduct of Landlord or its authorized representatives, Tenant agrees to protect, defend (with counsel acceptable to Landlord) and hold Landlord and Landlord's lenders, partners, members, property management company (if other than Landlord), agents, directors, officers, employees, representatives, contractors, shareholders, successors and assigns and each of their respective partners, members, directors, employees, representatives, agents, contractors, shareholders, successors and assigns (collectively, the "Indemnitees") harmless and indemnify the Indemnitees from and against all liabilities, damages, claims, losses, judgments, charges and expenses (including reasonable attorneys' fees, costs of court and expenses necessary in the prosecution or defense of any litigation including the enforcement of this provision) arising from or in any way related to, directly or indirectly, (i) Tenant's or Tenant's Representatives' use of the Premises or any portion thereof, (ii) the conduct of Tenant's business, (iii) from any activity, work or thing done, permitted or suffered

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by Tenant in or about the Premises, (iv) in any way connected with the improvements or personal property on the Premises, including, but not limited to, any liability for injury to person or property of Tenant, Tenant's Representatives, or third party persons, and/or (v) Tenant's failure to perform any covenant or obligation of Tenant under this Lease. Tenant agrees that the obligations of Tenant herein shall survive the expiration or earlier termination of this Lease.

Subject to the provisions of this Lease, Landlord shall indemnify, defend and hold harmless Tenant from all Claims: (A) to the extent arising from the gross negligence or willful misconduct of Landlord, its agents or employees, or any other persons entering upon the Premises under expressed or implied invitation of the Landlord; or (B) to the extent arising from the violation by Landlord of any provision of this Lease. The provisions of this section shall survive the expiration or termination of this Lease with respect to any damage, injury, death, breach or default occurring prior to such expiration or termination.

Except to the extent of damage resulting from the gross negligence or willful misconduct of Landlord or its authorized representatives, to the fullest extent permitted by law, Tenant agrees that neither Landlord nor any of Landlord's lender(s), partners, members, employees, representatives, legal representatives, successors or assigns shall at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss, liability, injury, death or damage to persons or property which at any time may be suffered or sustained by Tenant or by any person(s) whomsoever who may at any time be using, occupying or visiting the Premises or any portion thereof, including, but not limited to, any acts, errors or omissions by or on behalf of any other tenants or occupants of the Building, if any. Tenant shall not, in any event or circumstance, be permitted to offset or otherwise credit against any payments of Rent required herein for matters for which Landlord may be liable hereunder. Landlord and its authorized representatives shall not be liable for any interference with light or air, or for any latent defect in the Premises or the Building.

15. **Assignment and Subleasing.**

15.1 **Prohibition.** Except as otherwise provided in this Section, Tenant shall not assign, mortgage, hypothecate, encumber, grant any license or concession, pledge or otherwise transfer this Lease (collectively, "assignment"), in whole or in part, whether voluntarily or involuntarily or by operation of law, nor sublet or permit occupancy by any person other than Tenant of all or any portion of the Premises without first obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant hereby agrees that Landlord may withhold its consent to any proposed sublease or assignment if the proposed sublessee or assignee or its business is subject to compliance with additional requirements of the ADA (defined below) and/or Environmental Laws (defined below) beyond those requirements which are applicable to Tenant, unless the proposed sublessee or assignee shall (a) first deliver plans and specifications for complying with such additional requirements and obtain Landlord's written consent thereto, and (b) comply with all Landlord's conditions for or contained in such consent, including without limitation, requirements for security to assure the lien-free completion of such improvements. If Tenant seeks to sublet or assign all or any portion of the Premises, Tenant shall deliver to Landlord at least thirty (30) days prior to the proposed commencement of the sublease or assignment (the "Proposed Effective Date") the

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following: (i) the name of the proposed assignee or sublessee; (ii) such information as to such assignee's or sublessee's financial responsibility and standing as Landlord may reasonably require; and (iii) the aforementioned plans and specifications, if any. Within ten (10) days after Landlord's receipt of a written request from Tenant that Tenant seeks to sublet or assign all or any portion of the Premises, Landlord shall notify Tenant in writing that Landlord (a) elects to consent to the proposed assignment or sublease subject to the terms and conditions hereinafter set forth; (b) refuses such consent, specifying reasonable grounds for such refusal; or (c) elects to recapture the space described in the sublease or assignment, as applicable, except with respect to a Permitted Transferee (as defined in Section 15.4), if the sublease or assignment by itself or taken together with prior sublease(s) or partial assignment(s) covers or totals, as the case may be, all or ninety-five (95%) percent of the rentable square feet of the Premises. If such recapture notice is given, it shall serve to terminate this Lease with respect to the proposed sublease or assignment space, or, if the proposed sublease or assignment space covers all the Premises, it shall serve to terminate the entire term of this Lease in either case, as of the Proposed Effective Date. However, no termination of this Lease with respect to part or all of the Premises shall become effective without the prior written consent, where necessary, of the holder of each deed of trust encumbering the Premises or any part thereof. If this Lease is terminated pursuant to the foregoing with respect to less than the entire Premises, the Rent shall be adjusted on the basis of the proportion of square feet retained by Tenant to the square feet originally demised and this Lease as so amended shall continue thereafter in full force and effect. Each assignment or sublease agreement to which Landlord has consented shall be an instrument in writing and in form satisfactory to Landlord, and shall include a provision whereby the assignee or sublessee assumes all of Tenant's obligations hereunder and agrees to be bound by the terms hereof. As Additional Rent hereunder, Tenant shall reimburse Landlord for reasonable legal and other expenses incurred by Landlord in connection with any actual or proposed assignment or subletting up to a maximum of \$3,500.00 per subletting or assignment. Each permitted assignee or sublessee shall be and remain liable jointly and severally with Tenant for payment of Rent and for the due performance of, and compliance with all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed or complied with, for the term of this Lease. No assignment or subletting shall affect the continuing primary liability of Tenant (which, following assignment, shall be joint and several with the assignee), and Tenant shall not be released from performing any of the terms, covenants and conditions of this Lease. Tenant hereby acknowledges and agrees that it understands that Landlord's accounting department may process and accept Rent payments without verifying that such payments are being made by Tenant, a permitted sublessee or a permitted assignee in accordance with the provisions of this Lease. Although such payments may be processed and accepted by such accounting department personnel, any and all actions or omissions by the personnel of Landlord's accounting department shall not be considered as acceptance by Landlord of any proposed assignee or sublessee nor shall such actions or omissions be deemed to be a substitute for the requirement that Tenant obtain Landlord's prior written consent to any such subletting or assignment, and any such actions or omissions by the personnel of Landlord's accounting department shall not be considered as a voluntary relinquishment by Landlord of any of its rights hereunder nor shall any voluntary relinquishment of such rights be inferred therefrom. For purposes hereof, in the event

Tenant is a corporation, partnership, joint venture, trust or other entity other than a natural person, any change in the direct or indirect ownership of Tenant (whether pursuant to one or more transfers) which results in a change of more than fifty percent (50%) in the direct or indirect ownership of Tenant shall be deemed to be an assignment within the meaning of this Section 15 and shall be subject to all the provisions hereof. Any and all options, first rights of refusal, tenant improvement allowances and other similar rights granted to Tenant in this Lease, if any, shall not be assignable by Tenant except to a Permitted Transferee (as defined in Section 15.4 below) or unless expressly authorized in writing by Landlord.

**15.2 Excess Sublease Rental or Assignment Consideration.** In the event of any sublease or assignment of all or any portion of the Premises where the rent or other consideration provided for in the sublease or assignment either initially or over the term of the sublease or assignment exceeds the Rent or pro rata portion of the Rent, as the case may be, for such space reserved in the Lease, after deducting only (a) a standard leasing commission payable by Tenant in consummating such assignment or sublease, (b) the cost of standard tenant improvements required for a sublease, provided that the drawings for such tenant improvements and the cost thereof are approved in writing by Landlord concurrently with the approval by Landlord of the sublease, and (c) reasonable attorneys' fees incurred by Tenant in negotiating and reviewing the assignment or sublease documentation, then Landlord may require that Tenant shall pay the Landlord monthly, as Additional Rent, at the same time as the monthly installments of Rent are payable hereunder, fifty percent (50%) of the amount of such excess of each such payment of rent or other consideration in excess of the Rent called for hereunder.

**15.3 Option to Cure.** Landlord shall promptly deliver to Tenant notice of any default of any assignee or sublessee of Tenant (the "Courtesy Notice"). Tenant shall thereafter have five (5) days from receipt of the Courtesy Notice to cure such default. Notwithstanding any assignment or sublease, or any indulgences, waivers or extensions of time granted by Landlord to any assignee or sublessee, or failure by Landlord to take action against any assignee or sublessee, Tenant agrees that Landlord may, at its option, proceed against Tenant without having taken action against or joined such assignee or sublessee, except that Tenant shall have the benefit of any indulgences, waivers and extensions of time granted to any such assignee or sublessee and shall be entitled to delivery of the Courtesy Notice and the opportunity to cure within the time period described herein.

**15.4 Permitted Transferee.** Notwithstanding the foregoing, Tenant may, without Landlord's prior written consent and without any participation by Landlord in assignment and subletting proceeds, sublet a portion or the entire Premises or assign this Lease to any person or entity that (i) is a member agency of Tenant, (ii) that is an operator or successor operator of the CalTrain commuter rail service or other passenger rail service on the Peninsula Rail Corridor, and/or (iii) any person or entity that is by agreement, statute or case law established as a successor organization of Tenant (all of the foregoing to be collectively referred to herein as "**Permitted Transferee**"), provided that any such assignee or sublessee shall have a credit worthiness at least equal to that of Tenant immediately prior to the effective date of the sublease or assignment, or, if less, financial resources sufficient, in Landlord's reasonable good faith judgment, to perform the obligations under the assignment or sublease, as applicable. Tenant's foregoing rights in

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this Section 15.4 to assign this Lease or to sublease a portion of the entire Premises shall be subject to the following conditions: (a) Tenant shall not be in default hereunder past any applicable cure period; (b) in the case of an assignment or subletting to a Permitted Transferee, Tenant shall remain liable to Landlord hereunder if Tenant is a surviving entity; and (c) the transferee or successor entity shall expressly assume in writing all of Tenant's obligations hereunder.

16. **Ad Valorem Taxes.** Prior to delinquency, Tenant shall pay all taxes and assessments levied upon trade fixtures, alterations, additions, improvements, inventories and personal property located and/or installed on or in the Premises by, or on behalf of, Tenant; and if requested by Landlord, Tenant shall promptly deliver to Landlord copies of receipts for payment of all such taxes and assessments. To the extent any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced by Landlord.

17. **Subordination.**

17.1 Subject to satisfaction of the conditions specified in Section 17.2 below, at the election of Landlord or any bona fide mortgagee or deed of trust beneficiary with a lien on all or any portion of the Premises or any ground lessor with respect to the land of which the Premises are a part, the rights of Tenant under this Lease and this Lease shall be subordinate at all times to: (i) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Building or the land upon which the Building is situated or both, and (ii) the lien of any mortgage or deed of trust which may now exist or hereafter be executed in any amount for which the Building, the Lot, ground leases or underlying leases, or Landlord's interest or estate in any of said items is specified as security. Notwithstanding anything to the contrary in this Section 17, Landlord or any such ground lessor, mortgagee, or any beneficiary shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases or any such liens to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination and upon the request of such successor to Landlord, attorn to and become the Tenant of the successor in interest to Landlord, provided such successor in interest agrees in writing not to disturb Tenant's use, occupancy or quiet enjoyment of the Premises so long as Tenant is not in default, beyond any applicable notice and cure period, of the terms and provisions of this Lease following expiration of all applicable notice and cure periods. The successor in interest to Landlord following foreclosure, sale or deed in lieu thereof shall not be (a) liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) subject to any offsets or defenses which Tenant might have against any prior lessor; (c) bound by prepayment of more than one (1) month's Rent, except in those instances when Tenant pays Rent quarterly in advance pursuant to Section 8 hereof, then not more than three months' Rent; or (d) liable to Tenant for any Security Deposit not actually received by such successor in interest to the extent any portion or all of such Security Deposit has not already been forfeited by, or refunded to, Tenant. Landlord shall be liable to Tenant for all or any portion of the Security Deposit not forfeited by, or refunded to Tenant, until and unless Landlord transfers such Security Deposit to the successor in interest, and such successor in interest actually receives such deposit. Tenant

covenants and agrees to execute (and acknowledge if required by Landlord, any lender or ground lessor) and deliver, within ten (10) days of a demand or request by Landlord and in the form requested by Landlord, ground lessor, mortgagee or beneficiary, any additional documents evidencing the priority or subordination of this Lease with respect to any such ground leases or underlying leases or the lien of any such mortgage or deed of trust. Tenant's failure to timely execute and deliver such additional documents shall, at Landlord's option, constitute a material default hereunder.

17.2 As soon as reasonably possible following full execution of this Lease, Landlord shall request and cause the beneficiary of any deed of trust or mortgage executed by Landlord as trustor or mortgagee prior to Lease Date to execute a recognition and non-disturbance agreement ("SNDA") in substantially the form attached hereto as Exhibit I (the "SNDA Form"). If Landlord fails to deliver the SNDA within sixty (60) days following the Lease Date, then in such event Tenant shall have the right to terminate this Lease by delivering written notice of termination to Landlord no later than the seventieth (70th) day following the Lease Date; provided, however, if Landlord delivers the SNDA prior to receipt of Tenant's termination notice, then such termination notice shall be deemed void and this Lease shall continue in full force and effect. Landlord shall also cause the beneficiary of any deed of trust executed by Landlord as trustor or mortgagee on or after the Lease Date to execute a recognition and non-disturbance agreement in substantially the same form as the SNDA Form.

18. **Right of Entry.** Except in the event of emergency and except for permitted entry during Tenant's normal business hours, both of which may occur without prior notice to Tenant, Landlord and Landlord's agents shall provide Tenant with twenty-four (24) hours' notice prior to entry of the Premises. Tenant grants Landlord or its agents the right to enter the Premises at all reasonable times upon such notice, for purposes of inspection, exhibition, posting of notices, repair or alteration. At Landlord's option, Landlord shall at all times have and retain a key with which to unlock all the doors in, upon and about the Premises, excluding Tenant's control rooms, vaults and safes. It is further agreed that Landlord shall have the right to use any and all means Landlord deems necessary to enter the Premises in an emergency. Landlord shall have the right to place "for rent" or "for lease" signs on the outside of the Premises, the Building and in the Common Areas. Beginning on the date that is one (1) year from the anticipated expiration of this Lease and continuing until the expiration or earlier termination of this Lease, Landlord shall have the right to place "for sale" signs on the outside of the Building and in the Common Areas. Tenant hereby waives any claim from damages or for any injury or inconvenience to or interference with Tenant's business, or any other loss occasioned thereby except for any claim for any of the foregoing arising out of the gross negligence or willful misconduct of Landlord or its authorized representatives.

19. **Estoppel Certificate.** Tenant shall execute (and acknowledge if required by any lender or ground lessor) and deliver to Landlord, within fifteen (15) days after Landlord provides such to Tenant, a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification), the date to which the Rent and other charges are paid in advance, if any, acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder or specifying such defaults as are claimed, and such other matters as Landlord may reasonably require. Any such statement

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may be conclusively relied upon by Landlord and any prospective purchaser or encumbrancer of the Premises. Tenant's failure to deliver such statement within such time shall be conclusive upon the Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord; (b) there are no uncured defaults in Landlord's performance; and (c) not more than one month's Rent has been paid in advance, except in those instances when Tenant pays Rent quarterly in advance pursuant to Section 8 hereof, then not more than three month's Rent has been paid in advance. Failure by Tenant to so deliver such certified estoppel certificate shall be a material default of the provisions of this Lease.

20. **Tenant's Default.** The occurrence of any one or more of the following events shall, at Landlord's option, constitute a material default by Tenant of the provisions of this Lease:

20.1 The abandonment of the Premises by Tenant, the vacation of the Premises by Tenant or the cessation or suspension of Tenant's use of the Premises for a period of fifteen (15) consecutive business days following notice from Landlord;

20.2 The failure by Tenant to make any payment of Rent, Additional Rent or any other payment required hereunder on the date said payment is due and Tenant fails to cure such default within five (5) days after written notice of such failure is given to Tenant by Landlord;

20.3 The failure by Tenant to observe, perform or comply with any of the obligations, conditions, covenants or provisions of this Lease (except failure to make any payment of Rent and/or Additional Rent) and such failure is not cured within thirty (30) days after written notice of such failure is given to Tenant by Landlord. If such failure is susceptible of cure but cannot reasonably be cured within the aforementioned time period, as determined by Landlord, Tenant shall promptly commence the cure of such failure and thereafter diligently prosecute such cure to completion within the time period specified by Landlord in any written notice regarding such failure as may be delivered to Tenant by Landlord. In no event or circumstance shall Tenant have more than sixty (60) days to complete any such cure, unless otherwise expressly agreed to in writing by Landlord (in Landlord's sole discretion);

20.4 The making of a general assignment by Tenant for the benefit of creditors, the filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant's creditors seeking the rehabilitation, liquidation, or reorganization of Tenant under any law relating to bankruptcy, insolvency or other relief of debtors and, in the case of an involuntary action, the failure to remove or discharge the same within sixty (60) days of such filing, the appointment of a receiver or other custodian to take possession of substantially all of Tenant's assets or this leasehold, Tenant's insolvency or inability to pay Tenant's debts or failure generally to pay Tenant's debts when due, any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant's assets, Tenant taking any action toward the dissolution or winding up of Tenant's affairs, or the attachment, execution or other judicial seizure of substantially all of Tenant's assets or this leasehold;

20.5 Tenant's use or storage of Hazardous Materials in, on or about the Premises, the Lot and/or the Building other than as expressly permitted by the provisions of Section 29 below; or

20.6 The making of any material misrepresentation or omission by Tenant in any materials delivered by or on behalf of Tenant to Landlord pursuant to this Lease.

21. **Remedies for Tenant's Default.**

21.1 **Landlord's Rights.** In the event of Tenant's material default under this Lease, Landlord may terminate Tenant's right to possession of the Premises by any lawful means in which case upon delivery of written notice by Landlord this Lease shall terminate on the date specified by Landlord in such notice and Tenant shall immediately surrender possession of the Premises to Landlord. In addition, the Landlord shall have the immediate right of reentry whether or not this Lease is terminated, and if this right of reentry is exercised following abandonment of the Premises by Tenant, Landlord may consider any personal property belonging to Tenant and left on the Premises to also have been abandoned. No re-entry or taking possession of the Premises by Landlord pursuant to this Section 21 shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant. If Landlord relets the Premises or any portion thereof, (i) Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises or any part thereof, including, without limitation, broker's commissions, expenses of cleaning, redecorating, and further improving the Premises and other similar costs (collectively, the "**Reletting Costs**"), and (ii) the rent received by Landlord from such reletting shall be applied to the payment of, first, any indebtedness from Tenant to Landlord other than Base Rent, Operating Expenses, Tax Expenses, Common Area Utility Costs, and Utility Expenses; second, all costs including maintenance, incurred by Landlord in reletting; and, third, Base Rent, Operating Expenses, Tax Expenses, Common Area Utility Costs, Utility Expenses, and all other sums due under this Lease. Any and all of the Reletting Costs shall be fully chargeable to Tenant and shall not be prorated or otherwise amortized in relation to any new lease for the Premises or any portion thereof. After deducting the payments referred to above, any sum remaining from the rental Landlord receives from reletting shall be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. Reletting may be for a period shorter or longer than the remaining term of this Lease. No act by Landlord other than giving written notice to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. So long as this Lease is not terminated, Landlord shall have the right to remedy any default of Tenant, to maintain or improve the Premises, to cause a receiver to be appointed to administer the Premises and new or existing subleases and to add to the Rent payable hereunder all of Landlord's reasonable costs in so doing, with interest at the maximum rate permitted by law from the date of such expenditure.

21.2 **Damages Recoverable.** If Tenant breaches this Lease and abandons the Premises before the end of the Term, or if Tenant's right to possession is terminated by

Landlord because of a breach or default under this Lease, then in either such case, Landlord may recover from Tenant all damages suffered by Landlord as a result of Tenant's failure to perform its obligations hereunder, including, but not limited to, the portion of any broker's or leasing agent's commission incurred with respect to the leasing of the Premises to Tenant for the balance of the Term of the Lease remaining after the date on which Tenant is in default of its obligations hereunder, and all Reletting Costs, and the worth at the time of the award (computed in accordance with paragraph (3) of Subdivision (a) of Section 1951.2 of the California Civil Code) of the amount by which the Rent then unpaid hereunder for the balance of the Lease Term exceeds the amount of such loss of Rent for the same period which Tenant proves could be reasonably avoided by Landlord and in such case, Landlord prior to the award, may relet the Premises for the purpose of mitigating damages suffered by Landlord because of Tenant's failure to perform its obligations hereunder; provided, however, that even though Tenant has abandoned the Premises following such breach, this Lease shall nevertheless continue in full force and effect for as long as Landlord does not terminate Tenant's right of possession, and until such termination, Landlord shall have the remedy described in Section 1951.4 of the California Civil Code (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations) and may enforce all of its rights and remedies under this Lease, including the right to recover the Rent from Tenant as it becomes due hereunder. The "worth at the time of the award" within the meaning of Subparagraphs (a)(1) and (a)(2) of Section 1951.2 of the California Civil Code shall be computed by allowing interest at the rate equal to the prime rate plus two percent (2%) per annum.

21.3 **Rights and Remedies Cumulative.** The foregoing rights and remedies of Landlord are not exclusive; they are cumulative in addition to any rights and remedies now or hereafter existing at law, in equity by statute or otherwise, or to any equitable remedies Landlord may have, and to any remedies Landlord may have under bankruptcy laws or laws affecting creditor's rights generally. In addition to all remedies set forth above, if Tenant materially defaults under this Lease, any and all Base Rent waived by Landlord under Section 3 above shall be immediately due and payable to Landlord and all options granted to Tenant hereunder shall automatically terminate, unless otherwise expressly agreed to in writing by Landlord.

21.4 **Waiver of a Default.** The waiver by Landlord of any default of any provision of this Lease shall not be deemed or construed a waiver of any other default by Tenant hereunder or of any subsequent default of this Lease, except for the default specified in the waiver.

22. **Holding Over.** If Tenant holds possession of the Premises after the expiration of the Term of this Lease with Landlord's consent, Tenant shall become a tenant from month-to-month upon the terms and provisions of this Lease, provided the monthly Base Rent during such hold over period shall be the greater of (a) one hundred fifty percent (150%) of the Base Rent due on the last month of the Lease Term, payable in advance on or before the first day of each month, or (b) the then market rent for comparable space as the Premises. Acceptance by Landlord of the monthly Base Rent without the additional fifty percent (50%) increase of Base

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26. **Waiver.** No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The subsequent acceptance of Rent by Landlord after default by Tenant of any covenant or term of this Lease shall not be deemed a waiver of such default, other than a waiver of timely payment for the particular Rent payment involved, and shall not prevent Landlord from maintaining an unlawful detainer or other action based on such breach. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Rent and other sums due hereunder shall be deemed to be other than on account of the earliest Rent or other sums due, nor shall any endorsement or statement on any check or accompanying any check or payment be deemed an accord and satisfaction; and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or other sum or pursue any other remedy provided in this Lease. No failure, partial exercise or delay on the part of the Landlord in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

27. **Casualty Damage.**

27.1 If the Premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give prompt written notice thereof to Landlord. In the event of a total destruction of the Building or the Premises during the Term from any cause, either party may elect to terminate this Lease by giving written notice of termination to the other party within thirty (30) days after the casualty occurs. A total destruction shall be deemed to have occurred for this purpose if the Building or the Premises is destroyed to the extent of seventy-five percent (75%) or more of the replacement cost thereof. If the Lease is not terminated, and provided insurance proceeds and any contributions from Tenant, if necessary, are available to fully repair the damage, Landlord shall repair and restore the Building in a diligent manner and this Lease shall continue in full force and effect, except that Rent shall be abated as set forth herein.

27.2 In the event of a partial destruction of the Building or the Premises to an extent less than seventy-five percent (75%) of the replacement cost thereof, and if the damage thereto can be repaired, reconstructed, or restored within a period of one hundred fifty (150) days from the date of such casualty, there are at least twelve (12) months remaining in the Term of this Lease, and provided insurance proceeds and any contributions from Tenant, if necessary, are available to fully repair the damage, Landlord shall commence to repair and restore the Building and shall proceed with reasonable diligence to restore the Building (except that Landlord shall not be responsible for delays outside its control) to substantially the same condition in which it was immediately prior to the happening of the casualty; provided, Landlord shall not be required to rebuild, repair, or replace any part of Tenant's furniture, furnishings, fixtures and/or equipment removable by Tenant and Rent shall be abated in accordance with this Section 27. Landlord's obligation to repair and restore the Building shall not include the Tenant Improvements. If any of the foregoing conditions are not met, Landlord shall have the option of either repairing and restoring the Building or Premises, or terminating this Lease by giving written notice of termination to Tenant within thirty (30) days after the casualty. Landlord shall not in any event be required to spend for such work an amount in excess of the insurance proceeds (excluding any deductible) and any contributions from Tenant, if necessary, actually received by Landlord as a result of the fire or other casualty. Landlord shall not be liable

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for any inconvenience or annoyance to Tenant, injury to the business of Tenant, loss of use of any part of the Premises by the Tenant or loss of Tenant's personal property resulting in any way from such damage or the repair thereof, except that, Rent shall be abated proportionally in the ratio which the Tenant's use of the Premises is impaired during the period of such repair, reconstruction, or restoration, from the date of the casualty until such repair, reconstruction or restoration is completed.

27.3 In the event of a partial destruction of the Building or the Premises to an extent less than seventy-five percent (75%) of the replacement cost thereof, in which Landlord elects for any reason not to repair, reconstruct or restore the Premises, Tenant shall have the right (but not the obligation) to deliver to Landlord a notice (the "**Casualty Purchase Notice**") specifying that Tenant elects to purchase the Property at the fair market value on the date of delivery of the Casualty Purchase Notice (which amount shall in no event be less than the Purchase Price Floor (as defined in Section 40.2.1 below). At the Closing, Landlord shall assign to Tenant all of Landlord's right, title and interest to the insurance proceeds available to Landlord for such repair or restoration, including rental loss insurance or, the extent such insurance proceeds have not been received by Closing, Landlord shall assign to Tenant all of Landlord's right, title and interest to receive such insurance proceeds. If Landlord and Tenant are unable to agree upon the fair market value of the Building or the Premises within fifteen (15) days of Landlord's receipt of the Casualty Purchase Notice, said amount shall be determined as set forth in Section 41.2. below.

27.4 Notwithstanding anything to the contrary contained herein, if the Premises or any other portion of the Building be damaged by fire or other casualty resulting from the intentional or negligent acts or omissions of Tenant or any of Tenant's Representatives, (i) Tenant shall not have any right to terminate this Lease due to the occurrence of such casualty or damage, and (ii) Tenant shall be liable to Landlord for the cost and expense of the repair and restoration of all or any portion of the Building caused thereby (including, without limitation, any deductible) to the extent such cost and expense is not covered by insurance proceeds. In the event the holder of any indebtedness secured by the Premises requires that the insurance proceeds be applied to such indebtedness, then either Landlord or Tenant shall have the right to terminate this Lease by delivering written notice of termination to the other party within thirty (30) days after the date of notice to Tenant of any such event, whereupon all rights and obligations shall cease and terminate hereunder except for those obligations expressly intended to survive any such termination of this Lease. Except as otherwise provided in this Section 27, Tenant hereby waives the provisions of Sections 1932(2.), 1933(4.), 1941 and 1942 of the California Civil Code.

28. **Condemnation.** If twenty five percent (25%) or more of the Premises is condemned by eminent domain, inversely condemned or sold in lieu of condemnation for any public or quasi-public use or purpose ("**Condemned**"), then Tenant or Landlord may terminate this Lease as of the date when physical possession of the Premises is taken and title vests in such condemning authority, and Rent shall be adjusted to the date of termination. Tenant shall not because of such condemnation assert any claim against Landlord or the condemning authority for any compensation because of such condemnation, and Landlord shall be entitled to receive the entire amount of any award without deduction for any estate of interest or other interest of

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Tenant. Notwithstanding the foregoing, Tenant shall be entitled to receive any damages awarded by the court for (a) leasehold improvements installed at Tenant's expense or other property owned by Tenant, (b) Tenant's loss of any goodwill as a result of such condemnation, and (c) reasonable costs of Tenant's relocation. The entire balance of the award shall be the property of Landlord. If neither party elects to terminate this Lease, Landlord shall, if necessary, promptly proceed to restore the Premises or the Building to substantially its same condition prior to such partial condemnation, allowing for the reasonable effects of such partial condemnation, and a proportionate allowance shall be made to Tenant, as solely determined by Landlord, for the Rent corresponding to the time during which, and to the part of the Premises of which, Tenant is deprived on account of such partial condemnation and restoration. Landlord shall not be required to spend funds for restoration in excess of the amount received by Landlord as compensation awarded.

**29. Environmental Matters/Hazardous Materials.**

29.1 **Hazardous Materials Disclosure Certificate.** No later than ten (10) days after executing this Lease, Tenant shall complete, execute and deliver to Landlord for Landlord's approval Tenant's initial Hazardous Materials Disclosure Certificate (the "**Initial HazMat Certificate**"), in the form attached hereto as Exhibit E and which, when delivered, shall be deemed incorporated herein by this reference. Tenant covenants, represents and warrants to Landlord that the information on the Initial HazMat Certificate is true and correct and accurately describes the use(s) of Hazardous Materials which will be made and/or used on the Premises by Tenant. Tenant shall commencing with the date which is one year from the Commencement Date and continuing every year thereafter, complete, execute, and deliver to Landlord, a Hazardous Materials Disclosure Certificate ("the "**HazMat Certificate**") describing Tenant's present use of Hazardous Materials on the Premises, and any other reasonably necessary documents as requested by Landlord. The HazMat Certificate required hereunder, including, without limitation, the Initial HazMat Certificate shall be in substantially the form as that which is attached hereto as Exhibit E.

29.2 **Definition of Hazardous Materials.** As used in this Lease, the term Hazardous Materials shall mean and include (a) any hazardous or toxic wastes, materials or substances, and other pollutants or contaminants, which are or become regulated by any Environmental Laws; (b) petroleum, petroleum by products, gasoline, diesel fuel, crude oil or any fraction thereof; (c) asbestos and asbestos containing material, in any form, whether friable or non-friable; (d) polychlorinated biphenyls; (e) radioactive materials; (f) lead and lead-containing materials; (g) any other material, waste or substance displaying toxic, reactive, ignitable or corrosive characteristics, as all such terms are used in their broadest sense, and are defined or become defined by any Environmental Law (defined below); or (h) any materials which cause or threatens to cause a nuisance upon or waste to any portion of the Premises, the Building, the Lot or any surrounding property; or poses or threatens to pose a hazard to the health and safety of persons on the Premises or any surrounding property.

29.3 **Prohibition; Environmental Laws.** Tenant shall not be entitled to use nor store any Hazardous Materials on, in, or about the Premises, the Building, the Lot, or any

portion of the foregoing, without, in each instance, obtaining Landlord's prior written consent thereto. If Landlord consents to any such usage or storage, then Tenant shall be permitted to use and/or store only those Hazardous Materials that are necessary for Tenant's business and to the extent disclosed in the HazMat Certificate and as expressly approved by Landlord in writing, provided that such usage and storage is only to the extent of the quantities of Hazardous Materials as specified in the then applicable HazMat Certificate as expressly approved by Landlord and provided further that such usage and storage is in full compliance with any and all local, state and federal environmental, health and/or safety-related laws, statutes, orders, standards, courts' decisions, ordinances, rules and regulations (as interpreted by judicial and administrative decisions), decrees, directives, guidelines, permits or permit conditions, currently existing and as amended, enacted, issued or adopted in the future which are or become applicable to Tenant or all or any portion of the Premises (collectively, the "Environmental Laws"). Tenant agrees that any changes to the type and/or quantities of Hazardous Materials specified in the most recent HazMat Certificate may be implemented only with the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole discretion. Tenant shall not be entitled nor permitted to install any tanks under, on or about the Premises for the storage of Hazardous Materials without the express written consent of Landlord, which may be given or withheld in Landlord's sole discretion. Landlord shall have the right at all times during the Term of this Lease to (i) inspect the Premises, (ii) conduct tests and investigations to determine whether Tenant is in compliance with the provisions of this Section 29, and (iii) request lists of all Hazardous Materials used, stored or otherwise located on, under or about any portion of the Premises and/or the Common Areas. The cost of all such inspections, tests and investigations shall be borne solely by Tenant, if Landlord reasonably determines that Tenant or any of Tenant's Representatives are directly or indirectly responsible in any manner for any contamination revealed by such inspections, tests and investigations. The aforementioned rights granted herein to Landlord and its representatives shall not create (a) a duty on Landlord's part to inspect, test, investigate, monitor or otherwise observe the Premises or the activities of Tenant and Tenant's Representatives with respect to Hazardous Materials, including without limitation, Tenant's operation, use and any remediation related thereto, or (b) liability on the part of Landlord and its representatives for Tenant's use, storage, disposal or remediation of Hazardous Materials, it being understood that Tenant shall be solely responsible for all liability in connection therewith.

**29.4 Tenant's Environmental Obligations.** Tenant shall give to Landlord immediate verbal and follow up written notice of any spills, releases, discharges, disposals, emissions, migrations, removals or transportation of Hazardous Materials on, under or about any portion of the Premises or in any Common Areas. Tenant, at its sole cost and expense, covenants and warrants to promptly investigate, clean up, remove, restore and otherwise remediate (including, without limitation, preparation of any feasibility studies or reports and the performance of any and all closures) any spill, release, discharge, disposal, emission, migration or transportation of Hazardous Materials arising from or related to the intentional or negligent acts or omissions of Tenant or Tenant's Representatives such that the affected portions of any adjacent property are returned to the condition existing prior to the appearance of such Hazardous Materials. Any such investigation, clean up, removal,

restoration and other remediation shall only be performed after Tenant has obtained Landlord's prior written consent, which consent shall not be unreasonably withheld so long as such actions would not potentially have a material adverse long-term or short-term effect on any portion of the Premises, the Building or the Lot. Notwithstanding the foregoing, Tenant shall be entitled to respond immediately to an emergency without first obtaining Landlord's prior written consent. Tenant, at its sole cost and expense, shall conduct and perform, or cause to be conducted and performed, all closures as required by any Environmental Laws or any agencies or other governmental authorities having jurisdiction thereof. If Tenant fails to so promptly investigate, clean up, remove, restore, provide closure or otherwise so remediate, Landlord may, but without obligation to do so, take any and all steps necessary to rectify the same and Tenant shall promptly reimburse Landlord, upon demand, for all costs and expenses to Landlord of performing investigation, clean up, removal, restoration, closure and remediation work. All such work undertaken by Tenant, as required herein, shall be performed in such a manner so as to enable Landlord to make full economic use of the Premises, the Building and the Lot after the satisfactory completion of such work.

29.5 **Environmental Indemnity.** In addition to Tenant's obligations as set forth hereinabove, Tenant and Tenant's officers and directors agree to, and shall, protect, indemnify, defend (with counsel acceptable to Landlord) and hold Landlord and the other Indemnitees harmless from and against any and all claims, judgments, damages, penalties, fines, liabilities, losses (including, without limitation, diminution in value of any portion of the Premises, the Building or the Lot, damages for the loss of or restriction on the use of rentable or usable space, and from any adverse impact of Landlord's marketing of any space within the Building), suits, administrative proceedings and costs (including, but not limited to, attorneys' and consultant fees and court costs) arising at any time during or after the Term of this Lease in connection with or related to, directly or indirectly, the use, presence, transportation, storage, disposal, migration, removal, spill, release or discharge of Hazardous Materials on, in or about any portion of the Premises, the Common Areas, the Building or the Lot as a result (directly or indirectly) of the intentional or negligent acts or omissions of Tenant or any of Tenant's Representatives. Neither the written consent of Landlord to the presence, use or storage of Hazardous Materials in, on, under or about any portion of the Premises, the Building and/or the Lot, nor the strict compliance by Tenant with all Environmental Laws shall excuse Tenant and Tenant's officers and directors from its obligations of indemnification pursuant hereto. Tenant shall not be relieved of its indemnification obligations under the provisions of this Section 29.5 due to Landlord's status as either an "owner" or "operator" under any Environmental Laws.

29.6 **Survival.** Tenant's obligations and liabilities pursuant to the provisions of this Section 29 shall survive the expiration or earlier termination of this Lease.

30. **Financial Statements.** Tenant, for the reliance of Landlord, any lender holding or anticipated to acquire a lien upon the Premises or the Building or any portion thereof, or any prospective purchaser of the Building or any portion thereof, within fifteen (15) days after Landlord's request therefor, but not more often than once every two (2) years, shall deliver to Landlord the then current audited financial statements of Tenant (including interim periods following the end of the last fiscal year for which annual statements are available) which

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statements shall be prepared or compiled by a certified public accountant and shall present fairly the financial condition of Tenant at such dates and the result of its operations and changes in its financial positions for the periods ended on such dates. If an audited financial statement has not been prepared, Tenant shall provide Landlord with an unaudited financial statement and/or such other information, the type and form of which are acceptable to Landlord in Landlord's reasonable discretion, which reflects the financial condition of Tenant.

31. **General Provisions.**

31.1 **Time.** Time is of the essence in this Lease and with respect to each and all of its provisions in which performance is a factor.

31.2 **Successors and Assigns.** The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

31.3 **Recordation.** Landlord and Tenant shall, promptly following the Commencement Date, record a memorandum of lease ("**Memorandum of Lease**") in the land records for the County of San Mateo County, State of California, which Memorandum of Lease shall specify that Tenant has an option to purchase and a right of first offer with respect to the Premises; provided that prior to such recordation Tenant shall execute, acknowledge and deliver to Landlord a quitclaim deed for the Building and the underlying real property together with Tenant's irrevocable instructions that such quitclaim deed may be recorded upon the expiration or earlier termination of this Lease.

31.4 **Landlord's Personal Liability.** The liability of Landlord (which, for purposes of this Lease, shall include Landlord and the owner of the Building if other than Landlord) to Tenant for any default by Landlord under the terms of this Lease shall be limited to the actual interest of Landlord and its present or future partners or members in the Premises or the Building, and Tenant agrees to look solely to the Premises for satisfaction of any liability and shall not look to other assets of Landlord nor seek any recourse against the assets of the individual partners, members, directors, officers, shareholders, agents or employees of Landlord (including without limitation, any property management company of Landlord); it being intended that Landlord and the individual partners, members, directors, officers, shareholders, agents and employees of Landlord (including without limitation, any property management company of Landlord) shall not be personally liable in any manner whatsoever for any judgment or deficiency. The liability of Landlord under this Lease is limited to its actual period of ownership of title to the Building, and in the event of any sale or exchange of the Building by Landlord and assignment of this Lease by Landlord, Landlord shall, upon providing Tenant with written confirmation that the assignee has assumed all obligations of Landlord under this Lease and Landlord has delivered any Security Deposit held by Landlord to Landlord's successor in interest, be and hereby is entirely relieved of all liability under any and all of Landlord's covenants and obligations contained in or derived from this Lease with respect to the period commencing with the consummation of the sale or exchange and assignment.

31.5 **Separability.** Any provisions of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provisions hereof and such other provision shall remain in full force and effect.

31.6 **Choice of Law.** This Lease shall be governed by, and construed in accordance with, the laws of the State of California.

31.7 **Attorneys' Fees.** In the event any dispute between the parties results in litigation or other proceeding, the prevailing party shall be reimbursed by the party not prevailing for all reasonable costs and expenses, including, without limitation, reasonable attorneys' and experts' fees and costs incurred by the prevailing party in connection with such litigation or other proceeding, and any appeal thereof. Such costs, expenses and fees shall be included in and made a part of the judgment recovered by the prevailing party, if any.

31.8 **Entire Agreement.** This Lease supersedes any prior agreements, representations, negotiations or correspondence between the parties, and contains the entire agreement of the parties on matters covered. No other agreement, statement or promise made by any party, that is not in writing and signed by all parties to this Lease, shall be binding.

31.9 **Warranty of Authority.** On the date that Tenant executes this Lease, Tenant shall deliver to Landlord an original certificate of status for Tenant issued by the California Secretary of State or statement of partnership for Tenant recorded in the county in which the Premises are located, as applicable, and such other documents as Landlord may reasonably request with regard to the lawful existence of Tenant. Each person executing this Lease on behalf of a party represents and warrants that (1) such person is duly and validly authorized to do so on behalf of the entity it purports to so bind, and (2) if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Lease and perform all of its obligations hereunder. Tenant hereby warrants that this Lease is valid and binding upon Tenant and enforceable against Tenant in accordance with its terms.

31.10 **Notices.** Any and all notices and demands required or permitted to be given hereunder to Landlord shall be in writing and shall be sent: (a) by United States mail, certified and postage prepaid; or (b) by personal delivery; or (c) by overnight courier, addressed to Landlord at 1530 O'Brien Drive, Suite C, Menlo Park, California 94025. Any and all notices and demands required or permitted to be given hereunder to Tenant shall be in writing and shall be sent: (i) by United States mail, certified and postage prepaid; or (ii) by personal delivery to any employee or agent of Tenant over the age of eighteen (18) years of age; or (iii) by overnight courier, all of which shall be addressed to Tenant at the Premises. Notice and/or demand shall be deemed given upon the earlier of actual receipt or attempted delivery where delivery is not accepted. Tenant agrees to notice and service of notice as provided for in this Section 31.10 and waives any right to any other or further notice or service of notice which Tenant may have under any statute or law now or hereafter in effect.

31.11 **Joint and Several.** If Tenant consists of more than one person or entity, the obligations of all such persons or entities shall be joint and several.

31.12 **Covenants and Conditions.** Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition.

31.13 **Waiver of Jury Trial.** The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way related to this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, the Building or the Park, and/or any claim of injury, loss or damage.

31.14 **Underlining.** The use of underlining within the Lease is for Landlord's reference purposes only and no other meaning or emphasis is intended by this use, nor should any be inferred.

31.15 **Merger.** The voluntary or other surrender of this Lease by Tenant, the mutual termination or cancellation hereof by Landlord and Tenant, or a termination of this Lease by Landlord for a material default by Tenant hereunder, shall not work a merger, and, at the sole option of Landlord, (i) shall terminate all or any existing subleases or subtenancies, or (ii) may operate as an assignment to Landlord of any or all of such subleases or subtenancies. Landlord's election of either or both of the foregoing options shall be exercised by delivery by Landlord of written notice thereof to Tenant and all known subtenants under any sublease.

## 32. Signs.

32.1 Tenant, at its sole cost and expense, shall have the right to install on the Premises: (i) eyebrow signage on the Premises, (ii) Building entry signage, and (iii) monument signage, all subject to Section 32.2 below, including, without limitation, Landlord's prior written approval.

32.2 All signs and graphics of every kind visible in or from public view or corridors or the exterior of the Premises shall be subject to Landlord's prior written approval and shall be subject to any applicable governmental laws, ordinances, and regulations and in compliance with Landlord's sign criteria as same may exist from time to time. Tenant shall remove all such signs and graphics prior to the termination of this Lease. Such installations and removals shall be made in a manner as to avoid damage or defacement of the Premises; and Tenant shall repair any damage or defacement, including without limitation, discoloration caused by such installation or removal. Landlord shall have the right, at its option, to deduct from the Security Deposit such sums as are reasonably necessary to remove such signs, including, but not limited to, the costs and expenses associated with any repairs necessitated by such removal. Notwithstanding the foregoing, in no event shall any: (a) neon, flashing or moving sign(s) or (b) sign(s) which shall interfere with the visibility of any sign, awning, canopy, advertising matter, or decoration of any kind of any other business or occupant of the Building be permitted hereunder. Tenant further agrees to maintain any such sign, awning, canopy, advertising

matter, lettering, decoration or other thing as may be approved in good condition and repair at all times.

33. **Mortgage Protection.** Upon any default on the part of Landlord, Tenant will give written notice in accordance with Section 31.10 hereof, to any beneficiary of a deed of trust or mortgagee of a mortgage covering the Premises who has provided Tenant with notice of their interest together with an address for receiving notice, and shall offer such beneficiary or mortgagee a reasonable opportunity to cure the default (which, in no event shall be less than sixty (60) days), including time to obtain possession of the Premises by power of sale or a judicial foreclosure, if such should prove necessary to effect a cure. If such default cannot be cured within such time period, then such additional time as may be necessary will be given to such beneficiary or mortgagee to effect such cure so long as such beneficiary or mortgagee has commenced the cure within the original time period and thereafter diligently pursues such cure to completion, in which event this Lease shall not be terminated while such cure is being diligently pursued. Tenant agrees that each lender to whom this Lease has been assigned by Landlord is an express third party beneficiary hereof.

34. **Warranties of Tenant.** Tenant hereby warrants and represents to Landlord, for the express benefit of Landlord, that Tenant has undertaken a complete and independent evaluation of the risks inherent in the execution of this Lease and the operation of the Premises for the use permitted hereby, and that, based upon said independent evaluation, Tenant has elected to enter into this Lease and hereby assumes all risks with respect thereto. Tenant hereby further warrants and represents to Landlord, for the express benefit of Landlord, that in entering into this Lease, Tenant has not relied upon any statement, fact, promise or representation (whether express or implied, written or oral) not specifically set forth herein in writing and that any statement, fact, promise or representation (whether express or implied, written or oral) made at any time to Tenant, which is not expressly incorporated herein in writing, is hereby waived by Tenant.

35. **Compliance with Americans with Disabilities Act.** Landlord and Tenant hereby agree and acknowledge that the Premises and/or the Building may be subject to the requirements of the Americans with Disabilities Act, a federal law codified at 42 U.S.C. 12101 et seq, including, but not limited to Title III thereof, all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented (collectively, the "ADA"). Any Tenant Improvements to be constructed hereunder shall be in compliance with the requirements of the ADA, and all costs incurred for purposes of compliance therewith shall be a part of and included in the costs of the Tenant Improvements. Tenant shall be solely responsible for conducting its own independent investigation of this matter and for ensuring that the design of all Tenant Improvements strictly comply with all requirements of the ADA. Subject to reimbursement pursuant to Section 6 of the Lease, if any barrier removal work or other work is required to the Building under the ADA, then such work shall be the responsibility of Landlord; provided, if such work is required under the ADA as a result of Tenant's use of the Premises or any work or alteration made to the Premises by or on behalf of Tenant, then such work shall be performed by Landlord at the sole cost and expense of Tenant. Except as otherwise expressly provided in this

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provision, Tenant shall be responsible at its sole cost and expense for fully and faithfully complying with all applicable requirements of the ADA, including without limitation, not discriminating against any disabled persons in the operation of Tenant's business in or about the Premises, and offering or otherwise providing auxiliary aids and services as, and when, required by the ADA. Within ten (10) days after receipt, Landlord and Tenant shall advise the other party in writing, and provide the other with copies of (as applicable), any notices alleging violation of the ADA relating to any portion of the Premises or the Building; any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Premises or the Building; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Premises or the Building. Tenant shall and hereby agrees to protect, defend (with counsel acceptable to Landlord) and hold Landlord and the other Indemnitees harmless and indemnify the Indemnitees from and against all liabilities, damages, claims, losses, penalties, judgments, charges and expenses (including reasonable attorneys' fees, costs of court and expenses necessary in the prosecution or defense of any litigation including the enforcement of this provision) arising from or in any way related to, directly or indirectly, Tenant's or Tenant's Representatives' violation or alleged violation of the ADA. Tenant agrees that the obligations of Tenant herein shall survive the expiration or earlier termination of this Lease.

36. **Brokerage Commission.** Landlord and Tenant each represents and warrants for the benefit of the other that it has had no dealings with any real estate broker, agent or finder in connection with the Premises and/or the negotiation of this Lease, except for the Broker(s) (as set forth on Page 1), and that it knows of no other real estate broker, agent or finder who is or might be entitled to a real estate brokerage commission or finder's fee in connection with this Lease or otherwise based upon contacts between the claimant and Tenant. Each party shall indemnify and hold harmless the other from and against any and all liabilities or expenses arising out of claims made for a fee or commission by any real estate broker, agent or finder in connection with the Premises and this Lease other than Broker(s), if any, resulting from the actions of the indemnifying party. Any real estate brokerage commission or finder's fee payable to the Broker(s) in connection with this Lease shall be payable pursuant to a separate agreement.

37. **Quiet Enjoyment.** Landlord covenants with Tenant, upon the paying of Rent and observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept, and during the periods that Tenant is not otherwise in default of any of the terms or provisions of this Lease beyond expiration of all applicable notice and cure periods, and subject to the rights of any of Landlord's lenders, (i) that Tenant shall and may peaceably and quietly hold, occupy and enjoy the Premises and the Common Areas during the Term of this Lease, and (ii) neither Landlord, nor any successor or assign of Landlord, shall disturb Tenant's occupancy or enjoyment of the Premises and the Common Areas.

38. **Landlord's Ability to Perform Tenant's Unperformed Obligations.** Notwithstanding anything to the contrary contained in this Lease, if Tenant shall fail to perform any of the terms, provisions, covenants or conditions to be performed or complied with by Tenant pursuant to this Lease, and/or if the failure of Tenant relates to a matter which in Landlord's judgment reasonably exercised is of an emergency nature and such failure shall remain uncured for a period of time commensurate with such emergency, then Landlord may, at Landlord's option without any obligation to do so, and in its sole discretion as to the necessity

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therefor, perform any such term, provision, covenant, or condition, or make any such payment and Landlord by reason of so doing shall not be liable or responsible for any loss or damage thereby sustained by Tenant or anyone holding under or through Tenant. If Landlord so performs any of Tenant's obligations hereunder, the full amount of the cost and expense entailed or the payment so made or the amount of the loss so sustained shall immediately be owing by Tenant to Landlord, and Tenant shall promptly pay to Landlord within five (5) days of notice, as Additional Rent, the full amount thereof and Enforcement Expenses.

39. Option to Extend.

39.1 Provided Tenant is not in default of its obligations under this Lease, beyond any applicable notice and cure period, either at the time of exercise or on the commencement date of the Extended Term (as hereinafter defined), Tenant shall have one (1) option to re-lease the Premises for a term of ten (10) years (one hundred and twenty (120) months) (the "**Extended Term**") on the same terms and conditions as set forth in this Lease except that (i) the Base Monthly Rent for the extended term shall be adjusted to the Extended Term Rate, as defined in Section 39.3 below, and (iii) Tenant shall accept the Premises in their then "as is" condition. This option to extend is granted for the personal benefit of the Peninsula Corridor Joint Powers Board and its Permitted Transferee(s) only, and shall be exercisable only by Peninsula Corridor Joint Powers Board or a Permitted Transferee (as defined in Section 15.4 above). This option to extend may not be assigned or transferred to any assignee or sublessee, other than a Permitted Transferee, without the prior written consent of Landlord.

39.2 Tenant shall give Landlord written notice of its intent to exercise its option no earlier than thirty (30) months and no later than twenty four (24) months prior to the expiration of the initial Term (the "**Option Exercise Date**"). If Tenant does not exercise the Option to Extend prior to the Option Exercise Date, the Option to Extend shall lapse, time being of the essence.

39.3 The initial Monthly Base Rent for the Premises during the Extended Term, the "**Extended Term Rate**" shall be determined pursuant to the provisions of this Section 39.3, and shall equal the then current fair market rental for the Premises on the commencement date of the Extended Term, which shall be based on what a willing new lessee would pay and a willing lessor would accept at arm's length for comparable premises in the city of Menlo Park of similar age, size, quality of construction and specifications (excluding the value of any improvements to the Premises made at Tenant's cost with Landlord's prior written consent except as otherwise permitted herein) for a lease similar to this Lease for the same uses specified hereunder and taking into consideration that there will be no free rent, improvement allowance, or other rent concessions.

39.4 Upon the written request by Tenant to Landlord received by Landlord at any time prior to the Option Exercise Date and prior to the exercise by Tenant of the Option to Extend, Landlord shall, within fifteen (15) days of such request, give Tenant written notice of Landlord's good faith opinion of the Extended Term Rate ("**Landlord's Notice**"). Thereafter, if Tenant exercises the Option to Extend, Landlord's stated Extended Term Rate in Landlord's Notice shall be deemed approved. If, after delivery of Landlord's

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Notice, Tenant has not yet exercised the Option to Extend, then upon the request of Tenant, Landlord and Tenant shall enter into good faith negotiations in an effort to reach agreement on the Extended Term Rate. If Landlord and Tenant are unable to agree upon the Extended Term Rate within fifteen (15) days of Tenant's receipt of Landlord's Notice (the "**Outside Agreement Date**"), said amount shall be determined as set forth herein.

39.5 Landlord and Tenant shall each appoint one arbitrator who shall by profession be a real estate broker who shall have been active over the ten (10) year period ending on the date of such appointment in the leasing of commercial office/R&D/manufacturing properties in the vicinity of the Building. Landlord's and Tenant's arbitrators shall be appointed within fifteen (15) days after the Outside Agreement Date. If either Landlord or Tenant fails to appoint an arbitrator within the time period specified in this Section 39.5), the arbitrator appointed by one of them shall reach a decision, notify Landlord and Tenant thereof, and such arbitrator's decision shall be binding upon Landlord and Tenant. If two arbitrators are timely appointed, the arbitrators shall meet within ten (10) business days after the second arbitrator is appointed and shall seek to reach agreement on fair market value of the Premises for the Extended Term. If within twenty (20) days after the second arbitrator is appointed the two arbitrators are unable to reach agreement on such fair market value then the two arbitrators shall appoint a third arbitrator who shall be qualified under the same criteria set forth above for qualification of the initial two arbitrators. If the two arbitrators fail to agree upon and appoint a third arbitrator within five (5) days after the expiration of such twenty (20) day period, then the appointment of the arbitrator shall be made by the Presiding Judge of the San Mateo County Superior Court, or, if he or she refuses to act, by any judge having jurisdiction over the parties. Concurrently with the appointment of the third arbitrator, each of the arbitrators selected by the parties shall state, in writing, his or her determination of the fair market value and the reasons therefor. The three arbitrators shall, within fifteen (15) days after the appointment of the third arbitrator, reach a decision as to whether the parties shall use Landlord's and Tenant's submitted fair market rental value of the demised premises for the extended term. The determination of the arbitrators shall be limited solely to the issue of whether Landlord's and Tenant's submitted fair market rental value for the demised premises is closer to the actual fair market rental value as determined by the arbitrators, taking into account the requirements of this Section 39 hereof regarding the same. The decision of the majority of the three arbitrators shall be binding upon Landlord and Tenant.

39.6 If only one arbitrator is selected, then each party shall pay one-half of the fees and expenses of that arbitrator. If three arbitrators are selected, each party shall bear the fees and expenses of the arbitrator it selects and one-half of the fees and expenses of the third arbitrator.

39.7 Thereafter, provided that Tenant has previously given timely notice to Landlord of the exercise by Tenant of the Option to Extend, Landlord and Tenant shall execute an amendment to this Lease stating that the initial Monthly Base Rent for the Premises during the Extended Term shall be equal to the determination as set forth herein.

40. **Right of First Offer to Purchase.**

40.1 **Granting of Right; Conditions.** Provided that Tenant is not then in default, beyond any applicable notice and cure period, of the terms of this Lease, if Landlord decides to sell the Premises to any party other than to a Landlord affiliate at any time in the first five (5) years of the Lease Term, Landlord hereby grants to Tenant a continuing right of first offer to purchase the Premises (the "**ROFO Option**") at any time between the Commencement Date and the last day of the sixtieth (60th) month of the Lease Term ("**ROFO Purchase Option Period**") upon the following terms and conditions.

40.2 **Exercise of Option.** In the event Landlord desires to sell the Premises during the ROFO Purchase Option Period, then prior to selling the Premises to a third party, Landlord shall notify Tenant in writing of its election to sell the Premises, including the amount of the Purchase Price (as hereinafter defined) and the amount of any commercially reasonable deposit required ("**Landlord's Notice**"). The purchase price for the Premises (the "**Purchase Price**") shall be determined in Landlord's reasonable discretion and shall be equal to the prevailing market value for the Premises on the projected closing date, which shall be based on what a willing buyer would pay and a willing seller would accept at arm's length for comparable premises in the city of Menlo Park of similar age, size, leasing status, quality of construction and specifications for similar premises excluding the value of any improvements to the Premises made at Tenant's cost with Landlord's prior written consent and excluding the terms of any existing financing; provided, however, in no event shall the Purchase Price be equal to an amount less than the amount calculated by capitalizing the net Annual Rent for the projected twelve (12) month period commencing with the projected closing date using a capitalization rate of seven percent (7%) (the "**Purchase Price Floor**"). For the purposes of illustration only, a sample calculation of the Purchase Price Floor is set forth on Exhibit H attached hereto. Tenant shall exercise this ROFO Option, if at all, by delivering to Landlord notice of its acceptance of the terms set forth in Landlord's Notice and its exercise of the ROFO Option within sixty (60) days of Tenant's receipt of Landlord's Notice ("**Exercise Notice**"). Tenant's failure to deliver its Exercise Notice within said sixty (60) day period shall result in an automatic termination of the ROFO Option without further need of any documentation; provided, however, in the event Landlord requests Tenant to execute any documents necessary to evidence the termination of such option, Tenant shall execute such documentation promptly. In such event, Landlord thereafter, for a period of nine (9) months from the expiration of such 60 day period, may sell the Premises to any person on substantially the same terms set forth in Landlord's Notice. If Landlord does not sell the Premises on the terms or within the time period set forth in the immediately preceding sentence, then Landlord shall re-offer the Premises to Tenant in accordance with the terms of this Section 40.

40.3 **Escrow.** In the event that the ROFO Option is duly exercised, the parties shall promptly and in any event within sixty (60) days of the date of Tenant's Exercise Notice ("**Exercise Date**"), enter into a mutually acceptable purchase and sale agreement prepared by Landlord and reasonably acceptable to Tenant (the "**Purchase and Sale Agreement**") and open an escrow with First American Title Company (the "**Title**



Company”) by delivering a fully executed original of the Purchase and Sale Agreement to the Title Company.

40.4 **Closing.** The closing date shall be identified in the Purchase and Sale Agreement but shall be no later than one hundred eighty (180) days following the Exercise Date (the “**Closing Date**”). Tenant shall pay Rent and Additional Rent to Landlord through and including the Closing Date. If the Closing Date does not occur by reason of a breach of the Purchase and Sale Agreement by Tenant, the ROFO Option shall terminate automatically without further need of any documentation; provided, however, that Tenant shall promptly execute any documents requested by Landlord necessary to evidence the termination of such option.

40.5 **Time of Essence.** Time is of the essence with respect to the exercise by Tenant of its rights granted hereunder. The ROFO Option granted to Tenant under this Section 40 is granted for the personal benefit of Peninsula Corridor Joint Powers Board and shall be exercised only by the Peninsula Corridor Joint Powers Board, or by a Permitted Transferee (as defined herein) of this Lease. The ROFO Option may not be assigned or transferred to any assignee or sublessee, other than a Permitted Transferee, without the prior written consent of Landlord.

41. **Option to Purchase.**

41.1 **Granting of Right; Conditions.** Landlord hereby grants to Tenant a right to purchase the Premises (the “**Purchase Option**”) for the Option Purchase Price (determined pursuant to Section 41.2 below) effective as of the first day of the sixty-first (61st) month of the Lease Term and continuing until the last day of the seventy-second (72nd) month of the Lease Term (“**Purchase Option Period**”) upon the following terms and conditions.

41.2 **Option Purchase Price.**

41.2.1 The Option Purchase Price (the “**Option Purchase Price**”) shall be equal to the prevailing market value for the Premises on the projected closing date, which shall be based on what a willing buyer would pay and a willing seller would accept at arm’s length for comparable premises in the city of Menlo Park of similar age, size, leasing status, quality of construction and specifications for similar premises; provided, however, in no event shall the Purchase Price be equal to an amount less than the Purchase Price Floor (as defined in Section 40.2. above).

41.2.2 If Landlord and Tenant are unable to agree upon the Option Purchase Price within fifteen (15) days of Landlord’s receipt of Tenant’s Purchase Option Exercise Notice (as defined in Section 41.3 below) (the “**Outside Date**”), said amount shall be determined as set forth herein.

41.2.3 Landlord and Tenant shall each appoint one arbitrator who shall by profession be a real estate broker who shall have been active over the ten (10)

year period ending on the date of such appointment in the investment and sale of commercial office/R&D/manufacturing NNN properties in the vicinity of the Building. Landlord's and Tenant's arbitrators shall be appointed within fifteen (15) days after the Outside Date. If either Landlord or Tenant fails to appoint an arbitrator within the time period specified in this Section 41.2., the arbitrator appointed by one of them shall reach a decision, notify Landlord and Tenant thereof, and such arbitrator's decision shall be binding upon Landlord and Tenant but shall in no event be less than the Purchase Price Floor (as defined in Section 40.2. above). If two arbitrators are timely appointed, the arbitrators shall meet within ten (10) business days after the second arbitrator is appointed and shall seek to reach agreement on the Option Purchase Price. If within twenty (20) days after the second arbitrator is appointed the two arbitrators are unable to reach agreement on such price then the two arbitrators shall appoint a third arbitrator who shall be qualified under the same criteria set forth above for qualification of the initial two arbitrators. If the two arbitrators fail to agree upon and appoint a third arbitrator within five (5) days after the expiration of such twenty (20) day period, then the appointment of the arbitrator shall be made by the Presiding Judge of the San Mateo County Superior Court, or, if he or she refuses to act, by any judge having jurisdiction over the parties. Concurrently with the appointment of the third arbitrator, each of the arbitrators selected by the parties shall state, in writing, his or her determination of the price and the reasons therefor. The three arbitrators shall, within fifteen (15) days after the appointment of the third arbitrator, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted proposed Option Purchase Price, which shall in no event be less than the Purchase Price Floor. The determination of the arbitrators shall be limited solely to the issue of whether Landlord's or Tenant's submitted proposed Option Purchase Price is closer to the actual Option Purchase Price as determined by the arbitrators, taking into account the requirements of this Section 41.2 hereof regarding the same. The decision of the majority of the three arbitrators shall be binding upon Landlord and Tenant.

41.2.4 If only one arbitrator is selected, then each party shall pay one half of the fees and expenses of that arbitrator. If three arbitrators are selected, each party shall bear the fees and expenses of the arbitrator it selects and one half of the fees and expenses of the third arbitrator.

41.3 **Exercise of Option.** At any time during the Purchase Option Period, Tenant shall exercise this Purchase Option, if at all, by delivering to Landlord written notice of its exercise of the Purchase Option ("Purchase Option Exercise Notice"). Tenant's failure to deliver its Purchase Option Exercise Notice within the Purchase Option Period shall result in an automatic termination of the Purchase Option without further need of any documentation; provided, however, in the event Landlord requests Tenant to execute any documents necessary to evidence the termination of such option, Tenant shall execute any such documents promptly.

41.4 **Escrow.** In the event that the Purchase Option is duly exercised, the parties shall promptly and in any event within sixty (60) days of the date of Tenant's Purchase

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Option Exercise Notice (“**Purchase Option Exercise Date**”), enter into a Purchase and Sale Agreement prepared by Landlord and reasonably acceptable to Tenant and open an escrow with the Title Company by delivering a fully executed original of the Purchase and Sale Agreement to the Title Company.

41.5 **Closing.** The closing date shall be identified in the Purchase and Sale Agreement but shall be no later than one hundred eighty (180) days following the Exercise Date (the “**Closing Date**”). Tenant shall pay Rent and Additional Rent to Landlord through and including the Closing Date. If the Closing Date does not occur by reason of a breach of the Purchase and Sale Agreement by Tenant, the Purchase Option shall terminate automatically without further need of any documentation; provided, however, that Tenant shall promptly execute any documents requested by Landlord necessary to evidence the termination of such option.

41.6 The Purchase Option granted to Tenant under this Section 41 is granted for the personal benefit of Peninsula Corridor Joint Powers Board and shall be exercised only by the Peninsula Corridor Joint Powers Board, or by a Permitted Transferee (as defined herein) of this Lease. The Purchase Option may not be assigned or transferred to any assignee or sublessee, other than a Permitted Transferee, without the prior written consent of Landlord.

42. **Landlord Financing.** Tenant acknowledges that Landlord intends to obtain long term debt financing for the Premises. Landlord agrees to notify potential lenders of Tenant’s desire to be pre-approved as a voluntary assignee of Landlord’s debt financing in the event of a purchase of the Premises by Tenant pursuant to the terms of this Lease.

43. **Generator.** Tenant is hereby granted, subject to Section 10 hereof and the provisions of this Section 43 and such other requirements as shall be imposed by Landlord and compliance with all applicable governmental regulations, the right to install, secure, maintain, replace and operate in the location to be mutually agreeable to Landlord and Tenant, an emergency electric generator of a size necessary for Tenant’s continued operations and subject to Landlord’s prior written approval, together with all ancillary equipment, mountings, piping, duct work, venting, conduit, wiring and support, including, without limitation, the emergency electric riser and emergency fuel pumps, as shall be reasonably necessary for the operation thereof (collectively the “**Generator**”). Tenant shall diligently service, repair, paint and maintain the Generator, including, without limitation, all electrical wires, guide wires and conduits related thereto. In the performance of any installation, alteration, repair, maintenance, removal and/or any other work with respect to the Generator, Tenant shall comply with all of the applicable provisions of this Lease including, without limitation, those set forth in Section 10 and Section 11. Any and all taxes, filing fees, charges or license fees imposed upon Landlord by virtue of the existence and/or use of the Generator (including those shown to be specifically related to any increase in the assessed valuation of the Building attributable to the Generator), whether imposed by any local, state and/or federal government or any agency thereof, shall be exclusively borne by Tenant.

IN WITNESS WHEREOF, this Lease is executed by the parties as of the Lease Date referenced on Page 1 of this Lease.

TENANT:

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Michael Scanlon  
Executive Director

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

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

LANDLORD:

CAMPBELL AVENUE PORTFOLIO, LLC,  
a Delaware limited liability company

DATE: \_\_\_\_\_

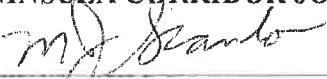
BY: \_\_\_\_\_

ITS: \_\_\_\_\_

IN WITNESS WHEREOF, this Lease is executed by the parties as of the Lease Date referenced on Page 1 of this Lease.

**TENANT:**

**PENINSULA CORRIDOR JOINT POWERS BOARD**

By:   
Michael Scanlon  
Executive Director

DATE: 5/15/2013

**APPROVED AS TO FORM:**

By:   
Counsel

**LANDLORD:**

**CAMPBELL AVENUE PORTFOLIO, LLC,**  
a Delaware limited liability company

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

IN WITNESS WHEREOF, this Lease is executed by the parties as of the Lease Date referenced on Page 1 of this Lease.

TENANT:

**PENINSULA CORRIDOR JOINT POWERS BOARD**

By: \_\_\_\_\_  
Michael Scanlon  
Executive Director

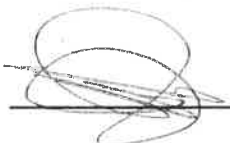
DATE: \_\_\_\_\_

APPROVED AS TO FORM:

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

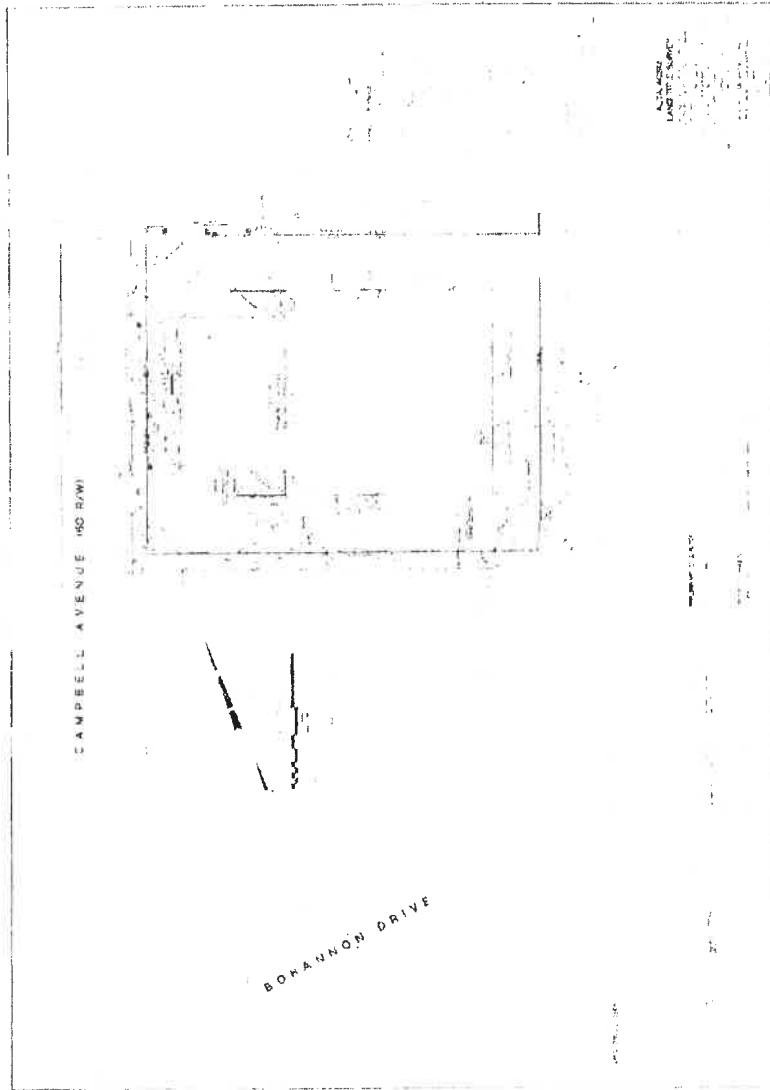
LANDLORD:

**CAMPBELL AVENUE PORTFOLIO, LLC,**  
a Delaware limited liability company

BY:  \_\_\_\_\_  
ITS: CEO OF MANAGER

DATE: 5/15/13

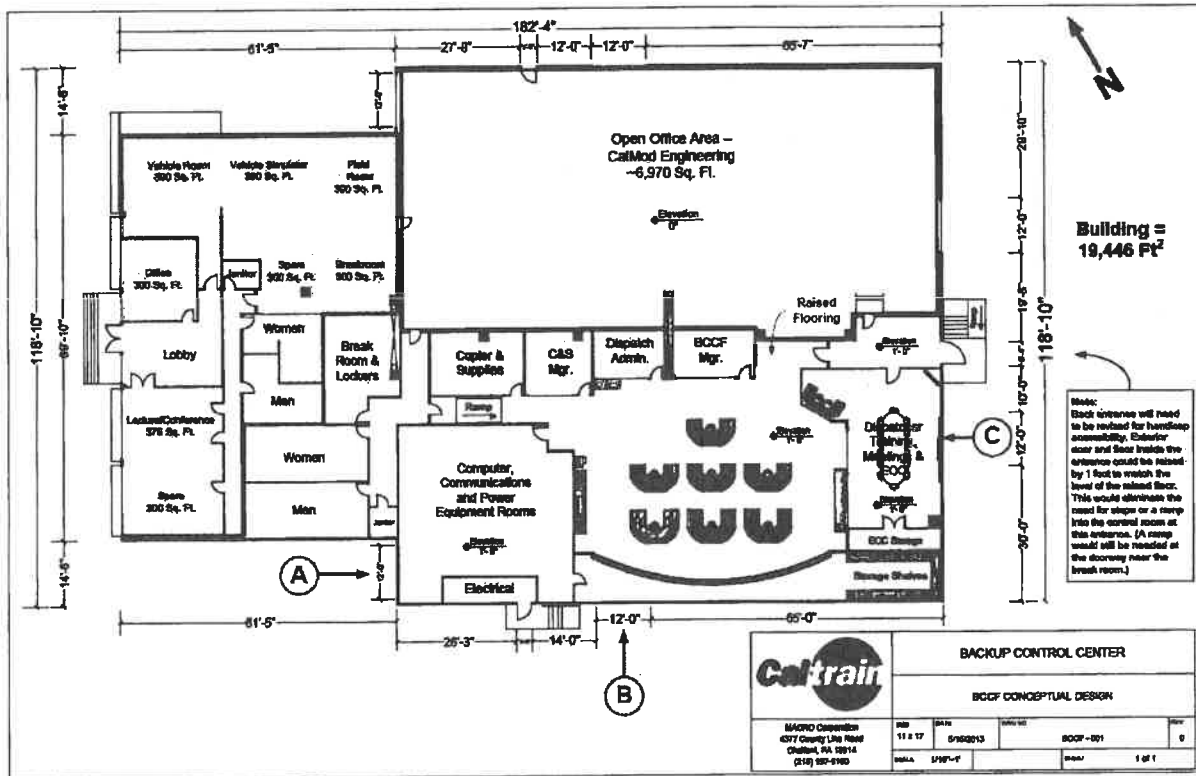
EXHIBIT A  
PREMISES



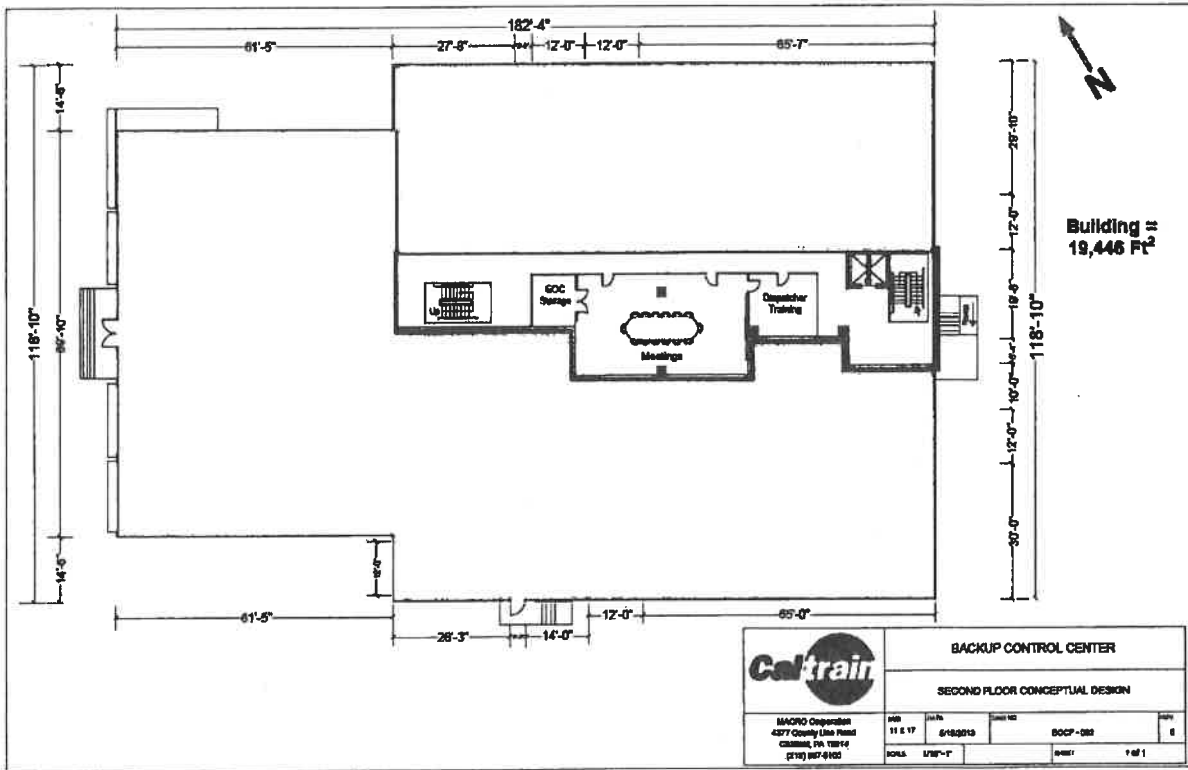
## EXHIBIT B

### TENANT IMPROVEMENTS

At Tenant's cost and expense, Tenant shall construct the following (the "Tenant Improvements") as described in this Exhibit B. All references in this Exhibit B to the "Lease" shall mean that certain Lease to which this Exhibit B is attached.







**EXHIBIT I**  
**FORM SNDA**  
(attached)

**EXHIBIT H**

**SAMPLE CALCULATION FOR PURCHASE PRICE FLOOR**

This sample calculation for the Purchase Price Floor is being provided for purposes of illustration only in accordance with Section 40.2 of the Lease to which this Exhibit H is attached.

Hypothetical Closing Date:	Month 48
Annual Net Rent:	\$512,674.08 (Net Rent in Month 49 - \$42,722.84 x 12)
Capitalization Rate:	7%
Hypothetical Purchase Price Floor:	\$7,323,915.43 ( $\$512,674.08 / .07$ )

## **Description of Improvements Planned for 4020 Campbell Avenue**

The building will be designed to accommodate two basic types of staffing, Railroad Dispatchers and Support Staff.

Approximately 2/3 of the interior space will be dedicated to support staff. This area will consist primarily of "open office architecture" desks. Basic floor coverings will be provided. A number of closed conference rooms and offices will be constructed of non-structural design. Typical office lighting will be provided. Appropriate heating and air conditioning will be installed. A fire alarm and suppression system will be installed.

Approximately 1/3 of the interior space will be prepared for the Railroad Dispatchers by providing a dispatch theater consisting of various consoles and electronic displays. These will be situated on a standard raised computer floor. Appropriate lighting will be provided.

A computer server and communications room will be constructed adjacent to the dispatch theater area. Fiber optic cables, twisted pair cables and microwave system will be added to the existing telephone communications. Heating and air condition system for both under floor and above floor will be provided. A fire alarm and suppression system will be provided.

An Emergency Electric Power Generator will be installed to provide back-up power in the event of a Utility Company failure.

Three existing exterior windows will be closed off, indicated as A, B and C on attached drawing.

A second floor conference room overlooking the dispatch theater will be constructed. An elevator and stairs compliant with ADA Requirements will be installed.

Upon the termination of this Lease, whether by forfeiture, lapse of time or otherwise, or upon termination of Tenant's rights to possession of the Premises, Tenant will surrender the Premises to Landlord in the condition required in Section 10.2 of the Lease, together with the following portions of the Tenant Improvements removed: (a) remove all of Tenant's furniture, fixtures and equipment, including, without limitation, the dispatching stations; (b) Tenant shall restore the two (2) storefront windows and one (1) glazed roll-up door which is removed as part of the Tenant Improvements with windows of substantially the same size and condition as of the Lease Date; (c) remove raised flooring installed in connection with the Tenant Improvements, and (d) remove and restore area of added R/R core in connection with the Tenant Improvements.

**EXHIBIT D**

Intentionally Deleted

EXHIBIT E

HAZARDOUS MATERIALS DISCLOSURE CERTIFICATE EXAMPLE

[To Be Attached]

**EXHIBIT G**

**Intentionally Deleted**

**EXHIBIT F**

Intentionally Deleted



Chemical	Primary Hazard	Secondary Hazard	S, L or G?	Current Storage Quantity	Premises Storage Quantity	Largest Container Size	Amount in Use	Amount in Flammable Cabinet	EHS?
glycerol	combustible	irritant	L	1.5L	3 L	1g			
methyl sulfoxide	combustible	irritant	L	1.5L	3 L	10g			
poly (vinyl alcohol) 99%	combustible		L	25g	50 g	50mL			
Tween 20	combustible		L	300mL	600 ml	25g			
Trichloroacetic acid	corrosive		L	400g	800g	500g			
acetonitrile	flammable	toxic	L	5L	10 L	1 L	2 L	3 L	
argon	inert		G	300 cf	300cf	300 cf			
liquid nitrogen (cryogenic)	inert		G	160 L (42 gal)	160 L (42 gal)	160L			
sodium bicarbonate	none		S	500g	1000g	500g			
sodium azide	toxic	combustible	S	1 g		1 g	1 g	0	Yes
hazardous waste-flammable liquids	flammable		L	55 g	55 g	55 g			

Please complete columns for Chemical, state (solid, liquid or gas), current storage quantity and largest container size

For flammable and combustible liquids, please complete the columns for amount in use and amount kept in a flammable cabinet.

If you know the hazards, or if the chemical is an extremely hazardous substance (aka, acutely hazardous substance, please complete that column as well.

Please list all chemicals used, even if you do not think they are hazardous.

**From:** [Murphy, Seamus](#)  
**To:** [Board \(@caltrain.com\)](#); [Executive Team](#); [Fitzpatrick, Brian](#)  
**Subject:** RE: FYI from Caltrain Board email account, input? FW: Request for information  
**Date:** Friday, December 20, 2019 8:32:31 AM

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Didn't he already submit this PRA request? Is this the second one for the same info?

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**From:** Board (@caltrain.com) <BoardCaltrain@samtrans.com>  
**Sent:** Friday, December 20, 2019 8:29 AM  
**To:** Executive Team <ExecutiveTeam@samtrans.com>; Fitzpatrick, Brian <fitzpatrickb@samtrans.com>  
**Subject:** FYI from Caltrain Board email account, input? FW: Request for information

Hello - FYI from Caltrain Board email account – scroll down, an info. request from Mr. LeBrun. Thought you should all know since he's sent it to Chair Gillet's attention + a number of other organizations.

Since it came through the Board email, does it seem okay to include it into today's Board correspondence with an acknowledgement of the request and handle as we would a regular PRA request? Please provide input/direction.

Thanks,

Dora

---

**From:** Roland Lebrun <[ccss@msn.com](mailto:ccss@msn.com)>  
**Sent:** Friday, December 20, 2019 3:39 AM  
**To:** Board (@caltrain.com) <[BoardCaltrain@samtrans.com](mailto:BoardCaltrain@samtrans.com)>  
**Cc:** VTA Board Secretary <[board.secretary@vta.org](mailto:board.secretary@vta.org)>; MTC Commission <[info@mtc.ca.gov](mailto:info@mtc.ca.gov)>; MTC-ABAG <[mtc-abag@service.govdelivery.com](mailto:mtc-abag@service.govdelivery.com)>; SFCTA CAC <[cac@sfcta.org](mailto:cac@sfcta.org)>; cacsecretary [@caltrain.com] <[jpbcacsecretary@samtrans.com](mailto:jpbcacsecretary@samtrans.com)>; Caltrain, Bac (@caltrain.com) <[BAC@caltrain.com](mailto:BAC@caltrain.com)>; Steve Stamos, Clerk of the Board <[clerk@sfcta.org](mailto:clerk@sfcta.org)>  
**Subject:** Re: Request for information

Dear Chair Gillett,

Pursuant to Government Code §6250 et seq, please refer to the legal council report (attached) of the September 2013 Board meeting  
[http://www.caltrain.com/Assets/\\_\\_\\_Agendas+and+Minutes/JPB/Board+of+Directors/Minutes/2013/9-5-13+JPB+Minutes.pdf](http://www.caltrain.com/Assets/___Agendas+and+Minutes/JPB/Board+of+Directors/Minutes/2013/9-5-13+JPB+Minutes.pdf)

and provide the following information:

- 1) Copy of the signed lease with option to purchase 4020 Campbell Avenue
- 2) Name(s) and position(s) of SamTrans employee(s) involved in the transaction

Thank you in advance for your prompt attention to this matter.

Sincerely,

Roland Lebrun

cc

SFCTA Commissioners

VTA Board of Directors

MTC Commissioners

SFCTA CAC

Caltrain CAC

Caltrain BPAC

**From:** Roland Lebrun  
**To:** [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))  
**Cc:** [VTA Board Secretary](#); [MTC Commission](#); [MTC-ABAG](#); [SFCTA CAC](#); [cacsecretary \[at\] caltrain.com](mailto:cacsecretary [at] caltrain.com); [Caltrain\\_Bac \(@caltrain.com\)](#); [Steve Stamos, Clerk of the Board](#)  
**Subject:** Re: Request for information  
**Date:** Friday, December 20, 2019 3:39:11 AM  
**Attachments:** [September 2013 Board meeting minutes.pdf](#)

---

Dear Chair Gillett,

Pursuant to Government Code §6250 et seq, please refer to the legal council report (attached) of the September 2013 Board meeting

[http://www.caltrain.com/Assets/\\_\\_\\_Agendas+and+Minutes/JPB/Board+of+Directors/Minutes/2013/9-5-13+JPB+Minutes.pdf](http://www.caltrain.com/Assets/___Agendas+and+Minutes/JPB/Board+of+Directors/Minutes/2013/9-5-13+JPB+Minutes.pdf)

and provide the following information:

- 1) Copy of the signed lease with option to purchase 4020 Campbell Avenue
- 2) Name(s) and position(s) of SamTrans employee(s) involved in the transaction

Thank you in advance for your prompt attention to this matter.

Sincerely,

Roland Lebrun

cc

SFCTA Commissioners  
VTA Board of Directors  
MTC Commissioners  
SFCTA CAC  
Caltrain CAC  
Caltrain BPAC

Mr. Murphy said a bill was introduced that would grant a blanket extension for the PTC deadline. The FRA's position is there shouldn't be a blanket extension, but year-to-year extensions granted when projects apply for them and only if they meet certain milestones. Staff doesn't think there will be any resolution on this issue this year. None of these efforts to extend the deadline apply to JPB's projects.

Chair Yeager asked if anything needs to be done regarding the bill for the 55 percent threshold for transportation. Mr. Murphy said there is a need to advocate for a bill that is going to maintain as much flexibility as possible. Senate Constitutional Amendment (SCA) 8 does that and SCA4 was amended to narrow the scope of projects.

### **CAPITAL PROJECTS QUARTERLY STATUS REPORT – 4<sup>TH</sup> QUARTER FISCAL YEAR 2013**

Ms. Harrington said this report is for information only.

### **CORRESPONDENCE**

No discussion.

### **BOARD MEMBER REQUESTS**

None

### **DATE/TIME/PLACE OF NEXT MEETING**

The next meeting will be Thursday, October 3, 2013, 10 a.m. at San Mateo County Transit District Administrative Building, Bacciocco Auditorium, 2<sup>nd</sup> Floor, 1250 San Carlos Avenue, San Carlos, CA 94070.

### **GENERAL COUNSEL REPORT**

- a. Closed Session: Conference with Real Property Negotiators  
Property: 4020 Campbell Avenue, Menlo Park, CA  
Agency Negotiators: Gigi Harrington; David Miller  
Property Owner: Campbell Avenue Portfolio, LLC  
Negotiations Scope: Price and Terms of Payment

David Miller, Legal Counsel, said the Board will meet in closed session to receive a report on real property negotiations for 4020 Campbell Avenue in Menlo Park.

Adjourned into closed session at 11:35 a.m.

Reconvened at 11:40 a.m.

Mr. Miller said the Board met in closed session as permitted by the Brown Act to discuss negotiations taking place with property at 4020 Campbell Avenue in Menlo Park. Instructions have been provided to the Executive Director and there is no official action to be taken at this time.

Adjourned at 11:41 a.m.

**From:** [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))  
**To:** [seanvoss@gmail.com](mailto:seanvoss@gmail.com)  
**Cc:** [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))  
**Subject:** FW: Request from Caltrain Board email account FW: Completely unacceptable service December 2019  
**Date:** Thursday, December 19, 2019 2:33:02 PM  
**Importance:** High

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Dear Sean, Good Afternoon - this email is to acknowledge your request and to advise that the requested information should be ready sometime during the week of January 7th. Staff will follow up with you once that information is received.

Best,

Dora

Dora Seamans, MPA, CMC  
Executive Officer/District Secretary  
SamTrans, Executive Administration  
1250 San Carlos Ave  
San Carlos, CA 94070  
Tel: 650-508-6242  
[Seamansd@samtrans.com](mailto:Seamansd@samtrans.com)

-----Original Message-----

From: Sean Voss <[seanvoss@gmail.com](mailto:seanvoss@gmail.com)>  
Sent: Friday, December 13, 2019 4:51 PM  
To: Board (@caltrain.com) <[BoardCaltrain@samtrans.com](mailto:BoardCaltrain@samtrans.com)>  
Subject: Completely unacceptable service December 2019

Can you please provide the on-time report for the current month of December? Please report the unaggregated performance as in one row per train for analysis.

In retrieving this data, you will likely find an interesting trend if you care to look at it yourselves.

Thanks,

Sean

Sent from my iPhone

**From:** [Dubost, Tina](#)  
**To:** ["jeff\\_kurn@prodigy.net"](mailto:jeff_kurn@prodigy.net)  
**Cc:** [Board \(@caltrain.com\)](#)  
**Subject:** RE: Accessibility Complaint ... Nobody is listening  
**Date:** Thursday, December 19, 2019 1:40:03 PM  
**Attachments:** [image001.png](#)

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Dear Jeff:

I wanted to follow up with you regarding your complaint.

We spoke to the Conductors on the train. In addition, the Rail department issued a reminder to all Conductors about the importance of making announcements during delays and in general in order to orient customers with disabilities and others who may want them.

Before equipment goes into service each day, our Maintenance team checks the equipment, including the PA system. Problems are fixed promptly.

I'm sorry for the delayed response. In the future, please call our Customer Service Center at 1-800-660-4287.

Again, I apologize for the bad experience.  
Thanks for letting us know about this problem and thanks for riding Caltrain.

Tina Dubost  
Manager, Accessible Transit Services

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**From:** Dubost, Tina  
**Sent:** Thursday, December 12, 2019 4:13 PM  
**To:** 'jeff\_kurn@prodigy.net'  
**Cc:** Board (@caltrain.com)  
**Subject:** RE: Accessibility Complaint ... Nobody is listening

Hi Jeff:  
Thanks for taking the time to talk to me.  
I will follow up and get back to you.  
Again, I'm sorry for the bad experience and that it took so long for an initial response.  
Tina

---

**From:** Dubost, Tina  
**Sent:** Thursday, December 12, 2019 2:38 PM  
**To:** 'jeff\_kurn@prodigy.net'  
**Subject:** RE: Accessibility Complaint ... Nobody is listening

Hi Jeff:  
I'm so sorry to hear about your accessibility complaint and that it has taken us so long to get back to you.

May I please have your telephone number, so that I can talk to you to get some additional information?

Thank you  
Tina

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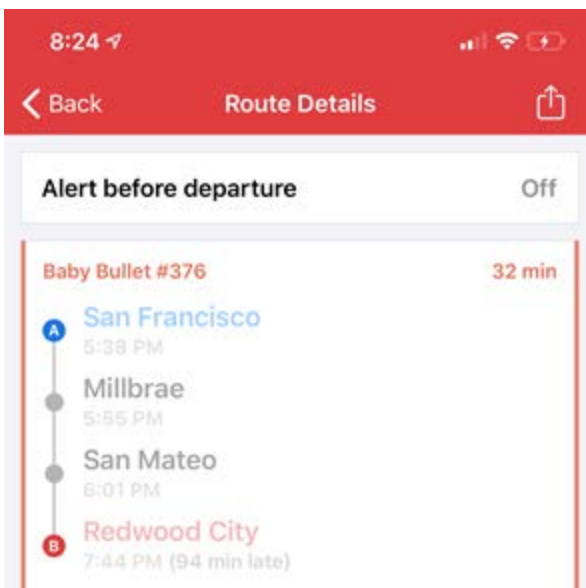
**From:** jeff\_kurn@prodigy.net [mailto:jeff\_kurn@prodigy.net]  
**Sent:** Wednesday, December 11, 2019 7:49 PM  
**To:** Dubost, Tina  
**Cc:** Board (@caltrain.com)  
**Subject:** Accessibility Complaint ... Nobody is listening

Hi Tina,

I saw your name on the Caltrain web site. This is my third time reaching out with zero response. Will stop here.

Last week I was on a bullet train from San Francisco to Redwood City. We were an hour and a half late – which happens – but what didn't happen was the issue.

1. We sat in some places for 30+ minutes for some reason. Ok, that happens.
2. Our bullet train at some point changed to a local train. OK, that happens
3. From the time we left the station until the time we got to Redwood City there was not a single announcement at all – about the delay, about changing to a local train or any announcement of upcoming stops. Not one announcement the entire time. That shouldn't happen.



Here's the issue

1. It was very dark out by the time we started to move
2. I have issues seeing things in the dark (accessibility!)
3. I could barely read, if at all, the station signs (had to ask)
4. I had no idea (again, no announcements) where we were, that we were adding extra stops so I



would normally know where to get off, etc.

5. Nobody was apprised of what was happening and causing the delay.

What did I do?

1. I sent a long note to your twitter account on the train. Got no response.
2. I mentioned it to a conductor the next morning. He said that at least five other people had complained to him about what happened. He was very apologetic. He suggested calling your office.
3. I called the office and asked for the head of accessibility. The name was something like David Sanlor (may be far off from that). Left him a message detailing my concern and contact information. No response. Called again a few days later. No response.

Common courtesy, if not meeting the needs of those that have trouble with vision, would have dictated announcements somewhere during over two hours that it took to reach my station.

Common courtesy would have meant that somebody would have responded to me.

Honestly this felt like earlier this year when the I bought a monthly parking ticket (\$84?) from one of the machines in Redwood City. No ticket came out. I immediately bought a second one. About 10 phone calls, emails, letters later I gave up trying to get a refund. I got serious pass the buck between Caltrain, Clipper Card and who knows who else. Even got a long typewritten letter saying they weren't responsible - pointing me back to where I started! Nobody would take responsibility even though I filed the claim as requested, I sent pictures as requested, etc. I gave up. Not worth it though this so should have been a very simple resolution. Nobody would take responsibility. Sound familiar?

Anyway, sorry for the ranting. Somebody needs to exhibit some common courtesy and take responsibility.