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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the quarterly period ended September 27, 2019

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
Commission File Number: 000-30235

EXELIXIS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**04-3257395**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

1851 Harbor Bay Parkway
Alameda, CA 94502
(650) 837-7000

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock $.001 Par Value per Share	**EXEL**	**The Nasdaq Stock Market LLC**

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days). Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
Emerging growth company	☐		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Securities Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of October 21, 2019, there were 303,846,306 shares of the registrant's common stock outstanding.

EXELIXIS, INC.
QUARTERLY REPORT ON FORM 10-Q
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PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

EXELIXIS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share amounts)
(unaudited)

	September 30, 2019	December 31, 2018*
ASSETS		
Current assets:		
Cash and cash equivalents	$ 242,317	$ 314,775
Short-term investments	518,350	378,559
Trade receivables, net	169,788	162,771
Other receivables	13,801	16,056
Inventory, net	13,366	9,838
Prepaid expenses and other current assets	14,490	15,017
Total current assets	972,112	897,016
Long-term investments	486,763	157,187
Long-term restricted cash and investments	1,000	1,100
Property and equipment, net	49,467	50,897
Operating lease right-of-use assets	17,735	5,867
Deferred tax assets, net	186,836	244,111
Goodwill	63,684	63,684
Other long-term assets	7,268	2,424
Total assets	$ 1,784,865	$ 1,422,286
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 8,352	$ 10,901
Accrued compensation and benefits	31,713	32,142
Accrued clinical trial liabilities	30,330	18,231
Rebates and fees due to customers	16,782	14,954
Accrued collaboration liabilities	7,973	7,419
Other current liabilities	45,919	21,825
Total current liabilities	141,069	105,472
Long-term portion of lease liabilities	23,705	12,178
Long-term portion of deferred revenue	15,399	15,897
Other long-term liabilities	975	1,286
Total liabilities	181,148	134,833
Commitments		
Stockholders' equity:		
Preferred stock, $0.001 par value, 10,000,000 shares authorized and no shares issued	—	—
Common stock, $0.001 par value; 400,000,000 shares authorized; issued and outstanding: 303,776,032 and 299,876,080 at September 30, 2019 and December 31, 2018, respectively	304	300
Additional paid-in capital	2,228,839	2,168,217
Accumulated other comprehensive income (loss)	2,668	(701)
Accumulated deficit	(628,094)	(880,363)
Total stockholders' equity	1,603,717	1,287,453
Total liabilities and stockholders' equity	$ 1,784,865	$ 1,422,286

* The Condensed Consolidated Balance Sheet as of December 31, 2018 has been derived from the audited financial statements as of that date.

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

EXELIXIS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(in thousands, except per share amounts)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Revenues:				
Net product revenues	$ 191,768	$ 162,946	$ 565,024	$ 443,054
Collaboration revenue	79,935	62,451	162,441	182,170
Total revenues	271,703	225,397	727,465	625,224
Operating expenses:				
Cost of goods sold	7,537	7,360	22,577	18,996
Research and development	97,295	44,741	242,516	124,986
Selling, general and administrative	51,265	48,120	170,218	153,989
Total operating expenses	156,097	100,221	435,311	297,971
Income from operations	115,606	125,176	292,154	327,253
Other income (expense), net:				
Interest income	7,191	3,507	20,253	8,099
Other, net	(140)	271	688	368
Total other income (expense), net:	7,051	3,778	20,941	8,467
Income before income taxes	122,657	128,954	313,095	335,720
Provision for income taxes	(25,205)	(2,324)	(60,826)	(5,739)
Net income	$ 97,452	$ 126,630	$ 252,269	$ 329,981
Net income per share, basic	$ 0.32	$ 0.42	$ 0.84	$ 1.11
Net income per share, diluted	$ 0.31	$ 0.41	$ 0.80	$ 1.05
Shares used in computing net income per share, basic	303,268	298,416	301,999	297,700
Shares used in computing net income per share, diluted	315,453	312,346	315,046	313,200

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

EXELIXIS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(in thousands)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Net income	$ 97,452	$ 126,630	$ 252,269	$ 329,981
Other comprehensive income (loss):				
Net unrealized gains or losses on available-for-sale securities, net of tax impact of $129, $0, $936 and $0, respectively (1)	461	218	3,369	(166)
Total other comprehensive income (loss)	461	218	3,369	(166)
Comprehensive income	$ 97,913	$ 126,848	$ 255,638	$ 329,815

(1) Reclassification adjustments to net income resulting from realized gains or losses on the sale of securities and the related tax impact were nominal or zero during the periods presented.

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

EXELIXIS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(in thousands, except share data)
(unaudited)

	Three Months Ended September 30, 2019					
	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance at June 30, 2019	302,784,854	$ 303	$2,211,668	$ 2,207	$ (725,546)	$ 1,488,632
Net income	—	—	—	—	97,452	97,452
Other comprehensive income	—	—	—	461	—	461
Issuance of common stock under equity incentive and stock purchase plans	991,178	1	4,032	—	—	4,033
Stock-based compensation	—	—	13,139	—	—	13,139
Balance at September 30, 2019	303,776,032	$ 304	$2,228,839	$ 2,668	$ (628,094)	$ 1,603,717

	Three Months Ended September 30, 2018					
	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance at June 30, 2018	297,892,180	$ 298	$2,142,717	$ (731)	$(1,367,082)	$ 775,202
Net income	—	—	—	—	126,630	126,630
Other comprehensive income	—	—	—	218	—	218
Issuance of common stock under equity incentive and stock purchase plans	989,704	1	4,173	—	—	4,174
Stock-based compensation	—	—	9,742	—	—	9,742
Balance at September 30, 2018	298,881,884	$ 299	$2,156,632	$ (513)	$(1,240,452)	$ 915,966

Continued on next page

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

EXELIXIS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY - continued
(in thousands, except share data)
(unaudited)

	Nine Months Ended September 30, 2019					
	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2018	299,876,080	$ 300	$2,168,217	$ (701)	$ (880,363)	$ 1,287,453
Net income	—	—	—	—	252,269	252,269
Other comprehensive income	—	—	—	3,369	—	3,369
Issuance of common stock under equity incentive and stock purchase plans	3,899,952	4	19,875	—	—	19,879
Stock-based compensation	—	—	40,747	—	—	40,747
Balance at September 30, 2019	303,776,032	$ 304	$2,228,839	$ 2,668	$ (628,094)	$ 1,603,717

	Nine Months Ended September 30, 2018					
	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2017	296,209,426	$ 296	$2,114,184	$ (347)	$(1,829,172)	$ 284,961
Adoption of Accounting Standards Update (ASU) No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*	—	—	—	—	258,505	258,505
Adoption of ASU No. 2016-02, *Leases (Topic 842)*	—	—	—	—	234	234
Net income	—	—	—	—	329,981	329,981
Other comprehensive loss	—	—	—	(166)	—	(166)
Issuance of common stock under equity incentive and stock purchase plans	2,672,458	3	14,118	—	—	14,121
Stock-based compensation	—	—	28,330	—	—	28,330
Balance at September 30, 2018	298,881,884	$ 299	$2,156,632	$ (513)	$(1,240,452)	$ 915,966

EXELIXIS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Nine Months Ended September 30,	
	2019	**2018**
Net income	$ 252,269	$ 329,981
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	6,088	2,876
Stock-based compensation	40,747	28,330
401(k) matching contributions made in common stock	4,079	3,232
Amortization and other changes in right-of-use assets	(6,367)	2,732
Deferred income taxes	56,339	—
Gain on other equity investments	(730)	(209)
Accretion of investments, net and other	(3,970)	(1,423)
Changes in operating assets and liabilities:		
Trade receivables, net	(7,017)	(12,707)
Other receivables	2,469	(2,938)
Inventory, net	(3,528)	(3,776)
Current portion of unbilled collaboration revenue	(2,640)	(32,673)
Prepaid expenses and other current assets	527	(3,529)
Other long-term assets	(6,294)	(542)
Accounts payable	(2,708)	(1,248)
Accrued compensation and benefits	(429)	6,210
Accrued clinical trial liabilities	12,099	(891)
Rebates and fees due customers	1,828	4,124
Accrued collaboration liability	554	(577)
Current and long-term deferred revenue	3,592	(1,548)
Long-term portion of lease liabilities	6,087	(974)
Other current and long-term liabilities	15,940	(3,321)
Net cash provided by operating activities	368,935	311,129
Cash flows from investing activities:		
Purchases of property and equipment	(5,575)	(30,403)
Proceeds from sale of property and equipment	—	308
Purchases of investments	(887,698)	(368,304)
Proceeds from maturities of investments	422,419	231,204
Proceeds from sale of investments	13,078	11,935
Proceeds from other equity investments	730	209
Net cash used in investing activities	(457,046)	(155,051)
Cash flows from financing activities:		
Proceeds from exercise of stock options	14,811	10,390
Proceeds from employee stock purchase plan	4,145	3,650
Taxes paid related to net share settlement of equity awards	(3,369)	(3,205)
Principal payments on financing lease obligation	(34)	—
Net cash provided by financing activities	15,553	10,835
Net (decrease) increase in cash, cash equivalents and restricted cash	(72,558)	166,913
Cash, cash equivalents and restricted cash at beginning of period	315,875	188,314
Cash, cash equivalents and restricted cash at end of period	$ 243,317	$ 355,227

Continued on next page

EXELIXIS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS - continued
(in thousands)
(unaudited)

	Nine Months Ended September 30,	
	2019	2018
Supplemental cash flow disclosure:		
Right-of-use assets obtained in exchange for lease obligations (1)	$ 12,944	$ 17,180
Unpaid liabilities incurred to acquire Property and equipment	$ 159	$ 1,281
Unpaid liabilities incurred to acquire investments	$ 8,961	$ —

(1) Amounts for the nine months ended September 30, 2019 include receipt of a tenant incentive payment and an amendment to our existing lease for office and research space. Amounts for the nine months ended September 30, 2018 include the transition adjustment for the adoption of Topic 842.

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

EXELIXIS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

NOTE 1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization

Exelixis, Inc. (Exelixis, we, our or us) is an oncology-focused biotechnology company that strives to accelerate the discovery, development and commercialization of new medicines for difficult-to-treat cancers. Since we were founded in 1994, four products resulting from our discovery efforts have progressed through clinical development, received regulatory approval and have launched commercially. Two are derived from cabozantinib, an inhibitor of multiple tyrosine kinases including MET, AXL, VEGF receptors and RET. These are: CABOMETYX® (cabozantinib) tablets approved for advanced renal cell carcinoma (RCC) and previously treated hepatocellular carcinoma (HCC); and COMETRIQ® (cabozantinib) capsules approved for progressive, metastatic medullary thyroid cancer. The other two products resulting from our discovery efforts are: COTELLIC® (cobimetinib), an inhibitor of MEK, approved as part of a combination regimen to treat a specific form of advanced melanoma and marketed under a collaboration with Genentech, Inc. (a member of the Roche Group) (Genentech); and MINNEBRO® (esaxerenone), an oral, non-steroidal, selective blocker of the mineralocorticoid receptor (MR), approved for the treatment of hypertension in Japan and licensed to Daiichi Sankyo Company, Limited (Daiichi Sankyo).

Basis of Consolidation

The accompanying Condensed Consolidated Financial Statements include the accounts of Exelixis and those of our wholly-owned subsidiaries. These entities' functional currency is the U.S. dollar. All intercompany balances and transactions have been eliminated.

Basis of Presentation

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the U.S. for interim financial information and pursuant to Form 10-Q and Article 10 of Regulation S-X of the Securities and Exchange Commission (SEC). Accordingly, they do not include all of the information and footnotes required by U.S. generally accepted accounting principles for complete financial statements. In our opinion, all adjustments (consisting only of normal recurring adjustments) considered necessary for a fair presentation of our financial statements for the periods presented have been included.

We have adopted a 52- or 53-week fiscal year policy that generally ends on the Friday closest to December 31st. Fiscal year 2019, which is a 53-week fiscal year, will end on January 3, 2020 and fiscal year 2018, which was a 52-week fiscal year, ended on December 28, 2018. For convenience, references in this report as of and for the fiscal periods ended September 27, 2019, June 28, 2019, September 28, 2018 and June 29, 2018, and as of and for the fiscal years ending January 3, 2020, and ended December 28, 2018 and December 29, 2017, are indicated as being as of and for the periods ended September 30, 2019, June 30, 2019, September 30, 2018 and June 30, 2018 and the years ending December 31, 2019, and ended December 31, 2018 and December 31, 2017, respectively. Similarly, references in this report to the first day of the fiscal year ended January 3, 2020 are indicated as being as of January 1, 2019 and the first day of the fiscal quarter ended September 27, 2019 are indicated as being as of July 1, 2019.

Operating results for the three and nine months ended September 30, 2019 are not necessarily indicative of the results that may be expected for the year ending December 31, 2019 or for any future period. The accompanying Condensed Consolidated Financial Statements and Notes thereto should be read in conjunction with our Consolidated Financial Statements and Notes thereto for the year ended December 31, 2018, included in our Annual Report on Form 10-K filed with the SEC on February 22, 2019.

Segment Information

We operate in one business segment that focuses on the discovery, development and commercialization of new medicines for difficult-to-treat cancers. Our Chief Executive Officer, as the chief operating decision-maker, manages and allocates resources to our operations on a total consolidated basis. Consistent with this decision-making process, our Chief Executive Officer uses consolidated, single-segment financial information for purposes of evaluating performance, forecasting future period financial results, allocating resources and setting incentive targets.

All of our long-lived assets are located in the U.S. See “Note 2. Revenues” for enterprise-wide disclosures about product sales, revenues from major customers and revenues by geographic region.

Use of Estimates

The preparation of the accompanying Condensed Consolidated Financial Statements conforms to accounting principles generally accepted in the U.S., which requires management to make judgments, estimates and assumptions that affect the reported amounts of assets, liabilities, equity, revenues and expenses, and related disclosures. On an ongoing basis, management evaluates its estimates including, but not limited to: those related to revenue recognition, including determining the nature and timing of satisfaction of performance obligations, and determining the standalone selling price of performance obligations, and variable consideration such as rebates, chargebacks, sales returns, sales allowances, and milestone payments included in collaboration arrangements; the amounts of revenues and expenses under our profit and loss sharing agreement; the recoverability of inventory; the amounts of operating lease right-of-use assets and lease liabilities; the amounts of deferred tax assets and liabilities including the related valuation allowance; the accrual for certain liabilities including accrued clinical trial liabilities; and valuations of equity awards used to determine stock-based compensation, including certain awards with vesting subject to market or performance conditions. We base our estimates on historical experience and on various other market-specific and other relevant assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ materially from those estimates.

Recently Adopted Accounting Pronouncements

On July 1, 2019, we adopted ASU No. 2018-15, *Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract* (ASU 2018-15). ASU 2018-15 requires a customer in a hosting arrangement that is a service contract to follow the guidance in Accounting Standards Codification (ASC) Subtopic 350-40 to determine which implementation costs to capitalize as an asset related to the service contract and which costs to expense and requires us to expense the capitalized implementation costs over the term of the hosting arrangement, which includes reasonably certain renewals. ASU 2018-15 was adopted using the prospective transition method in the accompanying Condensed Consolidated Financial Statements. The adoption of ASU 2018-15 did not have a material impact on our Condensed Consolidated Financial Statements.

On January 1, 2019, we adopted ASU 2018-02, *Income Statement—Reporting Comprehensive Income (Topic 220)* (ASU 2018-02). There was no financial impact from the adoption of ASU 2018-02 and we did not make an election to reclassify the income tax effects of the Tax Cuts and Jobs Act of 2017 from Accumulated other comprehensive income (loss) to Accumulated deficit. In connection with the adoption of ASU 2018-02, we have adopted the individual unit of account approach for releasing income tax effects from Accumulated other comprehensive income (loss).

On January 1, 2019, we also adopted ASU 2017-08, *Receivables—Nonrefundable Fees and Other Costs (Subtopic 310-20)* (ASU 2017-08). ASU 2017-08 shortens the amortization period for certain callable debt securities held at a premium. Specifically, ASU 2017-08 requires the premium to be amortized to the earliest call date. ASU 2017-08 does not require an accounting change for securities held at a discount; the discount continues to be amortized to maturity. The financial impact from the adoption of ASU 2017-08 was nominal.

Recent Accounting Pronouncements Not Yet Adopted

In November 2018, the Financial Accounting Standards Board (FASB) issued ASU No. 2018-18, *Collaborative Arrangements (Topic 808): Clarifying the Interaction between Topic 808 and Topic 606* (ASU 2018-18). ASU 2018-18 clarifies that certain transactions between collaborative arrangement participants should be accounted for as revenue under Topic 606 when the counterparty is a customer for a distinct good or service (i.e. a unit of account). For units of account that are in the scope of Topic 606, all of the guidance in Topic 606 should be applied, including the guidance on recognition, measurement, presentation and disclosure. ASU 2018-18 also adds a reference in ASC Topic 808, *Collaborative Arrangements* (Topic 808) to the unit of account guidance in Topic 606 and requires that it be applied only to assess whether transactions in a collaborative arrangement are in the scope of Topic 606. ASU 2018-18 will preclude entities from presenting amounts related to transactions with a counterparty in a collaborative arrangement that is not a customer as revenue from contracts with customers. ASU 2018-18 is effective for us for all interim and annual reporting periods beginning after December 15, 2019. Early adoption is permitted. We are in the process of assessing the impact of ASU 2018-18 on our Condensed Consolidated Financial Statements.

In January 2017, the FASB issued ASU No. 2017-04, *Intangibles—Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment* (ASU 2017-04). ASU 2017-04 eliminated Step 2 from the goodwill impairment test. Instead, under the amendments in ASU 2017-04, an entity should perform its annual, or interim, goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount. An entity should recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value; however, the loss recognized should not exceed the total amount of goodwill allocated to that reporting unit. Additionally, an entity should consider income tax effects from any tax deductible goodwill on the carrying amount of the reporting unit when measuring the goodwill impairment loss, if applicable. ASU 2017-04 is effective for all interim and annual reporting periods beginning after December 15, 2019. Early adoption is permitted. We do not expect the adoption of ASU 2017-04 to have a material impact on our Condensed Consolidated Financial Statements.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments—Credit Losses (Topic 326)* (ASU 2016-13). ASU 2016-13 implements an impairment model, known as the current expected credit loss model that is based on expected losses rather than incurred losses. Under the new guidance, an entity will recognize as an allowance its estimate of expected credit losses. 2016-13 is effective for all interim and annual reporting periods beginning after December 15, 2019. Early adoption is permitted. We do not expect the adoption of ASU 2016-13 to have a material impact on our Condensed Consolidated Financial Statements.

NOTE 2. REVENUES

Revenues by disaggregated category were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Product revenues:				
Gross product revenues	$ 239,916	$ 193,356	$ 704,084	$ 525,438
Discounts and allowances	(48,148)	(30,410)	(139,060)	(82,384)
Net product revenues	191,768	162,946	565,024	443,054
Collaboration revenues:				
License revenues (1)	68,035	51,323	128,937	152,261
Research and development services revenues (2)	12,988	10,560	35,814	27,464
Other collaboration revenues (3)	(1,088)	568	(2,310)	2,445
Total collaboration revenues	79,935	62,451	162,441	182,170
Total revenues	$ 271,703	$ 225,397	$ 727,465	$ 625,224

(1) License revenues included the recognition of the portion of milestones allocated to the transfer of intellectual property licenses for which it had become probable in the current period that the milestone would be achieved and a significant revenue reversal would not occur, as well as royalty revenues from Ipsen Pharma SAS (Ipsen), Genentech and Daiichi Sankyo.

(2) Research and development services revenues included the recognition of deferred revenue for the portion of upfront and milestone payments that have been allocated to research and development services performance obligations, as well as development cost reimbursements earned on our collaboration agreements.

(3) Other collaboration revenues included the profit on the U.S. commercialization of COTELLIC from Genentech and revenues on product supply services provided to Ipsen and Takeda Pharmaceutical Company Ltd. (Takeda), which were offset by the 3% royalty we are required to pay GlaxoSmithKline (GSK) on the net sales by Ipsen of any product incorporating cabozantinib.

Net product revenues, License revenues and Research and development services revenues were recorded in accordance with Topic 606 for all periods presented. Net product revenues and License revenues related to goods and intellectual property licenses transferred at a point in time and Research and development services revenues related to services performed over time. Other collaboration revenues, which included the profit on the U.S. commercialization of COTELLIC and net losses on product supply services, were recorded in accordance with Topic 808 for all periods presented.

Net product revenues disaggregated by product were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
CABOMETYX	$ 187,410	$ 158,262	$ 552,315	$ 428,317
COMETRIQ	4,358	4,684	12,709	14,737
Net product revenues	$ 191,768	$ 162,946	$ 565,024	$ 443,054

Total revenues disaggregated by significant customer were as follows (dollars in thousands):

	Three Months Ended September 30,			
	2019		2018	
	Dollars	Percent of Total	Dollars	Percent of Total
Ipsen	$ 76,016	28%	$ 57,186	25%
Caremark L.L.C.	35,703	13%	30,707	14%
Affiliates of McKesson Corporation	31,901	12%	26,597	12%
Affiliates of AmerisourceBergen Corporation	25,235	9%	17,232	8%
Others, individually less than 10% of Total revenues for all periods presented	102,848	38%	93,675	41%
Total revenues	$ 271,703	100%	$ 225,397	100%

	Nine Months Ended September 30,			
	2019		2018	
	Dollars	Percent of Total	Dollars	Percent of Total
Ipsen	$ 120,133	17%	$ 145,038	23%
Caremark L.L.C.	105,638	15%	83,516	13%
Affiliates of McKesson Corporation	88,496	12%	71,249	11%
Affiliates of AmerisourceBergen Corporation	70,503	10%	49,995	8%
Others, individually less than 10% of Total revenues for all periods presented	342,695	46%	275,426	45%
Total revenues	$ 727,465	100%	$ 625,224	100%

Total revenues disaggregated by geographic region were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
U.S.	$ 194,484	$ 166,270	$ 572,957	$ 453,342
Europe	76,017	57,186	120,134	145,038
Japan	1,202	1,941	34,374	26,844
Total revenues	$ 271,703	$ 225,397	$ 727,465	$ 625,224

Net product revenues are attributed to geographic region based on the ship-to location. Collaboration revenues are attributed to geographic region based on the location of our collaboration partners' headquarters.

Product Sales Discounts and Allowances

The activities and ending reserve balances for each significant category of discounts and allowances (which constitute variable consideration) were as follows (in thousands):

	Chargebacks and Discounts for Prompt Payment	Other Customer Credits/Fees and Co-pay Assistance	Rebates	Total
Balance at December 31, 2018	$ 2,322	$ 3,038	$ 11,916	$ 17,276
Provision related to sales made in:				
Current period	92,769	11,190	35,422	139,381
Prior periods	(130)	(106)	(85)	(321)
Payments and customer credits issued	(92,317)	(11,466)	(33,127)	(136,910)
Balance at September 30, 2019	$ 2,644	$ 2,656	$ 14,126	$ 19,426

Chargebacks and discounts for prompt payment are recorded as a reduction of trade receivables and the remaining reserve balances are classified as Other current liabilities in the accompanying Condensed Consolidated Balance Sheets.

Contract Assets and Liabilities

We receive payments from our licensees based on billing schedules established in each contract. Amounts are recorded as accounts receivable when our right to consideration is unconditional. We may also recognize revenue in advance of the contractual billing schedule and such amounts are recorded as unbilled collaboration revenue when recognized. Unbilled collaboration revenue was zero as of both September 30, 2019 and December 31, 2018. Upfront and milestone payments may require deferral of revenue recognition to a future period until we perform our obligations under these arrangements and are recorded as deferred revenue upon receipt or when due. Deferred revenue was $15.4 million and $15.9 million as of September 30, 2019 and December 31, 2018, respectively. The amount of revenues recognized during the nine months ended September 30, 2019 and 2018 that were included in the beginning deferred revenue balance as of December 31, 2018 and December 31, 2017 was $2.7 million and $6.1 million, respectively

During the three and nine months ended September 30, 2019, we recognized $67.7 million and $129.0 million, respectively, in revenues under Topic 606 for performance obligations satisfied in previous periods as compared to $48.2 million and $151.8 million during the same periods in 2018. Such revenues primarily related to milestone and royalty payments allocated to our license performance obligations of our collaborations with Ipsen, Takeda and Daiichi Sankyo.

NOTE 3. COLLABORATION AGREEMENTS

We have established multiple collaborations with leading pharmaceutical companies for the commercialization and further development of cabozantinib, as well as with smaller, discovery-focused biotechnology companies to expand our product pipeline. Additionally, in line with our business strategy prior to the commercialization of our first product, COMETRIQ, we entered into other collaborations with leading pharmaceutical companies including Genentech, Daiichi Sankyo and Bristol-Myers Squibb Company for other compounds and programs in our portfolio. See “Note 3. Collaboration Agreements” to our Consolidated Financial Statements included in our Annual Report on Form 10-K for the year ended December 31, 2018 for a description of each of our collaboration agreements.

Under these collaborations, we are generally entitled to receive milestone and royalty payments, and for certain collaborations, payments for product supply services, development cost reimbursements, and/or profit-sharing payments. See “Note 2. Revenues” for information on collaboration revenues recognized during the three and nine months ended September 30, 2019 and 2018.

Commercial Collaborations

Ipsen Collaboration

In February 2016, we entered into a collaboration and license agreement with Ipsen for the commercialization and further development of cabozantinib. Pursuant to the terms of the collaboration agreement, Ipsen received exclusive commercialization rights for current and potential future cabozantinib indications outside of the U.S., Canada and Japan. The collaboration agreement was subsequently amended on three occasions, including in December 2016 to include

commercialization rights in Canada. We have also agreed to collaborate with Ipsen on the development of cabozantinib for current and potential future indications. Collaboration revenues under the collaboration agreement with Ipsen were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Ipsen collaboration revenues	$ 76,016	$ 57,186	$ 120,133	$ 145,038

As of September 30, 2019, $47.1 million of the transaction price allocated to our research and development services performance obligation had not been satisfied. As of September 30, 2019, the net contract liability for the collaboration agreement with Ipsen was $7.2 million which was included in the Long-term portion of deferred revenue in the accompanying Condensed Consolidated Balance Sheets.

Takeda Collaboration

In January 2017, we entered into a collaboration and license agreement with Takeda. Pursuant to this collaboration agreement, Takeda has exclusive commercialization rights for current and potential future cabozantinib indications in Japan, and the parties have agreed to collaborate on the clinical development of cabozantinib in Japan. The collaboration agreement was subsequently amended in March 2018 and April 2019.

The second amendment to the collaboration agreement with Takeda, which was executed on April 29, 2019 and became effective on May 7, 2019 (the Amendment), among other things, reduced the amount of reimbursements we will receive from Takeda for costs associated with our required global pharmacovigilance activities and limits those reimbursements to $1.0 million per year. It also increased the total potential development, regulatory and first-sale milestone payments to be paid to us by Takeda for second-line RCC, first-line RCC and second-line HCC by $12.0 million to $102.0 million, including an increase from $10.0 million to $16.0 million for the milestone we received for the April 2019 submission of a regulatory application for cabozantinib as a treatment for patients with advanced RCC to the Japanese Ministry of Health, Labour and Welfare (MHLW). We continue to be eligible to receive additional development, regulatory and first-sale milestone payments for other potential future indications. The Amendment also increased the amount of Takeda's total potential commercial milestones by $6.0 million to $89.0 million. We continue to be eligible to receive royalties on net sales of cabozantinib in Japan.

Collaboration revenues under the collaboration agreement with Takeda were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Takeda collaboration revenues	$ 1,187	$ 1,940	$ 14,245	$ 6,843

As of September 30, 2019, $18.7 million of the transaction price allocated to our research and development services performance obligation had not been satisfied. As of September 30, 2019, the net contract liability for the collaboration agreement with Takeda was $8.2 million which was included in the Long-term portion of deferred revenue in the accompanying Condensed Consolidated Balance Sheets.

Genentech Collaboration

In December 2006, we out-licensed the development and commercialization of cobimetinib to Genentech pursuant to a worldwide collaboration agreement. Under the terms of the collaboration agreement, we developed cobimetinib through the determination of the maximum tolerated dose in a phase 1 clinical trial, and Genentech had the option to co-develop cobimetinib, an option that Genentech exercised, and in March 2009, we granted to Genentech an exclusive worldwide revenue-bearing license to cobimetinib, at which point Genentech became responsible for completing the phase 1 clinical trial and the subsequent clinical development.

In November 2015, the U.S. Food and Drug Administration (FDA) approved cobimetinib, under the brand name COTELLIC, in combination with Genentech's Zelboraf (vemurafenib) as a treatment for patients with BRAF V600E or V600K mutation-positive advanced melanoma. COTELLIC in combination with Zelboraf has also been approved in the European Union and multiple additional countries for use in the same indication. Profits on U.S. commercialization and Royalty revenues on ex-U.S. sales were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Profits on U.S. commercialization	$ 1,102	$ 1,935	$ 3,507	$ 6,004
Royalty revenues on ex-U.S. sales	$ 1,614	$ 1,390	$ 4,426	$ 4,285

Daiichi Sankyo

In March 2006, we entered into a collaboration agreement with Daiichi Sankyo pursuant to which we granted to Daiichi Sankyo an exclusive, worldwide license to certain intellectual property primarily relating to compounds that modulate MR, including esaxerenone, an oral, non-steroidal, selective MR antagonist. Daiichi Sankyo was responsible for all further preclinical and clinical development, regulatory, manufacturing and commercialization activities for the compounds.

In January 2019, the Japanese MHLW approved esaxerenone, under the brand name MINNEBRO, as a treatment for patients with hypertension and in May 2019, Daiichi Sankyo had its first commercial sale of MINNEBRO. As a result of the launch, we received a $20.0 million milestone payment from Daiichi Sankyo in June 2019. We are eligible for low double-digit royalties on sales of MINNEBRO. In addition, pursuant to a license agreement we entered into with Ligand Pharmaceuticals, Inc. (Ligand), we are required to pay a royalty of 0.5% to Ligand on net sales of MINNEBRO.

Collaboration revenues under the collaboration agreement with Daiichi Sankyo were as follows (in thousands):

	Nine Months Ended September 30,	
	2019	2018
Daiichi Sankyo collaboration revenues	$ 20,130	$ 20,000

Such collaboration revenues were nominal or zero for the three months ended September 30, 2019 and 2018.

Iconic Therapeutics, Inc. (Iconic) Collaboration

In May 2019, we entered into an exclusive option and license agreement with Iconic. Under the terms of the agreement, we gained an exclusive option to license ICON-2, Iconic's lead oncology antibody-drug conjugate program, in exchange for an upfront payment to Iconic of $7.5 million and a commitment for preclinical development funding. As of September 30, 2019, we accrued $6.6 million for the preclinical development funding commitment. Both the upfront payment and the accrual for the preclinical development funding commitment were included in Research and development expenses in the accompanying Condensed Consolidated Statements of Income.

If we exercise the option, we would be required to make an option exercise fee payment of $20.0 million to Iconic, we would assume responsibilities for all subsequent clinical development and commercialization activities, and Iconic would become eligible for up to $190.6 million in potential development, regulatory and first-sale milestone payments, $262.5 million in potential commercial milestone payments, as well as royalties on potential sales.

Aurigene Discovery Technologies Limited (Aurigene) Collaboration

In July 2019, we entered into an exclusive collaboration, option and license agreement with Aurigene, and India-based biotechnology company focused on oncology and inflammatory disorders, to in-license as many as six programs. Under the terms of the agreement, we made an upfront payment of $10.0 million for exclusive options to license three preexisting programs. In addition, we and Aurigene selected three additional Aurigene-led drug discovery programs on mutually agreed upon targets, in exchange for additional option payments totaling $7.5 million. We are also responsible for up to $32.6 million in research funding for the discovery and preclinical development work on these programs. As of September 30, 2019, we accrued $1.3 million for the discovery and preclinical development funding commitment.

For each option we decide to exercise, we would be required to pay an exercise fee of either $10.0 million or $12.0 million, depending on the program, and would assume responsibilities for all subsequent clinical development,

commercialization and global manufacturing of that program. Aurigene would then become eligible for up to $148.8 million per program in potential development and regulatory milestone payments, $280.0 million per program in potential commercial milestone payments, as well as royalties on potential sales. Under the terms of the agreement, Aurigene retains limited development and commercial rights for India and Russia.

GSK

In October 2002, we established a product development and commercialization collaboration agreement with GSK. Under the terms of the collaboration agreement, GSK had the right to choose cabozantinib for further development and commercialization, but notified us in October 2008 that it had waived its right to select the compound for such activities. Although the collaboration agreement was terminated in December 2014, we continue to be required to pay a 3% royalty to GSK on the net sales of any product incorporating cabozantinib by us and our collaboration partners. Royalties accruing to GSK in connection with the sales of cabozantinib are included in Cost of goods sold for sales by us and as a reduction of Collaboration revenues for sales by Ipsen. Such royalties accruing to GSK were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Royalties accruing to GSK	$ 7,964	$ 6,268	$ 23,079	$ 17,021

NOTE 4. CASH AND INVESTMENTS

Cash, Cash Equivalents and Restricted Cash

A reconciliation of Cash, cash equivalents, and restricted cash reported within our Condensed Consolidated Balance Sheets to the amount reported within the accompanying Condensed Consolidated Statements of Cash Flows was as follows (in thousands):

	September 30, 2019	December 31, 2018	September 30, 2018	December 31, 2017
Cash and cash equivalents	$ 242,317	$ 314,775	$ 353,623	$ 183,164
Restricted cash included in short-term restricted cash and investments	—	—	504	504
Restricted cash included in long-term restricted cash and investments	1,000	1,100	1,100	4,646
Cash, cash equivalents, and restricted cash as reported within the accompanying Condensed Consolidated Statements of Cash Flows	$ 243,317	$ 315,875	$ 355,227	$ 188,314

Restricted cash includes certificates of deposit used to collateralize letters of credit and, in prior periods, a purchasing card program.

Cash and Investments

Cash and investments by security type were as follows (in thousands):

	September 30, 2019			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Investments available-for-sale:				
Money market funds	$ 26,641	$ —	$ —	$ 26,641
Commercial paper	332,239	—	—	332,239
Corporate bonds	703,325	3,549	(67)	706,807
U.S. Treasury and government sponsored enterprises	152,531	143	(24)	152,650
Total investments available-for-sale	1,214,736	3,692	(91)	1,218,337
Cash and restricted cash	901	—	—	901
Certificates of deposit	29,189	3	—	29,192
Total cash and investments	$ 1,244,826	$ 3,695	$ (91)	$ 1,248,430

	December 31, 2018			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Investments available-for-sale:				
Money market funds	$ 47,744	$ —	$ —	$ 47,744
Commercial paper	381,134	—	(1)	381,133
Corporate bonds	344,741	180	(857)	344,064
U.S. Treasury and government sponsored enterprises	55,224	2	(25)	55,201
Total investments available-for-sale	828,843	182	(883)	828,142
Cash and restricted cash	6,883	—	—	6,883
Certificates of deposit	16,596	—	—	16,596
Total cash and investments	$ 852,322	$ 182	$ (883)	$ 851,621

Gains and losses on the sales of investments available-for-sale were nominal during the three and nine months ended September 30, 2019 and 2018.

The fair value and gross unrealized losses on investments available-for-sale in an unrealized loss position were as follows (in thousands):

	September 30, 2019					
	In an Unrealized Loss Position Less than 12 Months		In an Unrealized Loss Position 12 Months or Greater		Total	
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
Corporate bonds	$ 73,064	$ (66)	$ 4,398	$ (1)	$ 77,462	$ (67)
U.S. Treasury and government sponsored enterprises	46,744	(24)	—	—	46,744	(24)
Total	$ 119,808	$ (90)	$ 4,398	$ (1)	$ 124,206	$ (91)

	December 31, 2018					
	In an Unrealized Loss Position Less than 12 Months		In an Unrealized Loss Position 12 Months or Greater		Total	
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
Corporate bonds	$ 236,162	$ (606)	$ 39,627	$ (251)	$ 275,789	$ (857)
U.S. Treasury and government sponsored enterprises	28,105	(16)	9,182	(9)	37,287	(25)
Commercial paper	7,091	(1)	—	—	7,091	(1)
Total	$ 271,358	$ (623)	$ 48,809	$ (260)	$ 320,167	$ (883)

There were 43 and 199 investments in an unrealized loss position as of September 30, 2019 and December 31, 2018, respectively. During the three and nine months ended September 30, 2019 and 2018 we did not record any other-than-temporary impairment charges on our available-for-sale securities. Based upon our quarterly impairment review, we determined that the unrealized losses were not attributed to credit risk, but were primarily associated with changes in interest rates. Based on the scheduled maturities of our investments and our determination that it was more likely than not that we will hold these investments for a period of time sufficient for a recovery of our cost basis, we concluded that the unrealized losses in our investment securities were not other-than-temporary.

The fair value of investments available-for-sale by contractual maturity were as follows (in thousands):

	September 30, 2019	December 31, 2018
Maturing in one year or less	$ 743,768	$ 674,455
Maturing after one year through five years	474,569	153,687
Total investments available-for-sale	$ 1,218,337	$ 828,142

Related Party Transactions

BlackRock, Inc. (BlackRock), a global provider of investment, advisory and risk management solutions, reported that as of December 31, 2018, the most recent date for which they reported ownership data, their beneficial ownership was more than 10% of our outstanding common stock. BlackRock manages a portion of our cash and investments portfolio. As of September 30, 2019 and December 31, 2018, respectively, the fair value of cash and investments managed by BlackRock was $470.8 million and $298.5 million, which included $1.9 million and $3.0 million invested in the BlackRock Liquidity Money Market Fund. As of September 30, 2019, we also had a $9.0 million payable to BlackRock for unsettled trades that was included in Other current liabilities in the accompanying Condensed Consolidated Balance Sheets. We incurred $0.2 million in fees for BlackRock advisory services performed during the nine months ended September 30, 2019.

NOTE 5. INVENTORY

Inventory consisted of the following (in thousands):

	September 30, 2019	December 31, 2018
Raw materials	$ 1,906	$ 1,922
Work in process	11,035	6,170
Finished goods	7,311	3,836
Total	$ 20,252	$ 11,928
Balance Sheet classification:		
Current portion included in Inventory	$ 13,366	$ 9,838
Long-term portion included in Other long-term assets	6,886	2,090
Total	$ 20,252	$ 11,928

Write-downs related to excess and expiring inventory are charged to Cost of goods sold or the cost of supplied product included in Collaboration revenues. Such write-downs were $0.4 million and $0.8 million for the nine months ended September 30, 2019 and 2018, respectively.

Inventory not expected to be used in production or sold in the next 12 months is classified as Other long-term assets in the accompanying Condensed Consolidated Balance Sheets. As of both September 30, 2019 and December 31, 2018, the long-term portion of inventory consisted of portions of our raw materials and finished goods, and as of September 30, 2019, also a portion of our work in process.

NOTE 6. PROPERTY AND EQUIPMENT

Property and equipment consisted of the following (in thousands):

	September 30, 2019	December 31, 2018
Leasehold improvements	$ 33,769	$ 33,941
Computer equipment and software	17,017	15,022
Furniture and fixtures	13,053	12,709
Laboratory equipment	8,408	5,668
Construction in progress	617	866
	72,864	68,206
Less: accumulated depreciation and amortization	(23,397)	(17,309)
Property and equipment, net	$ 49,467	$ 50,897

Depreciation expense was $2.1 million and $6.1 million for the three and nine months ended September 30, 2019, respectively, as compared to $1.7 million and $2.9 million and for the comparable periods in 2018.

NOTE 7. STOCK-BASED COMPENSATION

We allocated the stock-based compensation expense for our equity incentive plans and our 2000 Employee Stock Purchase Plan (ESPP) as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Research and development	$ 4,301	$ 3,169	$ 13,745	$ 9,102
Selling, general and administrative	8,838	6,573	27,002	19,228
Total stock-based compensation	$ 13,139	$ 9,742	$ 40,747	$ 28,330

We have several equity incentive plans under which we have granted stock options and restricted stock units (RSUs) to employees and directors. At September 30, 2019, 6,024,995 shares were available for grant under our equity incentive plans.

We used a Monte Carlo simulation pricing model to value stock options that include market vesting conditions and a Black-Scholes Merton option pricing model to value other stock options and ESPP purchases. The weighted average grant-date fair value per share of stock options and ESPP purchases were as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Stock options	$ 7.71	$ 8.67	$ 8.57	$ 9.13
ESPP	$ 5.39	$ 6.19	$ 4.93	$ 6.96

The grant-date fair value of stock option grants and ESPP purchases was estimated using the following assumptions:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Stock options:				
Risk-free interest rate	1.57%	2.91%	1.82%	2.83%
Dividend yield	—%	—%	—%	—%
Volatility	48%	55%	48%	55%
Expected life	4.0 years	4.4 years	4.4 years	4.4 years
ESPP:				
Risk-free interest rate	2.09%	2.11%	2.34%	1.74%
Dividend yield	—%	—%	—%	—%
Volatility	43%	51%	52%	52%
Expected life	6 months	6 months	6 months	6 months

We considered our implied volatility and our historical volatility in developing our estimates of expected volatility. The assumptions for the expected life of stock options were based on historical exercise patterns and post-vesting termination behavior. The risk-free interest rate is based on U.S. Treasury rates with the same or similar term as the underlying award. Our dividend rate is based on historical experience and our investors' current expectations.

The fair value of RSUs was based on the closing price of the underlying common stock on the date of grant.

Activity for stock options during the nine months ended September 30, 2019 was as follows (dollars in thousands**,** except per share amounts):

	Shares	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
Options outstanding at December 31, 2018	22,674,062	$ 8.71		
Granted	1,042,286	$ 20.81		
Exercised	(3,042,201)	$ 4.94		
Forfeited	(160,241)	$ 16.76		
Expired	(35,045)	$ 23.41		
Options outstanding at September 30, 2019	20,478,861	$ 9.80	3.4 years	$ 186,407
Exercisable at September 30, 2019	15,860,131	$ 7.02	2.8 years	$ 181,542

As of September 30, 2019, there was $38.0 million of unrecognized compensation expense related to our unvested stock options. The compensation expense for the unvested stock options will be recognized over a weighted-average period of 2.3 years.

Activity for RSUs during the nine months ended September 30, 2019 was as follows (dollars in thousands, except per share amounts):

	Shares	Weighted Average Grant Date Fair Value Per Share	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value
RSUs outstanding at December 31, 2018	4,857,334	$ 18.42		
Awarded	5,635,362	$ 19.54		
Vested and released	(484,731)	$ 12.33		
Forfeited	(258,142)	$ 18.47		
RSUs outstanding at September 30, 2019	9,749,823	$ 19.37	2.2 years	$ 175,448

As of September 30, 2019, there was $166.0 million of unrecognized compensation expense related to our unvested RSUs, including those RSUs granted in September 2018 and September 2019 that will vest upon the achievement of specific performance targets (PSUs) described below. The compensation expense for the unvested RSUs will be recognized over a weighted-average period of 2.8 years.

During 2019, in connection with our long-term incentive compensation program, we awarded 1,926,605 RSUs (the target amount) that will vest upon the achievement of a performance target related to a product approval by the FDA (the 2019 PSUs); employees may earn 150% of the target amount, or an additional 963,136 shares relative to the target amount, if the performance target is achieved before December 31, 2020 and may earn the full 200% of the target amount, or up to an additional 1,926,605 shares relative to the target amount, if we receive a second product approval. During 2018 we awarded 693,131 RSUs that will vest upon the achievement of certain product revenue, late-stage clinical development and pipeline expansion performance targets (the 2018 PSUs). The 2018 PSUs and 2019 PSUs were designed to drive the performance of our management team and employees toward the achievement of key corporate objectives and will be forfeited if the performance targets are not met by December 31, 2021.

Expense recognition for PSUs commences when it is determined that attainment of the performance target is probable. During the quarter ended June 30, 2019, we achieved one of the two product revenue related performance targets for 114,843 of the 2018 PSUs and determined that it was probable that we would achieve the second product revenue related performance target for 172,272 additional 2018 PSUs. During the quarter ended September 30, 2019, the second product revenue related performance target of the 2018 PSUs was achieved. Those 2018 PSUs will vest over various dates through February 2021. We recognized $0.9 million and $3.5 million in compensation expense related to those 2018 PSUs during the three and nine months ended September 30, 2019, respectively; the remaining unrecognized compensation expense for those 2018 PSUs was $1.7 million as of September 30, 2019. The total unrecognized compensation expense for both the 2019 PSUs and the remaining 2018 PSUs for which we have not yet determined that attainment of the performance target is probable was $82.4 million as of September 30, 2019.

NOTE 8. INCOME TAXES

Our effective income tax rate was 20.5% and 19.4% during the three and nine months ended September 30, 2019, respectively, as compared to 1.8% and 1.7% during the three and nine months ended September 30, 2018, respectively. The Provision for income taxes relating to our pre-tax income for the three and nine months ended September 30, 2018 was largely offset by a valuation allowance against our net operating loss carryforwards and other deferred tax assets. At December 31, 2018, we released substantially all of our valuation allowance against our deferred tax assets, after we determined that it was more likely than not that these deferred tax assets would be realized.

The effective tax rate for the three and nine months ended September 30, 2019 differed from the U.S. federal statutory rate of 21% primarily due to excess tax benefits related to the exercise of certain stock options during those periods.

NOTE 9. NET INCOME PER SHARE

The basic and diluted net income per share were computed as follows (in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Numerator:				
Net income	$ 97,452	$ 126,630	$ 252,269	$ 329,981
Denominator:				
Weighted-average shares of common stock outstanding used in computing basic net income per share	303,268	298,416	301,999	297,700
Dilutive securities	12,185	13,930	13,047	15,500
Weighted-average shares of common stock outstanding and dilutive securities used in computing diluted net income per share	315,453	312,346	315,046	313,200
Net income per share, basic	$ 0.32	$ 0.42	$ 0.84	$ 1.11
Net income per share, diluted	$ 0.31	$ 0.41	$ 0.80	$ 1.05

Dilutive securities include outstanding stock options, unvested RSUs and ESPP contributions. Potential shares of common stock not included in the computation of diluted net income per share because to do so would be anti-dilutive, were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Potentially dilutive securities	6,153	5,687	5,740	2,938

NOTE 10. FAIR VALUE MEASUREMENTS

The classifications within the fair value hierarchy of our financial assets that were measured and recorded at fair value on a recurring basis were as follows (in thousands):

	September 30, 2019		
	Level 1	Level 2	Total
Money market funds	$ 26,641	$ —	$ 26,641
Commercial paper	—	332,239	332,239
Corporate bonds	—	706,807	706,807
U.S. Treasury and government sponsored enterprises	—	152,650	152,650
Total investments available-for-sale	26,641	1,191,696	1,218,337
Certificates of deposit	—	29,192	29,192
Total financial assets carried at fair value	$ 26,641	$ 1,220,888	$ 1,247,529

	December 31, 2018		
	Level 1	Level 2	Total
Money market funds	$ 47,744	$ —	$ 47,744
Commercial paper	—	381,133	381,133
Corporate bonds	—	344,064	344,064
U.S. Treasury and government sponsored enterprises	—	55,201	55,201
Total investments available-for-sale	47,744	780,398	828,142
Certificates of deposit	—	16,596	16,596
Total financial assets carried at fair value	$ 47,744	$ 796,994	$ 844,738

We did not have any financial liabilities measured and recorded at fair value on a recurring basis as of September 30, 2019 or December 31, 2018. We did not have any financial assets or liabilities classified as Level 3 in the fair value hierarchy as of September 30, 2019 or December 31, 2018. There were no transfers of financial assets or liabilities between Levels 1, 2 and 3 during the three and nine months ended September 30, 2019 or 2018.

When available, we value investments based on quoted prices for those financial instruments, which is a Level 1 input. Our remaining investments are valued using third-party pricing sources, which use observable market prices, interest rates and yield curves observable at commonly quoted intervals for similar assets as observable inputs for pricing, which is a Level 2 input.

See “Note 11. Leases” for a description of the determination of the amount of operating lease liabilities. Our remaining financial assets and liabilities include cash and restricted cash, Trade receivables, net, Other receivables, Accounts payable, Accrued compensation and benefits, Accrued clinical trial liabilities, Accrued collaboration liabilities and Rebates and fees due to customers. Those financial assets and liabilities are carried at cost, which approximates their fair values.

NOTE 11. LEASES

In May 2017, we entered into a Lease Agreement (the Lease) for our corporate headquarters located at 1851, 1801 and 1751 Harbor Bay Parkway, Alameda, California (the Initial Premises). The Lease was subsequently amended in October 2017, June 2018 and April 2019, resulting in the addition of the building located at 1601 Harbor Bay Parkway and increasing the leased space to an aggregate of 169,606 square feet (the Current Premises) as of September 30, 2019. We have made certain tenant improvements to the space leased on the Initial Premises, for which we received $8.2 million in reimbursements in January 2019. The Lease’s initial term is through January 31, 2028. Rent payments began February 1, 2018, following the conclusion of a partial twelve-month rent abatement period. We have two five-year options to extend the Lease and a one-time option to terminate the Lease without cause on the last day of the 8th year of the initial term (the Early Termination Right); none of these optional periods have been considered in the determination of the right-of-use asset or the lease liability for the Lease as we did not consider it reasonably certain that we would exercise any such options. The Lease further provides that we are obligated to pay the landlord certain variable costs, including taxes and operating expenses.

The April 2019 amendment to the Lease (the Third Lease Amendment) provides, among other things, for the (i) expansion of the Initial Premises by 37,544 square feet of office facilities located at 1601 Harbor Bay Parkway, Alameda, California (the 1601 Expansion Space) and (ii) surrender of 2,703 square feet of office facilities located at 1751 Harbor Bay Parkway, Alameda, California (the 1751 Space). The term for the 1601 Expansion Space will run coterminous with the term of the Lease for the existing space. We have been provided an allowance of $1.7 million for tenant improvements to the 1601 Expansion Space. As of September 30, 2019, we have surrendered the 1751 Space and we have taken possession of the 1601 Expansion Space, and accordingly we have adjusted our right-of-use asset and lease liability, and have begun to recognize lease costs for the Third Lease Amendment.

The balance sheet classification of our lease liabilities were as follows (in thousands):

	September 30, 2019	December 31, 2018
Operating lease liabilities:		
Current portion included in Other current liabilities	$ 2,695	$ 2,738
Long-term portion of lease liabilities	23,661	12,099
Total operating lease liabilities	26,356	14,837
Financing lease liabilities:		
Current portion included in Other current liabilities	50	49
Long-term portion of lease liabilities	44	79
Total financing lease liabilities	94	128
Total lease liabilities	$ 26,450	$ 14,965

The components of lease costs for operating leases, which were included in Selling, general and administrative expenses in our Condensed Consolidated Statements of Income, were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Operating lease cost	$ 692	$ 1,614	$ 1,768	$ 3,587
Variable lease cost	274	363	654	1,366
Total lease costs	$ 966	$ 1,977	$ 2,422	$ 4,953

Cash paid for amounts included in the measurement of lease liabilities for the nine months ended September 30, 2019 was $2.1 million and was included in Net cash provided by operating activities in our Condensed Consolidated Statements of Cash Flows.

As of September 30, 2019, the maturities of our operating lease liabilities were as follows (in thousands):

Remainder of 2019	$ 745
Years ending December 31,	
2020	3,625
2021	3,731
2022	3,852
2023	3,959
Thereafter	17,444
Total lease payments	33,356
Less:	
Present value adjustment	(5,258)
Tenant improvement reimbursements (1)	(1,742)
Operating lease liabilities	$ 26,356

(1) Represents anticipated tenant improvement reimbursements applicable to the portion of the 1601 Expansion Space.

Operating lease liabilities are based on the net present value of the remaining lease payments over the remaining lease term. In determining the present value of lease payments, we use our incremental borrowing rate. The weighted average discount rate used to determine the operating lease liability was 4.20%. As of September 30, 2019, the weighted average remaining lease term is 8.3 years.

NOTE 12. SUBSEQUENT EVENTS

Build to Suit Lease

On October 25, 2019, we entered into a build-to-suit Lease Agreement (the Build-to-Suit Lease) with Ernst Development Partners, Inc. (Ernst), for approximately 220,000 square feet of office space located in Alameda, California (the New Premises), adjacent to the Current Premises. The term of the Build-to-Suit Lease is for a period of 242 months (the Term), which will begin on the completion of the building and tenant improvements by Ernst. The Term is currently anticipated to begin on October 25, 2021. The monthly base rent under the Build-to-Suit Lease will equal to a percentage of the total development costs incurred in connection with the development of the New Premises (excluding the cost of the tenant improvements in excess of the allowance provided by Ernst and any development costs we pay) and is currently estimated to be about $726,000, subject to an annual increase of 3% during the Term. The monthly base rent will begin sixty days following commencement of the Term. We will also be responsible for paying operating expenses related to the New Premises.

The Build-to-Suit Lease includes two five-year options to extend the term of the Build-to-Suit Lease, exercisable under certain conditions and at a market rate determined in accordance with the Build-to-Suit Lease. We have a one-time option to terminate the Build-to-Suit Lease without cause after the 180th month of the Term, exercisable under certain conditions as described in the Build-to-Suit Lease and subject to a termination payment calculated in accordance with the Build-to-Suit Lease.

See Part II, Item 5 of this Quarterly Report on Form 10-Q for more information about the Build to Suit Lease.

Fourth Amendment to the Lease

In the fourth quarter of 2019, Hillwood Enterprises, L.P. (Hillwood) is expected to purchase the project known as 1750 North Loop Road and 1601, 1701, 1751, 1801 and 1851 Harbor Bay Parkway, Alameda, California from Ascentris 105, LLC (the Purchase), which project includes the Current Premises. Effective upon the Purchase, Hillwood will become the landlord pursuant to the Lease.

On August 30, 2019, we entered into an amendment to the Lease with Hillwood (the Fourth Lease Amendment), pursuant to which each of our rights and obligations are contingent upon the Purchase. Effective upon the Purchase, the Fourth Lease Amendment will provide for, among other things, the (i) expansion of the Current Premises by 59,335 square feet of laboratory facilities located at 1701 Harbor Bay Parkway, Alameda, California, (ii) extension of the Lease term through October 31, 2031 and (iii) elimination of the Early Termination Right.

As of September 30, 2019, we have not yet recorded a right-of-use asset or lease liability for the Fourth Lease Amendment, and the remainder of the disclosures in this note do not reflect the impact of this amendment.

See Part II, Item 5 of this Quarterly Report on Form 10-Q for more information about the Fourth Lease Amendment.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

This Quarterly Report on Form 10-Q contains forward-looking statements. These statements are based on Exelixis, Inc.'s (Exelixis, we, our or us) current expectations, assumptions, estimates and projections about our business and our industry and involve known and unknown risks, uncertainties and other factors that may cause our company's or our industry's results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied in, or contemplated by, the forward-looking statements. Our actual results and the timing of events may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such a difference include those discussed in "Risk Factors" in Part II, Item 1A of this Quarterly Report on Form 10-Q, as well as those discussed elsewhere in this report. These and many other factors could affect our future financial and operating results. We undertake no obligation to update any forward-looking statement to reflect events after the date of this report.

This discussion and analysis should be read in conjunction with our condensed consolidated financial statements and accompanying notes included in this report and the consolidated financial statements and accompanying notes thereto included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2018 filed with the Securities and Exchange Commission (SEC) on February 22, 2019.

Overview

We are an oncology-focused biotechnology company that strives to accelerate the discovery, development and commercialization of new medicines for difficult-to-treat cancers. Since we were founded in 1994, four products resulting from our discovery efforts have progressed through clinical development, received regulatory approval and have launched commercially. Two are derived from cabozantinib, an inhibitor of multiple tyrosine kinases including MET, AXL, VEGF receptors and RET. These are: CABOMETYX® (cabozantinib) tablets approved for advanced renal cell carcinoma (RCC) and previously treated hepatocellular carcinoma (HCC); and COMETRIQ® (cabozantinib) capsules approved for progressive, metastatic medullary thyroid cancer (MTC). The other two products resulting from our discovery efforts are: COTELLIC® (cobimetinib), an inhibitor of MEK, approved as part of a combination regimen to treat a specific form of advanced melanoma and marketed under a collaboration with Genentech, Inc. (a member of the Roche Group) (Genentech); and MINNEBRO® (esaxerenone), an oral, non-steroidal, selective blocker of the mineralocorticoid receptor, approved for the treatment of hypertension in Japan and licensed to Daiichi Sankyo Company, Limited (Daiichi Sankyo).

CABOMETYX was first approved by the U.S. Food and Drug Administration (FDA) for previously treated patients with advanced RCC in April 2016, and then in December 2017, the FDA expanded CABOMETYX's approval to include previously untreated patients with advanced RCC. Additionally, in January 2019, the FDA approved CABOMETYX as a treatment for patients with HCC who have been previously treated with sorafenib. This approval was based on results from CELESTIAL, our phase 3 pivotal trial evaluating cabozantinib in patients with previously treated HCC, which demonstrated a statistically significant and clinically meaningful improvement in overall survival versus placebo.

To develop and commercialize CABOMETYX and COMETRIQ outside the U.S., we have entered into license agreements with Ipsen Pharma SAS (Ipsen) and Takeda Pharmaceutical Company Ltd. (Takeda). Ipsen has been granted rights to cabozantinib outside of the U.S. and Japan, and Takeda has been granted rights to cabozantinib in Japan. Both partners also contribute financially and operationally to the further global development and commercialization of cabozantinib in other potential indications, and we continue to work closely with them on these activities. Utilizing its regulatory expertise and established international oncology marketing network, Ipsen has continued to execute on its commercialization plans for CABOMETYX, having received regulatory approvals and launched in multiple territories outside of the United States, including in the European Union (EU), as a treatment for advanced RCC and for HCC in adults who have previously been treated with sorafenib, and in Canada where CABOMETYX has recently been approved for previously untreated advanced RCC in addition to the earlier approval for advanced RCC who have received prior VEGF-targeting therapy. Takeda has also made significant progress on bridging studies in both RCC and HCC and achieved an important regulatory milestone in April 2019 with its application to the Japanese Ministry of Health, Labour and Welfare (MHLW) for approval to manufacture and sell CABOMETYX as a treatment for unresectable and metastatic RCC in Japan.

In addition to our regulatory and commercialization efforts in the U.S. and the support provided to our partners for rest of world regulatory and commercialization activities, we are also pursuing other indications for cabozantinib that have the potential to increase the number of cancer patients who could benefit from this medicine. We are evaluating cabozantinib, both as a single agent and in combination with other therapies, in a broad development program comprising over 80 ongoing or planned clinical trials across multiple indications. We, along with our clinical and commercial

collaboration partners, sponsor some of the trials, and independent investigators conduct the remaining trials through our Cooperative Research and Development Agreement (CRADA) with the National Cancer Institute's Cancer Therapy Evaluation Program (NCI-CTEP) or our investigator sponsored trial program. Informed by the available data from these clinical trials, we continue to advance cabozantinib's late-stage development program. One pivotal trial that has resulted from this effort is COSMIC-311, our ongoing phase 3 pivotal trial evaluating cabozantinib versus placebo in patients with radioactive iodine-refractory differentiated thyroid cancer who have progressed after up to two VEGF receptor-targeted therapies.

We are particularly interested in examining cabozantinib's potential in combination with immune checkpoint inhibitors (ICIs) to determine if such combinations further improve outcomes for patients. Building on preclinical and clinical observations that cabozantinib may promote a more immune-permissive tumor environment potentially resulting in cooperative activity of cabozantinib in combination with these products, we are evaluating cabozantinib in combination with a variety of ICIs. The most advanced of these combination studies include CheckMate 9ER, a phase 3 pivotal trial evaluating cabozantinib in combination with nivolumab in previously untreated advanced or metastatic RCC, for which our collaboration partner Bristol-Myers Squibb Company (BMS) has announced top line results are expected in early 2020, and CheckMate 040, a phase 1/2 trial evaluating cabozantinib in combination with nivolumab and in combination with both nivolumab and ipilimumab in patients with previously treated or previously untreated advanced HCC, also in collaboration with BMS. Additionally in May 2019, as part of our clinical collaboration with BMS, we initiated COSMIC-313, a phase 3 pivotal trial evaluating the triplet combination of cabozantinib, nivolumab and ipilimumab versus the combination of nivolumab and ipilimumab in patients with previously untreated advanced intermediate- or poor-risk RCC, and plan to further evaluate the combination of cabozantinib and nivolumab, with or without ipilimumab, in various other tumor types. In an effort to diversify our exploration of combinations with ICIs, we also initiated COSMIC-312, a phase 3 pivotal trial evaluating cabozantinib in combination with the Roche Group's (Roche's) ICI, atezolizumab, versus sorafenib in previously untreated advanced HCC, and COSMIC-021, a broad phase 1b study evaluating the safety and tolerability of cabozantinib in combination with atezolizumab in patients with locally advanced or metastatic solid tumors. COSMIC-021 is divided into two parts: a dose-escalation phase, which was completed in 2018; and an expansion phase, which is ongoing. Findings from the dose-escalation stage of COSMIC-021 demonstrated that the combination was well-tolerated and showed encouraging anti-tumor activity in patients with advanced RCC. The expansion phase of COSMIC-021 comprises 24 total cohorts, with 20 cohorts evaluating the combination of cabozantinib and atezolizumab and four cohorts evaluating cabozantinib or atezolizumab as single-agent therapies. Based on initial encouraging results from the ongoing expansion cohorts in patients with castration-resistant prostate cancer (CRPC) and in ICI-pretreated non-small cell lung cancer (NSCLC), in July 2019, we expanded the original 30-patient cohorts for each of these disease states to allow enrollment of an additional 50 patients for a total of 80 patients each. Additionally, four new cohorts, consisting of two expansion and two exploratory cohorts, were added to COSMIC-021 in July 2019: two new expansion cohorts evaluating the combination of cabozantinib and atezolizumab in patients with metastatic CRPC who have received prior enzalutamide or abiraterone therapy, with or without prior docetaxel therapy; and two new exploratory cohorts evaluating single-agent cabozantinib and single-agent atezolizumab in patients with metastatic CRPC, with the purpose of determining the individual contribution of each therapy. Depending on the results from COSMIC-021, we may evaluate the combination of cabozantinib and atezolizumab in various late-stage clinical trials, including in NSCLC and CRPC.

As we continue to work to maximize the clinical and commercial potential of cabozantinib, we also remain committed to building our product pipeline by discovering and developing new cancer therapies for patients. In this regard, we reinitiated internal drug discovery efforts in 2017 with the goal of identifying new product candidates to advance into clinical trials. Notably, these efforts are led by some of the same experienced scientists responsible for the discovery of cabozantinib, cobimetinib and esaxerenone, which have been approved for commercialization by regulatory authorities. Using our expertise in medicinal chemistry, tumor biology and pharmacology, we are advancing drug candidates toward and through preclinical development. Furthest along in these internal drug discovery efforts is XL092, a next-generation oral tyrosine kinase inhibitor that is currently in a phase 1 clinical trial in patients with advanced solid malignancies.

We augment these internal drug discovery activities with business development initiatives aimed at identifying and in-licensing promising, early-stage oncology assets and then further develop them utilizing our established clinical development infrastructure. In furtherance of this strategy, we have entered into multiple collaboration and license agreements, including with: StemSynergy Therapeutics, Inc., which is focused on the discovery and development of novel oncology compounds aimed to inhibit tumor growth by targeting Casein Kinase 1α; Invenra, Inc. (Invenra), which is focused on the discovery and development of multispecific antibodies for the treatment of cancer; Iconic Therapeutics, Inc. (Iconic), which is focused on the advancement of a next-generation antibody-drug conjugate program targeting tissue factor in solid tumors; and Aurigene Discovery Technologies Limited (Aurigene), which is focused on the discovery and development of novel small molecules as therapies for cancer. To further enhance our early-stage pipeline, we expect to enter into

additional, external collaborative relationships around assets and technologies that complement our internal drug discovery and development efforts.

Third Quarter 2019 Business Updates and Financial Highlights

During the third quarter of 2019, we continued to execute on our business objectives, generating significant revenue from operations and enabling us to continue to seek to maximize the clinical and commercial potential of our products and expand our product pipeline. Significant business updates and financial highlights for the quarter and subsequent to quarter-end include:

Business Updates

- In July 2019, we announced an amendment to the protocol for COSMIC-021, the phase 1b trial of cabozantinib in combination with atezolizumab in patients with locally advanced or metastatic solid tumors, to expand patient enrollment in certain existing CRPC and NSCLC cohorts and to add new expansion and exploratory cohorts in CRPC (an aggregate of 24 total cohorts, with 20 expansion cohorts evaluating the combination of cabozantinib and atezolizumab and four exploratory cohorts evaluating cabozantinib or atezolizumab as single-agent therapies).
- In July 2019, we announced an exclusive collaboration, option and license agreement with Aurigene, and India-based biotechnology company focused on oncology and inflammatory disorders, to in-license as many as six programs.
- In October 2019, Ipsen received regulatory approval from Health Canada for CABOMETYX for the first-line treatment of adults with advanced RCC.
- In October 2019, we expanded our collaboration with Invenra focused on the discovery and development of multispecific antibodies for the treatment of cancer to include the development of novel binders against six additional targets which we can use to generate multispecific antibodies based on Invenra's B-Body™ technology platform, or with other platforms and formats at our option.
- In October 2019, we filed a patent infringement lawsuit against MSN Pharmaceuticals, Inc. (MSN), following receipt of a Paragraph IV certification notice letter from MSN that it had filed an Abbreviated New Drug Application (ANDA) with the FDA requesting approval to market a generic version of CABOMETYX tablets, following expiration of the CABOMETYX composition of matter patent, U.S. Patent No. 7,579,473, which expires on August 14, 2026. We are seeking, among other relief, an order that the effective date of any FDA approval of the ANDA would be a date no earlier than the expiration of U.S. Patent No. 8,877,776 on October 8, 2030 and equitable relief enjoining MSN from infringing this patent. For a more detailed discussion of this litigation matter, see "Legal Proceedings" in Part II, Item 1 of this Quarterly Report on Form 10-Q.

Financial Highlights

- Net product revenues for the third quarter of 2019 increased to $191.8 million, compared to $162.9 million for the third quarter of 2018.
- Total revenues for the third quarter of 2019 increased to $271.7 million, compared to $225.4 million for the third quarter of 2018.
- Research and development expenses for the third quarter of 2019 increased to $97.3 million, compared to $44.7 million for the third quarter of 2018.
- Selling, general and administrative expenses for the third quarter of 2019 increased to $51.3 million, compared to $48.1 million for the third quarter of 2018.
- Provision for income taxes for the third quarter of 2019 increased to $25.2 million, compared to $2.3 million for the third quarter of 2018.
- Net income for the third quarter of 2019 was $97.5 million, or $0.32 per share, basic and $0.31 per share, diluted, compared to $126.6 million, or $0.42 per share, basic and $0.41 per share diluted, for the third quarter of 2018.
- Cash and investments increased to $1.2 billion at September 30, 2019, compared to $851.6 million at December 31, 2018.

See *"Results of Operations"* below for a discussion of the detailed components and analysis of the amounts above.

Challenges and Risks

We will continue to face challenges and risks that may impact our ability to execute on our remaining 2019 business objectives. In particular, for the foreseeable future, we expect our ability to maintain or increase unrestricted cash flow to fund our business operations and growth will depend upon the continued commercial success of CABOMETYX as a treatment for advanced RCC and previously treated HCC, and potentially for other indications for which cabozantinib is in late-stage clinical trials, if warranted by the data generated from such trials. The commercial success of CABOMETYX in its approved indications is subject to a variety of factors, most importantly, the drug's perceived benefit/risk profile as compared to the benefit/risk profiles of other competitive treatments available or in development for these conditions. CABOMETYX will only continue to be commercially successful if private third-party and government payers continue to provide coverage and reimbursement. However, as is the case for all innovative pharmaceutical therapies, obtaining and maintaining coverage and reimbursement for CABOMETYX is becoming increasingly difficult, both within the U.S. and in foreign markets, because of growing concerns over healthcare cost containment and corresponding policy initiatives and activities aimed at limiting access to, and restricting the prices of, pharmaceuticals.

Achievement of our remaining 2019 business objectives and the continued success of CABOMETYX will also depend on the success of our development and commercialization strategies to navigate increased competition, including that from, but not limited to, ICIs, as well as the use of combination therapy to treat cancer. In the longer term, we may eventually face competition from potential manufacturers of generic versions of our marketed products, including the proposed generic version of CABOMETYX tablets that is the subject of the ANDA submitted to the FDA by MSN, which if approved following the expiration of our composition of matter patent in 2026, could result in significant decreases in the revenue derived from sales of CABOMETYX and thereby materially harm our business and financial condition. Separately, our research and development objectives may be impeded by the challenges of scaling our organization to meet the demands of expanded drug development, unanticipated delays in clinical testing and the inherent risks and uncertainties associated with internal drug discovery operations. In connection with efforts to expand our product pipeline, we may be unsuccessful in discovering new drug candidates or identifying appropriate candidates for in-licensing or acquisition.

Some of these challenges and risks are specific to our business, and others are common to companies in the pharmaceutical industry with development and commercial operations. For a more detailed discussion of challenges and risks we face, see "Risk Factors" in Part II, Item 1A of this Quarterly Report on Form 10-Q.

Fiscal Year Convention

We have adopted a 52- or 53-week fiscal year policy that generally ends on the Friday closest to December 31st. Fiscal year 2019, which is a 53-week fiscal year, will end on January 3, 2020 and fiscal year 2018, which was a 52-week fiscal year, ended on December 28, 2018. For convenience, references in this report as of and for the fiscal periods ended September 27, 2019 and September 28, 2018, and as of and for the fiscal years ending January 3, 2020, and ended December 28, 2018, are indicated as being as of and for the periods ended September 30, 2019 and September 30, 2018 and the years ending December 31, 2019, and ended December 31, 2018, respectively.

Results of Operations

Revenues

Revenues by category were as follows (dollars in thousands):

	Three Months Ended September 30,		Percentage Change - Q3 2019 v. Q3 2018	Nine Months Ended September 30,		Percentage Change - Year to Date 2019 v. 2018
	2019	2018		2019	2018	
Net product revenues	$ 191,768	$ 162,946	18%	$ 565,024	$ 443,054	28 %
Collaboration revenues	79,935	62,451	28%	162,441	182,170	(11)%
Total revenues	$ 271,703	$ 225,397	21%	$ 727,465	$ 625,224	16 %

Net Product Revenues

Gross product revenues, Discounts and allowances, and Net product revenues were as follows (dollars in thousands):

	Three Months Ended September 30,		Percentage Change - Q3 2019 v. Q3 2018	Nine Months Ended September 30,		Percentage Change - Year to Date 2019 v. 2018
	2019	2018		2019	2018	
Gross product revenues	$ 239,916	$ 193,356	24%	$ 704,084	$ 525,438	34%
Discounts and allowances	(48,148)	(30,410)	58%	(139,060)	(82,384)	69%
Net product revenues	$ 191,768	$ 162,946	18%	$ 565,024	$ 443,054	28%

Net product revenues by product were as follows (dollars in thousands):

	Three Months Ended September 30,		Percentage Change - Q3 2019 v. Q3 2018	Nine Months Ended September 30,		Percentage Change - Year to Date 2019 v. 2018
	2019	2018		2019	2018	
CABOMETYX	$ 187,410	$ 158,262	18 %	$ 552,315	$ 428,317	29 %
COMETRIQ	4,358	4,684	(7)%	12,709	14,737	(14)%
Net product revenues	$ 191,768	$ 162,946	18 %	$ 565,024	$ 443,054	28 %

The increases in product revenues for CABOMETYX for the three and nine months ended September 30, 2019, as compared to the comparable periods in 2018, were primarily due to a 12% and 21% increase, respectively, in the number of units of CABOMETYX sold and increases in the average selling price of the product. The increases in CABOMETYX sales volumes reflects the continued growth of CABOMETYX in advanced RCC following FDA approvals in April 2016 of CABOMETYX for the treatment of patients with advanced RCC who have received prior anti-angiogenic therapy and in December 2017 for previously untreated patients with advanced RCC, as well as the U.S. launch of CABOMETYX for the treatment of patients with HCC who have been previously treated with sorafenib, following FDA approval in January 2019. The decreases in product revenues for COMETRIQ for the three and nine months ended September 30, 2019, as compared to the comparable periods in 2018, were primarily due to a 8% and 18% decline, respectively, the number of units of COMETRIQ sold. COMETRIQ sales volumes have continued to decrease since the launch of CABOMETYX in April 2016.

We recognize product revenues net of discounts and allowances that are described in “Note 1. Organization and Summary of Significant Accounting Policies” to our “Notes to Consolidated Financial Statements” included in our Annual Report on Form 10-K for the year ended December 31, 2018. The increases in discounts and allowances for the three and nine months ended September 30, 2019, as compared to the comparable periods in 2018, were primarily the result of the overall increases in product sales volume and increases in Public Health Service hospital utilization and the dollar amount of the related chargebacks, and, to a lesser extent, increases to the dollar amount of chargebacks associated with Veterans Affairs hospitals, as well as increases to other government and commercial rebates. We expect our discounts and allowances as a percentage of gross product revenues to increase during the remainder of 2019 as compared to 2018 as the number of patients participating in government programs increases, and as the discounts and rebates paid to government payers increase.

Collaboration Revenues

Collaboration revenues were as follows (dollars in thousands):

	Three Months Ended September 30,		Percentage Change - Q3 2019 v. Q3 2018	Nine Months Ended September 30,		Percentage Change - Year to Date 2019 v. 2018
	2019	2018		2019	2018	
Collaboration revenues:						
License revenues (1)	$ 68,035	$ 51,323	33%	$ 128,937	$ 152,261	(15)%
Research and development services revenues (2)	12,988	10,560	23%	35,814	27,464	30 %
Other collaboration revenues(3)	(1,088)	568	n/m	(2,310)	2,445	n/m
Total collaboration revenues	$ 79,935	$ 62,451	28%	$ 162,441	$ 182,170	(11)%

(1) License revenues included the recognition of the portion of milestones allocated to the transfer of intellectual property licenses for which it had become probable in the current period that the milestone would be achieved and a significant revenue reversal would not occur, as well as royalty revenues from Ipsen, Genentech and Daiichi Sankyo.

(2) Research and development services revenues included the recognition of deferred revenue for the portion of upfront and milestone payments that have been allocated to research and development services performance obligations, as well as development cost reimbursements earned on our collaboration agreements.

(3) Other collaboration revenues included the profit on the U.S. commercialization of COTELLIC from Genentech and revenues on product supply services provided to Ipsen and Takeda, which were offset by the 3% royalty we are required to pay GlaxoSmithKline (GSK) on the net sales by Ipsen of any product incorporating cabozantinib.

Milestone revenues were $50.6 million and $81.1 million, respectively, for the three and nine months ended September 30, 2019, as compared to $42.6 million and $134.8 million for the comparable periods in 2018. Milestone revenues by period included the following:

- Milestone revenues for the three and nine months ended September 30, 2019 included recognition of a $50.0 million commercial milestone from Ipsen that we earned in the third quarter of 2019 upon Ipsen's achievement of $250.0 million in net sales of cabozantinib in its territories over four consecutive quarters.
- Milestone revenues for the nine months ended September 30, 2019 also included recognition of a $20.0 million milestone from Daiichi Sankyo for the launch of MINNEBRO tablets as a treatment for patients with hypertension in Japan and $9.7 million in revenues recognized in connection with a $16.0 million milestone from Takeda for the submission in April 2019 of a regulatory application for cabozantinib as a treatment for patients with advanced RCC to the Japanese MHLW.
- Milestone revenues for the three and nine months ended September 30, 2018 included $36.9 million in revenue related to a $40.0 million milestone from Ipsen for the approval by the European Commission (EC) of cabozantinib for previously-treated HCC and $5.0 million in revenue for a milestone from Ipsen on the approval by Health Canada of cabozantinib for the treatment of adults with advanced RCC.
- Milestone revenues for the nine months ended September 30, 2018 also included: i) recognition of $46.2 million in revenue of a $50.0 million milestone from Ipsen for the approval of cabozantinib for the first-line treatment of adults with intermediate- or poor-risk advanced RCC by the EC, of which $0.2 million was recognized in the third quarter of 2018; ii) recognition of a $25.0 million commercial milestone from Ipsen that we earned in the second quarter of 2018 upon Ipsen's achievement of $100.0 million in net sales of cabozantinib in its territories over four consecutive quarters; and iii) recognition of a $20.0 million milestone upon Daiichi Sankyo's submission to the Japanese MHLW of a regulatory application for esaxerenone as a treatment for patients with hypertension.

Due to uncertainties surrounding the timing and achievement of regulatory and development milestones, it is difficult to predict future milestone revenues and such milestones can vary significantly from period to period.

Royalties on net sales of cabozantinib by Ipsen outside of the U.S. and Japan were $16.4 million and $45.3 million for the three and nine months ended September 30, 2019, respectively, as compared to $10.3 million and $20.0 million for the comparable periods in 2018. Ipsen's net sales of cabozantinib have continued to grow since their first commercial sale of the product in the fourth quarter of 2016, primarily due to increased demand of CABOMETYX, which, as of September 30,

2019, is approved and commercially available in 48 and 33 countries outside of the U.S., respectively. We were entitled to receive a tiered royalty of 2% to 12% on the initial $150.0 million of net sales; this amount was reached in the second quarter of 2018. As of June 30, 2018 and going forward, we are entitled to receive a tiered royalty of 22% to 26% on annual net sales (with separate tiers for Canada); these 22% to 26% royalty tiers reset each calendar year. In Canada, we are entitled to receive a tiered royalty of 22% on the first CAD$30.0 million of annual net sales and a tiered royalty thereafter of 22% to 26% on annual net sales; these 22% to 26% royalty tiers for Canada will also reset each calendar year. In May 2019, we also began to earn low double-digit royalties on the sale of MINNEBRO by Daiichi Sankyo in Japan.

Development cost reimbursements in connection with our collaboration arrangements with Ipsen and Takeda were $12.0 million and $32.5 million for the three and nine months ended September 30, 2019, respectively, as compared to $6.9 million and $17.7 million for the comparable periods in 2018. The increases were primarily the result of reimbursements from Ipsen and Takeda for their share of the increase in spending on the CheckMate 9ER study.

Profits on the U.S. commercialization of COTELLIC and royalties on ex-U.S. net sales of COTELLIC under our collaboration agreement with Genentech were $2.7 million and $7.9 million for the three and nine months ended September 30, 2019, respectively, as compared to $3.3 million and $10.3 million for the comparable periods in 2018. Sales of COTELLIC in the U.S. have declined following Genentech's decision to scale back the personal promotion of COTELLIC commencing in January 2018.

For three and nine months ended September 30, 2019, collaboration revenues were reduced by $8.0 million and $23.1 million, respectively, for the 3% royalty we are required to pay GSK on the net sales by Ipsen of any product incorporating cabozantinib, as compared to $6.3 million and $17.0 million for the comparable periods in 2018. As royalty generating sales of cabozantinib by Ipsen have increased as described above, our royalty payments to GSK have also increased. In addition, pursuant to a license agreement we entered into with Ligand Pharmaceuticals, Inc. (Ligand), we are required to pay a royalty of 0.5% to Ligand on net sales of MINNEBRO.

Cost of Goods Sold

The Cost of goods sold and our gross margin were as follows (dollars in thousands):

	Three Months Ended September 30,		Percentage Change - Q3 2019 v. Q3 2018	Nine Months Ended September 30,		Percentage Change - Year to Date 2019 v. 2018
	2019	2018		2019	2018	
Cost of goods sold	$ 7,537	$ 7,360	2%	$ 22,577	$ 18,996	19%
Gross margin	96%	95%		96%	96%	

Cost of goods sold is related to our product revenues and consists primarily of a 3% royalty payable to GSK on U.S. net sales of any product incorporating cabozantinib, as well as the cost of inventory sold, indirect labor costs, write-downs related to expiring and excess inventory, and other third-party logistics costs. The increases in Cost of goods sold for the three and nine months ended September 30, 2019, as compared to the comparable periods in 2018, were primarily the result of the increases in product sales volume described above. We do not expect our gross margin to change significantly during the remainder of 2019.

Research and Development Expenses

Research and development expenses were as follows (dollars in thousands):

	Three Months Ended September 30,		Percentage Change - Q3 2019 v. Q3 2018	Nine Months Ended September 30,		Percentage Change - Year to Date 2019 v. 2018
	2019	2018		2019	2018	
Research and development expenses	$ 97,295	$ 44,741	117%	$ 242,516	$ 124,986	94%

Research and development expenses consist primarily of clinical trial costs, personnel expenses, license and other collaboration costs, consulting and outside services, stock-based compensation and the allocation of general corporate costs.

The increases in Research and development expenses for the three and nine months ended September 30, 2019, as compared to the comparable periods in 2018, were primarily related to increases in clinical trial costs, license and other collaboration costs, personnel expenses, the allocation of general corporate costs and stock-based compensation. Clinical trial costs, which includes services performed by third-party contract research organizations and other vendors who support our clinical trials, and comparator drug purchases, increased $20.8 million and $54.1 million for the three and nine months ended September 30, 2019, respectively, as compared to the comparable periods in 2018. The increases in clinical trial costs were primarily due to costs associated with the expanding clinical trial program for cabozantinib that now includes four phase 3 pivotal studies (CheckMate 9ER, COSMIC-311, COSMIC-312 and COSMIC-313), as well as the multi-cohort phase 1b study (COSMIC-021). License and other collaboration costs increased $20.5 million and $30.4 million for the three and nine months ended September 30, 2019, respectively, as compared to the comparable periods in 2018, primarily as a result of the collaboration agreements we entered into with Aurigene in July 2019 and Iconic in May 2019. Personnel expenses increased $3.8 million and $13.0 million and the allocation of general corporate costs increased $1.3 million and $4.5 million for the three and nine months ended September 30, 2019, respectively, as compared to the comparable periods in 2018, primarily due to increases in headcount to support our expanded discovery and development efforts. Stock-based compensation increased $1.1 million and $4.6 million for the three and nine months ended September 30, 2019, respectively, as compared to the comparable periods in 2018, primarily due to the increases in headcount, as well as the expense recognition for restricted stock units that were granted in September 2018 that either have vested or will vest upon the achievement of specific performance targets (the 2018 PSUs).

We do not track fully-burdened Research and development expenses on a project-by-project basis. We group our Research and development expenses into three categories: Development, Drug discovery and Other. Our development group leads the development and implementation of our clinical and regulatory strategies and prioritizes disease indications in which our compounds are being or may be studied in clinical trials. Our drug discovery group utilizes a variety of technologies to enable the rapid discovery, optimization and extensive characterization of lead compounds such that we are able to select development candidates with the best potential for further evaluation and advancement into clinical development. Research and development expenses by category were as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Research and development expenses:				
Development:				
Clinical trial costs	$ 38,055	$ 17,242	$ 94,612	$ 40,482
Personnel expenses	14,964	12,316	44,077	34,182
Consulting and outside services	4,084	1,943	10,884	6,969
Other development costs	3,754	2,925	11,824	10,257
Total development	60,857	34,426	161,397	91,890
Drug discovery:				
License and other collaboration costs	20,910	367	38,390	7,708
Other drug discovery (1)	6,896	3,706	17,870	9,646
Total drug discovery	27,806	4,073	56,260	17,354
Other (2)	8,632	6,242	24,859	15,742
Total research and development expenses	$ 97,295	$ 44,741	$ 242,516	$ 124,986

(1) Primarily includes personnel expenses, consulting and outside services and laboratory supplies.
(2) Includes stock-based compensation and the allocation of general corporate costs to research and development.

In addition to reviewing the three categories of Research and development expenses described above, we principally consider qualitative factors in making decisions regarding our research and development programs. Such factors include enrollment in clinical trials for our drug candidates, preliminary data from and final results of clinical trials, the potential indications for our drug candidates, the clinical and commercial potential for our drug candidates, and competitive dynamics. We also make our research and development decisions in the context of our overall business strategy.

We are focusing our development efforts primarily on cabozantinib to maximize the therapeutic and commercial potential of this compound and, as a result, we expect our near-term research and development expenses to primarily

relate to the clinical development of cabozantinib. We expect to continue to incur significant development costs for cabozantinib in future periods as we evaluate its potential in a broad development program comprising over 80 ongoing or planned clinical trials across multiple indications. Notable studies of this program include: CheckMate 9ER and CheckMate 040, each in collaboration with BMS; company-sponsored COSMIC-021 and COSMIC-312, for which Roche is providing atezolizumab free of charge; company-sponsored COSMIC-313, for which BMS is providing nivolumab and ipilimumab free of charge; and company-sponsored COSMIC-311. In addition, post-marketing commitments in connection with the approval of COMETRIQ in progressive, metastatic MTC dictate that we conduct an additional study in that indication.

We are also committed to building our product pipeline by discovering and developing new cancer therapies for patients. In this regard, we are conducting internal drug discovery activities with the goal of identifying new product candidates to advance into clinical trials. We augment these internal drug discovery activities with business development initiatives aimed at identifying and in-licensing promising, early-stage oncology assets and then further develop them utilizing our established clinical development infrastructure.

We expect our Research and development expenses to continue to increase as we expand the cabozantinib development program and our product pipeline.

The length of time required for clinical development of a particular product candidate and our development costs for that product candidate may be impacted by the scope and timing of enrollment in clinical trials for the product candidate, our decisions to develop a product candidate for additional indications and whether we pursue development of the product candidate or a particular indication with a collaborator or independently. For example, cabozantinib is being developed in multiple indications, and we do not yet know for how many of those indications we will ultimately pursue regulatory approval. In this regard, our decisions to pursue regulatory approval of cabozantinib for additional indications depend on several variables outside of our control, including the strength of the data generated in our prior, ongoing and potential future clinical trials. Furthermore, the scope and number of clinical trials required to obtain regulatory approval for each pursued indication is subject to the input of the applicable regulatory authorities, and we have not yet sought such input for all potential indications that we may elect to pursue. Even after having given such input, applicable regulatory authorities may subsequently require additional clinical studies prior to granting regulatory approval based on new data generated by us or other companies, or for other reasons outside of our control. As a condition to any regulatory approval, we may also be subject to post-marketing development commitments, including additional clinical trial requirements. As a result of the uncertainties discussed above, we are unable to determine the duration of or complete costs associated with the development of cabozantinib or any of our other research and development projects.

In any event, our potential therapeutic products are subject to a lengthy and uncertain regulatory process that may not result in our receipt of the necessary regulatory approvals. Failure to receive the necessary regulatory approvals would prevent us from commercializing the product candidates affected, including cabozantinib in any additional indications. In addition, clinical trials of our potential product candidates may fail to demonstrate safety and efficacy, which could prevent or significantly delay regulatory approval. A discussion of the risks and uncertainties with respect to our research and development activities, including completing the development of our product candidates, and the consequences to our business, financial position and growth prospects can be found in “Risk Factors” in Part II, Item 1A of this Quarterly Report on Form 10-Q.

Selling, General and Administrative Expenses

Selling, general and administrative expenses were as follows (dollars in thousands):

	Three Months Ended September 30,		Percentage Change - Q3 2019 v. Q3 2018	Nine Months Ended September 30,		Percentage Change - Year to Date 2019 v. 2018
	2019	2018		2019	2018	
Selling, general and administrative expenses	$ 51,265	$ 48,120	7%	$ 170,218	$ 153,989	11%

Selling, general and administrative expenses consist primarily of personnel expenses, consulting and outside services, stock-based compensation and marketing costs.

The increases in Selling, general and administrative expenses for the three and nine months ended September 30, 2019, as compared to the comparable periods in 2018, were primarily related to increases in stock-based compensation,

personnel expenses and consulting and outside services, and were partially offset by a decrease in corporate giving. Stock-based compensation increased $2.3 million and $7.8 million for the three and nine months ended September 30, 2019, respectively, as compared to the comparable periods in 2018, primarily due to increases in administrative headcount to support the company's commercial and research and development organizations as well as the expense recognition for the 2018 PSUs. Personnel expenses increased $2.6 million and $7.2 million for the three and nine months ended September 30, 2019, respectively, as compared to the comparable periods in 2018, primarily due to increases in headcount. Consulting and outside services increased $0.3 million and $5.1 million for the three and nine months ended September 30, 2019, respectively, as compared to the comparable periods in 2018, primarily due to increases in marketing activities in support of the CABOMETYX launch in HCC and continued support of the product in an increasingly competitive RCC market. Corporate giving, consisting predominantly of donations to independent patient support foundations, decreased $2.1 million and $6.9 million for the three and nine months ended September 30, 2019, respectively, as compared to the comparable periods in 2018.

We expect our Selling, general and administrative expenses to increase modestly to support our overall organizational growth.

Other Income (Expense), Net

Other income (expense), net, was as follows (dollars in thousands):

	Three Months Ended September 30,		Percentage Change - Q3 2019 v. Q3 2018	Nine Months Ended September 30,		Percentage Change - Year to Date 2019 v. 2018
	2019	2018		2019	2018	
Interest income	$ 7,191	$ 3,507	105%	$ 20,253	$ 8,099	150%
Other, net	(140)	271	n/m	688	368	87%
Total other income (expense), net	$ 7,051	$ 3,778	87%	$ 20,941	$ 8,467	147%

The increases in Interest income for the three and nine months ended September 30, 2019, as compared to the comparable periods in 2018, were the result of both an increase in our investment balances and an increase in the yield earned on those investments.

Provision for Income Taxes

The Provision for income taxes was as follows (dollars in thousands):

	Three Months Ended September 30,		Percentage Change - Q3 2019 v. Q3 2018	Nine Months Ended September 30,		Percentage Change - Year to Date 2019 v. 2018
	2019	2018		2019	2018	
Provision for income taxes	$ 25,205	$ 2,324	985%	$ 60,826	$ 5,739	960%

Our effective income tax rates were 20.5% and 19.4% during the three and nine months ended September 30, 2019, respectively, as compared to 1.8% and 1.7% for the comparable periods in 2018. The Provision for income taxes relating to our pre-tax income for the three and nine months ended September 30, 2018 was largely offset by a valuation allowance against our net operating loss carryforwards and other deferred tax assets. At December 31, 2018, we released substantially all of the remaining valuation allowance against our deferred tax assets, after we determined that it was more likely than not that these deferred tax assets would be realized.

Liquidity and Capital Resources

As of September 30, 2019, we had $1.2 billion in cash and investments. We anticipate that the aggregate of our current cash and cash equivalents, short-term investments available for operations, product revenues and collaboration revenues will enable us to maintain our operations for a period of at least 12 months following the filing date of this report. The sufficiency of our cash resources depends on numerous assumptions, including assumptions related to product sales and operating expenses, as well as the other factors set forth in “Risk Factors” under the headings “Risks Related to our Capital Requirements, Accounting and Financial Results,” in Part II, Item 1A of this Quarterly Report on Form 10-Q. Our

assumptions may prove to be wrong or other factors may adversely affect our sources of cash and, as a result, we may not have the cash resources to fund our operations as currently planned, which would have a material adverse effect on our business.

We expect to continue to spend significant amounts to fund the continued development and commercialization of cabozantinib. In addition, we intend to continue to expand our product pipeline through our internal drug discovery efforts and the execution of strategic transactions that align with our oncology drug expertise. Financing these activities could materially impact our liquidity and capital resources and may require us to incur debt or raise additional funds through the issuance of equity. Furthermore, even if we believe we have sufficient funds for our current and future operating plans, we may choose to incur debt or raise additional funds through the issuance of equity due to market conditions or strategic considerations.

Sources and Uses of Cash

The following table summarizes our cash flow activities (in thousands):

	Nine Months Ended September 30,	
	2019	**2018**
Net cash provided by operating activities	$ 368,935	$ 311,129
Net cash used in investing activities	$ (457,046)	$ (155,051)
Net cash provided by financing activities	$ 15,553	$ 10,835

Operating Activities

Our operating activities provided cash of $368.9 million for nine months ended September 30, 2019, compared to $311.1 million of for the comparable period in 2018.

Cash flows provided by operating activities represent the cash receipts and disbursements related to all of our activities other than investing and financing activities. Cash provided by operating activities is derived by adjusting our net income for: non-cash operating items such as deferred income taxes, share-based compensation charges, depreciation and amortization, and 401(k) matching contributions made in common stock; and changes in operating assets and liabilities which reflect timing differences between the receipt and payment of cash associated with transactions and when they are recognized in our Condensed Consolidated Statements of Income.

The most significant factors that contributed to the increase in cash provided by operating activities for the nine months ended September 30, 2019, as compared to the comparable period in 2018, was $96.0 million in milestone payments received from Ipsen, Takeda and Daiichi Sankyo, including $60.0 million in payments for milestones that had previously been recognized and were included in Trade receivables, net as of December 31, 2018, and an increase in cash received on sales of our products. Those increases were partially offset by an increase in cash paid for operating expenses for the nine months ended September 30, 2019, as compared to the comparable period in 2018.

Investing Activities

Our investing activities used cash of $457.0 million for the nine months ended September 30, 2019, as compared to $155.1 million during the comparable period in 2018.

Cash used in investing activities for the nine months ended September 30, 2019 was primarily due to investment purchases of $887.7 million and Property and equipment purchases of $5.6 million, less cash provided by the maturity and sale of investments of $422.4 million and $13.1 million, respectively.

Cash used in investing activities for the nine months ended September 30, 2018 was primarily due to investment purchases of $368.3 million and Property and equipment purchases of $30.4 million, less cash provided by the maturity and sale of investments of $231.2 million and $11.9 million, respectively.

Financing Activities

Cash provided by financing activities was $15.6 million for the nine months ended September 30, 2019, as compared to $10.8 million during the comparable period in 2018.

Cash provided by financing activities for the nine months ended September 30, 2019 was primarily a result of $19.0 million in proceeds from the issuance of common stock under our equity incentive plans, partially offset by $3.4 million of taxes paid related to net share settlements.

Cash provided by financing activities for the nine months ended September 30, 2018 was primarily a result of $14.0 million in proceeds from the issuance of common stock under our equity incentive plans, partially offset by $3.2 million of taxes paid related to net share settlements.

Contractual Obligations

Except as follows, there were no material changes outside of the ordinary course of business in our contractual obligations as of September 30, 2019 from those as of December 31, 2018.

In April 2019, we entered into an amendment to the existing Lease Agreement dated May 2, 2017, as amended (the Lease) relating to our corporate headquarters located in Alameda, California, and in August 2019 we entered into an agreement that will further amend the Lease upon consummation of a third-party transaction. See “Note 11. Leases” in our “Notes to Condensed Consolidated Financial Statements” contained in Part I, Item 1 of this Quarterly Report on Form 10-Q for more information about these amendments to the Lease.

Off-Balance Sheet Arrangements

As of September 30, 2019, we did not have any material off-balance-sheet arrangements, as defined by applicable SEC regulations.

Critical Accounting Estimates

The preparation of our Condensed Consolidated Financial Statements conforms to accounting principles generally accepted in the U.S. which requires management to make judgments, estimates and assumptions that affect the reported amounts of assets, liabilities, equity, revenues and expenses, and related disclosures. An accounting policy is considered to be critical if it requires an accounting estimate to be made based on assumptions about matters that are highly uncertain at the time the estimate is made, and if different estimates that reasonably could have been used, or changes in the accounting estimates that are reasonably likely to occur periodically, could materially impact our Condensed Consolidated Financial Statements. On an ongoing basis, management evaluates its estimates including, but not limited to: those related to revenue recognition, including determining the nature and timing of satisfaction of performance obligations, and determining the standalone selling price of performance obligations, and variable consideration such as rebates, chargebacks, sales returns, sales allowances, and milestone payments included in collaboration arrangements; the amounts of revenues and expenses under our profit and loss sharing agreement; the recoverability of inventory; the amounts of operating lease right-of-use assets and lease liabilities; the amounts of deferred tax assets and liabilities including the related valuation allowance; the accrual for certain liabilities including accrued clinical trial liabilities; and valuations of equity awards used to determine stock-based compensation, including certain awards with vesting subject to market or performance conditions. We base our estimates on historical experience and on various other market-specific and other relevant assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Our senior management has discussed the development, selection and disclosure of these estimates with the Audit Committee of our Board of Directors. Actual results could differ materially from those estimates.

We believe our critical accounting policies relating to revenue recognition, inventory, clinical trial accruals, stock option valuation and income taxes reflect the more significant estimates and assumptions used in the preparation of our Consolidated Financial Statements.

There have been no significant changes in our critical accounting policies and estimates during the nine months ended September 30, 2019, as compared to the critical accounting policies and estimates disclosed in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in our Annual Report on Form 10-K for the year ended December 31, 2018 filed with the SEC on February 22, 2019.

Recent Accounting Pronouncements

For a description of the expected impact of recent accounting pronouncements, see “Note 1. Organization and Summary of Significant Accounting Policies” in the “Notes to Condensed Consolidated Financial Statements” contained in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Our market risks at September 30, 2019 have not changed significantly from those described in Item 7A of our Annual Report on Form 10-K for the year ended December 31, 2018.

Item 4. Controls and Procedures.

Evaluation of disclosure controls and procedures. Based on the evaluation of our disclosure controls and procedures (as defined in Rules 13a-15(e) or 15d-15(e) of the Securities Exchange Act of 1934, as amended, or the Exchange Act) required by Rules 13a-15(b) or 15d-15(b) of the Exchange Act, our Chief Executive Officer and Chief Financial Officer have concluded that as of the end of the period covered by this report, our disclosure controls and procedures were effective at the reasonable assurance level.

Limitations on the effectiveness of controls. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within an organization have been detected. Accordingly, our disclosure controls and procedures are designed to provide reasonable, not absolute, assurance that the objectives of our disclosure control system are met and, as set forth above, our principal executive officer and principal financial officer have concluded, based on their evaluation as of the end of the period covered by this report, that our disclosure controls and procedures were effective to provide reasonable assurance that the objectives of our disclosure control system were met.

Changes in internal control over financial reporting. There were no changes in our internal control over financial reporting that occurred during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

In October 2019, we received a notice letter regarding an ANDA submitted to the FDA by MSN, requesting approval to market a generic version of CABOMETYX tablets. The notice letter included a Paragraph IV certification with respect to our U.S. Patent Nos. 8,877,776, 9,724,342, 10,034,873 and 10,039,757, which are listed in the FDA publication *Approved Drug Products with Therapeutic Equivalence Evaluations*, also referred to as the *Orange Book.* MSN's notice letter does not provide a Paragraph IV certification against the CABOMETYX composition of matter patent, U.S. Patent No. 7,579,473, which expires on August 14, 2026, and therefore this patent is not presently at issue. On October 29, 2019, we filed a complaint for patent infringement against MSN asserting U.S. Patent No. 8,877,776 in the United States District Court for the District of Delaware (the Delaware District Federal Court) arising from MSN's ANDA filing with the FDA. Based on the information we have received to date, our complaint does not allege infringement of U.S. Patent Nos. 9,724,342, 10,034,873 and 10,039,757. We are seeking, among other relief, an order that the effective date of any FDA approval of the ANDA would be a date no earlier than the expiration of U.S. Patent No. 8,877,776 on October 8, 2030 and equitable relief enjoining MSN from infringing this patent.

We may also from time to time become a party or subject to various other legal proceedings and claims, either asserted or unasserted, which arise in the ordinary course of business. Some of these proceedings have involved, and may involve in the future, claims that are subject to substantial uncertainties and unascertainable damages.

Item 1A. Risk Factors

In addition to the factors discussed elsewhere in this report and our other reports filed with the SEC, the following are important factors that could cause actual results or events to differ materially from those contained in any forward-looking statements made by us or on our behalf. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not currently known to us or that we deem immaterial also may impair our business operations. If any of the following risks or such other risks actually occur, our business could be harmed.

Risks Related to Our Business and Industry

Our ability to grow our company is critically dependent upon the commercial success of CABOMETYX in its approved indications and the further clinical development, regulatory approval and commercial success of cabozantinib in additional indications.

Our mission is to maximize the clinical and commercial potential of cabozantinib, and to position us for future growth through our discovery efforts and expansion of our development pipeline. We anticipate that for the foreseeable future, our ability to maintain or meaningfully increase unrestricted cash flow to fund our business operations and growth will depend upon the continued commercial success of CABOMETYX as a treatment for advanced RCC and previously treated HCC, and potentially for other indications for which cabozantinib is in late-stage clinical trials, if warranted by the data generated from such trials. The commercial success of CABOMETYX in its approved indications is subject to a variety of factors, most importantly, the drug's perceived benefit/risk profile as compared to the benefit/risk profiles of other treatments available or in development for these conditions. If revenue from CABOMETYX decreases or remains flat, or if we fail to achieve anticipated product royalties and collaboration milestones, we may need to reduce our operating expenses, access other sources of cash or otherwise modify our business plans, which could have a material adverse impact on our business, financial condition and results of operations. Furthermore, as a consequence of our collaboration agreements with Ipsen and Takeda, we rely heavily upon their regulatory, commercial, medical affairs, market access and other expertise and resources for commercialization of CABOMETYX in their respective territories outside of the U.S. We cannot control the amount and timing of resources that our collaborators dedicate to the commercialization of CABOMETYX, or to its marketing and distribution, and our ability to generate revenues from the commercialization of CABOMETYX by our collaborators depends on their ability to obtain and maintain regulatory approvals for, achieve market acceptance of, and to otherwise effectively market, CABOMETYX in its approved indications in their respective territories. Further, foreign sales of CABOMETYX by our collaborators could be adversely affected by the imposition of governmental controls, political and economic instability, trade restrictions or barriers and changes in tariffs, including as a result of the pending withdrawal of the United Kingdom (UK) from the EU (commonly referred to as "Brexit") and the uncertainty surrounding the date and the terms of the withdrawal, escalating global trade and political tensions, or otherwise. If our collaborators are unable to, or do not invest the resources necessary to successfully commercialize CABOMETYX in the EU

and other international territories where it has been approved, this could reduce the amount of revenue we are due to receive under these collaboration agreements, thus resulting in harm to our business and operations.

CABOMETYX has been approved for the treatment of advanced RCC and previously treated HCC in the U.S., the EU and other territories. With these approvals, our ability to grow our company remains contingent upon, among other things, further success in the clinical development, regulatory approval and market acceptance of cabozantinib, the active pharmaceutical ingredient in CABOMETYX, in potential additional indications. We cannot be certain that the clinical trials we and our collaboration partners are currently conducting, or may conduct in the future, will demonstrate adequate safety and efficacy in these additional indications to receive regulatory approval. Even if we and our partners receive the required regulatory approvals to market cabozantinib for any additional indications or in additional territories, we and our partners may not be able to effectively commercialize CABOMETYX in these additional indications or territories.

Our ability to grow revenues from sales of CABOMETYX will depend upon the degree of market acceptance among physicians, patients, health care payers, and the medical community.

Our ability to increase revenues from sales of CABOMETYX for its approved indications is, and if approved for additional indications will be, highly dependent upon the extent of market acceptance of CABOMETYX among physicians, patients, government health care payers such as Medicare and Medicaid, commercial health care plans and the medical community. If CABOMETYX does not continue to be prescribed broadly for the treatment of its approved RCC and HCC indications, we may not be able to grow product revenues. The degree of market acceptance of CABOMETYX will depend upon a number of factors, including:

- the effectiveness, or perceived effectiveness, of CABOMETYX in comparison to competing products;
- the safety of CABOMETYX, including the existence of serious side effects of CABOMETYX and their severity in comparison to those of competing products;
- CABOMETYX's relative convenience and ease of administration;
- potential unexpected results connected with analysis of data from future or ongoing clinical trials of cabozantinib;
- the timing of CABOMETYX label expansions for additional indications, if any, relative to competitive treatments;
- the price of CABOMETYX relative to competitive therapies;
- price increases taken by us and the impact on the net sales price of CABOMETYX as a result of any new laws, regulations or other government initiatives affecting pharmaceutical pricing;
- the strength of CABOMETYX sales efforts, marketing, market access and product distribution support;
- our ability to obtain and maintain coverage and reimbursement for CABOMETYX from commercial and government payers; and
- our ability to enforce our intellectual property rights with respect to CABOMETYX, including against potential generic competition.

Further, in the event that any of these or other factors cause market acceptance of CABOMETYX to decrease, this could negatively impact our revenues, which could have a material adverse impact on our business, financial condition and results of operations.

Our competitors may develop products and technologies that impair the relative value of our marketed products and any future product candidates.

The pharmaceutical, biopharmaceutical and biotechnology industries are competitive, highly diversified and are characterized by rapid technological change, particularly in the area of novel oncology therapies. Many of the organizations competing with us have greater capital resources, larger research and development staff and facilities, more experience in obtaining regulatory approvals and more extensive product manufacturing and commercial capabilities than we do, which may allow them to have a competitive advantage. Further, our competitors may be more effective at using their technologies to develop commercial products. As a result, our competitors may be able to more easily develop products that would render our products, and those of our collaborators, obsolete and noncompetitive. There may also be drug candidates that we are not aware of at an earlier stage of development that may compete with our marketed products and product candidates. We face, and will continue to face, intense competition from biotechnology, biopharmaceutical and pharmaceutical companies, as well as academic research institutions, clinical reference laboratories and government

agencies that are pursuing research activities similar to ours. Delays in the development of cabozantinib for the treatment of additional tumor types, for example, could allow our competitors to bring products to market before us.

Furthermore, the specific indications for which CABOMETYX is approved are highly competitive. Several novel therapies and combinations of therapies have been approved, are in advanced stages of clinical development or are under expedited regulatory review in these indications, and these other therapies are currently competing or are expected to compete with CABOMETYX. We believe our future success will depend upon our ability to maintain a competitive position with respect to technological advances and the shifting landscape of therapeutic strategy following the advent of ICIs. While we have adapted our cabozantinib development strategy to address the fact that the approach to treating cancer with ICIs in combination with other therapeutic agents has become highly prevalent in indications for which our products are approved, we cannot ensure that our clinical trials will show efficacy in comparison to competing products or product combinations. Moreover, the complexities of such a development strategy have required and may continue to require collaboration with some of our competitors.

We also may face competition from manufacturers of generic versions of our marketed products, and both Congress and the FDA are seeking to promote generic competition, including through proposals focused on drug patenting, importation and provision of drug to generic applicants for testing. Such generic competition often results in very significant decreases in the overall sales or prices at which branded products can be sold. Please also see the risk factor entitled, "*If competitors use litigation and regulatory means to obtain approval for generic versions of our marketed products, our business will suffer.*"

If we are unable to maintain or scale adequate sales, marketing, market access and product distribution capabilities for our products or enter into or maintain agreements with third parties to do so, we may be unable to maximize product revenues, which could have a material adverse impact on our business, financial condition and results of operations.

Maintaining our sales, marketing, market access and product distribution capabilities requires significant resources, and there are numerous risks involved with managing such a commercial organization, including our potential inability to successfully recruit, train, retain and incentivize adequate numbers of qualified and effective sales and marketing personnel. We are competing for talent with numerous commercial- and pre-commercial-stage oncology-focused biotechnology companies seeking to build out their commercial organizations, as well as other large pharmaceutical organizations that have extensive, well-funded and more experienced sales and marketing operations, and we may be unable to maintain or adequately scale our commercial organization as a result of such competition. If we cannot maintain effective sales, marketing, market access and product distribution capabilities, we may be unable to maximize the commercial potential of CABOMETYX and COMETRIQ in their approved indications. Also, to the extent that the commercial opportunities for CABOMETYX grow over time, we may not properly judge the requisite size and experience of our current commercialization teams or the level of distribution necessary to market and sell CABOMETYX successfully in multiple indications. If we are unable to maintain or scale our organization appropriately, we may not be able to maximize product revenues, which could have a material adverse impact on our business, financial condition and results of operations.

Our ability to successfully commercialize our products will depend, in part, on the extent to which we are able to adequately distribute the products to eligible patients. We currently rely on third-party providers for storage and distribution of our commercial supplies of both CABOMETYX and COMETRIQ in the U.S. Furthermore, we rely on our collaboration partners for ongoing and further commercialization and distribution of CABOMETYX and COMETRIQ in their respective territories outside of the U.S., as well as for access and distribution activities for the approved products under named patient use programs (or similar programs) with the effect of introducing earlier patient access to CABOMETYX and COMETRIQ.

Our current and anticipated future dependence upon the activities, support, and legal and regulatory compliance of third parties may adversely affect our ability to supply CABOMETYX and COMETRIQ to the marketplace on a timely and competitive basis. These third parties may not provide services in the time required to meet our commercial timelines and objectives or to meet regulatory requirements. We may not be able to maintain or renew our arrangements with third parties, or enter into new arrangements, on acceptable terms, or at all. Third parties could terminate or decline to renew our arrangements based on their own business priorities. If we are unable to contract for these third-party services related to the distribution of CABOMETYX and COMETRIQ on acceptable terms, our commercialization efforts and those of our collaboration partners may be delayed or otherwise adversely affected, which could have a material adverse impact on our business, financial condition and results of operations.

If we are unable to obtain or maintain coverage and reimbursement for our products from third-party payers, our business will suffer.

Our ability to commercialize our products successfully is highly dependent on the extent to which health insurance coverage and reimbursement is, and will be, available from third-party payers, including governmental payers, such as Medicare and Medicaid, and private health insurers. Patients are generally not capable of paying for CABOMETYX or COMETRIQ themselves and rely on third-party payers to pay for, or subsidize, the costs of their medications, among other medical costs. If third-party payers do not provide coverage or reimbursement for CABOMETYX or COMETRIQ, our revenues and results of operations will suffer. In addition, even if third-party payers provide some coverage or reimbursement for CABOMETYX or COMETRIQ, the availability of such coverage or reimbursement for prescription drugs under private health insurance and managed care plans, which often varies based on the type of contract or plan purchased, may not be sufficient for patients to afford CABOMETYX or COMETRIQ. Third-party payers continue to scrutinize and manage access to pharmaceutical products and services and press manufacturers for discounts and rebates. Payers may also limit reimbursement for newly approved products and indications.

We are subject to certain healthcare laws, regulations and enforcement; our failure to comply with those laws could have a material adverse impact on our business, financial condition and results of operations.

We are subject to certain healthcare laws and regulations and enforcement by the federal government and the states in which we conduct our business. Should our compliance controls prove ineffective at preventing or mitigating the risk and impact of improper conduct or inaccurate reporting, the laws that may affect our ability to operate include, without limitation:

- the federal Anti-Kickback Statute (AKS), which governs our business activities, including our marketing practices, medical educational programs, pricing policies, and relationships with healthcare providers or other entities. The AKS has been broadly interpreted to apply to manufacturer arrangements with prescribers, purchasers and formulary managers, among others. Among other things, this statute prohibits persons and entities from knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual for, or the purchase, order or recommendation of, any good or service for which payment may be made under federal healthcare programs such as the Medicare and Medicaid programs. Remuneration is not defined in the AKS and has been broadly interpreted to include anything of value, including for example, gifts, discounts, coupons, the furnishing of supplies or equipment, credit arrangements, payments of cash, waivers of payments, ownership interests, value-added services to customers, and providing anything at less than its fair market value;
- the Federal Food, Drug, and Cosmetic Act (FDCA) and its implementing regulations, which prohibit, among other things, the introduction or delivery for introduction into interstate commerce of any drug that is adulterated or misbranded;
- federal civil and criminal false claims laws, including the civil False Claims Act, and civil monetary penalty laws, which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payers that are false or fraudulent, or making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government;
- federal criminal laws that prohibit executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters;
- the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations, which impose certain requirements relating to the privacy, security and transmission of individually identifiable health information on covered entities and business associates that access such information on behalf of a covered entity;
- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws, which may apply to items or services reimbursed by any third-party payer, including commercial insurers, and state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts;
- the Open Payments program of the Patient Protection and Affordable Care Act, as amended by the Healthcare and Education Reconciliation Act (PPACA), which was created under the Physician Payments Sunshine Act and its implementing regulations and requires certain manufacturers of drugs, devices, biologics and medical supplies that are reimbursable under Medicare, Medicaid, or the Children’s Health Insurance Program, with specific exceptions, to report annually to the government information related to certain payments and other

transfers of value to physicians and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members;

- state laws and regulations that require drug manufacturers to file reports relating to marketing activities, payments and other remuneration and items of value provided to healthcare professionals and entities, as well as state and local laws requiring the registration of pharmaceutical sales representatives;
- the Foreign Corrupt Practices Act, a U.S. law which regulates certain financial relationships with foreign government officials (which could include, for example, certain medical professionals) and its foreign equivalents;
- federal and state consumer protection and unfair competition laws, which broadly regulate marketplace activities and activities that potentially harm consumers; and
- state pharmaceutical price and price reporting laws and regulations that require us to provide notice of price increases and/or file complex ancillary reports concerning prices and pricing and discount practices. Laws and regulations in this area, and associated compliance obligations, may increase general and administrative costs, cause volatility in our revenues due to speculative buying practices by purchasers, or diminish our revenues as a result of the imposition of caps on pricing and price increases.

These federal and state healthcare fraud and abuse laws, FDA rules and regulations, as well as false claims laws, including the civil False Claims Act, govern certain marketing practices, including off-label promotion. If our operations are found to be in violation of any of the laws described above or any other governmental regulations that apply to us, we, or our officers or employees, may be subject to penalties, including administrative civil and criminal penalties, damages, fines, regulatory penalties, the curtailment or restructuring of our operations, exclusion from participation in Medicare, Medicaid and other federal and state healthcare programs, reputational harm, additional reporting requirements and oversight if we become subject to a corporate integrity agreement or similar agreement, any of which would adversely affect our ability to sell our products and operate our business and also adversely affect our financial results. Of particular concern are suits filed under the civil False Claims Act, known as "*qui tam*" actions, which can be brought by any individual on behalf of the government. These individuals, commonly known as relators or "whistleblowers," may potentially then share in amounts paid by the entity to the government in fines or settlement. The filing of *qui tam* actions has caused a number of pharmaceutical, medical device and other healthcare companies to have to defend civil False Claims Act actions. When an entity is determined to have violated the civil False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties for each separate false claim. Defending against any such actions can be costly, time-consuming and may require significant financial and personnel resources. Therefore, even if we are successful in defending against any such actions that may be brought against us, our business may be impaired.

Current healthcare laws and regulations and future legislative or regulatory reforms to the healthcare system may affect our ability to commercialize our marketed products profitably.

The U.S. and some foreign jurisdictions are considering or have enacted a number of legislative and regulatory proposals to change the healthcare system in ways that could affect our ability to continue to commercialize CABOMETYX and COMETRIQ profitably. Among policy makers and payers in the U.S. and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality and/or expanding access. In the U.S., the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives.

Specifically, we may face uncertainties as a result of executive, legislative and administrative efforts to repeal, substantially modify or invalidate some or all of the provisions of the PPACA. On December 14, 2018, a Texas U.S. District Court Judge ruled that the PPACA is unconstitutional in its entirety because the penalty enforcing the "individual mandate" was repealed by Congress as part of the Tax Cuts and Jobs Act of 2017. The decision has been appealed to the U.S. Court of Appeals for the Fifth Circuit, and the Trump administration filed its brief in support of the decision of the Texas District Court judge on May 1, 2019. While the Texas District Court Judge, as well as the Trump Administration and the Centers for Medicare and Medicaid Services, have stated that the ruling will have no immediate effect pending the appeal, it is unclear how this decision, subsequent appeals and other efforts to repeal and replace the PPACA will impact the PPACA. There is no assurance that the PPACA, as currently enacted or as amended in the future, will not have a material adverse impact on our business financial condition and results of operations, and we cannot predict how future federal or state legislative or administrative changes relating to healthcare reform will affect our business. The Trump Administration has also indicated an intention to regulate prescription drug pricing, and recent Congressional hearings and proposed legislation have brought increased public attention to the costs of prescription drugs. These actions and the uncertainty about the future of the

PPACA, healthcare laws or future legislation on drug pricing at the federal level may put downward pressure on pharmaceutical pricing and increase our regulatory burdens and operating costs.

There are pending federal and state Congressional proposals that would significantly expand government-provided health insurance coverage, ranging from establishing a single-payer, national health insurance system to more limited buy-in options that would be available to individuals above a certain age. Federal legislation has also been proposed that would authorize states to permit individuals to "buy in" to their state Medicaid programs. Several states are also considering or have already enacted legislation that would allow individuals to "buy in" to the state's Medicaid program or that would otherwise establish a "public health option," which could have a significant impact on the healthcare industry. At this stage, we cannot predict how future legislation (or enacted legislation that has yet to be implemented) will affect our business. However, such proposals could have the potential to impact access to and sales of our products.

In August 2017, President Trump signed the FDA Reauthorization Act of 2017, which reauthorized the FDA user fee programs for prescription drugs, generic drugs, medical devices, and biosimilars, under which applicants for such products partially pay for the FDA's pre-market review of their product candidates and pay other specified fees, including yearly program fees in the case of most New Drug Application (NDA)-approved prescription drugs. The legislation includes, *inter alia,* measures to expedite the development and approval of generic products, where generic competition is lacking even in the absence of exclusivities or listed patents. The FDA has also released a Drug Competition Action Plan, which proposes actions to broaden access to generic drugs and lower consumers' health care costs by, among other things, improving the efficiency of the generic drug approval process and supporting the development of complex generic drugs, and the FDA has taken steps to implement this plan. Moreover, both Congress and the FDA are considering various legislative and regulatory proposals focused on drug competition, including legislation focused on drug patenting, importation, and provision of drug to generic applicants for testing. While we cannot currently predict the specific outcome or impact on our business of such regulatory actions or legislation, they do have the potential to facilitate the development and future approval of generic versions of our products, or otherwise limit or reduce the term for our market exclusivity, which could result in significant decreases in the revenue derived from sales of our marketed products and thereby materially harm our business and financial condition.

As a result of the overall trend towards managed healthcare in the U.S., third-party payers are increasingly attempting to contain healthcare costs by limiting both coverage and the level of reimbursement of new drugs. Insurers also continue to pursue means of contracting for pharmaceutical "value" or "outcomes." These entities could refuse or limit coverage for CABOMETYX and COMETRIQ, such as by using tiered reimbursement or pressing for new forms of value-based contracting, which would adversely affect demand for CABOMETYX and COMETRIQ. They may also refuse to provide coverage for uses of CABOMETYX and COMETRIQ for medical indications other than those for which the FDA has granted market approval. As a result, significant uncertainty exists as to whether and how much third-party payers will cover newly approved drugs, which in turn will put pressure on the pricing of drugs. Due to the volatility in the current economic and market dynamics, we are unable to predict the impact of any unforeseen or unknown legislative, regulatory, third-party payer or policy actions, which may include cost containment and healthcare reform measures. These policy actions could have a material adverse impact on our business, financial condition and results of operations.

Pricing for, and patient access to, pharmaceutical products has come under increasing attention and scrutiny by governments, legislative bodies and enforcement agencies. These activities may result in actions that have the effect of reducing our revenue or harming our business or reputation.

There have been several recent U.S. Congressional inquiries, hearings and proposed and enacted federal legislation designed to, among other things: reduce or limit the prices of drugs and make them more accessible and affordable for patients; reform the structure and financing of public health insurance pharmaceutical benefits, most importantly, Medicare and Medicaid, including through increasing manufacturer contributions to offset Medicare beneficiary costs; facilitate value-based arrangements between manufacturers and payers; bring more transparency to drug pricing rationale and methodologies; and expedite the development and approval of generic drugs and biosimilars. It is entirely unclear what, if any, legislative, regulatory and/or administrative measures that impact the biopharmaceutical industry will eventually be implemented; however, both Congress, and the Trump Administration have indicated that they will continue to seek reforms in this area. While we cannot know the final form of any such reforms, some of the pending legislative proposals, such as those incorporating International Pricing Index models, if enacted, would likely have a significant and far-reaching impact on the biopharmaceutical industry and therefore also likely have a material adverse impact on our business, financial condition and results of operations.

In connection with its evaluation of proposals concerning the pricing of, and access to, pharmaceutical products, many companies in our industry have received governmental requests for documents and information relating to drug pricing and patient support programs. Requests take various forms, including through a Congressional inquiry (e.g., from the U.S. Senate Finance Committee) or a subpoena from the U.S. Department of Justice. We could receive a similar request, which would require us to incur significant expense and result in distraction for our management team. Additionally, to the extent there are findings, or even allegations, of improper conduct on the part of the company, these findings could further harm our business, reputation and/or prospects. It is possible that these inquiries could result in: negative publicity or other negative actions that could harm our reputation; changes in our product pricing and distribution strategies; reduced demand for our approved products; and/or reduced reimbursement of our approved products, including by federal health care programs such as Medicare and Medicaid as well as state health care programs.

At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, to encourage importation from other countries and bulk purchasing, including the National Medicaid Pooling Initiative. With respect to drug pricing transparency, for example, in October 2017, Jerry Brown, the Governor of California at the time, signed SB-17, which requires, among other provisions, pharmaceutical manufacturers to provide notice of price increases above a defined threshold to certain purchasers and related reports to the government. SB-17 is currently subject to challenge, but in the meantime, manufacturers must comply with its requirements. It is possible that laws such as SB-17 will encourage federal and state healthcare programs to reduce the amount of reimbursements they provide for prescription drugs, and any reduction in reimbursement from these government healthcare programs may result in a similar reduction in payments from private payers. We also believe that pricing transparency requirements, such as the requirement for us, in certain circumstances, to provide lengthy notices of price increases to purchasers, may influence customer ordering patterns for CABOMETYX and COMETRIQ, and that this, in turn, may increase the volatility of our revenues as a reflection of changes in inventory volumes. Therefore, the implementation of these cost-containment measures or other healthcare reforms may result in fluctuations in our results of operations and limit our ability to generate product revenue or commercialize our current products and/or those for which we may receive regulatory approval in the future.

Further, in some foreign countries, particularly in the EU, the pricing and reimbursement of prescription pharmaceuticals is subject to governmental control under the respective national health system. In these EU countries, pricing and reimbursement negotiations with governmental authorities or payers can take six to 12 months or longer after the initial marketing authorization is granted for a product, or after the marketing authorization for a new indication is granted. This can substantially delay broad availability of the product. To obtain reimbursement and/or pricing approval in some countries, our collaboration partner, Ipsen, may be required to conduct a study that seeks to establish the cost effectiveness of CABOMETYX compared with other available established therapies. The conduct of such a study could also result in delays in the commercialization of CABOMETYX. Additionally, cost-control initiatives, increasingly based on affordability, could decrease the price we and our collaboration partner, Ipsen, might establish for CABOMETYX, which would result in lower license revenues to us.

Enhanced governmental and private scrutiny over, or investigations or litigation involving, pharmaceutical manufacturer donations to patient assistance programs offered by charitable foundations may require us to modify our programs and could negatively impact our business practices, harm our reputation, divert the attention of management and increase our expenses.

To help patients afford our products, we have a patient assistance program and also occasionally make donations to independent charitable foundations that help financially needy patients. These types of programs designed to assist patients with affording pharmaceuticals have become the subject of scrutiny. In recent years, some pharmaceutical manufacturers were named in class action lawsuits challenging the legality of their patient assistance programs and support of independent charitable patient support foundations under a variety of federal and state laws. Notably, certain of these manufacturers have entered into significant monetary or other settlements with the federal government, including entering into Corporate Integrity Agreements, to resolve allegations that they paid kickbacks through independent charitable foundations. Our patient assistance program and support of independent charitable foundations could become the target of similar litigation. Though not affecting CABOMETYX, at least one insurer also has directed its network pharmacies to no longer accept manufacturer co-payment coupons for certain specialty drugs the insurer identified. In addition, certain state and federal enforcement authorities and members of Congress have initiated inquiries about co-pay assistance programs. Some state legislatures have also been considering proposals that would restrict or ban co-pay coupons.

In addition, there has been regulatory review, Congressional interest and enhanced government scrutiny of donations by pharmaceutical companies to patient assistance programs operated by charitable foundations. The U.S. Department of Health and Human Services Office of Inspector General has established specific guidelines permitting pharmaceutical manufacturers to make donations to charitable organizations who provide co-pay assistance to Medicare patients, provided that such organizations are bona fide charities, are entirely independent of and not controlled by the manufacturer, provide aid to applicants on a first-come basis according to consistent financial criteria, and do not link aid to use of a donor's product. If we are deemed not to have complied with laws or regulations in the operation of these programs, we could be subject to damages, fines, penalties or other criminal, civil or administrative sanctions or enforcement actions. Further, numerous organizations, including pharmaceutical manufacturers, have received subpoenas from the U.S. Department of Justice and other enforcement authorities seeking information related to their patient assistance programs and support, and, as noted above, certain of these organizations have entered into, or have otherwise agreed to, significant civil settlements with applicable enforcement authorities. Additionally, in March 2019, the Senate Finance Committee launched an inquiry into alleged ties between pharmaceutical manufacturers and patient assistance charitable foundations. It is possible that future legislation may propose establishing requirements that affect pharmaceutical manufacturers and such charitable organizations. We cannot ensure that our compliance controls, policies and procedures will be sufficient to protect against acts of our employees, business partners or vendors that may violate the laws or regulations of the jurisdictions in which we operate. Regardless of whether we have complied with the law, a government investigation could negatively impact our business practices, harm our reputation, divert the attention of management and increase our expenses.

We are subject to laws and government regulations relating to privacy and data protection that have required us to modify certain of our policies and procedures with respect to the collection and processing of personal data, and future laws and regulations may cause us to incur additional expenses or otherwise limit our ability to collect and process personal data. Failure to maintain compliance with these regulations could jeopardize certain business transactions and create additional liabilities for us.

The legislative and regulatory landscape for privacy and data protection in the U.S. continues to evolve, and there has been an increasing focus on privacy and data protection, including state security breach notification laws, state health information privacy laws and federal and state consumer protection laws governing the collection, use and disclosure of personal information. For example, in June 2018, Jerry Brown, the Governor of California at the time, signed into law the California Consumer Privacy Act of 2018 (CCPA), which was subsequently amended, and which goes into operation on January 1, 2020 and will give California residents expanded privacy rights and protections and will provide for civil penalties for violations and statutory damages under a private right of action for data breaches. There are similar legislative proposals being advanced in other states, and Congress is also considering federal privacy legislation. In addition, most healthcare providers who are expected to prescribe our products, and from whom we obtain patient health information, are subject to privacy and security requirements under HIPAA. Although we are not directly subject to HIPAA, we could be subject to criminal penalties if we knowingly encourage a HIPAA-covered entity (or its business associate) to use or disclose individually identifiable health information in a manner not authorized or permitted by HIPAA. Other countries also have, or are developing, laws governing the collection, use and transmission of personal information. For example, the EU General Data Protection Regulation 2016/679 (GDPR), which became enforceable on May 25, 2018, regulates the processing of personal data of individuals within the EU, even if, under certain circumstances, that processing occurs outside the EU, and also restricts transfers of such data to countries outside of the EU, including the United States. Switzerland is updating the Swiss Data Protection Act, and updates to data protection laws in other countries may occur in due course. In connection with these new laws, in particular the CCPA and GDPR, we have modified or are reviewing certain of our policies and procedures with respect to the collection and processing of personal data. We will continue to review all future privacy and other regulations implemented pursuant to the CCPA, GDPR and other applicable laws to assess whether additional procedural safeguards are warranted, which may cause us to incur additional expenses or otherwise limit our ability to collect and process personal data. Failure to provide adequate privacy or data security protections or maintain compliance with these laws and regulations could jeopardize certain domestic and cross-border business transactions and create additional liabilities for us, including the imposition of sanctions or other penalties, litigation or an increase in our cost of doing business.

If competitors use litigation and regulatory means to obtain approval for generic versions of our marketed products, our business will suffer.

Under the FDCA, the FDA can approve an ANDA for a generic version of a branded drug without the applicant undertaking the human clinical testing necessary to obtain approval to market a new drug. The FDA can also approve an NDA under section 505(b)(2) of the FDCA that relies in whole or in part on the agency's findings of safety and/or

effectiveness for a previously approved drug. Both the ANDA and 505(b)(2) processes are discussed in more detail under “Item 1. Business-Government Regulation-The Hatch-Waxman Act” in our Annual Report on Form 10-K for the year ended December 31, 2018 filed with the SEC on February 22, 2019. In either case, if an ANDA or 505(b)(2) applicant submits an application referencing one of our marketed products prior to the expiry of one or more our *Orange Book*-listed patents for the applicable product, we may engage in litigation with the potential generic competitor to protect our patent rights, which will require us to incur significant expense and result in distraction for our management team, and could also have an adverse impact on our stock price. If one or more companies receive FDA approval of an ANDA or 505(b)(2) NDA, it is possible that such company or companies could introduce generic versions of our marketed products before our patents expire if they do not infringe our patents or if it is determined that our patents are invalid or unenforceable. In particular, we expect generic cabozantinib products would be offered at a significantly lower price compared to our marketed cabozantinib products. Regardless of the regulatory approach, whether through the ANDA or 505(b)(2) pathways or otherwise, the introduction of a generic version of any of our marketed products could result in significant decreases in the revenue derived from sales of our marketed products and thereby materially harm our business and financial condition.

In October 2019, we received a notice letter regarding an ANDA submitted to the FDA by MSN, requesting approval to market a generic version of CABOMETYX tablets. The notice letter included a Paragraph IV certification with respect to our U.S. Patent Nos. 8,877,776, 9,724,342, 10,034,873 and 10,039,757, which are listed in the *Orange Book.* MSN’s notice letter does not provide a Paragraph IV certification against the CABOMETYX composition of matter patent, U.S. Patent No. 7,579,473, which expires on August 16, 2026. On October 29, 2019, we filed a complaint for patent infringement against MSN asserting U.S. Patent No. 8,877,776 in the Delaware District Federal Court arising from MSN’s ANDA filing with the FDA. Based on the information we have received to date, our complaint does not allege infringement of U.S. Patent Nos. 9,724,342, 10,034,873 and 10,039,757. We are seeking, among other relief, an order that the effective date of any FDA approval of the ANDA would be a date no earlier than the expiration of U.S. Patent No. 8,877,776 on October 8, 2030 and equitable relief enjoining MSN from infringing this patent. We cannot assure you that the lawsuit will prevent the introduction of a generic version of CABOMETYX for any particular length of time, or at all. If MSN’s ANDA is approved, and a generic version of CABOMETYX is introduced following the expiration of our composition of matter patent in 2026, our sales of CABOMETYX would be adversely affected. In addition, we cannot predict what additional ANDAs could be filed by MSN or other potential generic competitors requesting approval to market generic forms of cabozantinib, including against the cabozantinib composition of matter patent that MSN has not challenged, which would require us to incur significant additional expense and result in distraction for our management team, and if approved, result in significant decreases in the revenue derived from sales of our marketed products and thereby materially harm our business and financial condition.

Clinical testing of cabozantinib for new indications, or of new potential product candidates, is a lengthy, costly, complex and uncertain process and may fail to demonstrate safety and efficacy.

Clinical trials are inherently risky and may reveal that cabozantinib, despite its approval for certain indications, or a new potential product candidate, is ineffective or has an unacceptable safety profile with respect to an intended use. Such results may significantly decrease the likelihood of regulatory approval in a particular indication. Moreover, the results of preliminary studies do not necessarily predict clinical or commercial success, and later stage clinical trials may fail to confirm the results observed in earlier stage trials or preliminary studies. Although we have established timelines for manufacturing and clinical development of cabozantinib and our other product candidates based on existing knowledge of our compounds in development and industry metrics, we may not be able to meet those timelines.

We may experience numerous unforeseen events, during or as a result of clinical testing, that could delay or prevent commercialization of cabozantinib in new indications, or of our other product candidates, including:

- lack of efficacy or a tolerable safety profile;
- negative or inconclusive clinical trial results that require us to conduct further testing or to abandon projects that we had expected to be promising;
- discovery or commercialization by our competitors of other compounds or therapies that show significantly improved safety or efficacy compared to cabozantinib or our other product candidates;
- our inability to identify and maintain a sufficient number of trial sites, many of which may already be engaged in other clinical trial programs;
- lower-than-anticipated patient registration or enrollment in our clinical testing, resulting in the delay or cancellation of clinical testing;
- failure by our collaborators to provide us with an adequate and timely supply of product that complies with the applicable quality and regulatory requirements for a combination trial;

- failure of our third-party contract research organizations or investigators to satisfy their contractual obligations, including deviating from any trial protocols; and
- withholding of authorization from regulators or institutional review boards to commence or conduct clinical trials of cabozantinib or another product candidate, or delays, suspensions or terminations of clinical research for various reasons, including noncompliance with regulatory requirements or a determination by these regulators and institutional review boards that participating patients are being exposed to unacceptable health risks.

If we were to have significant delays in or termination of the clinical testing of cabozantinib or our other product candidates as a result of any of the events described above or otherwise, our expenses could increase and our ability to generate revenues could be impaired, either of which could adversely impact our financial results. Furthermore, we rely on our clinical and commercial collaboration partners to fund a significant portion of the clinical development of cabozantinib and our product candidates. Should one or all of our collaboration partners decline to support future planned clinical trials, we will be entirely responsible for the financial obligations associated with the further development of cabozantinib or our other product candidates and, as a result, we may be unable to execute our current business plans, which could have a material adverse impact on our business, financial condition and results of operations.

We may not be able to rapidly or effectively continue the further development of cabozantinib or our other product candidates or meet current or future requirements of the FDA or regulatory authorities in other jurisdictions, including those identified based on our discussions with the FDA or such other regulatory authorities. Our planned clinical trials may not begin on time, or at all, may not be completed on schedule, or at all, may not be sufficient for registration of our product candidates or may not result in an approvable product.

The duration and the cost of clinical trials vary significantly as a result of factors relating to the clinical trial, including, among others:

- characteristics of the product candidate under investigation;
- the number of patients who ultimately participate in the clinical trial;
- the duration of patient follow-up that is appropriate in view of the results or required by regulatory authorities;
- the number of clinical sites included in the trials; and
- the length of time required to enroll suitable patient subjects.

Any delay could limit our ability to generate revenues, cause us to incur additional expense and cause the market price of our common stock to decline significantly. Our partners under our collaboration agreements may experience similar risks with respect to the compounds we have out-licensed to them. If any of the events described above were to occur with such programs or compounds, the likelihood of receipt of milestones and royalties under such collaboration agreements could decrease.

The regulatory approval processes of the FDA and comparable foreign regulatory authorities are lengthy and uncertain, and may not result in regulatory approvals for cabozantinib or our other product candidates, which could have a material adverse impact on our business, financial condition and results of operations.

The activities associated with the research, development and commercialization of cabozantinib and our other product candidates are subject to extensive regulation by the FDA and other regulatory agencies in the U.S. and by comparable authorities in other countries. The process of obtaining regulatory approvals in the U.S. and other foreign jurisdictions is expensive, and often takes many years, if approval is obtained at all, and can vary substantially based upon the type, complexity and novelty of the product candidates involved. For example, before an NDA or supplemental New Drug Application (sNDA) can be submitted to the FDA, or a marketing authorization application to the European Medicines Agency or any application or submission to regulatory authorities in other jurisdictions, the product candidate must undergo extensive clinical trials, which can take many years and require substantial expenditures.

Any clinical trial may fail to produce results satisfactory to the FDA or regulatory authorities in other jurisdictions. For example, the FDA could determine that the design of a clinical trial is inadequate to produce reliable results. The regulatory process also requires preclinical testing, and data obtained from preclinical and clinical activities are susceptible to varying interpretations. The FDA has substantial discretion in the approval process and may refuse to approve any NDA or sNDA and decide that our data is insufficient for approval and require additional preclinical, clinical or other studies. For

example, varying interpretations of the data obtained from preclinical and clinical testing could delay, limit or prevent regulatory approval of cabozantinib for any individual, additional indications.

In addition, delays or rejections may be encountered based upon changes in regulatory policy for product approval during the period of product development and regulatory agency review, which may cause delays in the approval or rejection of an application for cabozantinib or for our other product candidates.

Even if the FDA or a comparable authority in another jurisdiction approves cabozantinib for one or more indications beyond advanced RCC, previously treated HCC and MTC, or approves one of our other product candidates, such approval may be limited, imposing significant restrictions on the indicated uses, conditions for use, labeling, distribution, advertising, promotion, marketing and/or production of the product and could impose ongoing requirements for post-approval studies, including additional research and development and clinical trials. For example, in connection with the FDA's approval of COMETRIQ for the treatment of progressive, metastatic MTC in November 2012, we are subject to a post-marketing requirement to conduct a clinical study comparing a lower dose of cabozantinib to the approved dose of 140 mg daily cabozantinib in progressive, metastatic MTC. Failure to complete any post-marketing requirements in accordance with the timelines and conditions set forth by the FDA could significantly increase costs or delay, limit or eliminate the commercialization of cabozantinib. Further, these agencies may also impose various administrative, civil or criminal sanctions for failure to comply with regulatory requirements, including withdrawal of product approval.

We may be unable to expand our development pipeline, which could limit our growth and revenue potential.

Our business is focused on the discovery, development and commercialization of new medicines for difficult-to-treat cancers. In this regard, we are pursuing internal drug discovery efforts with the goal of identifying new product candidates to advance into clinical trials. Internal discovery efforts to identify new product candidates require substantial technical, financial and human resources. These internal discovery efforts may initially show promise in identifying potential product candidates, yet ultimately fail to yield product candidates for clinical development for a number of reasons. For example, potential product candidates may, on further study, be shown to have inadequate efficacy, harmful side effects, suboptimal pharmaceutical profiles or other characteristics suggesting that they are unlikely to be commercially viable products.

Apart from our internal discovery efforts, our strategy to expand our development pipeline is also dependent on our ability to successfully identify and acquire or in-license relevant product candidates. However, the in-licensing and acquisition of product candidates is a highly competitive area, and many other companies are pursuing the same or similar product candidates to those that we may consider attractive. In particular, larger companies with more well-established and diverse revenue streams may have a competitive advantage over us due to their size, financial resources and more extensive clinical development and commercialization capabilities. Furthermore, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. We may also be unable to in-license or acquire additional relevant product candidates on acceptable terms that would allow us to realize an appropriate return on our investment. If we are unable to develop suitable product candidates through internal discovery efforts or if we are unable to successfully obtain rights to suitable product candidates, our business and prospects for growth could suffer. Even if we succeed in our efforts to obtain rights to suitable product candidates, the competitive business environment may result in higher acquisition or licensing costs, and our investment in these potential products will remain subject to the inherent risks associated with the development and commercialization of new medicines. In certain circumstances, we may also be reliant on the licensor for the continued development of the in-licensed technology and their efforts to safeguard their underlying intellectual property.

With respect to acquisitions, we may not be able to integrate the target company successfully into our existing business, maintain the key business relationships of the target, or retain key personnel of an acquired business. Furthermore, we could assume unknown or contingent liabilities or incur unanticipated expenses. Any acquisitions or investments made by us also could result in our spending significant amounts, issuing dilutive securities, assuming or incurring significant debt obligations and contingent liabilities, incurring large one-time expenses and acquiring intangible assets that could result in significant future amortization expense and significant write-offs, any of which could harm our operating results.

Increasing use of social media could give rise to liability and result in harm to our business.

We and our employees are increasingly utilizing social media tools and our website as a means of communication. For example, we use Facebook and Twitter to communicate with the medical community and the investing public, although we do not intend to disclose material, nonpublic information through these means. Despite our efforts to monitor evolving

social media communication guidelines and comply with applicable laws and regulations, there is risk that the unauthorized use of social media by us or our employees to communicate about our products or business, or any inadvertent disclosure of material, nonpublic information through these means, may cause us to be found in violation of applicable laws and regulations, which may give rise to liability and result in harm to our business. In addition, there is also risk of inappropriate disclosure of sensitive information, which could result in significant legal and financial exposure and reputational damages that could potentially have a material adverse impact on our business, financial condition and results of operations. Furthermore, negative posts or comments about us or our products on social media could seriously damage our reputation, brand image and goodwill.

Risks Related to Our Capital Requirements, Accounting and Financial Results

We may be unable to maintain or increase profitability.

Although we reported net income of $252.3 million and $690.1 million for the nine months ended September 30, 2019 and the year ended December 31, 2018, respectively, we may not be able to maintain or increase profitability on a quarterly or annual basis, and we are unable to predict the extent of long-range future profits or losses. The amount of our net profits or losses will depend, in part, on: the level of sales of CABOMETYX and COMETRIQ in the U.S.; achievement of clinical, regulatory and commercial milestones, if any, under our collaboration agreements with Ipsen and Takeda; the amount of royalties from sales of CABOMETYX and COMETRIQ outside of the U.S. under our collaboration agreements with Ipsen and Takeda; other collaboration revenues; and the level of our expenses, including development and commercialization activities for cabozantinib and any pipeline expansion efforts. We expect to continue to spend significant additional amounts to fund the continued development of cabozantinib for additional indications and the commercialization of our approved products. In addition, we intend to continue to expand our product pipeline through our internal drug discovery efforts and the execution of strategic transactions that align with our oncology drug development expertise, which efforts could involve substantial costs. To offset these costs, we will need to generate substantial revenues. If these costs exceed our expectations, or we fail to achieve anticipated revenue targets, the market value of our common stock may decline.

If additional capital is not available to us when we need it, we may be unable to expand our product offerings and maintain business growth.

As of September 30, 2019, we had $1,248.4 million in cash and investments as compared to $851.6 million as of December 31, 2018. Our business operations grew substantially during 2018 and the first nine months of 2019. In order to maintain business growth, we plan to continue to execute on our U.S. commercialization plans for CABOMETYX, while reinvesting in our product pipeline through the continued development of cabozantinib and our other product candidates, internal discovery activities and the execution of strategic transactions. Our ability to achieve these business objectives will depend on many factors including but not limited to:

- the commercial success of both CABOMETYX and COMETRIQ and the revenues we generate from those approved products;
- costs associated with maintaining our expanded sales, marketing, market access, medical affairs and product distribution capabilities for CABOMETYX and COMETRIQ;
- the achievement of stated regulatory and commercial milestones and royalties paid under our collaboration agreements with Ipsen and Takeda;
- the commercial success of and revenues generated by products marketed under our collaboration and license agreements;
- future clinical trial results;
- the level of our investments in the expansion of our pipeline through internal drug discovery and business development activities;
- our ability to control costs;
- the number and size of clinical trials we conduct and the cost of drug supply for such clinical trials evaluating our products with other therapeutic agents;
- trends and developments in the pricing of oncologic therapeutics in the U.S. and abroad, especially in the EU;
- scientific developments in the market for oncologic therapeutics and the timing of regulatory approvals for competing oncologic therapies; and

- the filing, maintenance, prosecution, defense and enforcement of patent claims and other intellectual property rights.

Our commitment of cash resources to CABOMETYX and the reinvestment in our product pipeline through the continued development of cabozantinib and increasing internal drug discovery activities, as well as through the execution of strategic transactions, could require us to obtain additional capital. We may seek such additional capital through some or all of the following methods: corporate collaborations; licensing arrangements; and public or private debt or equity financings. Our ability to obtain additional capital may depend on prevailing economic conditions and financial, business and other factors beyond our control. Disruptions in the U.S. and global financial markets, including any disruptions resulting from government shutdowns, the uncertainty surrounding the date and the terms of the pending Brexit, rising interest rate environments, increased or changed tariffs and trade restrictions or otherwise, may adversely impact the availability and cost of credit, as well as our ability to raise money in the capital markets. Economic and capital markets conditions have been, and continue to be, volatile. Continued instability in these market conditions may limit our ability to access the capital necessary to fund and grow our business. Accordingly, we do not know whether additional capital will be available when needed, or that, if available, we will obtain additional capital on terms favorable to us or our stockholders. If we are unable to raise additional funds when we need them, we may be unable to expand our product offerings and maintain business growth, which could have a material adverse impact on our business, financial condition and results of operations.

Our financial results are impacted by management's selection of accounting methods, certain assumptions and estimates and future changes in accounting standards.

Our accounting policies and methods are fundamental to how we record and report our financial condition and results of operations. Our management must exercise judgment in selecting and applying many of these accounting policies and methods so they comply with generally accepted accounting principles and reflect management's judgment of the most appropriate manner to report our financial condition and results of operations. In some cases, management must select the accounting policy or method to apply from two or more alternatives, any of which may be reasonable under the circumstances, yet may result in our reporting materially different results than would have been reported under a different alternative.

Certain accounting policies are critical to the presentation of our financial condition and results of operations. The preparation of our financial statements requires us to make significant estimates, assumptions and judgments that affect the amounts of assets, liabilities, revenues and expenses and related disclosures. We believe our critical accounting policies relating to revenue recognition, clinical trial accruals, inventory and stock-based compensation reflect the more significant estimates and judgments used in the preparation of our Condensed Consolidated Financial Statements. Although we base our estimates and judgments on historical experience, our interpretation of existing accounting literature and on various other assumptions that we believe to be reasonable under the circumstances, if our assumptions prove to be materially incorrect, actual results may differ materially from these estimates.

In addition, future changes in financial accounting standards may cause adverse, unexpected revenue fluctuations and affect our financial position or results of operations. New pronouncements from the Financial Accounting Standards Board (FASB) and varying interpretations of pronouncements have occurred with frequency in the past and are expected to occur again in the future and, as a result, we may be required to make changes in our accounting policies. Those changes could adversely affect our reported revenues and expenses, our other results of operations or our current financial position.

The 2017 comprehensive tax reform bill could have a material adverse impact on our business, financial condition and results of operations.

The Tax Cuts and Jobs Act could be amended or subject to technical correction, which could change the financial impacts that were recorded at December 31, 2018 and September 30, 2019, or are expected to be recorded in future periods. Additionally, further guidance may be forthcoming from the FASB and SEC, as well as regulations, interpretations and rulings from federal and state tax agencies, which could result in additional impacts, possibly with retroactive effect.

Our effective tax rate may fluctuate, and we may incur obligations in tax jurisdictions in excess of accrued amounts.

We are subject to income tax in the U.S. as well as numerous U.S. states and territories, municipalities, and other local jurisdictions. As a result, our effective tax rate is derived from various factors including the mix of earnings and applicable tax rates in the various places that we operate, the accounting for stock options and share based awards, and research and development spending. In preparing our financial statements, we estimate the amount of tax that will become

payable in each jurisdiction. Our effective tax rate, however, may be different than experienced in the past due to numerous factors, including changes in tax laws such as the passage of the Tax Cuts and Jobs Act, changes in the mix of our earnings from state to state, the results of examinations and audits of our tax filings, or our inability to secure or sustain acceptable agreements with tax authorities. Any of these factors could cause our effective tax rate to fluctuate.

Our ability to use net operating losses and tax credits to offset future taxable income may be subject to limitations.

As of December 31, 2018, we had federal and state net operating loss carryforwards of approximately $1.1 billion. The federal and state net operating loss carryforwards will begin to expire, if not utilized, beginning in 2031 for federal income tax purposes and 2028 for California state income tax purposes. These net operating loss carryforwards could expire unused and be unavailable to offset future income tax liabilities. Under the Internal Revenue Code (the Code) and similar state provisions, certain substantial changes in our ownership could result in an annual limitation on the amount of net operating loss carryforwards that can be utilized in future years to offset future taxable income. The annual limitation may result in the expiration of net operating losses and credit carryforwards before utilization. Based on our review and analysis, we concluded, as of December 31, 2018, that an ownership change, as defined under Section 382, had not occurred. However, if there is an ownership change under Section 382 of the Code in the future, we may not be able to utilize a material portion of our net operating losses. Furthermore, our ability to utilize our net operating losses is conditioned upon our maintaining profitability and generating U.S. federal taxable income.

The transition away from the London Interbank Offered Rate (LIBOR) could affect the value of certain short-term investments, as well as our ability to seek additional debt financing.

Actions by governmental entities may impact certain financial instruments in which we have invested or may invest in the future. For example, some of these financial instruments may rely in some fashion upon LIBOR, which is an average interest rate, determined by the ICE Benchmark Administration, that banks charge one another for the use of short-term money. The UK's Financial Conduct Authority, which regulates LIBOR, has announced plans to phase out the use of LIBOR by the end of 2021. While only a small percentage of our short-term investments include financial instruments subject to LIBOR, and while we do not currently have any outstanding debt that is subject to LIBOR, there remains uncertainty regarding the future utilization of LIBOR and the nature of any replacement rate, and any potential effects of the transition away from LIBOR on certain instruments in to which we may enter in the future are not known. The transition process may involve, among other things, increased volatility or illiquidity in markets for instruments that currently rely on LIBOR. The transition may also result in reductions in the value of certain instruments or the effectiveness of related transactions such as hedges, increased borrowing costs, uncertainty under applicable documentation, or difficult and costly consent processes. Any such effects of the transition away from LIBOR, as well as other unforeseen effects, result in expenses, difficulties, complications or delays in connection with future financing efforts, which could have a material adverse impact on our business, financial condition and results of operations.

The UK’s pending withdrawal from the EU may have a negative effect on global economic conditions, financial markets and our business.

Brexit has created significant uncertainty concerning the terms of the UK withdrawal from the EU and the future relationship between the UK and the EU. On April 11, 2019, the European Council agreed at its Special Meeting to extend the UK’s departure date to October 31, 2019, and then on October 28, 2019, the European Council informally agreed to further extend the departure date to January 31, 2020, though this latest extension allows the UK to withdraw from the EU prior to January 31, 2020 if a transition agreement is ratified by both the UK Parliament and the European Parliament. However, despite numerous proposals to provide for a more fair and reasonable exit, both the EU and the UK are preparing for a “no deal” scenario in which the UK will leave the EU as a “third country” without the benefit of any transition arrangements. In addition, the resignation of Theresa May and election of Boris Johnson as UK Prime Minister has further increased this uncertainty, since the UK’s future position on Brexit will depend significantly upon the policies and political decisions of the new administration under the premiership of Prime Minister Johnson.

The “no deal” scenario has been recognized by the policy makers in the UK and the EU as likely to cause significant market and economic disruption. The effects of Brexit will depend on whether the UK retains access to EU markets either during a transitional period or more permanently. Brexit could disrupt the single internal market principle, which ensures the free movement of goods, services and people between the UK and the EU, undermine bilateral cooperation in key policy areas and significantly disturb trade relationships between the UK and the EU. In addition, Brexit could lead to legal

uncertainty and potentially divergent national laws and regulations as the UK determines which EU laws to replace, amend or adopt.

Given the lack of comparable precedent, it is unclear what financial, trade, regulatory and legal implications the withdrawal of the UK from the EU would have, and how such withdrawal would affect us. For example, we rely on third-party contract manufacturing organization facilities located in the UK, responsible for packaging, labeling, storing and subsequently distributing supplies of our product to the EU. Any tariffs, differing regulatory requirements and other restrictions on the free movement of goods between the UK and the EU that result from Brexit may have an adverse impact on this part of our supply chain. Trade restrictions, changes to the regulatory approval or drug cost reimbursement systems, and additional administrative costs may impede the ability of our collaborator Ipsen to market our products in Europe. Furthermore, the announcement of Brexit caused significant volatility in global stock markets and currency exchange rate fluctuations, and the pending withdrawal of the UK from the EU may also adversely affect European and global economic and market conditions, which may cause third-party payers, including governmental organizations, to closely monitor their costs and reduce their spending budgets, and which could contribute to instability in the global financial and foreign exchange markets. Any of these effects of Brexit could have a material adverse impact on our business, financial condition and results of operations.

Risks Related to Our Relationships with Third Parties

We are dependent upon our collaborations with major companies, which subject us to a number of risks.

We have established collaborations with leading pharmaceutical and biotechnology companies, including, Ipsen, Takeda, Genentech, Daiichi Sankyo and BMS for the development and ultimate commercialization of certain compounds generated from our research and development efforts. Our dependence on our relationships with collaborators for the development and commercialization of compounds subjects us to, a number of risks, including:

- our inability to control the amount and timing of resources that our collaborators or potential future collaborators will devote to the development or commercialization of drug candidates or to their marketing and distribution;
- the possibility that collaborators may delay clinical trials, fail to supply us on a timely basis with the product required for a combination trial, deliver product that fails to meet appropriate quality and regulatory standards and results in a market recall or withdrawal, provide insufficient funding for a clinical trial program, stop a clinical trial or abandon a drug candidate, repeat or conduct new clinical trials or require a new formulation of a drug candidate for clinical testing;
- disputes that may arise between us and our collaborators that result in the delay or termination of the research, development or commercialization of our drug candidates, or that diminish or delay receipt of the economic benefits we are entitled to receive under the collaboration, or that result in costly litigation or arbitration that diverts management's attention and resources;
- our inability to control the U.S. commercial resourcing decisions made and resulting costs incurred by Genentech for COTELLIC, which costs we are obligated to share, in part, under our collaboration agreement with Genentech;
- the possibility that our collaborators may experience financial difficulties;
- our collaborators' lack of success in their efforts to obtain regulatory approvals in a timely manner, or at all;
- our collaborators' failure to properly maintain or defend our intellectual property rights or their use of our intellectual property rights or proprietary information in such a way as to invite litigation that could jeopardize or invalidate our intellectual property rights or expose us to potential litigation;
- our collaborators' failure to comply with the terms of our collaboration agreements and related ancillary agreements;
- our collaborators' failure to comply with applicable healthcare laws, as well as established guidelines, laws and regulations related to Good Manufacturing Practice, Good Clinical Practice, Good Distribution Practice and Good Pharmacovigilance Practice;
- business combinations or significant changes in a collaborator's business strategy may adversely affect a collaborator's willingness or ability to complete its obligations under any arrangement;
- the possibility that our collaborators could independently move forward with competing drug candidates, developed either independently or in collaboration with others, including our competitors;

- our inability to enter into additional collaboration arrangements with third parties in an area or field of exclusivity;
- the possibility that future collaborators may require us to relinquish some important rights, such as marketing and distribution rights; and
- the possibility that collaborations may be terminated or allowed to expire, which would delay, and may increase the cost of, development of our drug candidates.

If any of these risks materialize, we may not receive collaboration revenues or otherwise realize anticipated benefits from such collaborations and our product development efforts could be delayed, all of which could have a material adverse impact on our business, financial condition and results of operations.

If third parties upon which we rely to perform clinical trials for cabozantinib in new indications or for new potential product candidates do not perform as contractually required or expected, we may not be able to obtain regulatory approval for or commercialize cabozantinib or other product candidates beyond currently approved indications.

We do not have the ability to conduct clinical trials for cabozantinib or for new potential product candidates independently, including our post-marketing commitments in connection with the approval of COMETRIQ in progressive, metastatic MTC, so we rely on independent third parties for the performance of these trials, such as the U.S. federal government (including NCI-CTEP, a department of the National Institutes of Health, with whom we have our CRADA), third-party contract research organizations, medical institutions, clinical investigators and contract laboratories to conduct our clinical trials. If these third parties do not successfully carry out their contractual duties or regulatory obligations or meet expected deadlines, or if the third parties must be replaced or if the quality or accuracy of the data they generate or provide is compromised due to their failure to adhere to our clinical protocols or regulatory requirements or for other reasons, our preclinical development activities or clinical trials may be extended, delayed, suspended or terminated, and we may not be able to obtain regulatory approval for or commercialize cabozantinib or other product candidates beyond currently approved indications. In addition, due to the complexity of our research initiatives, we may be unable to engage with third-party contract research organizations that have the necessary experience and sophistication to further our internal drug discovery efforts, which would impede our ability to identify, develop and commercialize our potential product candidates.

We lack internal manufacturing capabilities necessary for us to produce our products for clinical development or for commercial sale and rely on third parties to do so, which subjects us to various risks.

We do not own or operate manufacturing facilities, distribution facilities or resources for clinical or commercial production and distribution of our products. Instead, we have multiple contractual agreements in place with third-party contract manufacturing organizations that, on our behalf, manufacture clinical and commercial supplies of CABOMETYX and COMETRIQ. As our operations continue to expand through our clinical development and commercial progress, we are appropriately expanding our supply chain by entering into new agreements with additional third-party contract manufacturers and suppliers. This will continue for the foreseeable future for all of our product candidates, as well as our current and future commercial products.

To establish and manage our supply chain requires a significant financial commitment, the creation of numerous third-party contractual relationships and continued oversight of these third parties to ensure compliance with applicable regulatory requirements. Although we maintain significant resources to directly and effectively oversee the activities and relationships with the companies in our supply chain, we do not have direct control over their operations.

Our third-party contract manufacturers may not be able to produce material on a timely basis or manufacture material with the required quality standards, or in the quantity required to meet our development and commercial needs and applicable regulatory requirements. If our third-party contract manufacturers and suppliers do not continue to supply us with our products or product candidates in a timely fashion and in compliance with applicable quality and regulatory requirements, or if they otherwise fail or refuse to comply with their obligations to us under our supply and manufacturing arrangements, we may not have adequate remedies for any breach. Furthermore, their failure to supply us could impair or preclude our ability to meet our commercial supply requirements, or our supply needs for clinical trials, including those being conducted in collaboration with our partners, which could delay our product development efforts and have a material adverse impact on our business, financial condition and results of operations. Through our third-party contract manufacturers and data service providers, we have implemented product serialization designed to comply with the Drug Supply Chain Security Act (DSCSA), pursuant to which, subject to limited exemptions, all prescription pharmaceutical products manufactured and distributed in the U.S. were required to be serialized as of November 27, 2018. If our third-party

contract manufacturers or data service providers fail to support our efforts to continue to comply with DSCSA and any future federal or state electronic pedigree requirements, we may face legal penalties or be restricted from selling our products.

As part of our collaboration agreements with Ipsen and Takeda, we are responsible for the supply of CABOMETYX and COMETRIQ for global development and commercial purposes. Failure to meet our supply obligations under these collaboration agreements could impair our collaborators' ability to successfully develop and commercialize CABOMETYX and COMETRIQ and generate revenues to which we are entitled under the collaborations.

Our collaborations with outside scientific advisors and collaborators may be subject to restriction and change.

We work with scientific and clinical advisors and collaborators at academic and other institutions that assist us in our research and development efforts, including in drug discovery and preclinical development strategy. These advisors and collaborators are not our employees and may have other commitments or pursue other opportunities that limit their availability to us. Although these advisors and collaborators generally agree not to do competing work, if a conflict of interest between their work for us and their work for another entity arises, we may lose their services. There has also been increased scrutiny surrounding the disclosures of payments made to medical researchers from companies in the pharmaceutical industry, and it is possible that the academic and other institutions that employ these medical researchers may prevent us from engaging them as advisors and collaborators or otherwise limit our access to these experts, or that the advisors themselves may now be more reluctant to work with industry partners. In any of these circumstances, we may lose work performed by these advisors and collaborators or be unable to engage them in the first place, and our discovery and development efforts with respect to the matters on which they were working or would work in the future may be significantly delayed or otherwise adversely affected. In addition, although our advisors and collaborators sign agreements not to disclose our confidential information, it is possible that valuable proprietary knowledge may become publicly known through them.

Risks Related to Our Information Technology, Data Privacy and Intellectual Property

Data breaches, cyber-attacks and other failures in our information technology infrastructure could compromise our intellectual property or other sensitive information, damage our operations and cause significant harm to our business and reputation.

In the ordinary course of our business, we collect, maintain and transmit sensitive data on our networks and systems, including our intellectual property and proprietary or confidential business information (such as research data and personal information) and confidential information with respect to our customers, clinical trial patients and our business partners. We have also outsourced significant elements of our information technology infrastructure to third parties and, as a result, such third parties may or could have access to our confidential information. The secure maintenance of this information is critical to our business and reputation, and while we have enhanced and are continuing to enhance our cyber-security efforts commensurate with the growth and complexity of our business, our systems and those of third-party service providers may be vulnerable to a cyber-attack. In addition, we are heavily dependent on the functioning of our information technology infrastructure to carry out our business processes, such as external and internal communications or access to clinical data and other key business information. Accordingly, both inadvertent disruptions to this infrastructure and cyber-attacks could cause us to incur significant remediation or litigation costs, result in product development delays, disrupt key business operations and divert attention of management and key information technology resources.

Numerous companies have been subject to a wide variety of security incidents, cyber-attacks (including through use of ransomware) and other attempts to gain unauthorized access or otherwise compromise information technology systems. In fact, although the aggregate impact of cyber-attacks on our operations and financial condition has not been material to date, we have frequently been the target of threats of this nature and expect them to continue. These threats can come from a variety of sources, ranging in sophistication from an individual hacker to a state-sponsored attack, and such threats can also vary in motive (including corporate espionage). Cyber threats may be generic, or they may be custom-crafted against our information systems. Cyber-attacks continue to become more prevalent and much harder to detect and defend against. Our network and storage applications and those of our contract manufacturing organizations, contract research organizations or vendors may be subject to unauthorized access by hackers or breached due to operator error, malfeasance or other system disruptions. It is often difficult to anticipate or immediately detect such incidents and the damage caused by such incidents. These data breaches and any unauthorized access or disclosure of our information or intellectual property could compromise our intellectual property and expose our sensitive business information (or sensitive business information of our collaboration partners, which may lead to significant liability for us). A data security breach could also lead to public exposure of personal information of our clinical trial patients, employees or others. Any such event

that leads to unauthorized access, use or disclosure of personal information, including personal information regarding our patients or employees, could harm our reputation and business, compel us to comply with federal and/or state breach notification laws and foreign law equivalents (including the GDPR), subject us to investigations and mandatory corrective action, or otherwise subject us to liability under laws and regulations that protect the privacy and security of personal information, which could disrupt our business, result in increased costs or loss of revenue, and/or result in significant financial exposure. Furthermore, the costs of maintaining or upgrading our cyber-security systems (including the recruitment and retention of experienced information technology professionals, who are in high demand) at the level necessary to keep up with our expanding operations and prevent against potential attacks are increasing, and despite our best efforts, our network security and data recovery measures and those of our vendors may still not be adequate to protect against such security breaches and disruptions, which could cause material harm to our business, financial condition and results of operations.

If we are unable to adequately protect our intellectual property, third parties may be able to use our technology, which could adversely affect our ability to compete in the market.

Our success will depend in part upon our ability to obtain patents and maintain adequate protection of the intellectual property related to our technologies and products. The patent positions of biopharmaceutical companies, including our patent position, are generally uncertain and involve complex legal and factual questions. We will be able to protect our intellectual property rights from unauthorized use by third parties only to the extent that our technologies are covered by valid and enforceable patents or are effectively maintained as trade secrets. We will continue to apply for patents covering our technologies and products as, where and when we deem lawful and appropriate. However, these applications may be challenged or may fail to result in issued patents. Our issued patents have been and may in the future be challenged by third parties as invalid or unenforceable under U.S. or foreign laws, or they may be infringed by third parties, and we are from time to time involved in the defense and enforcement of our patents or other intellectual property rights in a court of law, U.S. Patent and Trademark Office *inter partes* review or reexamination proceeding, foreign opposition proceeding or related legal and administrative proceeding in the U.S. and elsewhere. The costs of defending our patents or enforcing our proprietary rights in post-issuance administrative proceedings and litigation can be substantial and the outcome can be uncertain. An adverse outcome may allow third parties to use our intellectual property without a license and/or allow third parties to introduce generic and other competing products, any of which would negatively impact our business. Third parties may also attempt to invalidate or design around our patents, or assert that they are invalid or otherwise unenforceable, and seek to introduce generic versions of cabozantinib. For example, in October 2019, we received a notice letter from MSN that it has filed an ANDA with the FDA for a generic version of CABOMETYX tablets, and we subsequently filed a patent infringement lawsuit against MSN on October 29, 2019. Should MSN or any other third parties receive FDA approval of an ANDA for a generic version of cabozantinib or a 505(b)(2) NDA with respect to cabozantinib, and if our patents covering cabozantinib were held to be invalid (or if such competing generic versions of cabozantinib were found to not infringe our patents), then they could introduce generic versions of cabozantinib or other such 505(b)(2) products before our patents expire, and the resulting generic competition would negatively affect our business, financial condition and results of operations. Please also see the risk factor entitled, "*If competitors use litigation and regulatory means to obtain approval for generic versions of our marketed products, our business will suffer.*"

In addition, because patent applications can take many years to issue, third parties may have pending applications, unknown to us, which may later result in issued patents that cover the production, manufacture, commercialization or use of our product candidates. Our existing patents and any future patents we obtain may not be sufficiently broad to prevent others from practicing our technologies or from developing competing products. Furthermore, others may independently develop similar or alternative technologies or design around our patents. In addition, our patents may be challenged or invalidated or may fail to provide us with any competitive advantages, if, for example, others were the first to invent or to file patent applications for closely related inventions.

The laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the U.S., and many companies have encountered significant problems in protecting and defending such rights in foreign jurisdictions. Many countries, including certain countries in Europe, have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties (for example, the patent owner has failed to "work" the invention in that country or the third party has patented improvements). In addition, many countries limit the enforceability of patents against government agencies or government contractors. In these countries, the patent owner may have limited remedies, which could materially diminish the value of the patent. Initiatives seeking compulsory licensing of life-saving drugs are also becoming increasingly prevalent in developing countries either through direct legislation or international initiatives. Governments in those developing countries could require that we grant compulsory licenses to allow competitors to manufacture and sell their own versions of our products or product candidates, thereby reducing our product sales.

Moreover, the legal systems of certain countries, particularly certain developing countries, do not favor the aggressive enforcement of patent and other intellectual property protection, which makes it difficult to stop infringement. We rely on trade secret protection for some of our confidential and proprietary information. We have taken security measures to protect our proprietary information and trade secrets, but these measures may not provide adequate protection. While we seek to protect our proprietary information by entering into confidentiality agreements with employees, collaborators and consultants, we cannot assure you that our proprietary information will not be disclosed, or that we can meaningfully protect our trade secrets. In addition, our competitors may independently develop substantially equivalent proprietary information or may otherwise gain access to our trade secrets.

Litigation or third-party claims of intellectual property infringement could require us to spend substantial time and money and adversely affect our ability to develop and commercialize products.

Our commercial success depends in part upon our ability to avoid infringing patents and proprietary rights of third parties and not to breach any licenses that we have entered into with regard to our technologies and the technologies of third parties. Other parties have filed, and in the future are likely to file, patent applications covering products and technologies that we have developed or intend to develop. If patents covering technologies required by our operations are issued to others, we may have to obtain licenses from third parties, which may not be available on commercially reasonable terms, or at all, and may require us to pay substantial royalties, grant a cross-license to some of our patents to another patent holder or redesign the formulation of a product candidate so that we do not infringe third-party patents, which may be impossible to accomplish or could require substantial time and expense.

In addition, third parties may obtain patents that relate to our technologies and claim that use of such technologies infringes on their patents or otherwise employs their proprietary technology without authorization. Regardless of their merit, such claims could require us to incur substantial costs, including the diversion of management and technical personnel, in defending ourselves against any such claims or enforcing our own patents. In the event that a successful claim of infringement is brought against us, we may be required to pay damages and obtain one or more licenses from these third parties, subjecting us to substantial royalty payment obligations. We may not be able to obtain these licenses on commercially reasonable terms, or at all. Defense of any lawsuit or failure to obtain any of these licenses could adversely affect our ability to develop and commercialize products.

We may be subject to damages resulting from claims that we, our employees or independent contractors have wrongfully used or disclosed alleged trade secrets of their former employers.

Many of our employees and independent contractors were previously employed at universities or other biotechnology, biopharmaceutical or pharmaceutical companies, including our competitors or potential competitors. We may be subject to claims that we or these employees or independent contractors have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers, or used or sought to use patent inventions belonging to their former employers. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and divert management's attention. If we fail in defending such claims, in addition to paying damages, we may lose valuable intellectual property rights or personnel. A loss of key research personnel and/or their work product could hamper or prevent our ability to develop or commercialize certain product candidates, which could severely harm our business.

Risks Related to Employees and Location

If we are unable to manage our growth, there could be a material adverse impact on our business, financial condition and results of operations, and our prospects may be adversely affected.

We have experienced and expect to continue to experience growth in the number of our employees and in the scope of our operations. This growth places significant demands on our management, operational and financial resources, and our current and planned personnel, facilities, systems, procedures and controls may not be adequate to support our growth. To effectively manage our growth, we must continue to improve existing, and implement new, facilities, operational and financial systems, and procedures and controls, as well as expand, train and manage our growing employee base, and there can be no assurance that we will effectively manage our growth without experiencing operating inefficiencies or control deficiencies. We expect that we may need to increase our management personnel to oversee our expanding operations, and recruiting and retaining qualified individuals is difficult. If we are unable to manage our growth effectively, or are unsuccessful in recruiting qualified management personnel, there could be a material adverse impact on our business, financial condition and results of operations, and our prospects may be adversely affected.

The loss of key personnel or the inability to retain and, where necessary, attract additional personnel could impair our ability to operate and expand our operations.

We are highly dependent upon the principal members of our management, as well as clinical, commercial and scientific staff, the loss of whose services might adversely impact the achievement of our objectives. Also, we may not have sufficient personnel to execute our business plans. Retaining and, where necessary, recruiting qualified clinical, commercial and scientific personnel will be critical to support activities related to advancing the development program for cabozantinib and our other compounds, successfully executing upon our commercialization plan for cabozantinib and our internal proprietary research and development efforts. Competition is intense for experienced clinical, commercial, scientific and pharmaceutical operations personnel, and we may be unable to retain or recruit such personnel with the expertise or experience necessary to allow us to successfully develop and commercialize our products. Further, all of our employees are employed “at will” and, therefore, may leave our employment at any time.

Additionally, in the second quarter of 2018, we moved our corporate headquarters from South San Francisco, California to Alameda, California. This relocation may make it more difficult to retain certain employees, and any resulting loss of talent and need to recruit and train new employees could be disruptive to our business.

Our operations might be interrupted by the occurrence of a natural disaster or other catastrophic event.

Our headquarters in Alameda, California is located in the San Francisco Bay Area, and therefore our facilities are vulnerable to damage from earthquakes. We have limited earthquake insurance, which may not cover all of the damage we may suffer in the event of an earthquake. We are also vulnerable to damage from other types of disasters, including fires and floods, which have become a significant danger in California during recent years, as well as power loss, communications failures, terrorism and similar events, and any insurance we may maintain may be inadequate to cover our losses. If any disaster were to occur, our ability to operate our business at our facilities could be seriously, or potentially completely, impaired. In addition, a disaster could cause significant delays in our programs and make it difficult for us to recover due to the unique nature of our research activities. Accordingly, an earthquake or other disaster could materially and adversely harm our ability to conduct business.

Facility security breaches may disrupt our operations, subject us to liability and harm our operating results.

Any break-in or trespass at our facilities that results in the misappropriation, theft, sabotage or any other type of security breach with respect to our proprietary and confidential information, including research or clinical data, or that results in damage to our research and development equipment and assets, or that results in physical or psychological harm to any of our employees, could subject us to liability or otherwise have a material adverse impact on our business, financial condition and results of operations.

Risks Related to Environmental and Product Liability

We use hazardous chemicals and biological materials in our business. Any claims relating to improper handling, storage or disposal of these materials could be time consuming and costly.

Our research and development processes involve the controlled use of hazardous materials, including chemicals and biological materials. Our operations produce hazardous waste products. We cannot eliminate the risk of accidental contamination or discharge, or any resultant injury from these materials. Federal, state and local laws and regulations govern the use, manufacture, storage, handling and disposal of hazardous materials. We may face liability for any injury or contamination that results from our use or the use by third parties of these materials, and such liability may exceed our insurance coverage and our total assets. Compliance with environmental laws and regulations may be expensive, and current or future environmental regulations may impair our research, development and production efforts.

In addition, our collaborators may use hazardous materials in connection with our collaborative efforts. In the event of a lawsuit or investigation, we could be held responsible for any injury caused to persons or property by exposure to, or release of, any hazardous materials used by these parties. Further, we may be required to indemnify our collaborators against all damages and other liabilities arising out of our development activities or products produced in connection with these collaborations.

We face potential product liability exposure far in excess of our limited insurance coverage.

We may be held liable if any product we or our collaborators develop or commercialize causes injury or is found otherwise unsuitable during product testing, manufacturing, marketing or sale. Regardless of merit or eventual outcome,

product liability claims could result in decreased demand for our products and product candidates, injury to our reputation, withdrawal of patients from our clinical trials, product recall, substantial monetary awards to third parties and the inability to commercialize any products that we may develop in the future. These claims might be made directly by consumers, health care providers, pharmaceutical companies or others selling or testing our products. We have obtained limited product liability insurance coverage for our clinical trials and commercial activities for cabozantinib in the amount of $20.0 million per occurrence and $20.0 million in the aggregate. However, our insurance may not reimburse us or may not be sufficient to reimburse us for expenses or losses we may suffer. Moreover, if insurance coverage becomes more expensive, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to liability. On occasion, juries have awarded large judgments in class action lawsuits for claims based on drugs that had unanticipated side effects. In addition, the pharmaceutical, biopharmaceutical and biotechnology industries, in general, have been subject to significant medical malpractice litigation. A successful product liability claim or series of claims brought against us could harm our reputation and business and would decrease our cash reserves.

Risks Related to Our Common Stock

We expect that our quarterly results of operations will fluctuate, and this fluctuation could cause our stock price to decline, causing investor losses.

Our quarterly operating results have fluctuated in the past and are likely to fluctuate in the future. A number of factors, many of which we cannot control, could subject our operating results to volatility, including:

- the commercial success of both CABOMETYX and COMETRIQ and the revenues we generate from those approved products;
- customer ordering patterns for CABOMETYX and COMETRIQ, which may vary significantly from period to period as a result of multiple factors, including pricing information required to be disclosed by us pursuant to drug pricing transparency laws;
- the overall level of demand for CABOMETYX and COMETRIQ, including the impact of any competitive products and the duration of therapy for patients receiving CABOMETYX or COMETRIQ;
- the achievement of stated regulatory and commercial milestones and royalties paid under our collaboration agreements;
- the commercial success of and revenues generated by products marketed under our collaboration and license agreements, including COTELLIC and MINNEBRO;
- changes in the amount of deductions from gross sales, including changes to the discount percentage of rebates and chargebacks mandated by the government programs in which we participate, including increases in the government discount percentage resulting from price increases we have taken or may take in the future, or due to different levels of utilization by entities entitled to government rebates and chargebacks and changes in patient demographics;
- costs associated with maintaining our sales, marketing, market access, medical affairs and product distribution capabilities for CABOMETYX and COMETRIQ;
- the progress and scope of other development and commercialization activities for cabozantinib and our other compounds;
- future clinical trial results;
- our future investments in the expansion of our pipeline through internal drug discovery and business development activities;
- the inability to obtain adequate product supply for any approved drug product or inability to do so at acceptable prices;
- recognition of upfront licensing or other fees or revenues;
- payments of non-refundable upfront or licensing fees, or payment for cost-sharing expenses, to third parties;
- the introduction of new technologies or products by our competitors;
- the timing and willingness of collaborators to further develop or, if approved, commercialize our product candidates out-licensed to them;
- the termination or non-renewal of existing collaborations or third-party vendor relationships;
- regulatory actions with respect to our product candidates and any approved products or our competitors' products;

- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our technologies, including with respect our current and potential future patent litigations against MSN and potential future generic applicants;
- the timing and amount of expenses incurred for clinical development and manufacturing of cabozantinib;
- adjustments to expenses accrued in prior periods based on management's estimates after the actual level of activity relating to such expenses becomes more certain;
- the impairment of acquired goodwill and other assets;
- significant fluctuations in interest rates or foreign currency exchange rates;
- general and industry-specific economic conditions that may affect our or our collaborators' research and development expenditures; and
- other factors described in this "Risk Factors" section.

In addition, in the fourth quarter of 2018, we determined, based on our facts and circumstances, that it was more likely than not that a substantial portion of our deferred tax assets would be realized and, as a result, substantially all of our valuation allowance against deferred tax assets was released. Therefore, beginning in 2019, we record income tax expense at an estimated tax rate that will likely approximate statutory tax rates, adjusted for discrete tax items, which has resulted in a significant reduction in our net income and net income per share.

Due to the possibility of such fluctuations in our revenues and expenses, we believe that quarter-over-quarter comparisons of our operating results are not a good indication of our future performance. As a result, in some future quarters, our operating results may not meet the expectations of securities analysts and investors, which could result in a decline in the price of our common stock.

Our stock price has been and may in the future be highly volatile.

The trading price of our common stock has been highly volatile, and we believe the trading price of our common stock will remain highly volatile and may fluctuate substantially due to factors such as the following, many of which we cannot control:

- adverse or inconclusive results or announcements related to our or our collaborators' clinical trials or delays in those clinical trials;
- the announcement of FDA approval or non-approval, or delays in the FDA review process with respect to cabozantinib, our collaborators' product candidates being developed in combination with cabozantinib, or our competitors' product candidates;
- the commercial success of both CABOMETYX and COMETRIQ and the revenues we generate from those approved products;
- the timing of achievement of our clinical, regulatory, partnering and other milestones, such as the commencement of clinical development, the completion of a clinical trial, the filing for regulatory approval or the establishment of collaborative arrangements for cabozantinib or any of our other programs or compounds;
- actions taken by regulatory agencies, both in the U.S. and abroad, with respect to cabozantinib or our clinical trials for cabozantinib;
- unanticipated regulatory actions taken by the FDA as a result of changing FDA standards and practices concerning the review of product candidates, including approvals at earlier stages of clinical development or with lesser developed data sets and expedited reviews;
- the announcement of new products or clinical trial data by our competitors;
- the announcement of regulatory applications, such as MSN's ANDA, seeking approval of generic versions of our marketed products;
- quarterly variations in our or our competitors' results of operations;
- developments in our relationships with our collaborators, including the termination or modification of our agreements;
- the announcement of an in-licensed product candidate or strategic acquisition;
- conflicts or litigation with our collaborators;
- litigation, including intellectual property infringement and product liability lawsuits, involving us;

- changes in earnings estimates or recommendations by securities analysts and any failure to achieve the operating results projected by securities analysts;
- the entry into new financing arrangements;
- developments in the biotechnology, biopharmaceutical or pharmaceutical industry;
- sales of large blocks of our common stock or sales of our common stock by our executive officers, directors and significant stockholders;
- additions and departures of key personnel or board members;
- the extent to which coverage and reimbursement is available for both CABOMETYX and COMETRIQ from government and health administration authorities, private health insurers, managed care programs and other third-party payers;
- disposition of any of our technologies or compounds; and
- general market, economic and political conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors.

These factors, as well as general economic, political and market conditions, may materially adversely affect the market price of our common stock. In addition, the stock markets in general, and the markets for biotechnology and pharmaceutical stocks in particular, have historically experienced significant volatility that has often been unrelated or disproportionate to the operating performance of particular companies. For example, negative publicity regarding drug pricing and price increases by pharmaceutical companies has negatively impacted, and may continue to negatively impact, the markets for biotechnology and pharmaceutical stocks. Likewise, as a result of the uncertainty of the date and the terms of the pending Brexit and/or significant changes in U.S. social, political, regulatory and economic conditions or in laws and policies governing foreign trade and health care spending and delivery, including possible repeal and/or replacement of or adverse judicial rulings against all or portions of PPACA or increases or changes in tariffs and other trade restrictions stemming from Trump administration and foreign government policies, or future U.S. federal government shutdowns, the financial markets could experience significant volatility that could also negatively impact the markets for biotechnology and pharmaceutical stocks. These broad market fluctuations have adversely affected, and may in the future adversely affect the trading price of our common stock. Excessive volatility may continue for an extended period of time following the date of this report.

In the past, following periods of volatility in the market price of a company's securities, securities class action litigation has often been instituted. A securities class action suit against us could result in substantial costs and divert management's attention and resources, which could have a material adverse impact on our business, financial condition and results of operations.

Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us, which may be beneficial to our stockholders, more difficult and may prevent or deter attempts by our stockholders to replace or remove our current management, which could cause the market price of our common stock to decline.

Provisions in our corporate charter and bylaws may discourage, delay or prevent an acquisition of us, a change in control, or attempts by our stockholders to replace or remove members of our current Board of Directors. Because our Board of Directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt by our stockholders to replace current members of our management team. These provisions include:

- a prohibition on actions by our stockholders by written consent;
- the inability of our stockholders to call special meetings of stockholders;
- the ability of our Board of Directors to issue preferred stock without stockholder approval, which could be used to institute a "poison pill" that would work to dilute the stock ownership of a potential hostile acquirer, effectively preventing acquisitions that have not been approved by our Board of Directors; and
- advance notice requirements for director nominations and stockholder proposals.

Moreover, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Not applicable.

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

Build to Suit Lease

On October 25, 2019, we entered into a build-to-suit Lease Agreement (the Build-to-Suit Lease) with Ernst Development Partners, Inc. (Ernst), for approximately 220,000 square feet of office space located in Alameda, California (the New Premises), adjacent to our current corporate headquarters (the Current Premises).

The term of the Build-to-Suit Lease is for a period of 242 months (the Term), which will begin on the completion of the building and tenant improvements by Ernst. The Term is currently anticipated to begin on October 25, 2021. The monthly base rent under the Build-to-Suit Lease will equal to a percentage of the total development costs incurred in connection with the development of the New Premises (excluding the cost of the tenant improvements in excess of the allowance provided by Ernst and any development costs we pay) and is currently estimated to be about $726,000, subject to an annual increase of 3% during the Term. The monthly base rent will begin sixty days following commencement of the Term. We will also be responsible for paying operating expenses related to the New Premises. We have been provided an allowance of $75 per square foot of the New Premises (approximately $16.5 million) for tenant improvements to the New Premises. To the extent that the total development costs of the New Premises exceeds $525 per square foot, we will also pay 50% of such excess costs prior to the commencement of the Term, and may be required to secure such amount and the cost of the tenant improvements in excess of the allowance by providing a letter of credit or depositing such amounts in an account with Ernst's lender prior to the start of construction.

The Build-to-Suit Lease includes two five-year options to extend the term of the Build-to-Suit Lease, exercisable under certain conditions and at a market rate determined in accordance with the Build-to-Suit Lease. We have a one-time option to terminate the Build-to-Suit Lease without cause after the 180th month of the Term, exercisable under certain conditions as described in the Build-to-Suit Lease and subject to a termination payment calculated in accordance with the Build-to-Suit Lease. In addition, we have a right of first offer to purchase the New Premises, subject to certain procedures and exclusions set forth in the Build-to-Suit Lease.

In connection with the Build-to-Suit Lease, we will deliver to Ernst an irrevocable standby letter of credit for $726,000, which amount will be adjusted to reflect the initial monthly base rent once it is determined, as security for our performance of our obligations under the Build-to-Suit Lease.

Ernst does not yet own the land upon which the New Premises will be built, and the Build-to-Suit Lease is subject to termination if Ernst does not acquire such land. The Build-to-Suit Lease contains customary events of default, representations, warranties and covenants.

The foregoing summary of the Build-to-Suit Lease does not purport to be complete and is qualified in its entirety by the full text of the Build-to-Suit Lease, which is filed as Exhibit 10.2 to this Quarterly Report on Form 10-Q and incorporated herein by reference.

Fourth Amendment to the Lease

In the fourth quarter of 2019, Hillwood Enterprises, L.P. (Hillwood) is expected to purchase the project known as 1750 North Loop Road and 1601, 1701, 1751, 1801 and 1851 Harbor Bay Parkway, Alameda, California from Ascentris 105, LLC (the Purchase), which project includes the Current Premises. Effective upon the Purchase, Hillwood will become the landlord pursuant to that certain Lease Agreement dated May 2, 2017, as amended (the Lease).

On August 30, 2019, we entered into an amendment to the Lease with Hillwood (the Fourth Lease Amendment), pursuant to which each of our rights and obligations are contingent upon the Purchase. Effective upon the Purchase, the Fourth Lease Amendment will provide for, among other things, the (i) expansion of the Current Premises by 59,335 square feet of laboratory facilities located at 1701 Harbor Bay Parkway, Alameda, California (the 1701 Expansion Space), (ii) extension of the Lease term through October 31, 2031 (the New Term) and (iii) elimination of our early termination right.

Assuming the Purchase occurs, we expect to take possession of the 1701 Expansion Space on or prior to April 30, 2020 and will begin to pay rent on or within fifteen days following delivery of each respective portion of the 1701 Expansion Space. Following receipt of the entire 1701 Expansion Space, and assuming such receipt occurs on April 30, 2020 (the 1701 Expansion Space Commencement Date), the total monthly base rent under the Lease for the entire premises, consisting of the Current Premises and the 1701 Expansion Space (the Entire Premises) will be $391,580 per month, increasing throughout the remainder of the New Term to $574,975 at the end of the New Term. The aggregate contractual base rent for the entire 228,941 square feet of the Entire Premises from the 1701 Expansion Space Commencement Date through the remainder of the New Term of Lease will be approximately $67.0 million. If any portion of the 1701 Expansion Space is delivered prior to the 1701 Expansion Space Commencement Date, our base rent obligations will increase in accordance with the terms of the Lease. In addition, we will pay the New Landlord specified percentages of certain operating expenses and taxes related to the leased facilities incurred by the New Landlord.

The foregoing summary of the Fourth Lease Amendment does not purport to be complete and is qualified in its entirety by reference to the Fourth Lease Amendment, which is filed as Exhibit 10.3 to this Quarterly Report on Form 10-Q and incorporated herein by reference.

Item 6. Exhibits

		Incorporation by Reference				
Exhibit Number	**Exhibit Description**	**Form**	**File Number**	**Exhibit/ Appendix Reference**	**Filing Date**	**Filed Herewith**
3.1	Amended and Restated Certificate of Incorporation of Exelixis, Inc.	10-K	000-30235	3.1	3/10/2010	
3.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Exelixis, Inc.	10-K	000-30235	3.2	3/10/2010	
3.3	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Exelixis, Inc.	8-K	000-30235	3.1	5/25/2012	
3.4	Certificate of Change of Registered Agent and/or Registered Office of Exelixis, Inc.	8-K	000-30235	3.1	10/15/2014	
3.5	Certificate of Ownership and Merger Merging X-Ceptor Therapeutics, Inc. with and into Exelixis, Inc.	8-K	000-30235	3.2	10/15/2014	
3.6	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Exelixis, Inc.	8-K	000-30235	3.1	5/23/2019	
3.7	Amended and Restated Bylaws of Exelixis, Inc.	8-K	000-30235	3.2	5/23/2019	
4.1	Specimen Common Stock Certificate	S-1, as amended	333-96335	4.1	4/7/2000	
10.1*	Amendment No. 2 dated August 15, 2019 to the Clinical Trial Collaboration Agreement dated February 24, 2017, by and between Exelixis, Inc. and Bristol-Myers Squibb Company					X

Exhibit Number	Exhibit Description	Incorporation by Reference				Filed Herewith
		Form	File Number	Exhibit/ Appendix Reference	Filing Date	
10.2	Lease Agreement dated October 25, 2019, between Ernst Development Partners, Inc. and Exelixis, Inc.					X
10.3	Fourth Amendment dated August 30, 2019, to Lease Agreement dated May 2, 2017, between Hillwood Enterprises, L.P. (as successor in interest to Ascentris 105, LLC) and Exelixis, Inc.					X
31.1	Certification of Principal Executive Officer Pursuant to Exchange Act Rules 13a-14(a) and Rule 15d-14(a)					X
31.2	Certification of Principal Financial Officer Pursuant to Exchange Act Rules 13a-14(a) and Rule 15d-14(a)					X
32.1‡	Certifications of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350					X
101.INS	XBRL Instance Document	The instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.				
101.SCH	Inline XBRL Taxonomy Extension Schema Document					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document					X
101.LAB	Inline XBRL Taxonomy Extension Labels Linkbase Document					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document					X
104	Cover Page Interactive Data File	Formatted as Inline XBRL and contained in Exhibit 101.				

* Portions of this exhibit have been omitted as being immaterial and would be competitively harmful if publicly disclosed.

‡ This certification accompanies this Quarterly Report on Form 10-Q, is not deemed filed with the SEC and is not to be incorporated by reference into any filing of Exelixis, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of this Quarterly Report on Form 10-Q), irrespective of any general incorporation language contained in such filing.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

EXELIXIS, INC.

October 30, 2019	By:	/s/ CHRISTOPHER J. SENNER
Date		**Christopher J. Senner**
		Executive Vice President and Chief Financial Officer
		(Duly Authorized Officer and Principal Financial and Accounting Officer)

[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS, HAS BEEN OMITTED BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED.

Exhibit 10.1

AMENDMENT No. 2

This Amendment No. 2 (this ***"Amendment No. 2"***) is effective as of the date signed by the last party to sign below (the "***Amendment No. 2 Effective Date"***) and is made and entered into by and among Exelixis, Inc., a Delaware corporation, located at 1851 Harbor Bay Parkway, Alameda, California 94502 (*"**Exelixis**"*) and Bristol-Myers Squibb Company, a Delaware corporation, with a place of business at Route 206 & Province Line Road, Princeton, New Jersey 08543-4000, New York, New York 10154 ("***BMS***").

RECITALS

WHEREAS, Exelixis and BMS entered into that certain Clinical Trial Collaboration Agreement dated February 24, 2017, as amended (the ***"Agreement"***).

WHEREAS, BMS desires to conduct separate Stage 1 Studies with Exelixis and two Third Parties and, dependent on the results of such Stage 1 Studies, potentially conduct a Stage 2 Study with Exelixis.

WHEREAS, Exelixis and BMS want to amend the Agreement to (a) include the Stage 1 Study and Stage 2 Study, (b) memorialize their understanding regarding the conduct of the Stage 1 Study and Stage 2 Study and (c) agree to certain matters relating to the rights, obligations and liabilities of the Parties relating to such Stage 1 Study and Stage 2 Study.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained herein, Exelixis and BMS agree as follows:

1. The terms in this Amendment No. 2 with initial letters capitalized, whether used in the singular or the plural, shall have the meaning set forth herein, or if not defined herein, as set forth in the Agreement.

2. *Definitions*. The following definitions are hereby added to the Agreement:

"***Stage 1 Study***" shall mean [*].

"***Stage 2 Study***" shall mean [*].

3. *Publication and Disclosure*. Section 9.7 of the Agreement is hereby amended to include the following after the last sentence:

> "Notwithstanding the above, the Parties agree that BMS has the unilateral right to publish or disclose Stage 1 Study Data and Stage 2 Study Data to the extent that such Study also evaluates a Third Party compound. Any presentation, publication or other disclosure (each a "Disclosure"), whether electronic, written or oral to any person or party not subject to an obligation of confidentiality pursuant to the Agreement, concerning or relating to the Stage 1 Study or the Stage 2 Study (solely to the extent that the Stage 2 Study includes the Exelixis Compound)shall first be provided by BMS to Exelixis for review and comment at least [*] prior to submission for publication or other disclosure. Where Exelixis determines that such proposed presentation, publication or other disclosure contains or may contain confidential or proprietary information or patentable subject matter, it shall so notify BMS within [*] of receipt thereof, and BMS shall remove such confidential or proprietary information, or in the case of patentable subject matter, delay such presentation, publication or other disclosure for an additional [*] to allow sufficient time for the drafting and filing of a patent application directed to such subject matter."

4. *Study Data*. Exelixis hereby agrees that BMS has the right to fully exploit, without accounting to Exelixis, the Stage 1 Combined Therapy Study Data solely for the limited purpose of enabling BMS to determine whether to conduct, and to conduct, a Stage 2 Study and whether to use the Exelixis Compound and/or a Compound of a Third Party, provided that BMS may not disclose the Stage 1 Combined Therapy Study Data to a Third Party, except to the extent reasonably required to obtain Regulatory Approval of a combination therapy involving the BMS Compound and a Third Party Compound. For clarity, Exelixis' rights to

Study Data related to the Exelixis Compound, including but not limited to Study Data arising from the Stage 1 Study and the Stage 2 Study (if applicable), are unchanged under the Agreement.

5. *Combined Therapy Inventions and Patent Rights*. Exelixis hereby agrees that BMS has the right to exploit Stage 1 Combined Therapy Inventions and Combined Therapy Patent Rights (if any) solely as needed to (A) conduct a Stage 2 Study with a Third Party and (B) obtain Regulatory Approval of a combination therapy involving the BMS Compound and a Third Party Compound. For clarity, to the extent that such Combined Therapy Inventions or Combined Therapy Patent Rights disclose or claim the Exelixis Compound, BMS shall notify Exelixis as provided in the Agreement and the terms of the Agreement shall apply. Exelixis shall grant, and hereby does grant, to BMS a non-exclusive, sublicensable license to such Combined Therapy Inventions and Combined Therapy Patent Rights to conduct such Stage 2 Study and obtain Regulatory Approval only. For clarity, such license does not extend to commercial uses or sales for BMS or such Third Party.

6. *Combined Therapy Regulatory Documentation*. Exelixis hereby agrees that BMS has the right to exploit Combined Therapy Regulatory Documentation related to combinations with Third Parties only, without accounting to Exelixis, solely for the limited purpose of (A) conducting a Stage 2 Study with a Third Party and (B) obtaining Regulatory Approval of a combination therapy involving the BMS Compound and a Third Party Compound. For clarity, Exelixis' rights to Combined Therapy Regulatory Documentation related to the Exelixis Compound, including but not limited to Study Data arising from the Stage 1 Study and the Stage 2 Study (if applicable), are unchanged under the Agreement.

7. *Other Agreements*. BMS represents and warrants that its agreements with Third Parties related to the Stage 1 Studies and the Stage 2 Study grant Exelixis rights commensurate to the rights granted to BMS and such Third Parties under this Amendment No. 2, and that pursuant to any such agreements with Third Parties, Exelixis has the right to exploit Study Data, Combination Therapy Inventions and Combination Therapy Patent Rights, and Combined Therapy Regulatory Documentation related to such Stage 1 Studies and Stage 2 Study as otherwise permitted under the Agreement.

8. Exhibit A-1 of the Agreement is hereby amended to include the Stage 1 Study and the Stage 2 Study.

9. The JDC has agreed that there are no Shared Costs for the Stage 1 Study or the Stage 2 Study (each, for clarity, a Combined Therapy Trial under the Agreement to the extent each includes an Exelixis Compound) identified in Exhibt A-1.

10. *Stage 2 Selection Criteria*. Exelixis hereby acknowledges that the Stage 1 Protocol will provide BMS with the selection criteria it needs to select either Exelixis' Compound and/or a Compound of a Third Party to conduct the Stage 2 Study, and that BMS will make such selection in its sole discretion.

11. *No Assurances*. Exelixis hereby acknowledges that it has received no assurances that the Exelixis Compound will be selected by BMS to conduct a Stage 2 Study and fully understands that BMS may select a Compound of a Third Party to conduct a Stage 2 Study.

12. *Commitment*. Exelixis hereby acknowledges that it commits to supply the Exelixis Compound to conduct the Stage 2 Study, if BMS selects the Exelixis Compound for the Stage 2 Study, which Stage 2 Study will be deemed to be a Combined Therapy Trial under the Agreement to the extent such Stage 2 Study relates to the combination of the Exelixis Compound and the BMS Compound,

13. *Stage 2 Study with the BMS Compound, Exelixis Compound and a Third Party Compound*. In the event that a Stage 2 Study involves an Exelixis Compound, a BMS Compound and a Third Party Compound, Exelixis hereby grants to BMS and such Third Party the right to use and disclose Stage 1 and Stage 2 Study Data, Stage 1 and Stage 2 Combined Therapy Inventions, Stage 1 and Stage 2 Combined Patent Rights and Stage 1 and Stage 2 Combined Therapy Regulatory Documentation to the extent needed to seek Regulatory Approval of a combined therapy involving the BMS Compound and a Third Party Compound. BMS hereby grants to Exelixis the right to use and disclose such Stage Stage 1 and Stage 2 Study Data, Stage 1 and Stage 2 Combined Therapy Inventions, Stage 1 and Stage 2 Combined Patent Rights and Stage 1 and Stage 2 Combined Therapy Regulatory Documentation to the extent needed to seek Regulatory Approval of a combined therapy involving the Exelixis Compound and the BMS Compound. Exelixis shall grant to BMS and such Third Party, and hereby does grant to BMS and such Third Party, a non-exclusive, sublicensable license to such Stage 1 and Stage 2 Study Data, Stage 1 and Stage 2 Combined Therapy Inventions, Stage 1 and Stage 2 Combined Patent Rights and Stage 1 and Stage 2 Combined Therapy Regulatory

Documentation to the extent needed to seek Regulatory Approval. For clarity, such license does not extend to commercial uses or sales for BMS or such Third Party. BMS and such Third Party shall grant to Exelixis, and hereby do grant to Exelixis, a non-exclusive, sublicensable license to such Stage 1 and Stage 2 Study Data, Stage 1 and Stage 2 Combined Therapy Inventions, Stage 1 and Stage 2 Combined Patent Rights and Stage 1 and Stage 2 Combined Therapy Regulatory Documentation to the extent needed to seek Regulatory Approval. For clarity, such license does not extend to commercial uses or sales for Exelixis. To the extent that an additional agreement is required to give full effect to this Paragraph 13 and/or to protect the Parties' rights with respect to confidentiality and the use of information, Exelixis agrees to enter into negotiations for such an agreement with such Third Party on reasonable commercial terms.

14. Except as expressly set forth herein, all provisions of the Agreement shall remain unchanged and in full force and effect.

15. This Amendment No. 2 shall be governed and construed in accordance with the internal laws of the State of New York, USA, excluding any choice of law rules that may direct the application of the laws.

16. This Amendment No. 2 may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument. This Amendment No. 2 may be executed by facsimile or electronic (e.g., .pdf) signatures and such signatures shall be deemed to bind each party hereto as if they were original signatures.

[Signature page follows]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

IN WITNESS WHEREOF, Exelixis and BMS, intending to be legally bound hereby, have caused this Amendment No. 2 to be executed by their duly authorized representatives as of the date(s) below.

Exelixis, Inc.

By: /s/ Gisela Schwab
Name: Gisela Schwab
Title: President, Product Development and Med Affairs & CMO

Date: 8/15/2019

Bristol-Myers Squibb Company

By: /s/ Nancy P. Forrest
Name: Nancy P. Forrest
Title: Vice President, Global Allicance Management

Date: Aug 12, 2019

[Signature Page to Amendment No. 2]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

EXHIBIT A-1

New Combined Therapy Trials Expected to be Conducted

[*]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

Exhibit 10.2

FOURTH AMENDMENT TO LEASE AGREEMENT

THIS FOURTH AMENDMENT TO LEASE AGREEMENT (this “Fourth Amendment”) is made and entered into on August 30, 2019 (the "Execution Date") by and between HILLWOOD ENTERPRISES, L.P., a Texas limited partnership ("Hillwood Enterprises"), and EXELIXIS, INC., a Delaware corporation (“Tenant”).

RECITALS

A. Ascentris 105, LLC (“Existing Landlord”) and Tenant are parties to (i) that certain Lease Agreement dated May 2, 2017 (the “Original Lease”) for premises consisting of approximately 110,783 square feet of Rentable Area (the “Original Premises”) in the multiple building project known as 1750 North Loop Road and 1601, 1701, 1751, 1801 and 1851 Harbor Bay Parkway, Alameda, California (as further defined in the Original Lease, the “Project”), and (ii) that certain Agreement for Conditional Option to Amend Lease dated as of May 2, 2017 (the “Additional 1801 Space Option Agreement”), pursuant to which Tenant had the right to add Suite 125 consisting of approximately 17,075 square feet of Rentable Area and depicted on Exhibit A-1 attached to the First Amendment (as defined below) (the “Additional 1801 Space”) on the first floor of the 1801 Building (as defined in the Original Lease) to the Premises, by amending the Original Lease.

B. Existing Landlord and Tenant are parties to that certain First Amendment to Lease Agreement dated October 16, 2017 (the “First Amendment”), pursuant to which the Original Premises was expanded to include the Additional 1801 Space and the premises known as Suite 115 consisting of 2,703 square feet of Rentable Area and depicted on Exhibit A-2 attached to the First Amendment (the “Additional 1751 Space”) on the first floor of the 1751 Building (as defined in the Original Lease).

C. Existing Landlord and Tenant are parties to the certain Second Amendment to Lease Agreement dated June 13, 2018 (the “Second Amendment”), pursuant to which, among other things, the Premises under the Lease was further expanded to include the premises known as Suite 150 consisting of 4,204 square feet of Rentable Area and depicted on Exhibit A-3 attached to the Second Amendment (the “Second Amendment Expansion 1751 Space”) on the first floor of the 1751 Building.

D. Existing Landlord and Tenant are parties to the certain Third Amendment to Lease Agreement dated April 1, 2019 (the “Third Amendment”), pursuant to which, among other things, the Tenant agreed to surrender the Additional 1751 Space and to expand the Premises under the Lease to include the premises known as Suites 100, 120, and 150 and common areas of the building located at 1601 Harbor Bay Parkway, Alameda, California (the “1601 Building”), consisting of 37,544 square feet of Rentable Area and depicted on Exhibit A-3 attached to the Third Amendment (the “1601 Space”). The 1601 Space comprises the entirety of the 1601 Building.

E. The Original Premises, as expanded by the Additional 1801 Space, the Second Amendment Expansion 1751 Space, and the 1601 Space, is hereinafter referred to as the “Existing Premises.” The Original Lease, as amended by the First Amendment, the Second Amendment, and the Third Amendment, is hereinafter referred to as the “Lease.”

F. Existing Landlord, as seller, and Hillwood Enterprises, as purchaser, have entered into a purchase and sale agreement for the Project (as the same may be amended from time to time, the "Contract"). The closing of the acquisition of the Project pursuant to the terms of the Contract is anticipated to occur on or about September 27, 2019, subject to extensions as set forth in the Contract (as such date may be extended, “Closing”). As used herein, (i) the term "Landlord" shall mean either Hillwood Enterprises or the successor-in-interest to the rights and obligations of Hillwood Enterprises under the Contract acquiring fee title to the Project at Closing and (ii) the term “Fourth Amendment Effective Date” shall mean the date of the Closing.

G. Hillwood Enterprises’ election to acquire the Project under the Contract is contingent on Tenant’s agreeing to amend the terms of the Lease as described in clauses (i), (ii) and (iii) immediately below, and, prior to

Closing, Hillwood Enterprises and Tenant desire to enter into this Fourth Amendment to agree on the terms and conditions upon which the parties will, conditioned on occurrence of the Closing, (i) extend the Term to expire on October 31, 2031 (as provided below in Section 3 below), (ii) expand the Existing Premises to include the premises known as Suites 100, 125, 150, 115, and 200 and common areas of the building located at 1701 Harbor Bay Parkway, Alameda, California (the "1701 Building"), consisting of 59,335 square feet of Rentable Area and depicted on Exhibit A-4 attached hereto (the "1701 Space"), and (iii) terminate Tenant's early termination right pursuant to Section 29 of the Lease. The 1701 Space comprises the entirety of the 1701 Building.

AMENDMENT

NOW THEREFORE, in consideration of good and valuable consideration and the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Defined Terms. All capitalized terms used but not defined in this Fourth Amendment will have the meanings set forth for such terms in the Lease. All terms that are defined in this Fourth Amendment and used in any provisions that are added to the Lease pursuant to this Fourth Amendment will have the meanings in the Lease set forth for such terms in this Fourth Amendment.

2. Delivery and Demise of the 1701 Space.

(a) Lease of 1701 Space. Subject to the terms, covenants, conditions and provisions of the Lease, as amended by this Fourth Amendment, Landlord leases to Tenant and Tenant leases from Landlord the 1701 Space for the remainder of the Term (as such term is amended in Section 3 below). On the applicable "Start Dates" (as defined in Section 2(c) below) for the 1701 Space, Landlord shall Deliver to Tenant, and Tenant shall accept possession of, the applicable portions of the 1701 Space in the following condition notwithstanding anything in Section 2.2 of the Lease to the contrary: in its as-is, where-as condition, provided that the 1701 Space shall be vacant and broom clean and fully decommissioned with respect to any Hazardous Materials used therein. Landlord represents that, to Landlord's knowledge, (a) Suite 100 of the 1701 Space is currently occupied by a tenant pursuant to a lease (the "Current Suite 100 Lease"), which is set to expire on November 30, 2023; (b) Suite 125 of the 1701 Space is currently occupied by a tenant pursuant to a lease (the "Current Suite 125 Lease"), which is set to expire on May 31, 2021; (c) Suite 150 of the 1701 Space is currently used for the property management office; and (d) the Closing is conditioned on the seller under the Contract delivering Suites 115 and 200 of the 1701 Space vacant and unleased at Closing. Landlord will use commercially reasonable efforts to Deliver (i) Suite 100 of the 1701 Space to Tenant within 15 days following the date that the tenant under the Current Suite 100 Lease vacates Suite 100 of the 1701 Space, (ii) Suite 125 of the 1701 Space to Tenant within 15 days following the date that the tenant under the Current Suite 125 Lease vacates Suite 125 of the 1701 Space, (iii) Suites 115 and 200 of the 1701 Space to Tenant within 15 days after the Closing, and (iv) Suite 150 of the 1701 Space within 15 days following the date that the property management office is relocated to an alternative location at the Project. Landlord shall use commercially reasonable efforts to relocate the property manager currently occupying Suite 150 of the 1701 Space as soon as reasonably practical after the Closing. Landlord shall use commercially reasonable efforts to relocate the tenants currently occupying Suites 100 and 125 of the 1701 Space as soon as reasonably practical after the Closing. Tenant shall use reasonable efforts to cooperate with Landlord to relocate such tenants, which efforts shall include, without limitation, negotiating in good faith with Landlord to vacate a portion of the Premises located in the 1751 Building to make space available to such tenants. Notwithstanding anything to the contrary herein, until all of the 1701 Space has been Delivered to Tenant, the 1701 Building shall be considered a Multi User Building and Tenant shall have the non-exclusive right to use the interior Common Areas within the 1701 Building. Upon the Delivery of the final portion of the 1701 Space, the 1701 Building will be considered a Single User Building fully leased by Tenant and there shall be no interior Common Areas therein. As used herein, "Landlord's knowledge" shall mean the current, actual knowledge of Joseph Ernst without a duty to investigate or inquire.

(b) 1701 Space Rent Commencement Dates.

(i) Suite 100. Commencing on the date that is 15 days after Landlord Delivers Suite 100 of the 1701 Space in accordance with Section 2(a), Tenant shall pay Landlord Base Rent for such space according to Section 8(b) and shall pay Additional Rent for such space according to Section 3.2 of the Lease.

(ii) Suite 125. Commencing on the date that is 15 days after Landlord Delivers Suite 125 of the 1701 Space in accordance with Section 2(a), Tenant shall pay Landlord Base Rent for such space according to Section 8(b) and shall pay Additional Rent for such space according to Section 3.2 of the Lease.

(iii) Suite 150. Commencing on the later of December 1, 2019 and the date Landlord Delivers Suite 150 of the 1701 Space in accordance with Section 2(a), Tenant shall pay Landlord Base Rent for such space according to Section 8(b) and shall pay Additional Rent for such space according to Section 3.2 of the Lease.

(iv) Suites 115 and 200. Commencing on the later of December 1, 2019 and the date that Landlord Delivers Suites 115 and 200 of the 1701 Space in accordance with Section 2(a), Tenant shall pay Landlord Base Rent for such space according to Section 8(b) and shall pay Additional Rent for such space according to Section 3.2 of the Lease.

(c) Start Dates. "Start Date" with respect to each portion of the 1701 Space means the date that Landlord Delivers such portion to Tenant. The targeted Start Dates with respect to the 1701 Space are as follows:

Portion of 1701 Space	**Targeted Start Date**
Suites 115 and 200	15 days after the Closing
Suite 100	Within 6 months after the Closing
Suite 125	Within 6 months after the Closing
Suite 150	Within 6 months after the Closing

Landlord shall have no liability to Tenant for its failure to deliver any portion of the 1701 Space to Tenant on the applicable targeted Start Date if a delay in Delivery is caused by a tenant's holding over in a portion of the 1701 Space or refusal to relocate from its portion of the 1701 Space, so long as Landlord is using commercially reasonable efforts to cause such tenant to vacate or relocate from the applicable portion of the 1701 Space, which commercially reasonable efforts shall include filing an unlawful detainer action if a tenant is holding over and such holdover continues for a period in excess of 30 days.

If the Start Date for a specified portion of the 1701 Space has not occurred within 120 days after the targeted Start Date specified in this Section 1(c), then Tenant will have the right to terminate the Lease with respect to such undelivered portion of the 1701 Space (the "Terminated Space") by delivering written notice of termination to Landlord not more than 30 days after the end of such 120-day period. Upon such termination, Tenant will, upon Landlord's request, execute and deliver an agreement in recordable form containing a release and surrender of all right, title and interest in and to the Terminated Space except as otherwise provided in this paragraph; neither Landlord nor Tenant will have any further obligations to each other with respect to the Terminated Space under this Amendment, including, without limitation, any obligations to pay for work previously performed in the Terminated Space; all improvements to the Terminated Space will become and remain the property of Landlord; Landlord will refund to Tenant any sums paid to Landlord by Tenant for the Terminated Space in connection with the Lease. Such termination and refund rights will be Tenant's sole and exclusive remedies for Landlord's failure to deliver any portion of the 1701 Space by the targeted Start Dates described above other than the right to seek specific performance to enforce Landlord's obligations to use commercially reasonable efforts to relocate the tenants in Suites 100, 125 and 150 of the

1701 Space and thereafter deliver such space to Tenant, and Tenant expressly waives any other rights, claims or remedies that Tenant might otherwise have against Landlord by reason of Landlord's failure to deliver any portion of the 1701 Space.

3. Term. Section 1.1(h) of the Lease is hereby replaced in its entirety with the following as of the Fourth Amendment Effective Date:

"(h) "Term" means the duration of this Lease, beginning on February 1, 2018 (the "Commencement Date") and ending on the "Expiration Date" (as defined below), unless terminated earlier or extended further as provided in this Lease. The "Expiration Date" means October 31, 2031."

4. Premises. The Lease is hereby amended as follows:

(a) 1701 Space. Effective as of the Fourth Amendment Effective Date (as defined in Section 26 below), Section 1.1(d) of the Original Lease is hereby amended by the addition of the following as Section 1.1(d)(v):

"(v) ***1701 Space***. Premises known as Suites 100, 125, 150, 115 and 200 and common areas located at the 1701 Building identified on Exhibit A (the "1701 Space"), which constitute the entire 1701 Building and contain approximately 59,335 square feet of the Rentable Area, which shall not be subject to re-measurement except as set forth in Section 2.6 below."

(b) Rentable Area of the Premises. Effective as of the Fourth Amendment Effective Date, the last paragraph of Section 1.1(d) of the Original Lease is hereby amended as follows:

(i) The Premises contains total square feet of Rentable Area equal to the total square feet of Rentable Area of the Premises that has been Delivered to Tenant (see Exhibit A of the Original Lease for the Rentable Area table).

(ii) The Rentable Area table set forth in Exhibit A of the Original Lease, as previously replaced, is hereby replaced with the Rentable Area table attached hereto as Exhibit A-4 of this Fourth Amendment.

5. 1701 Building. Effective as of the Fourth Amendment Effective Date, Section 1.1(e) of the Original Lease is hereby amended by the addition of the following as Section 1.1(e)(v):

"(v) 1701 Harbor Bay Parkway, Alameda, California, in which the 1701 Space is located (the "1701 Building"), which Building contains approximately 59,335 square feet of Rentable Area and is a Single User Building."

6. Project. Effective as of the Fourth Amendment Effective Date, Section 1.1(f) of the Original Lease is hereby amended by replacing "386,283" with "385,967".

7. Exhibits. Effective as of the Fourth Amendment Effective Date, Exhibit A to the Lease, entitled "Plan Delineating the Premises and Tenant Maintained Outdoor Areas" is hereby replaced by the updated Exhibit A-4 attached hereto.

8. Base Rent. Section 1.1(i) of the Original Lease, as previously amended, is hereby further amended as of the Fourth Amendment Effective Date as follows:

(a) The Base Rent schedule for the Existing Premises for the remainder of the Term shall be paid in accordance with the schedules for the Existing Premises shown on Exhibit B.

(b) Commencing on the dates stated in Section 2(b) above, Base Rent for the 1701 Space, or applicable portion thereof, shall be paid in accordance with the schedule for the 1701 Space shown on Exhibit B. If the commencement of Base Rent for a portion of the 1701 Space does not occur on the first day of the month, then the Base Rent paid during such partial month shall be prorated based on the number of days in such partial month from and after such Base Rent commencement date through the end of the month.

9. Building Shares; Project Shares.

(a) 1801 Project Share. Effective as of the Fourth Amendment Effective Date, Section 1.1(k)(ii) of the Original Lease is hereby further amended so that the 1801 Project Share is 15.14%, subject to adjustment pursuant to Section 2.6 of the Original Lease.

(b) 1851 Project Share. Effective as of the Fourth Amendment Effective Date, Section 1.1(k)(iii) of the Original Lease is hereby further amended so that the 1851 Project Share is 14.89%, subject to adjustment pursuant to Section 2.6 of the Original Lease.

(c) 1751 Building Share; 1751 Project Share. Effective as of the Fourth Amendment Effective Date, (i) Section 1.1(e)(i) of the Original Lease is hereby amended to delete the phrase "74,390 square feet of Rentable Area" and replace such phrase with "73,854 square feet of Rentable Area", (ii) Section 1.1(j)(i) of the Original Lease is amended so that the 1751 Building Share is 21.89%, subject to adjustment pursuant to Section 2.6 of the Original Lease, and (iii) Section 1.1(k)(i) of the Original Lease is hereby amended so that the 1751 Project Share is 4.19%, subject to adjustment pursuant to Section 2.6 of the Original Lease.

(d) 1601 Project Share. Effective as of the Fourth Amendment Effective Date, Section 1.1(k)(iv) of the Original Lease is hereby amended so that the 1601 Project Share is 9.73%, subject to adjustment pursuant to Section 2.6 of the Original Lease.

(e) 1701 Building Share; 1701 Project Share. Effective as of the Fourth Amendment Effective Date, the Lease is hereby amended as follows:

(i) 1701 Building Share. Section 1.1(j) of the Original Lease is hereby further amended by adding the following as Section 1.1(j)(v):

"(v) With respect to the 1701 Building, percentage obtained by dividing the Rentable Area of the 1701 Space which has been Delivered by Landlord by the total Rentable Area of the 1701 Building and multiplying the resulting quotient by 100 and rounding to the second decimal place (the "1701 Building Share"). The 1701 Building Share will be 100%, subject to adjustment pursuant to Section 2.6 below."

(ii) 1701 Project Share. Section 1.1(k) of the Original Lease is hereby further amended by adding the following as Section 1.1(k)(v):

"(v) With respect to the 1701 Building, percentage obtained by dividing the Rentable Area of the 1701 Space which has been Delivered by Landlord by the total rentable square footage of the Project and multiplying the resulting quotient by 100 and rounding to the second decimal place (the "1701 Project Share"). The 1701 Project Share will be 15.37%, subject to adjustment pursuant to Section 2.6 below."

(iii) Notwithstanding the foregoing, prior to the last Start Date of the 1701 Space, the 1701 Building Share and the 1701 Project Share will be adjusted proportionately to apply only to the portion of the 1701 Space that has been Delivered to Tenant.

10. Parking; Signage. Effective as of the "Start Date" for Suite 100 of the 1701 Space, Section 19 of the Lease is hereby amended so that Tenant may utilize up to 14 additional unassigned parking spaces within the Project at no charge. Effective as of the "Start Date" for Suite 125 of the 1701 Space, Section 19 of the Lease is hereby amended so that Tenant may utilize up to 8 additional unassigned parking spaces within the Project at no charge. Effective as of the "Start Date" for Suite 150 of the 1701 Space, Section 19 of the Lease is hereby amended so that Tenant may utilize up to 3 additional unassigned parking spaces within the Project at no charge. Effective as of the "Start Date" for Suites 115 and 200 of the 1701 Space, Section 19 of the Lease is hereby amended so that Tenant may utilize up to 182 additional unassigned parking spaces within the Project at no charge. Accordingly, following the "Start Dates" for all 1701 Space and 1601 Space, Tenant may utilize up to 800 unassigned parking spaces within the Project at no charge. Notwithstanding anything in the Lease to the contrary, including but not limited to Section 1.3(g) of the Lease, Landlord may enter parking agreements with an affiliate of Hillwood Enterprises that owns property adjacent to the east of the Project (the "BTS Site") to permit a parking allocation for the buildings at the Project (other than the building located at 1750 North Loop Road) and the BTS Site of three (3) spaces per 1,000 square feet of building area. Section 21.3 of the Lease is hereby amended so that Tenant may install exterior signs on the 1601 Building and, effective as of the first "Start Date" for the 1701 Space, the 1701 Building in accordance with the terms of Section 21.3 of the Lease. Such signage shall be substantially similar to the signage at the 1801 Building and the 1851 Building.

11. Single User Buildings; Excluded and Common Areas. Notwithstanding Section 11 of the Third Amendment or any other provision in the Lease to the contrary, the 1601 Building and any other Single User Building shall be considered a Single User Building for the purposes of Article 5 of the Lease (Services and Utilities; Repair and Maintenance Obligations). Notwithstanding anything in this Amendment or the Lease (including without limitation Section 1.3(e) of the Lease) to the contrary, the areas of the 1701 Space shown as "Restricted Common Area" on Exhibit A-4 (the "Restricted Common Areas") shall be deemed to be Common Areas under the Lease except that Tenant shall have no right to access or use the Restricted Common Areas; provided, that, upon not less than 24 hours' prior actual notice to Landlord (except in the event of an emergency, in which case no notice shall be required), Tenant shall have the right to access the Restricted Common Areas to the extent necessary to access, repair, maintain, and modify the panels that control the fire and life safety systems serving the Premises. The Restricted Common Areas shall be accessible to Landlord in accordance with Section 2.5 of the Lease in the same manner in which the Landlord may access the roof and other structural elements of a Single User Building. Landlord may lease space in the Restricted Common Areas for the storage and installation of telecommunications equipment, and Tenant shall permit reasonable access to the Restricted Common Areas to such tenants and shall not interfere with any such tenant's operations of its telecommunications equipment or diminish any such tenant's signal quality.

12. Tenant Alterations. Tenant may construct any Tenant Alterations in the 1701 Space in accordance with the Lease, including but not limited to Section 7 of the Original Lease. Landlord hereby consents to Tenant's use of DGA as the architect and the provisions of (a) the tenth sentence of Section 8 and (b) Section 19 of Exhibit B of the Original Lease shall apply as to the 1701 Space. Landlord shall not be obligated to make or pay for any alterations or improvements to the 1701 Space whatsoever or to the Premises other than in connection with Landlord's maintenance and repair obligations expressly stated in the Lease. The parties agree that any Tenant Alterations constructed in the 1701 Space in accordance with the Lease shall become the Landlord's property upon installation and will remain Landlord's property at the expiration or earlier termination of the Term.

13. Occupancy Estoppel Certificate. Tenant will deliver an Occupancy Estoppel Certificate in substantially the form attached as Exhibit C to the Original Lease, as previously amended, for the Start Dates, move-in dates and Base Rent commencement dates for the 1701 Space.

14. 1750 Right of First Offer; 1701 Space Right of First Offer Terminated. Effective on the Fourth Amendment Effective Date, the right of first offer in Section 30 of the Original Lease shall also apply as to the building located at 1750 North Loop Road. Tenant's rights pursuant to Section 30 of the Original Lease are terminated with respect to the 1701 Space and shall no longer have any force or effect with respect the 1701 Space.

15. Tenant's Waiver of Termination Right. Tenant's right to terminate the Lease pursuant to Section 29 of the Original Lease is hereby terminated, and Section 29 of the Original Lease shall have no further force or effect.

16. Use. Section 1.1(g) of the Lease is hereby revised to permit vivariums and manufacturing in all of the Premises.

17. Brokers. Landlord and Tenant represent and warrant that no broker or agent negotiated or was instrumental in negotiating or consummating this Fourth Amendment. Neither party knows of any real estate broker or agent who is or might be entitled to a commission or compensation in connection with this Fourth Amendment other than other than Greg Domanico of Kidder Mathews ("Broker"). Tenant and Landlord will indemnify and hold each other harmless from all damages paid or incurred by the other resulting from any claims asserted against either party by brokers or agents claiming through the other party, except Tenant shall not indemnify Landlord from claims by Broker.

18. Whole Agreement. This Fourth Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Except as amended herein, or in a future writing signed by both parties, there shall be no other changes or modifications to the Lease between the parties and the Lease and the terms and provision contained therein shall remain in full force and effect. The terms of this Amendment will control over any conflicts between it and the terms of the Lease.

19. Successors and Assigns. This Fourth Amendment shall be binding upon the parties hereto, their heirs, successors and assigns.

20. Ratification. Except as amended by this Fourth Amendment, the Lease has not been amended, and the parties ratify and confirm the Lease, as amended by the Fourth Amendment, as being in full force and effect.

21. Counterparts; Execution by Telecopy. This Fourth Amendment may be executed in counterparts, each of which will constitute an original, but all of which, when taken together, will constitute but one agreement. Executed copies hereof may be delivered by telecopier or other electronic means, and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

22. Representations; Occupancy Certificate.

(a) Tenant certifies, represents and warrants to Landlord that, except as to the Overpayment Amount (defined below): (i) a true, correct, and complete copy of the Lease has been provided to Hillwood Enterprises; (ii) the Lease is in full force and effect and has not been modified or amended, except as otherwise set forth herein; (iii) to Tenant's actual knowledge, without inquiry, neither Existing Landlord nor Tenant is in default under the Lease and there does not exist any facts or circumstances which, with the giving of notice, the passage of time or both, would constitute a default by either Existing Landlord or Tenant; (iv) to Tenant's actual knowledge, without inquiry, all conditions of the Lease to be performed by the Existing Landlord and necessary to the enforceability of the Lease have been satisfied; (v) to Tenant's actual knowledge, without inquiry, all improvements or work required under the Lease to be made by the Existing Landlord to date, if any, have been completed to the satisfaction of the Tenant; (vi) except with respect to those under the Third Amendment, allowances or other amounts payable by Existing Landlord to Tenant have been paid in full; (vii) to Tenant's actual knowledge, without inquiry, charges for all labor and materials used or furnished in connection with improvements and/or alterations made for the account of the Tenant at the Premises and common areas have been paid in full; (viii) to Tenant's actual knowledge, without inquiry, on the Execution Date there are no existing defenses, offsets, or claims that the Tenant has against the enforcement of the Lease by the Existing Landlord; (ix) Tenant has no option or preferential right to purchase all or any part of the Project, or the land of which the Project are a part; (x) Tenant has no rights or interest with respect to the Premises other than as a tenant under the Lease; (xi) Tenant has not assigned or sublet its interest in the Premises; and (xii) as of the Execution Date, there are no actions, whether voluntary or otherwise, pending against the Tenant under the bankruptcy or insolvency laws of the United States or any state thereof.

(b) Prior to the Closing, upon ten (10) business days' request by Existing Landlord, Tenant shall deliver to Existing Landlord (for the benefit of Existing Landlord and Landlord) an Occupancy Certificate in accordance with Section 16 of the Lease.

23. Disclosures. Pursuant to California Civil Code Section 1938, Landlord hereby notifies Tenant that neither the Buildings nor the Premises have been inspected by a Certified Access Specialist. A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

24. Intentionally deleted.

25. No Restoration. Tenant shall not be required to remove any alterations or improvements located in the Premises as of the Execution Date upon the surrender of the Premises pursuant to Section 15.1 of the Lease. The foregoing shall not be interpreted to limit Tenant's obligation to repair damage to the Premises caused by its removal of any alterations or improvements that it is permitted to remove under the Lease.

26. Closing; Termination of this Fourth Amendment. Landlord and Tenant agree that this Fourth Amendment and the obligations of Landlord and Tenant hereunder are contingent on the Closing, and, if the Contract is terminated, then this Fourth Amendment shall terminate, and neither party shall have any obligation to the other hereunder; provided, however, Landlord shall promptly notify Tenant of the termination of the Contract. For the sake of clarity, the parties acknowledge that this Fourth Amendment is a binding agreement between Hillwood Enterprises and its successor-in-interest to the rights and obligations of Hillwood Enterprises under the Contract acquiring fee title to the Project at Closing (*i.e.,* the Landlord) and Tenant, with all obligations contingent upon the Closing (i.e. prior to the Fourth Amendment Effective Date, neither party shall have a right to terminate this Fourth Amendment except for a failure of the Closing to timely occur as expressly provided below). Upon the Closing, no further documentation shall be required to evidence the effectiveness of this Fourth Amendment; provided, however, at the request of either party, both parties will execute a document confirming the occurrence of the Fourth Amendment Effective Date. Tenant acknowledges and agrees that, in connection with the Closing, Hillwood Enterprises will assign its rights under the Contract to an entity affiliated with Hillwood Enterprises that will be formed to acquire the Project. Accordingly, Hillwood Enterprises shall assign its right and obligations under this Fourth Amendment to the successor-in-interest to the rights and obligations of Hillwood Enterprises under the Contract acquiring fee title to the Project at Closing (*i.e.,* the Landlord); provided, however, prior to the Closing this Fourth Amendment may not be assigned by Hillwood Enterprises to any other parties. If the Closing has not occurred on or before March 31, 2020, then either Landlord or Tenant may terminate this Fourth Amendment, prior to the Closing, by prior written notice to the other party. Tenant acknowledges that (i) prior to the Closing, Landlord has no right, title, or interest in the Buildings and (ii) Landlord has no right to bind or act on behalf of the Existing Landlord.

27. Additional 1751 Space. Landlord acknowledges that, for a period beginning on the Third Amendment Vacation Date and continuing through August 31, 2019, Existing Landlord incorrectly charged Tenant rent for the Additional 1751 Space, resulting in an overpayment by Tenant in the amount of $20,677.95 (the "**Overpayment Amount**"). Tenant acknowledges that Landlord shall not be liable for the Overpayment Amount in the event that Existing Landlord has not reimbursed Tenant for the Overpayment Amount by the Fourth Amendment Effective Date, provided that the foregoing shall not limit Tenant's recourse against Existing Landlord with respect to the Overpayment Amount.

[Signatures appear on next page]

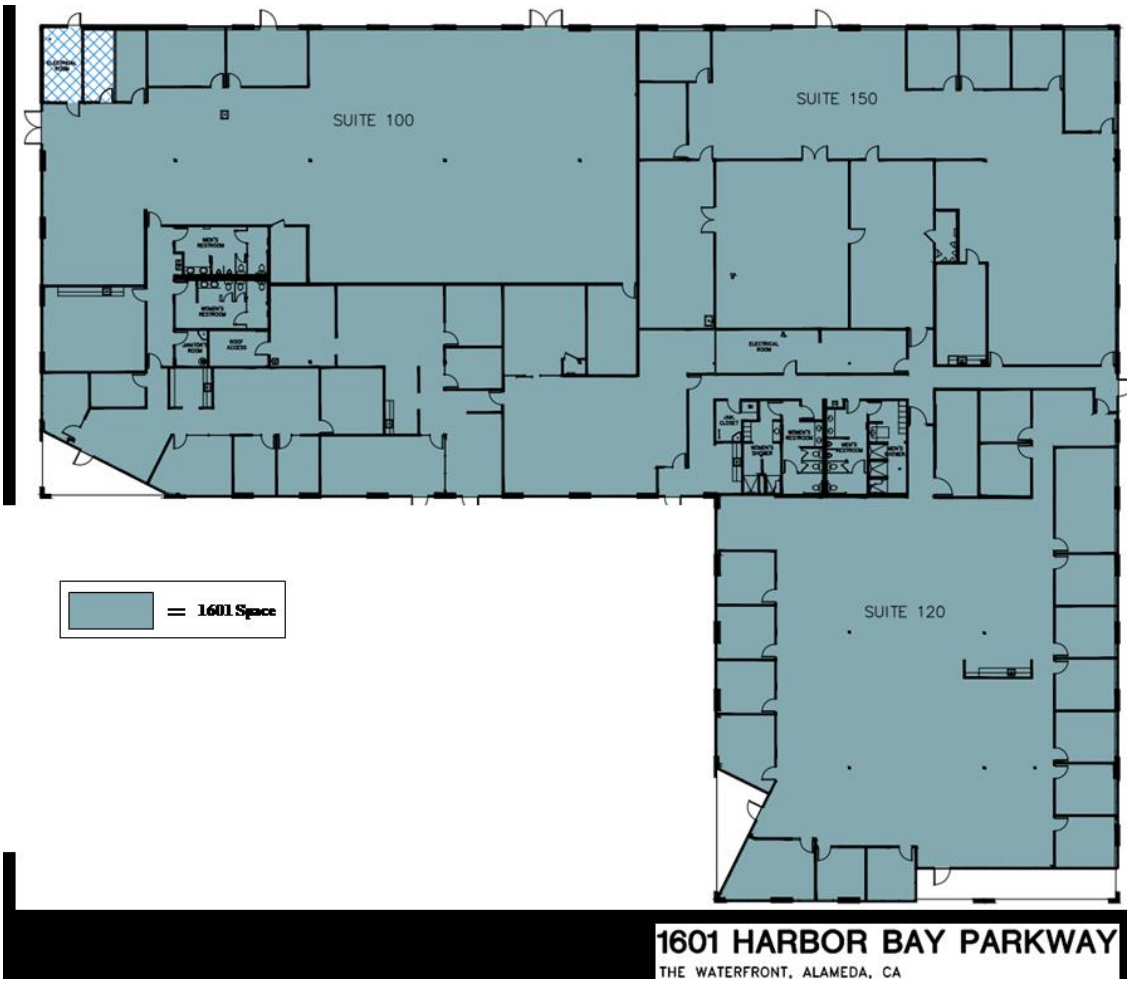
IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment as of the Execution Date.

LANDLORD:	HILLWOOD ENTERPRISES, L.P., a Texas limited partnership By: AHB, LLC, a Texas limited liability company its general partner By: /s/ Larry Blair Name: Larry Blair Title: Senior Vice President
TENANT:	EXELIXIS, INC., a Delaware corporation By: /s/ Michael M. Morrissey Name: Michael M. Morrissey Title: President & Chief Executive Officer

EXHIBIT A-4

PLAN DELINEATING THE PREMISES AND TENANT MAINTAINED OUTDOOR AREAS

(See attached.)



1601 HARBOR BAY PARKWAY

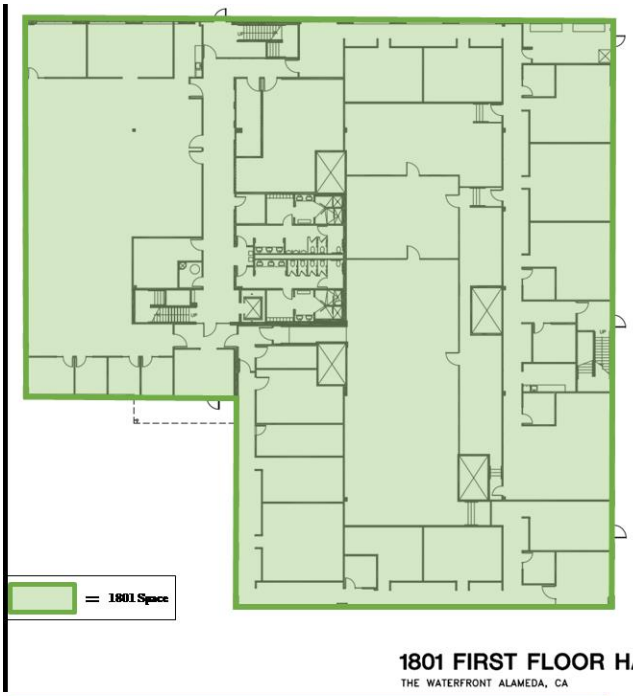
THE WATERFRONT, ALAMEDA, CA

1751 FIRST FLOOR HARBOR BAY PARKWAY

THE WATERFRONT, ALAMEDA, CA

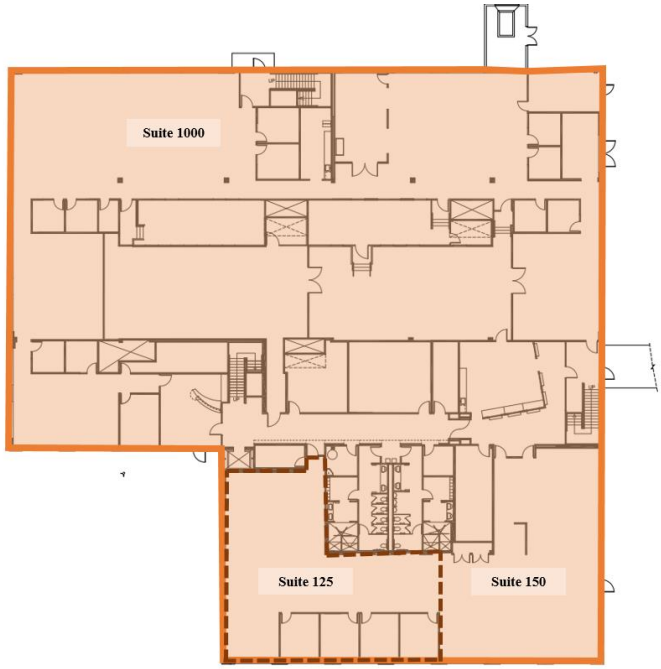
1751 SECOND FLOOR HARBOR BAY PARKWAY

THE WATERFRONT, ALAMEDA, CA



1801 FIRST FLOOR HARBOR BAY PARKWAY
THE WATERFRONT ALAMEDA, CA

1801 SECOND FLOOR HARBOR BAY PARKWAY
THE WATERFRONT ALAMEDA, CA



= 1851 Space

1851 FIRST FLOOR HARBOR BAY PARKWAY

THE WATERFRONT ALAMEDA, CA

= 1851 Space

1851 SECOND FLOOR HARBOR BAY PARKWAY

THE WATERFRONT, ALAMEDA, CA

INTERform
COMMERCIAL INTERIORS
300 EXECUTIVE PARKWAY, Suite 115, San Ramon, CA 94583
Tel: 925.847.1001 Fax: 925.867.2701

1701 FIRST FLOOR HARBOR BAY PARKWAY

THE WATERFRONT, ALAMEDA, CA

REV 05.29.19

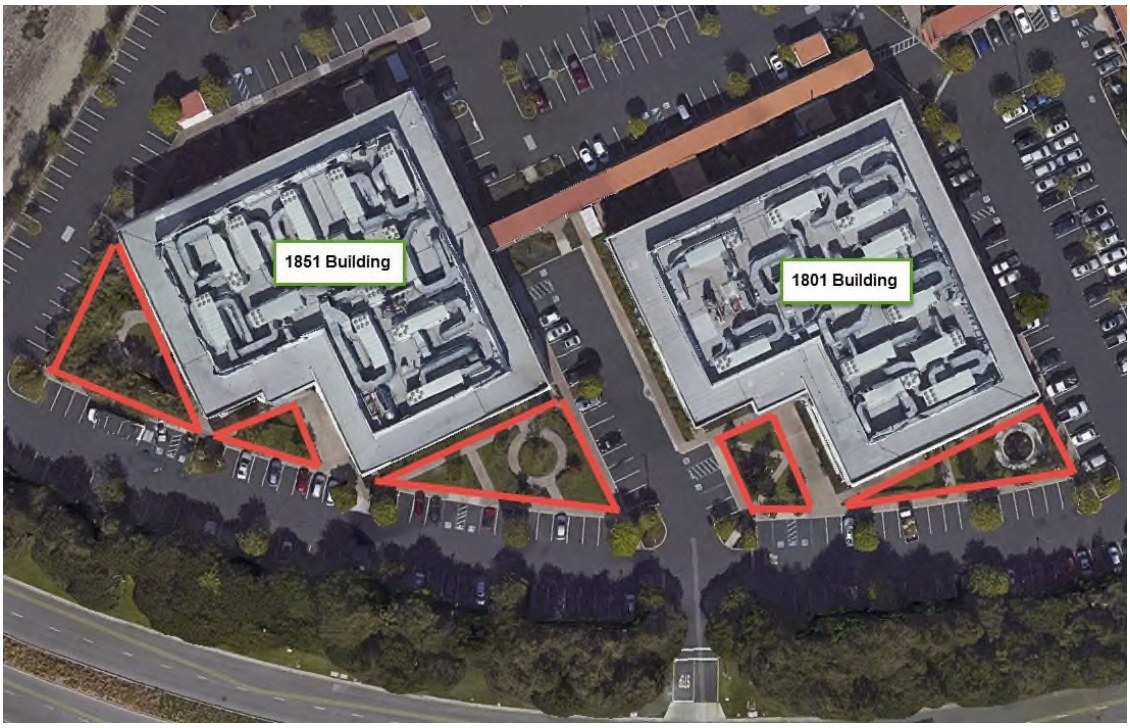
INTERform
COMMERCIAL INTERIORS

1701 SECOND FLOOR HARBOR BAY PARKWAY

THE WATERFRONT, ALAMEDA, CA

REV 10.26.18

TENANT MAINTAINED OUTDOOR AREAS



1601 Space

Project RSF	Building RSF	Premises RSF	Rent Start/ Change Date (for remaining Term)	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
			1601 Space						
385,967	37,544	37,544	Commencement*	$1.90	71,333.60	100.00%	9.73%	10/31/2031	NNN
			12/1/2020	$1.96	73,586.24				
			12/1/2021	$2.02	75,838.88				
			12/1/2022	$2.08	78,091.52				
			12/1/2023	$2.14	80,344.16				
			12/1/2024	$2.20	82,596.80				
			12/1/2025	$2.27	85,224.88				
			12/1/2026	$2.34	87,852.96				
			12/1/2027	$2.41	90,481.04				
			12/1/2028	$2.48	93,109.12				
			12/1/2029	$2.55	95,737.20				
			12/1/2030	$2.63	98,740.72				

* See provisos in the Third Amendment.

1701 Space

Suite 100 of 1701 Space (former Port's America)

Project RSF	Building RSF	Premises RSF	Rent Start/ Change Date	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
385,967	59,335	4,140	Base Rent commencement	$1.85	$7,659.00	6.98%	1.07%	10/31/2031	NNN
			2/1/2020	$1.87	$7,741.80	[1]			
			2/1/2021	$1.93	$7,990.20	[2]			
			2/1/2022	$1.99	$8,238.60	[3]			
			2/1/2023	$2.09	$8,652.60	[4]			
			2/1/2024	$2.15	$8,901.00	[4]			
			2/1/2025	$2.21	$9,149.40				
			2/1/2026	$2.28	$9,439.20				
			2/1/2027	$2.35	$9,729.00				
			2/1/2028	$2.42	$10,018.80				
			2/1/2029	$2.49	$10,308.60				
			2/1/2030	$2.56	$10,598.40				
			2/1/2031	$2.64	$10,929.60				

[1] 10 mos @ $1.85, 2 mos @ $1.91
[2] 3% increase
[3] 10 mos @ $2.08, 2 mos @ $2.14)
[4] 3% current year and each year ther

Suite 125 of 1701 Space (former Ripple Effects)

Project RSF	Building RSF	Premises RSF	Rent Start/ Change Date	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
385,967	59,335	2,355	Base Rent commencement	$1.54	$3,626.70	3.97%	0.61%	10/31/2031	NNN
			2/1/2020	$1.58	$3,720.90	[1]			
			2/1/2021	$1.87	$4,403.85	[2]			
			2/1/2022	$2.03	$4,780.65	[3]			
			2/1/2023	$2.09	$4,921.95	[4]			
			2/1/2024	$2.15	$5,063.25				
			2/1/2025	$2.21	$5,204.55				
			2/1/2026	$2.28	$5,369.40				
			2/1/2027	$2.35	$5,534.25				
			2/1/2028	$2.42	$5,699.10				
			2/1/2029	$2.49	$5,863.95				
			2/1/2030	$2.56	$6,028.80				
			2/1/2031	$2.64	$6,217.20				

[1] First two years blend RE rents
[2] 4 mos @ 1.64, 6 mos @1.96, 2 mos
[3] 10 mos @ 2.02, 2 mos @2.08
[4] 3% current year and each year ther

Suite 115 and 200 of 1701 Space (Former Singulex)

Project RSF	Building RSF	Premises RSF	Rent Start/ Change Date	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
385,967	59,335	51,858	Base Rent commencement	$1.43	$74,156.94	87.40%	13.44%	10/31/2031	NNN
			2/1/2020	$1.47	$76,231.26				
			2/1/2021	$1.51	$78,305.58				
			2/1/2022	$1.56	$80,898.48				
			2/1/2023	$1.94	$100,604.52	[1]			
			2/1/2024	$2.15	$111,494.70	[2]			
			2/1/2025	$2.21	$114,606.18	[3]			
			2/1/2026	$2.28	$118,236.24				
			2/1/2027	$2.35	$121,866.30				
			2/1/2028	$2.42	$125,496.36				
			2/1/2029	$2.49	$129,126.42				
			2/1/2030	$2.56	$132,756.48				
			2/1/2031	$2.64	$136,905.12				

[1] 4 mos @ $1.61, 6 mos @ $2.08, 2 r
[2] 10 mos @ $2.14, 2 mos @ 2.20
[3] 3% current year and each year ther

Suite 150 of 1701 Space (former Management Space - Modeled after Suites 115 and 200)

Project RSF	Building RSF	Premises RSF	Rent Start/ Change Date	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
385,967	59,335	982	Base Rent commencement	$1.43	$1,404.26	1.66%	0.25%	10/31/2031	NNN
			2/1/2020	$1.47	$1,443.54				
			2/1/2021	$1.51	$1,482.82				
			2/1/2022	$1.56	$1,531.92				
			2/1/2023	$1.94	$1,905.08				
			2/1/2024	$2.15	$2,111.30				
			2/1/2025	$2.21	$2,170.22				
			2/1/2026	$2.28	$2,238.96				
			2/1/2027	$2.35	$2,307.70				
			2/1/2028	$2.42	$2,376.44				
			2/1/2029	$2.49	$2,445.18				
			2/1/2030	$2.56	$2,513.92				
			2/1/2031	$2.64	$2,592.48				

1751 Space

Project RSF	Building RSF	RSF	Rent Start/ Change Date (for remaining Term)	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
385,967	73,854	16,169	Current	$1.70	27,487.30	21.89%	4.19%	10/31/2031	NNN
			2/1/2020	$1.75	28,295.75				
			2/1/2021	$1.80	29,104.20				
			2/1/2022	$1.86	30,074.34				
			2/1/2023	$1.91	30,882.79				
			2/1/2024	$1.97	31,852.93				
			2/1/2025	$2.03	32,823.07				
			2/1/2026	$2.09	33,793.21				
			2/1/2027	$2.15	34,763.35				
			2/1/2028	$2.21	35,733.49				
			2/1/2029	$2.28	36,865.32				
			2/1/2030	$2.35	37,997.15				
			2/1/2031	$2.42	39,128.98				

1801 Space

Project RSF	Building RSF	RSF	Rent Start/ Change Date (for remaining Term)	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
385,967	58,417	58,417	Current	$1.70	99,308.90	100.00%	15.14%	10/31/2031	NNN
			2/1/2020	$1.75	102,229.75				
			2/1/2021	$1.80	105,150.60				
			2/1/2022	$1.86	108,655.62				
			2/1/2023	$1.91	111,576.47				
			2/1/2024	$1.97	115,081.49				
			2/1/2025	$2.03	118,586.51				
			2/1/2026	$2.09	122,091.53				
			2/1/2027	$2.15	125,596.55				
			2/1/2028	$2.21	129,101.57				
			2/1/2029	$2.28	133,190.76				
			2/1/2030	$2.35	137,279.95				
			2/1/2031	$2.42	141,369.14				

1851 Space

Project RSF	Building RSF	RSF	Rent Start/ Change Date (for remaining Term)	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
385,967	57,476	57,476	Current	$1.70	97,709.20	100.00%	14.89%	10/31/2031	NNN
			2/1/2020	$1.75	100,583.00				
			2/1/2021	$1.80	103,456.80				
			2/1/2022	$1.86	106,905.36				
			2/1/2023	$1.91	109,779.16				
			2/1/2024	$1.97	113,227.72				
			2/1/2025	$2.03	116,676.28				
			2/1/2026	$2.09	120,124.84				
			2/1/2027	$2.15	123,573.40				
			2/1/2028	$2.21	127,021.96				
			2/1/2029	$2.28	131,045.28				
			2/1/2030	$2.35	135,068.60				
			2/1/2031	$2.42	139,091.92				

EXHIBIT B

BASE RENT SCHEDULES

(See attached.)

1601 Space

Project RSF	Building RSF	Premises RSF	Rent Start/ Change Date (for remaining Term)	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
			1601 Space						
385,967	37,544	37,544	Commencement*	$1.90	71,333.60	100.00%	9.73%	10/31/2031	NNN
			12/1/2020	$1.96	73,586.24				
			12/1/2021	$2.02	75,838.88				
			12/1/2022	$2.08	78,091.52				
			12/1/2023	$2.14	80,344.16				
			12/1/2024	$2.20	82,596.80				
			12/1/2025	$2.27	85,224.88				
			12/1/2026	$2.34	87,852.96				
			12/1/2027	$2.41	90,481.04				
			12/1/2028	$2.48	93,109.12				
			12/1/2029	$2.55	95,737.20				
			12/1/2030	$2.63	98,740.72				

* See provisos in the Third Amendment.

1701 Space

Suite 100 of 1701 Space (former Port's America)

Project RSF	Building RSF	Premises RSF	Rent Start/ Change Date	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
385,967	59,335	4,140	Base Rent commencement	$1.85	$7,659.00	6.98%	1.07%	10/31/2031	NNN
			2/1/2020	$1.87	$7,741.80	[1]			
			2/1/2021	$1.93	$7,990.20	[2]			
			2/1/2022	$1.99	$8,238.60	[3]			
			2/1/2023	$2.09	$8,652.60	[4]			
			2/1/2024	$2.15	$8,901.00	[4]			
			2/1/2025	$2.21	$9,149.40				
			2/1/2026	$2.28	$9,439.20				
			2/1/2027	$2.35	$9,729.00				
			2/1/2028	$2.42	$10,018.80				
			2/1/2029	$2.49	$10,308.60				
			2/1/2030	$2.56	$10,598.40				
			2/1/2031	$2.64	$10,929.60				

[1] 10 mos @ $1.85, 2 mos @ $1.91
[2] 3% increase
[3] 10 mos @ $2.08, 2 mos @ $2.14)
[4] 3% current year and each year ther

Suite 125 of 1701 Space (former Ripple Effects)

Project RSF	Building RSF	Premises RSF	Rent Start/ Change Date	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
385,967	59,335	2,355	Base Rent commencement	$1.54	$3,626.70	3.97%	0.61%	10/31/2031	NNN
			2/1/2020	$1.58	$3,720.90	[1]			
			2/1/2021	$1.87	$4,403.85	[2]			
			2/1/2022	$2.03	$4,780.65	[3]			
			2/1/2023	$2.09	$4,921.95	[4]			
			2/1/2024	$2.15	$5,063.25				
			2/1/2025	$2.21	$5,204.55				
			2/1/2026	$2.28	$5,369.40				
			2/1/2027	$2.35	$5,534.25				
			2/1/2028	$2.42	$5,699.10				
			2/1/2029	$2.49	$5,863.95				
			2/1/2030	$2.56	$6,028.80				
			2/1/2031	$2.64	$6,217.20				

[1] First two years blend RE rents
[2] 4 mos @ 1.64, 6 mos @1.96, 2 mos
[3] 10 mos @ 2.02, 2 mos @2.08
[4] 3% current year and each year ther

Suite 115 and 200 of 1701 Space (Former Singulex)

Project RSF	Building RSF	Premises RSF	Rent Start/ Change Date	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
385,967	59,335	51,858	Base Rent commencement	$1.43	$74,156.94	87.40%	13.44%	10/31/2031	NNN
			2/1/2020	$1.47	$76,231.26				
			2/1/2021	$1.51	$78,305.58				
			2/1/2022	$1.56	$80,898.48				
			2/1/2023	$1.94	$100,604.52	[1]			
			2/1/2024	$2.15	$111,494.70	[2]			
			2/1/2025	$2.21	$114,606.18	[3]			
			2/1/2026	$2.28	$118,236.24				
			2/1/2027	$2.35	$121,866.30				
			2/1/2028	$2.42	$125,496.36				
			2/1/2029	$2.49	$129,126.42				
			2/1/2030	$2.56	$132,756.48				
			2/1/2031	$2.64	$136,905.12				

[1] 4 mos @ $1.61, 6 mos @ $2.08, 2 r
[2] 10 mos @ $2.14, 2 mos @ 2.20
[3] 3% current year and each year ther

Suite 150 of 1701 Space (former Management Space - Modeled after Suites 115 and 200)

Project RSF	Building RSF	Premises RSF	Rent Start/ Change Date	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
385,967	59,335	982	Base Rent commencement	$1.43	$1,404.26	1.66%	0.25%	10/31/2031	NNN
			2/1/2020	$1.47	$1,443.54				
			2/1/2021	$1.51	$1,482.82				
			2/1/2022	$1.56	$1,531.92				
			2/1/2023	$1.94	$1,905.08				
			2/1/2024	$2.15	$2,111.30				
			2/1/2025	$2.21	$2,170.22				
			2/1/2026	$2.28	$2,238.96				
			2/1/2027	$2.35	$2,307.70				
			2/1/2028	$2.42	$2,376.44				
			2/1/2029	$2.49	$2,445.18				
			2/1/2030	$2.56	$2,513.92				
			2/1/2031	$2.64	$2,592.48				

1751 Space

Project RSF	Building RSF	RSF	Rent Start/ Change Date (for remaining Term)	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
385,967	73,854	16,169	Current	$1.70	27,487.30	21.89%	4.19%	10/31/2031	NNN
			2/1/2020	$1.75	28,295.75				
			2/1/2021	$1.80	29,104.20				
			2/1/2022	$1.86	30,074.34				
			2/1/2023	$1.91	30,882.79				
			2/1/2024	$1.97	31,852.93				
			2/1/2025	$2.03	32,823.07				
			2/1/2026	$2.09	33,793.21				
			2/1/2027	$2.15	34,763.35				
			2/1/2028	$2.21	35,733.49				
			2/1/2029	$2.28	36,865.32				
			2/1/2030	$2.35	37,997.15				
			2/1/2031	$2.42	39,128.98				

1801 Space

Project RSF	Building RSF	RSF	Rent Start/ Change Date (for remaining Term)	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
385,967	58,417	58,417	Current	$1.70	99,308.90	100.00%	15.14%	10/31/2031	NNN
			2/1/2020	$1.75	102,229.75				
			2/1/2021	$1.80	105,150.60				
			2/1/2022	$1.86	108,655.62				
			2/1/2023	$1.91	111,576.47				
			2/1/2024	$1.97	115,081.49				
			2/1/2025	$2.03	118,586.51				
			2/1/2026	$2.09	122,091.53				
			2/1/2027	$2.15	125,596.55				
			2/1/2028	$2.21	129,101.57				
			2/1/2029	$2.28	133,190.76				
			2/1/2030	$2.35	137,279.95				
			2/1/2031	$2.42	141,369.14				

1851 Space

Project RSF	Building RSF	RSF	Rent Start/ Change Date (for remaining Term)	Rent PSF/Mo	Monthly Base Rent	% of Bldg	% of Project	Term Expire	Expense Reimb.
385,967	57,476	57,476	Current	$1.70	97,709.20	100.00%	14.89%	10/31/2031	NNN
			2/1/2020	$1.75	100,583.00				
			2/1/2021	$1.80	103,456.80				
			2/1/2022	$1.86	106,905.36				
			2/1/2023	$1.91	109,779.16				
			2/1/2024	$1.97	113,227.72				
			2/1/2025	$2.03	116,676.28				
			2/1/2026	$2.09	120,124.84				
			2/1/2027	$2.15	123,573.40				
			2/1/2028	$2.21	127,021.96				
			2/1/2029	$2.28	131,045.28				
			2/1/2030	$2.35	135,068.60				
			2/1/2031	$2.42	139,091.92				

Exhibit 10.3

LEASE AGREEMENT
(COMMERCIAL SINGLE-TENANT NET LEASE)

EXELIXIS, INC.,
A DELAWARE CORPORATION

LEASE AGREEMENT
(COMMERCIAL SINGLE-TENANT NET LEASE)

BASIC LEASE INFORMATION

Defined Term or Terminology	Definition or Description
Execution Date:	October 25, 2019
Landlord:	Ernst Development Partners, Inc., a California corporation
Tenant:	Exelixis, Inc., a Delaware corporation
Premises:	The Building and the Tenant Exclusive Outdoor Areas. The Premises are generally depicted on **Exhibit A**. At the request of either party, Landlord and Tenant shall execute an amendment to this Lease to modify **Exhibit A** to be consistent with the Construction Document Packages
Building:	The building to be constructed on the Land in accordance with the Work Letter (as defined in Section 1(b))
Land:	Portions of APNs 74-1359-15-2, 74-1359-9, and 74-1359-18-1 (commonly referred to as 1951 and 2001 Harbor Bay Parkway) in Alameda, California, to be acquired by Landlord pursuant to that certain Purchase and Sale Agreement dated June 12, 2019 between Peet's Coffee Inc. and Landlord, as amended from time to time (the "**Land Purchase Agreement**"). The Land is approximately 5.13 acres. The Land is depicted on **Exhibit A** attached hereto.
Tenant Exclusive Outdoor Areas:	Certain exterior areas located outside of the Building as generally depicted in **Exhibit A**, as may be adjusted by Landlord and Tenant, from time to time; provided, however, upon the approval of the Construction Document Packages, the Tenant Exclusive Outdoor Areas shown on **Exhibit A** will be automatically amended to reflect the Tenant Exclusive Outdoor Areas identified in the Construction Document Packages.
Project:	The Premises and Land collectively
Rentable Area of Building:	Approximately 220,000 square feet. The parties shall determine the Rentable Area of the Building (*i.e.*, the rentable square footage) calculated pursuant to the BOMA Standard set forth in Section 4.1(a) of the Work Letter.
Term Commencement:	The date of Substantial Completion of the Improvements and delivery of the Premises to Tenant in the required condition, which date shall be automatically adjusted for Tenant Delay as provided in the Work Letter ("Substantial Completion," "Improvements" and "Tenant Delay" are each defined in the Work Letter).

Estimated Date of Substantial Completion:	October 25, 2021, which date is shown as the “Estimated Date of Substantial Completion” in the Progress Schedule (as defined in the Work Letter), and which date shall be automatically extended for Excusable Delays as permitted in the Work Letter and for other adjustments to the Progress Schedule permitted in Section 1.4 of the Work Letter.
Base Rent Commencement:	Sixty (60) days after Term Commencement
Term Expiration:	242 months after the Term Commencement, provided that if such date is not the last day of a calendar month, then the Term Expiration shall be the last day of the calendar month in which such date occurs.
Base Rent:	Initial Base Rent (per month), as defined in and calculated in accordance with Section 3(a)(ii), provided that Base Rent shall increase by 3% each year on each anniversary of the Term Commencement. A proforma (preliminary) Base Rent schedule is attached as **Exhibit D-2** solely for the purpose of demonstrating how the actual, final Base Rent will be determined in accordance with **Exhibit D-1** and **Exhibit D-2**.
Use:	Office, research and development, manufacturing, and other legally permitted uses, subject to the limitations in this Lease; provided, however, with respect to the Tenant Exclusive Outdoor Areas, the Tenant's use shall be restricted to (i) uses that are ancillary to general office use (*e.g.*, outdoor meeting space and break areas) and (ii) the installation, operation and maintenance of the Building Equipment as provided in Section 9.
Security Deposit amount or Letter of Credit amount:	An amount equal to Initial Base Rent, as defined in and calculated in accordance with Section 3(a)(ii); provided, until the amount of the Initial Base Rent is established, it shall be $726,000.00.
Tenant’s Address for Notices:	1851 Harbor Bay Parkway Alameda, CA 94502 Attn: General Counsel

Landlord's Address for Notices and Payment of Rent:	c/o srmErnst Development Partners 2220 Livingston Street, Suite 208 Oakland, CA 94606 Attn: Joseph Ernst With a copy to: c/o Hillwood 3000 Turtle Creek Boulevard Dallas, Texas 75219 Attn: Chris Brown, Senior Vice President With a copy to: Waterfront & BTS Harbor Bay Project, LLC c/o Hillwood 3000 Turtle Creek Boulevard Dallas, Texas 75219 Attn: Thomas D. Williams Phone: XXX-XXX-XXXX Email: XXX@XXX With a copy to: FISHMAN I JACKSON I RONQUILLO 13155 Noel Road, Suite 700, L.B. 13 Dallas, Texas 75240 Attn: Clay B. Pulliam Phone: XXX-XXX-XXXX Email: XXX@XXX
Broker(s):	None

In the event of any conflict between any Basic Lease Information and the Lease, the Basic Lease Information shall control.

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Exhibit A – Diagram of Premises
Exhibit B – Initial Improvements Work Letter
Exhibit C – Verification Memorandum
Exhibit D-1 – Base Rent Determination
Exhibit D-2 – Proforma Base Rent Schedule
Exhibit E-1 – Title Report
Exhibit E-2 – Specific Permitted Exceptions
Exhibit E-3 – Form of Restrictive Covenant
Exhibit F – Rules and Regulations
Exhibit G – Form of Environmental Questionnaire
Exhibit H – List of Environmental Documents
Exhibit I – Tenant's Property
Exhibit J – Amortization Schedule

LEASE AGREEMENT

(COMMERCIAL SINGLE-TENANT NET LEASE)

THIS LEASE AGREEMENT is made and entered into as of the Execution Date by and between ERNST DEVELOPMENT PARTNERS, INC., a California corporation ("**Landlord**"), and EXELIXIS, INC., a Delaware corporation ("**Tenant**").

WITNESSETH

1. Premises.

a. Premises. Subject to the terms and conditions of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord for the term of this Lease and at the rental and upon the conditions set forth below, the Premises, as described in the Basic Lease Information. Subject to the terms and conditions of this Lease and to the Title Exceptions, Tenant shall have the non-exclusive right to use the Land.

b. "As-Is" Condition. Subject to Substantial Completion of the Improvements and delivery of the Premises to Tenant in the required condition in accordance with the Initial Improvements Work Letter attached hereto as **Exhibit B** (the "**Work Letter**"), and subject to the express covenants, representations and warranties of Landlord contained herein, Tenant shall accept the Premises and the balance of the Project in its "as is" condition as of the date of delivery by Landlord. Notwithstanding the foregoing, Tenant's acceptance of the Premises and the balance of the Project shall not be deemed a waiver of Landlord's obligations with respect to the repairs of such defects, as expressly set forth herein.

c. Surrender Condition. At the expiration or earlier termination of the Lease, Tenant shall surrender possession of the Premises in the same condition and repair existing on Term Commencement (but including the completion of any punchlist items with respect to the Improvements in accordance with the Work Letter), only excepting ordinary wear and tear, damage by casualty (except for any damage the repairs for which Tenant is responsible under this Lease) and condemnation, Hazardous Materials (other than those used, generated, stored, released or emitted by Tenant's Parties or their contractors, invitees, or other guests), and repairs that Tenant is not responsible for under this Lease, and with all Alterations (as defined below), except as set forth in the immediately succeeding sentence. Notwithstanding the preceding sentence, except Alterations that constitute Tenant Improvements (other than laboratory improvements) and Alterations that constitute general office improvements, Tenant shall be obligated to remove upon the surrender of the Premises: (i) all Permitted Alterations and all other Alterations made without Landlord's consent, (ii) Tenant Improvements (that are laboratory improvements) that Landlord has required Tenant to remove as a condition to Landlord's granting consent or approval to such Alterations, and (iii) Alterations (including Tenant's Work) that Landlord has required Tenant to remove as a condition to Landlord's granting consent or approval to such Alterations. Upon surrender of the Premises, Tenant shall have obtained from all appropriate regulatory authorities (including any applicable fire department or regional water quality control board) all permits, approvals and clearances required by Law (as defined below) for the decommissioning or other closure of the Premises for Tenant's uses. If any Hazardous Materials (as defined below) have been used, generated, stored, released, or emitted at the Project in violation of applicable Laws by Tenant's Parties, Tenant shall have obtained a "no further action letter" or the equivalent from applicable regulatory authorities having jurisdiction over the Premises.

2. Term.

a. Initial Term. The term of this Lease (sometimes referred to herein as the "**Term**") shall commence on the Term Commencement as specified in the Basic Lease Information and, unless sooner terminated as hereinafter provided, shall end on the Term Expiration as specified in the Basic Lease Information. If Landlord permits Tenant to occupy the Premises prior to the date of Term Commencement, such occupancy shall be subject to all the terms of this Lease other than the obligation to pay Rent. If Term Commencement has not occurred on or prior to the Estimated Date of Substantial Completion as set forth in the Basic Lease Information, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom, except as

expressly provided in this Section 2(a). If Term Commencement has not occurred within forty-five (45) days after the Estimated Date of Substantial Completion (as the same may be extended as set forth in the Basic Lease Information), then Landlord shall credit against the first amounts of Base Rent otherwise becoming due an amount equal to one (1) day of Base Rent for each day that Term Commencement is delayed beyond such 45th day after the Estimated Date of Substantial Completion (as the same may be extended as set forth herein). If Term Commencement has not occurred by the date that is one year after the Estimated Date of Substantial Completion (as the same may be extended as set forth in the Basic Lease Information) (such date, the "**Outside Completion Date**"), Tenant, at its option, may either (i) terminate this Lease by written notice to Landlord given before Term Commencement or (ii) waive its right to terminate this Lease and pursue specific performance. Landlord and Tenant agree that the rent credit, the termination right and the right to seek specific performance provided in this Section 2(a) are Tenant's sole remedies for late delivery, and the rent credit is intended to compensate Tenant based on Landlord and Tenant's best estimate of the damages, including any lost business opportunity that Tenant will incur as a result of Landlord's failure to deliver the Premises timely, and such amount is not to be deemed a penalty. The dates of the Term Commencement and Term Expiration shall be confirmed in a Verification Memorandum (the "**Verification Memorandum**") in the form of **Exhibit C** executed by Landlord and Tenant promptly following delivery of possession. Notwithstanding anything in this Lease to the contrary, if a Tenant Delay (as defined in the Work Letter) occurs, then Term Commencement shall be deemed to be the date that Substantial Completion of the Improvements (as defined in the Work Letter) would have occurred and the Premises would have been delivered to Tenant in the required condition but for the Tenant Delay. Such date will be reasonably determined by Landlord in consultation with the Architect and the General Contractor. For the sake of clarity, the parties acknowledge that the Estimated Date of Substantial Completion, as referenced in this Section, shall be adjusted for certain Excusable Delays in accordance with the Basic Lease Information.

b. Early Termination Right. Provided that Exelixis, Inc. has not assigned this Lease other than to a Permitted Transferee (it being intended that all rights pursuant to this provision are and shall be personal to the original Tenant under this Lease and shall not be transferable or exercisable for the benefit of any Transferee other than a Permitted Transferee), and provided that an Event of Default hereunder is not continuing at the time of exercise, Tenant shall have the one-time right to elect to have the Term expire on a date stated in Tenant's written notice to Landlord as provided below (but in no event prior to the end of the one hundred eightieth (180th) month after the Term Commencement) (the "**Termination Date**") instead of the Term Expiration specified in the Basic Lease Information, by giving written notice to Landlord of the exercise of such termination option at least twelve (12) months prior to the end of the one hundred eightieth (180th) month after the Term Commencement and paying to Landlord, not later than six (6) months prior to the Termination Date, the amount of the unamortized portion (as of the Termination Date) of the Allowance and, if applicable, the Landlord's Excess Development Costs (such amortization to be calculated as a monthly amortization at 8% per annum in accordance with the amortization schedule attached hereto as **Exhibit J**) as consideration for the early termination of the Lease. Tenant shall have such option to terminate only if such option is exercised precisely in the manner provided herein (the "**Termination Payment**"). Upon timely and proper exercise of such option and the timely payment of the Termination Payment, the Term shall expire on the Termination Date, with the same force and effect as if the Lease were amended to provide for the Term to expire on the Termination Date instead of the Term Expiration specified on the Basic Lease Information. If Tenant has not delivered written notice to Landlord of the exercise of such termination option at least twelve (12) months prior to the end of the one hundred eightieth (180th) month after the Term Commencement or timely delivered the Termination Payment to Landlord, then the right to terminate this Lease pursuant to this Section 2(b) shall be null and void. Notwithstanding any of the foregoing, if an Event of Default exists on the Termination Date, then, at Landlord's sole option, the Lease will not terminate but will remain in full force and effect until such Event of Default is cured, subject to Landlord's rights and remedies with respect to such (and any other) Event of Default. Promptly upon the request of either party, the other party will confirm that the Event of Default has been cured and the Lease has been terminated. If an Event of Default exists on the Termination Date and Landlord does not elect to terminate this Lease pursuant to Section 14(b), Tenant shall retain its rights and obligations under this lease, including the payment of Rent, provided that the Termination Payment shall be applied against the components of the Base Rent consisting of the unamortized portion of the Allowance and Landlord's Excess Development Costs that are included in monthly Base Rent after the scheduled Termination Date and until this Lease is terminated pursuant to the terms set forth above following Tenant's cure of the Event of Default.

c. Option to Extend.

(i) Tenant shall have two options (each an "**Option**") to extend the Term of the Lease for consecutive and successive periods of five (5) years (the "**Option Period**") each, subject to the following conditions: (i) at the time an Option is exercised and as of the commencement of an Option Period, this Lease shall be in full force and effect and no Event of Default then exists; (ii) an Option must be exercised by notice given to Landlord not later than nine (9) months prior to the then-scheduled expiration of the Term, which notice shall be irrevocable regardless of the fact that Base Rent for the Option Period has not yet been finally determined; and (iii) Tenant shall not have assigned the Lease or sublet substantially all of the Premises for substantially the remainder of the Term other than in a transaction that does not require Landlord's consent.

(ii) In the event an Option is timely and effectively exercised, the Term shall be extended for the Option Period upon all of the terms and conditions of the Lease; provided, however, that (1) the Base Rent during the first year of the Option Period shall be the then fair market rental value of the Premises and Base Rent during the Option Period shall increase by three percent (3%) as of each anniversary of the commencement of the Option Period; (2) upon the exercise by Tenant of the first Option, if at all, Tenant will have only one (1) remaining Option, and upon Tenant's exercise of the second Option, if at all, Tenant will have no further remaining rights or options to extend the Term; (3) the Work Letter attached hereto and any allowances and other or inducements provided by Landlord in connection with the original Term (or any previous Option Period), will not apply with respect to the subject Option Period; and (4) Operating Expenses shall not include the amortization of any capital expenditures incurred by Landlord prior to the commencement of each Option Period.

(iii) For the purposes hereof, the fair market rental value of the Premises for the applicable Option Period shall be the monthly rental rate per square foot of rentable area then prevailing for comparable space in the Oakland Metropolitan area (excluding downtown Oakland), multiplied by the Rentable Area of the Premises. Not later than eight (8) months prior to the commencement of the Option Period, Landlord shall give Tenant Landlord's determination of fair market rental value that takes into account all of the factors required to be considered in the determination of fair market rental value in subsection (iv) below (the "**FMRV Notice**"). Tenant may dispute Landlord's determination of fair rental value by notice to Landlord given within fifteen (15) days following the giving of Landlord's determination, in which event the parties shall negotiate in good faith to resolve the dispute. If such dispute is not resolved by negotiation between the parties within thirty (30) days following delivery of Tenant's notice of dispute of Landlord's determination of fair market rental value, then fair market rental value shall be determined by appraisal under subsection (iv) below and from the commencement of the Option Period, Tenant shall pay Base Rent when due based upon the Base Rent in effect at the end of the initial Term, subject to retroactive adjustment between the parties if the determination by appraisal is different from the Base Rent in effect at the end of the initial Term. If Tenant does not timely dispute Landlord's determination of the fair market rental, then Tenant will be deemed to have accepted the fair market rental value as set forth in the FMRV Notice.

(iv) When fair market rental value is to be determined by appraisal, within fifteen (15) days after the expiration of the 30-day negotiation period, Landlord and Tenant shall each appoint as an appraiser, a real estate appraiser with at least fifteen (15) years of experience in appraising real property in the Alameda and Oakland area, and give written notice of such appointment to the other. If either Landlord or Tenant shall fail to appoint an appraiser within such 15-day period, then the single appraiser appointed shall be the sole appraiser and shall determine the fair market rental value of the Premises. In the event each party appoints an appraiser, such appraisers shall, within thirty (30) days after the appointment of the last of them to be appointed, complete their independent determinations of fair market rental value and furnish the same to Landlord and Tenant. In making the determination of fair market rental value of the Premises, such appraisers shall base such appraisal on the fair market base rent then being charged to non-renewing, non-equity tenants in comparable buildings in the Oakland Metropolitan area of comparable age, construction, capital improvements, size, location and quality for leases with terms equal to the Option Period and shall take into consideration the creditworthiness and financial strength of the tenant, any "base year" or "expense stop" provisions applicable to such value, and the value of market concessions. The determination of fair market rental value will account for the lack of concessions under this Lease as to the Option Period. The concessions to be considered in adjusting fair market rental value shall include (a) rental abatement concessions, if any, being granted such tenants in connection with such comparable space, (b) tenant improvements

or allowances provided or to be provided for such comparable space, taking into account the value, if any, of the existing improvements in the subject space, such value to be based on the age, condition, design, quality of finishes and layout of the improvements, and (c) other reasonable monetary concessions being granted such tenants in connection with such comparable space. If any concessions are paid in cash, such as moving allowances or tenant improvement reimbursements, Tenant shall have the option of receiving the payment or concession in cash or receiving the benefit of the relevant concession through an adjustment to the net effective Base Rent that shall reflect the reasonable present value of the relevant concession. Notwithstanding the foregoing, the determination of fair market rental value of the Premises shall exclude the value of the Improvements (as defined in the Work Letter) and any Alterations to the extent paid for by Tenant. If the aggregate Base Rent over the Option Period under the lower appraisal varies from the higher appraisal by five percent (5%) or less of the total Base Rent payable over the Option Period under the lower appraisal, the fair market rental value shall be the average of the two valuations. The appraisal shall not provide for any interim increases in Base Rent during the Option Period. If the total Base Rent during the Option Period under the lower appraisal varies from the higher appraisal by more than five percent (5%), the two appraisers shall, within thirty (30) days after submission of the last appraisal report, appoint an independent third appraiser who shall be similarly qualified and such appraiser (i.e. the individual, in contrast to his or her employer) shall not have been previously employed by Landlord or Tenant. If the two appraisers shall be unable to agree on the selection of a third appraiser in a timely manner then either Landlord or Tenant may request such appointment by the presiding judge of the Superior Court of Alameda County. The third appraiser shall, within forty-five (45) days after appointment, select which of the two appraisals most closely represents the third appraiser's determination of fair market rental value and submit that determination to Landlord and Tenant which shall be deemed the fair market rental value of the Premises. All fees and costs incurred in connection with the determination of fair market rental value by the third appraiser, if any, shall be paid one-half by Landlord and one-half by Tenant. Following the determination of the Base Rent during the Option Period, either by the process outlined above or by agreement, and prior to the commencement of the Option Period, Tenant and Landlord shall execute an amendment to this Lease extending the Term by the Option Period and establishing the Base Rent during the Option Period.

3. Rent.

a. Base Rent.

(i) Base Rent Generally. Commencing on the Base Rent Commencement, Tenant shall pay to Landlord as rental the amount specified in the Basic Lease Information as the Base Rent. Base Rent shall be payable in advance on or before the first day of each successive calendar month during the term in which Base Rent is payable. Base Rent for any partial month hereunder will be prorated based on the actual number of days in the relevant period.

(ii) Calculation of Initial Base Rent. As soon as practical after Landlord enters into all Contracts and procures all applicable permits for the construction of the Improvements, Landlord shall deliver notice to Tenant of Landlord's calculation of Base Rent for the first month of the Term for which Base Rent is due in accordance with **Exhibit D-1** attached hereto (the "**Initial Base Rent**"), together with reasonably-detailed documentation supporting such calculation. If Tenant disagrees with Landlord's calculation, then, within ten (10) business days after delivery of Landlord's notice, Tenant shall notify Landlord of its objections in reasonable detail and, thereafter, the parties shall use reasonable efforts to agree on the Initial Base Rent calculated in accordance with **Exhibit D-1**. If Tenant fails to notify Landlord of any objections within such 10-business day period, then Tenant shall be deemed to have approved Landlord's calculation. As soon as practicable after the calculation of Initial Base Rent, the parties shall amend this Lease to insert a Base Rent schedule in the Base Lease Information; provided, however, Landlord's failure to prepare or Tenant's failure to execute such amendment shall not affect the validity of the determination of the Initial Base Rent or alter Tenant's obligations with respect thereto.

(iii) Adjustments to Base Rent due to Changes. Following agreement (or deemed agreement) by the parties with respect to the calculation of the Initial Base Rent pursuant to Section 3(a)(ii), Initial Base Rent shall not be adjusted (except as provided in subparagraph (iv) below) unless: (A) Total Development Costs (as defined in **Exhibit D-1**) increase or decrease as a result of Changes in the amount set

forth in approved Changed Orders (as defined in the Work Letter) after the date that Initial Base Rent is determined in accordance with Section 3(a)(ii), (B) Total Development Costs increase as a result of Tenant Delays (as defined in the Work Letter) after the date that Initial Base Rent is determined in accordance with Section 3(a)(ii), or (C) as of the Base Rent Commencement, there is an actual, documented reduction in Total Development Costs resulting from cost savings in the construction of the Improvements. In such events, Landlord shall re-calculate Initial Base Rent in accordance with **Exhibit D-1**, provided that Initial Base Rent shall be adjusted only to the extent necessary to account for the changes to Total Development Costs due to circumstances described in clauses (A), (B), and (C) immediately above. Any change to Initial Base Rent pursuant to this subsection shall be documented by notice from Landlord to Tenant, together with reasonable documentation supporting such change, and shall be subject to the same review and objection process set forth in subsection (ii) above. For the sake of clarity, the parties agree that any reduction in Total Development Costs as described in clause (C) immediately above shall exclude reductions that have been reflected in an adjustment to the Initial Base Rent pursuant to clause (A) immediately above. Any adjustments to Base Rent pursuant to this subsection shall be reflected in the Base Rent schedule in the Verification Memorandum. As soon as practicable after the mutual execution and delivery of the Verification Memorandum, the parties shall amend this Lease to insert the revised Base Rent schedule in the Base Lease Information; provided, however, that Landlord's failure to prepare or Tenant's failure to execute such amendment shall not affect the validity of the subject adjustments or alter Tenant's obligations with respect thereto.

(iv) Other Equitable Adjustments. The parties acknowledge that Tenant may be obligated to make a payment of Base Rent prior to final adjustments to Initial Base Rent in accordance with Section 3(a)(iii). Tenant shall make any such payment in accordance with the Base Rent then-calculated by the parties, and any shortfall due to Landlord as a result of adjustments pursuant to Section 3(a)(iii) shall be paid to Landlord within thirty (30) days, and any refund due to Tenant as a result of adjustments pursuant to Section 3(a)(iii) shall be deducted by Tenant from Tenant's next payment of Rent.

b. Additional Rent. Tenant shall pay, as additional rent, all amounts of money required to be paid to Landlord by Tenant under this Lease ("**Additional Rent**") in addition to Base Rent, whether or not the same is designated "additional rent." Base Rent and Additional Rent are sometimes collectively referred to in this Lease as "**Rent**." Additional Rent shall be payable on or before the first day of each month during the Term contemporaneously with Tenant's payment of Base Rent or, if such amount is not a periodic payment, then within thirty (30) days after Landlord's request or as otherwise required in this Lease.

c. Late Charge. Tenant hereby acknowledges that late payment by Tenant to Landlord of Base Rent and other amounts due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing, accounting and late charges which may be imposed on Landlord by the terms of any loan secured by the Building. Accordingly, if any Rent shall not be received by Landlord within five (5) days of the date due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant and shall not be construed as a penalty. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted under this Lease.

d. Default Rate. Any amount payable by Tenant to Landlord, if not paid by the fifth (5th) day after such amount was due, shall bear interest from the sixth (6th) day after such amount was due until paid at the "prime" rate as announced from time to time in the *Wall Street Journal* for short term commercial loans, plus three percent (3%) per annum or such lower rate as is the maximum rate permitted by law ("**Default Rate**"), provided that interest shall not be payable on late charges incurred by Tenant nor on any amounts upon which late charges are paid by Tenant to the extent such interest would cause the total interest to be in excess of that legally permitted. Payment of interest shall not excuse or cure any default or Event of Default under this Lease by Tenant. Notwithstanding the foregoing, before assessing a late charge or interest for the first time in any twelve (12) month period (but not if a late charge or interest has been assessed more than two (2) times during the immediately preceding three years), Landlord

shall provide Tenant written notice of the delinquency, and shall waive such late charge and interest if Tenant pays such delinquency within five (5) days thereafter.

e. Payment. All payments due from Tenant to Landlord under this Lease shall be made to Landlord without deduction or offset in lawful money of the United States of America by a check for currency or wire transfer at the address for payment set forth in the Basic Lease Information, or to such other person or at such other place as Landlord may from time to time designate by notice to Tenant.

f. Independent Covenants. This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent, and not dependent. Except as otherwise set forth herein, Tenant shall not be entitled to any setoff of the Rent owing hereunder against Landlord if Landlord fails to perform its obligations set forth herein.

4. Operating Expenses.

a. Obligation. Commencing on Term Commencement, in addition to its obligations under Section 5 below, Tenant shall pay all of the Operating Expenses in accordance with this Section 4.

b. Operating Expenses.

(i) "**Operating Expenses**" shall mean all actual, reasonable, third party (except as expressly provided below with respect to Landlord's employees) expenses, costs and amounts of every kind and nature which Landlord pays or accrues after the Term Commencement because of or in connection with the ownership, management, maintenance, security, repair, replacement, restoration or operation of the Project, or any portion thereof. Without limiting the generality of the foregoing, Operating Expenses shall specifically include any and all of the following: (i) the cost of supplying all utilities, the cost of operating, repairing, maintaining, and renovating the utility, telephone, mechanical, sanitary, storm drainage, and elevator systems, and the cost of maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections and the cost of contesting any governmental enactments which may increase Operating Expenses, and the costs incurred in connection with a governmentally mandated transportation system management program or similar program; (iii) the cost of all insurance carried by Landlord in connection with the Project as reasonably determined by Landlord, including insurance deductibles not to exceed commercially reasonable deductibles carried by owners of buildings in the Oakland Metropolitan Area that are comparable to the Building, subject to the terms of Section 4(c); (iv) the cost of landscaping, relamping, and all supplies, tools, equipment and materials used in the operation, repair and maintenance of the Project, or any portion thereof; (v) the cost of parking area operation, repair, restoration, and maintenance; (vi) fees and other costs, including management and/or incentive fees, consulting fees, legal fees and accounting fees, of all contractors and consultants in connection with the management, operation, maintenance and repair of the Project; (vii) payments under any equipment rental agreements; (viii) wages, salaries and other compensation and benefits, including taxes levied thereon, of all persons to the extent engaged in the operation, maintenance and security of the Project; (ix) costs under any instrument pertaining to the sharing of costs by the Project, including as relating to any business improvement district; (x) non-capital costs incurred in connection with the operation, repair, maintenance and replacement of all systems and equipment and components thereof of the Project; (xi) the cost of janitorial, alarm, security and other services, replacement of wall and floor coverings, ceiling tiles and fixtures in common areas, maintenance and replacement of curbs and walkways, repair to roofs and non-capital re-roofing; (xii) amortization (including interest on the unamortized cost at a commercially reasonable annual interest rate determined by Landlord, not to exceed the prime rate plus 250 basis points), over the useful life of the item in question as Landlord shall reasonably determine in accordance with generally accepted accounting principles, of the cost of acquiring or the rental expense of personal property used in the maintenance, operation and repair of the Project, or any portion thereof; (xiii) the cost of capital improvements or other capital costs incurred in connection with the Project (A) which are intended to effect economies in the operation or maintenance of the Project, or any portion thereof, or to cause a net reduction in current or future Operating Expenses (collectively, "**Cost-Saving Capital Items**"), which Cost-Saving Capital Items will

be included in Operating Expenses only to the extent of the anticipated savings resulting therefrom, or to enhance the safety or security of the Project or its occupants, (B) that are required to comply with conservation programs first enacted or imposed upon the Project after the Term Commencement, (C) that are required under any governmental law or regulation, except for expenditures to remedy a condition existing prior to the Term Commencement that was not in compliance with then-current applicable laws, statutes, ordinances or governmental rules or regulations or any orders pursuant thereto (collectively "**Laws**") in their form existing as of the Term Commencement, or (D) which are replacements, maintenance, or modifications, except to the extent such work is to correct or remedy any construction defects in the Improvements discovered not later than the second anniversary of the Term Commencement (the costs described in clauses (A), (B), (C), and (D) being referred to collectively as "**Permitted Capital Expenditures**"); provided, however, that any Permitted Capital Expenditure shall be amortized (including interest at the rate set forth in subpart (xii) above on the amortized cost) over the useful life of the item in question, as reasonably determined by Landlord, in accordance with generally accepted accounting principles; (xiv) costs, fees, charges or assessments imposed by, or resulting from any mandate imposed on Landlord by, any federal, state or local government for fire and police protection, trash removal, community services, or other services, (xv) intentionally omitted, (xvi) Property Taxes (as defined below in this subsection), (xvii) wages and salaries of all employees of Landlord or its Affiliates, if any, to the extent engaged in the operation, repair, replacement, maintenance and security of the Project, including taxes, insurance and benefits relating thereto (except to the extent that the cost thereof exceeds the amount that Landlord would pay to a third party in an arms length transaction for similar services) and (xviii) payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs by the Building or the Project the terms of which must be complied with by Tenant pursuant to Section 6, and reciprocal easement agreements affecting the property, any parking licenses, parking easements, and other parking agreements relating to use of parking off-site, and any agreements with transit agencies affecting the Project, in each case the terms of which Tenant must comply with pursuant to Section 6.

(ii) "**Property Taxes**" shall mean all federal, state, county, or local governmental or municipal taxes, fees, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary, (including, without limitation, real estate taxes, general and special assessments, transit taxes, leasehold taxes or taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent, unless required to be paid directly by Tenant, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used in connection with the Project, or any portion thereof, and including estimated amounts based on pending but uncompleted reassessments of the Project, as reasonably determined by Landlord), which shall be paid or accrued because of or in connection with the ownership, leasing and operation of the Project, or any portion thereof. Property Taxes shall include, without limitation: (i) any tax on the rent, right to rent or other income from the Project, or any portion thereof, or as against the business of leasing the Project, or any portion thereof; (ii) any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the June 1978 election ("**Proposition 13**") and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants, and, in further recognition of the decrease in the level and quality of governmental services and amenities as a result of Proposition 13, Property Taxes shall also include any governmental or private assessments or the Project contribution towards a governmental or private cost-sharing agreement for the purpose of augmenting or improving the quality of services and amenities normally provided by governmental agencies; (iii) any assessment, tax, fee, levy, or charge allocable to or measured by the area of the Project or the Rent payable hereunder, including, without limitation, any business or gross income tax or excise tax with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Project, or any portion thereof; and (iv) any assessment, tax, fee, levy or charge, upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Project. Any costs and expenses (including, without limitation, reasonable attorneys' and consultants'

fees) incurred in attempting to protest, reduce or minimize Property Taxes shall be included in Property Taxes. If Property Taxes for any period during the Term or any extension thereof are increased after payment thereof for any reason, including, without limitation, error or reassessment by applicable governmental or municipal authorities, Tenant shall pay such increase to Landlord within thirty (30) days following Landlord's request accompanied by reasonably detailed back-up documentation. Notwithstanding anything to the contrary contained in this Section, Property Taxes shall exclude (such exclusions, the "**Excluded Taxes**") (A) all franchise taxes, gift taxes, transfer taxes (as distinct from reassessments of the Project resulting from any transfers), capital stock taxes, inheritance and succession taxes, estate taxes, occupational taxes, local, federal and state income taxes, and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents, receipts or income attributable to operations at the Project), (B) all penalties and interest on any Property Taxes as a result of Landlord's failure to pay the same as and when payable (except to the extent caused by Tenant) and (C) all assessments in excess of the amount that would be payable if such assessments were paid over the longest permitted term. Notwithstanding the immediately preceding subparagraph (C), if (1) Landlord elects to pay any assessments that would constitute Excluded Taxes by virtue of Landlord's election to make such payment within a shorter period of time, Landlord shall have the right to include in future Taxes the amounts so paid as and when such payments could have been made over the longest permitted term and (2) the total amount of any payment of an assessment would be lower if paid in a shorter period of time and Landlord elects to make such payment within such shorter period of time, such payment shall not constitute an Excluded Tax.

c. Exclusions from Operating Expenses. Notwithstanding anything to the contrary contained in this Lease, Operating Expenses, however characterized, shall not include and Tenant shall in no event have any obligation to perform or to pay directly, or to reimburse Landlord for, all or any portion of:

(i) costs incurred in connection with the original construction, development or leasing of the Project, including legal fees, space planners' fees, advertising and promotional expenses (except as otherwise set forth above), and brokerage fees, and the costs to correct or remedy any construction defects in the Improvements discovered not later than the second anniversary of Term Commencement;

(ii) except as set forth in items (xii) and (xiii) in Section 4(b)(i) above, depreciation, interest and principal payments on mortgages and other debt costs, if any, penalties and interest, costs of capital repairs and alterations, and costs of capital improvements and equipment, and any other costs which would be properly capitalized pursuant to generally accepted accounting principles, other than Permitted Capital Expenditures;

(iii) costs for which the Landlord is actually reimbursed by insurance by its carrier or any tenant's carrier or by another third party (provided Landlord shall use commercially reasonable efforts to obtain such reimbursement from any such third party with an obligation to provide such reimbursement);

(iv) costs of all items and services for which Tenant reimburses Landlord (other than as reimbursements of Operating Expenses) or is required to and does pay to third parties pursuant to the terms of this Lease, including electric power and other utility costs for which Tenant directly contracts with a local utilities company;

(v) charitable and political contributions or reserves of any kind;

(vi) Landlord's and Landlord's managing agent's general corporate or partnership overhead and general administrative expenses, and all costs associated with the operation of the business of the ownership or entity which constitutes "Landlord," as distinguished from the costs of Building operations, management, maintenance or repair;

(vii) payments to subsidiaries or affiliates of Landlord, for management (but not including the management fee) or other services in or to the Project, or for supplies or other materials to the extent that the costs of such services, supplies, or materials exceed the costs that would have been paid

had the services, supplies or materials been provided by parties unaffiliated with the Landlord on a competitive basis;

(viii) marketing, advertising and promotional costs and cost of signs in or on the Project identifying the owner of the Project;

(ix) leasing commissions, attorneys' fees, costs and disbursements and other expenses incurred in connection with negotiations or disputes with other tenants or other occupants or prospective tenants or other occupants, or associated with the enforcement of any leases or the defense of Landlord's title to or interest in the Project;

(x) legal, auditing, consulting and professional fees and other costs paid or incurred in connection with financings, refinancings or sales of any interest in Landlord or of Landlord's interest in the Project or in connection with any ground lease (including, without limitation, recording costs, mortgage recording taxes, title insurance premiums and other similar costs, but excluding those legal, auditing, consulting and professional fees and other costs incurred in connection with the normal and routine maintenance and operation of the Project);

(xi) legal fees, space planner's fees, architect's fees, leasing and brokerage commissions, advertising and promotional expenditures and any other marketing expense incurred in connection with the leasing of space in the Building (including new leases, lease amendments, lease terminations and lease renewals);

(xii) the cost of any items to the extent such cost is covered by a warranty to the extent of reimbursement for such coverage (provided Landlord shall use commercially reasonable efforts to obtain such reimbursements from any third parties with an obligation to deliver such reimbursements, except that Landlord's obligations with respect to the Warranties shall be governed by Section 8(b) of this Lease and Section 3.4 of the Work Letter);

(xiii) the cost of acquiring sculptures, paintings or other objects of fine art in the Building;

(xiv) any bad debt loss, rent loss, or reserves for bad debts or rent loss;

(xv) costs due to the violation of this Lease or the gross negligence or willful misconduct of Landlord's Parties;

(xvi) interest, fines or penalties for late payment or violations of Laws by Landlord's Parties, except to the extent incurring such expense is caused by a corresponding late payment or violation of a Law by Tenant, in which event Tenant shall be responsible for the amount of such expense to the extent caused by Tenant's late payment or violation;

(xvii) the wages and benefits of any employee who does not devote substantially all of his or her employed time to the Project unless such wages and benefits are prorated to reflect time spent on operating and managing the Project vis-a-vis time spent on matters unrelated to operating and managing the Project; provided, that in no event shall Operating Expenses for purposes of this Lease include wages and/or benefits attributable to personnel above the level of property manager;

(xviii) reserves of any kind, including for expenses for future improvements, repairs, additions, etc.;

(xix) salaries and all other compensation (including fringe benefits) of partners, officers and executives at and above the grade of senior property manager;

(xx) amounts paid as ground rental for the Project by the Landlord;

(xxi) any compensation paid to clerks, attendants or other persons in commercial concessions operated by the Landlord;

(xxii) any costs expressly excluded from Operating Expenses elsewhere in this Lease;

(xxiii) rent for any office space occupied by property management personnel to the extent (A) not providing service to the Premises, (B) Landlord is reimbursed such costs from other tenants and (C) the size or rental rate of such office space exceeds the size or fair market rental value of office space occupied by management personnel of the comparable buildings in the vicinity of the Building, with adjustment where appropriate for the size of the applicable project;

(xxiv) except with respect to Tenant's obligations with regard to Hazardous Materials (as defined in Section 6(c)) under this Lease), any liabilities, costs or expenses associated with or incurred in connection with the presence of Hazardous Materials and the cost of defending against claims in regard to the existence or release of Hazardous Materials at the Project;

(xxv) fees payable or retained by Landlord or its Affiliates for management of the Project in excess of two percent (2%) of gross rental revenues received by Landlord under this Lease, including base rent, pass-throughs, for any calendar year or portion thereof;

(xxvi) the costs of Landlord's Structural Repair Obligations (as defined in Section 8(a));

(xxvii) costs incurred by Landlord with respect to casualties or condemnations, except insurance deductibles as provided in Section 4(b)(i)(iii); provided, however, that the amount of any deductible under any earthquake insurance shall be amortized (including interest on the unamortized cost at a commercially reasonable annual interest rate determined by Landlord, not to exceed the prime rate plus 250 basis points) over the estimated useful life of the improvements constructed or restored with the deductible as Landlord shall reasonably determine in accordance with generally accepted accounting principles;

(xxviii) costs to comply with any Laws applicable to the Project on Term Commencement;

(xxix) costs relating to the acquisition of the Project; and

(xxx) any other expenses that under standard real estate accounting principles consistently applied would not be considered normal maintenance, repair, management or operation expenses (provided that the parties agree that the expenses expressly and specifically enumerated as items (i) through (xviii) in Section 4(b)(i) above that are not expressly excluded under clauses (i) through (xxix) in this Section 4(c) are deemed normal maintenance, repair, management or operation expenses).

Notwithstanding anything in this Section 4 to the contrary, this Section 4 shall not preclude Landlord's recovery of its costs incurred to comply with Laws to the extent that such compliance is necessary due to Tenant's particular use of the Premises or of its costs incurred to repair damage to the Project caused by Tenant's Parties or their contractors, invitees, or other guests.

d. Determination of Operating Expenses. The inclusion of the improvements, facilities and services set forth in this Section 4 *(e.g.*, items (iv), (v), (x) and (xi) in Section 4(b)(i)) shall not be deemed to impose an obligation upon Landlord to either have said improvements or facilities or to provide those services unless the Landlord is required in this Lease to provide the same or some of them. Landlord may determine some items of Operating Expenses on a cash basis and other items on an accrual basis, so long as such determination is consistently applied to the same item during all accounting periods, and is otherwise consistent with generally accepted accounting principles.

e. Payment; Audit Rights. Tenant shall pay to Landlord each month at the same time and in the same manner as monthly Base Rent one-twelfth (1/12th) of Landlord's estimate of Tenant's share of Operating Expenses for the then current calendar year. Landlord shall deliver its estimate of Operating Expenses within ninety (90) days after the commencement of any calendar year (provided that, with respect to the calendar year in which the Term Commencement occurs, Landlord shall use reasonable efforts to deliver such estimate at least 30 days prior to Term Commencement). Following delivery of Landlord's statement of estimated Operating Expenses, Landlord will adjust Tenant's monthly payment of Operating Expenses by providing not less than thirty (30) days' written notice to Tenant so that by the end of the calendar year, Tenant shall have paid Operating Expenses for the current calendar year in accordance with Landlord's estimate. Operating Expense payments shall continue at the rate specified for the prior year until Landlord's statement of estimated Operating Expenses for the current calendar year is delivered, provided any over or under payment will be reconciled through Landlord's adjustment of monthly payments per the preceding sentence. Notwithstanding anything to the contrary herein, Tenant shall not be required to pay any Operating Expenses otherwise due hereunder if Landlord first notifies Tenant of such Operating Expenses in a statement received by Tenant more than eighteen (18) months after such Operating Expenses are incurred; provided, however, Landlord shall have the right to amend any Annual Statement (as defined below) after Landlord's delivery thereof, regardless of such eighteen (18) month period, if Landlord receives additional bills or invoices relating to such calendar year after Landlord's delivery of the Annual Statement, provided Landlord amends the Annual Statement within three (3) months after Landlord's receipt of the additional bill or invoice.

Within ninety (90) days after the close of each calendar year Landlord shall deliver to Tenant a statement of actual Operating Expenses for such calendar year (an "**Annual Statement**"), along with supportive documentation as may be reasonably requested by Tenant, including invoices and receipts. If on the basis of such statement and supportive documentation Tenant owes an amount that is less than the estimated payments for such calendar year previously made by Tenant, Landlord shall credit such excess against the Operating Expenses, as applicable, subsequently payable by Tenant or, if the Lease has expired or terminated (unless such termination arose from Event of Default by Tenant), refund such amounts to Tenant within thirty (30) days after Landlord's delivery of the Annual Statement. If on the basis of such statement Tenant owes an amount that is more than the estimated payments for such calendar year previously made by Tenant, Tenant shall pay the deficiency to Landlord within thirty (30) days after delivery of the statement. The obligations of Landlord and Tenant under this Section with respect to the reconciliation between estimated payments and actual Operating Expenses for the last year of the term shall survive the expiration or termination of this Lease. The amount payable by Tenant as its share of Operating Expenses for any portion of the term which is not an entire calendar year shall be prorated based upon the ratio that the number of days of the term in such calendar year bears to three hundred sixty-five (365). Landlord shall keep records showing all expenditures incurred as Operating Expenses for each calendar year for a period of three (3) years following each year, and such records shall be made available at Landlord's corporate offices during normal business hours and upon reasonable advance notice for inspection and photocopying (at Tenant's sole cost and expense) by Tenant and/or its agents. Within one hundred eighty (180) days after receipt of an Annual Statement by Tenant (the "**Audit Period**") and provided that no Event of Default then exists, if Tenant disputes the amount of the expenses set forth in the Annual Statement, an independent certified public accountant (which accountant (A) is a member of a nationally or regionally recognized certified public accounting firm which has previous experience in auditing financial operating records of landlords of industrial buildings, and (B) is not working on a contingency fee basis) designated and paid for by Tenant, may, after reasonable advanced written notice to Landlord and during reasonable business hours, audit Landlord's records with respect to the expenses set forth in the Annual Statement at Landlord's corporate offices. Any audit report prepared by Tenant's certified public accounting firm shall be delivered concurrently to Landlord and Tenant, and shall be completed within sixty (60) days after Tenant's accountant is provide access to the books and records of Landlord. If such audit proves that the expenses in the subject Annual Statement were overstated by more than five percent (5%), then Landlord will pay the actual out of pocket cost of the audit. Tenant and Landlord shall work together in good faith to resolve any issues raised in the audit. If Tenant and Landlord determine that Operating Expenses set forth in the Annual Statement for the calendar year are less than reported, Landlord shall provide Tenant with a credit against the next installment of Additional Rent in the amount of the overpayment by Tenant or, if the Lease has expired or terminated, refund such amounts to Tenant within thirty (30) days within 30 days after Landlord's delivery of the Annual Statement. Likewise, if Landlord and Tenant determine that Operating Expenses for the calendar year are greater than reported, Tenant shall pay Landlord the amount of any underpayment within thirty (30) days after such determination. The records obtained by Tenant shall be treated as confidential; provided, that, Tenant shall be

permitted to disclose such records to its employees, accountants, attorneys, agents, and consultants to the extent required to complete its audit or as required by law or in litigation with Landlord in which in the amount of or substance of the Operating Expenses are at issue. If the parties cannot agree then at any time after the audit is delivered to Landlord, either party may refer the matter to arbitration, by a single arbitrator in accordance with the AAA Streamlined Rules and such arbitration will be completed within forty-five (45) days after the matter is referred to the arbitrator.

5. Other Taxes. Except to the extent already reimbursed by Tenant as Property Taxes and except for Excluded Taxes, Tenant shall pay or reimburse Landlord within thirty (30) days following its demand for any taxes, assessments, excises, levies, license, permit, inspection, service payments in lieu of taxes and any other fees or charges of any kind, which are levied, assessed, confirmed or imposed by any public authority: (a) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises or leasehold improvements made in or to the Premises at Tenant's expense; (b) upon or by reason of the development, possession, use or occupancy of the Premises or other areas of the Project used by Tenant in connection with the Premises; (c) imposed with respect to the Rent paid under this Lease, such as gross receipts tax; or (d) upon this transaction or any document to which Tenant is a party in connection with this Lease.

6. Use.

a. Use Restrictions Subject to the other restrictions and requirements of this Lease, the Premises shall be used and occupied by Tenant only for the uses specified in the Basic Lease Information and for no other purpose without Landlord's consent, which Landlord may withhold in its sole and absolute discretion. Landlord makes no representation to the effect that the Premises can be, under applicable Laws, used for any specific uses desired by Tenant. Subject to Landlord's obligations under the Work Letter, Tenant is solely responsible for obtaining all necessary permits and approvals required under applicable Laws for its desired uses of the Premises. Tenant shall, at Tenant's expense, comply promptly with all applicable Laws in effect during the term regulating the use by Tenant of the Premises and the balance of the Project. Tenant shall not use or permit the use of the Project by any Tenant Parties, their guests or invitees in any manner that would constitute waste or a nuisance, nor shall Tenant, its employees, agents or invitees damage the Building or any other portion of the Project, nor place or maintain any signs on or visible from the exterior of the Premises except as permitted under this Lease, or use any corridors, sidewalks or other areas outside of the Premises not specifically designated for Tenant's use for storage or for any purpose other than access to the Premises and, in locations designated by Landlord in its reasonable discretion, the storage of bicycles. Tenant shall not do or permit any of Tenant's Parties (as defined below) or Tenant's contractors or guests to do anything in and about the Premises, either in connection with activities under this Lease expressly permitted or otherwise, which would cause an increase in premiums payable under, or a cancellation of, any policy of insurance maintained by Landlord in connection with the Building or the balance of the Project (unless, in the case of increased premiums, Tenant reimburses Landlord for any such increases as set forth below) or which would violate the terms of any covenants, conditions, restrictions or other matters of record affecting the Project shown in the Preliminary Report – Update "A" dated September 4, 2019 prepared by Chicago Title Company under Order No. 58211261-582-HA-DP attached hereto as **Exhibit E-1** (as such covenants, conditions, and restrictions may be modified) or that hereinafter affect the Project, provided that such new or modified covenants, conditions, restrictions and other matters of record either are consented to by Tenant (which consent shall not be unreasonably withheld, conditioned or delayed and which shall be deemed given if Tenant has failed to respond to Landlord's request for approval within five (5) business days after such request has been made) or do not unreasonably interfere with Tenant's use of the Premises, materially increase the obligations of Tenant hereunder, or materially decrease the rights of Tenant hereunder (the "**Title Exceptions**"). Notwithstanding the foregoing, Tenant hereby consents to the agreements and other documents described on **Exhibit E-2** that Landlord intends to record in connection with the acquisition and development of the Land. If any activity of Tenant shall increase any insurance premiums, Landlord shall provide Tenant with a notice that shall identify the relevant activity and the increase in the premium and Tenant may elect by written notice within ten (10) days after Landlord's notice, either to discontinue the activity or pay the additional premium as Additional Rent hereunder. Subject to Tenant's obligation to pay Operating Expenses in accordance with Section 4, notwithstanding anything to the contrary herein, Tenant shall not be required to comply with or cause the Project to comply with any Laws, rules, regulations or insurance requirements requiring the construction of capital alterations unless such compliance is necessitated solely due to Tenant's Alterations, Tenant's particular use of the Premises or the balance of the Project, or damage caused by Tenant's Parties or their contractors, invitees or other guests. Tenant acknowledges

and agrees that (i) the Land will, at the closing under the Land Purchase Agreement, be subject to that certain Declaration of Restrictive Covenants attached as **Exhibit E-3** (the "**Restrictive Covenant**") by and between Landlord (or Landlord's successor-in-interest acquiring title to the Land at the time of such closing), as "Declarant" and Peet's Coffee, Inc. ("**Peet's**") and (ii) that the real property adjacent to the Project currently owned by Peet's is and will be used for coffee roasting activity, including, without limitation, manufacturing and distribution related to coffee products. Accordingly, Tenant hereby waives, for itself and its successors and assigns, any rights and claims against Peet's, and its successors and assigns, to the same extent that the Declarant (as defined in the Restrictive Covenant) waives such rights and claims pursuant to the terms of the Restrictive Covenant. WITH RESPECT TO THE FOREGOING WAIVER, TENANT SPECIFICALLY WAIVES WITH RESPECT TO ALL SUCH MATTERS THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, AND ANY COMPARABLE LAW IN THE STATE OF CALIFORNIA, REGARDING THE MATTERS COVERED BY A GENERAL RELEASE, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR THE RELEASED PARTY."

Landlord shall provide a recorded copy of the Restrictive Covenant upon Tenant's request following the recordation of the Restrictive Covenant in the Official Records of Alameda County, California.

b. Rules and Regulations. Tenant shall faithfully observe and comply with the Rules and Regulations attached to this Lease as **Exhibit F**, and, after notice thereof, all reasonable modifications thereof and additions thereto from time to time promulgated in writing by Landlord (as so amended, the "**Rules and Regulations**"); provided that, such modifications thereof and additions thereto do not unreasonably interfere with Tenant's use of the Project or Tenant's parking rights and do not materially increase the obligations or decrease the rights of Tenant under this Lease.

c. Hazardous Materials – Tenant's Covenants.

(i) Tenant shall give prompt written notice to Landlord when Tenant becomes aware of: (a) any proceeding by any governmental authority with respect to the presence of any Hazardous Materials on the Project or the Building (or off-site of the Project that might affect the Project) or related to any loss or injury that might result from any Hazardous Materials; (b) all claims made or threatened by any third party against Tenant or the Project or the Building relating to any loss or injury resulting from any Hazardous Materials; and (c) any occurrence or condition on the Project, or the Building (or off-site of the Project that is likely to affect the Project) that could cause the Project, or any part of either, to be subject to any restriction on occupancy or use of the Project under any applicable Law.

(ii) Tenant shall comply with all Laws and precautions now or hereafter mandated by any federal, state, local or other governmental agency with respect to the use, generation, storage, or disposal of hazardous, toxic, flammable, or radioactive materials introduced into the Project by Tenant's Parties (collectively, "**Hazardous Materials**"). As herein used, Hazardous Materials shall include, but not be limited to, (i) asbestos and any asbestos containing material and any substance that is then defined or listed in, or otherwise classified pursuant to, any present and future Laws, orders, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Materials as a "hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity, (ii) any petroleum and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources, (iii) toxic mold, mildew or any substance that reasonably can be expected to give rise to toxic mold or mildew, or (iv) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear, or by product material), medical waste, chlorofluorocarbon, lead or lead based product, and any other substance whose presence is likely to be hazardous to health or the environment. Tenant shall not cause, or allow anyone in the reasonable control of Tenant to cause, any Hazardous Materials to be used, generated, stored, or disposed of, on or about the Project or the Building other than Hazardous

Materials necessary or desirable in connection with Tenant's use of the Premises for the permitted use, provided that such materials are stored and used in compliance with all applicable Laws, and are disclosed to Landlord in writing to the extent required by law or following Landlord's request. Upon Landlord's request, Tenant shall promptly provide to Landlord copies of any safety data sheets, permits and approvals, compliance certificates, management plans, or other reports required by applicable Laws with respect to Tenant's use of Hazardous Materials, including but not limited to Tenant's removal of any Hazardous Materials upon the expiration or termination of this Lease. Tenant shall defend, indemnify and hold Landlord's Parties, any entity having a security interest in the Project or the Building and its and their employees and agents (collectively, **"Indemnitees"**) harmless from and against all liabilities, claims, costs, damages and depreciation of property value, including all foreseeable and unforeseeable consequential damages, arising out of the use, generation, storage, release or emission of Hazardous Materials by Tenant or any person under the reasonable control of Tenant, including, without limitation, the cost of any required or necessary investigation, monitoring, repair, cleanup, or detoxification and the preparation of any closure or other required plans, required by Law or in good faith required by Landlord whether such action is required or necessary prior to or following the termination of this Lease, as well as reasonable attorneys' fees, penalties, fines and claims for contribution to the full extent that such action is attributable to the use, generation, storage, release or emission of Hazardous Materials by Tenant or any person under the reasonable control of Tenant; provided that, Tenant's foregoing obligation shall not apply to the extent that such liabilities, claims, costs, damages and depreciation arise from the negligence or willful misconduct of Indemnitees. Neither the consent by Landlord to the use, generation, storage, or disposal of Hazardous Materials nor the strict compliance by Tenant with all Laws and precautions pertaining to Hazardous Materials shall excuse Tenant from Tenant's obligation of indemnification set forth above. Tenant's obligations under this Section 6(c) shall survive the expiration or termination of this Lease. Within ten (10) business days following Landlord's request from time to time but not more than once each calendar year, Tenant shall deliver to Landlord a completed Environmental Questionnaire in the form of **Exhibit G**. Landlord will, subject to applicable laws and disclosure requirements, keep confidential any information contained in the Environmental Questionnaire or in the other documentation delivered to Landlord pursuant to this Section, provided that Landlord may disclose such information on a confidential basis to its directors, officers, managers, employees, agents, advisers, consultants, investors and prospective investors, prospective purchasers, lenders and prospective lenders to the extent required or permitted to exercise its rights or perform its obligations under this Lease or applicable Law. If Landlord violates the foregoing obligation of confidentiality, Tenant's sole and exclusive remedy shall be to seek injunctive relief or pursue Landlord for Tenant's actual damages resulting from such violation, and in no event shall a violation by Landlord of the foregoing confidentiality provision give rise to a right for Tenant to terminate this Lease.

d. Hazardous Materials – Landlord's Covenants.

(i) Tenant acknowledges receipt of those documents listed in **Exhibit H** attached hereto. Tenant may order at its expense a new or updated Phase I environmental site assessment of the Project, a copy of which shall be provided to Landlord.

(ii) Landlord shall give prompt written notice to Tenant when Landlord becomes aware of: (a) any proceeding by any governmental authority with respect to the presence of any Hazardous Materials on the Project or the Building (or off-site of the Project that might affect the Project) or related to any loss or injury that might result from any Hazardous Materials; (b) all claims made or threatened by any third party against Landlord or the Project or the Building relating to any loss or injury resulting from any Hazardous Materials; and (c) any occurrence or condition on the Project, or the Building (or off-site of the Project that is likely to affect the Project) that could cause the Project, or any part of either, to be subject to any restriction on occupancy or use of the Premises or the balance of the Project under any applicable Law.

(iii) In the event there shall now or in the future exist any Hazardous Materials in, on, under, or about the Project or the Building that (A) are caused by Landlord's Parties (as defined below) or (B) were preexisting prior to the date of this Lease, and, in either case, the presence of which materially and adversely affect Tenant's use of or operations from the Premises or access to the Premises, Tenant's construction of its improvements, or that shall make Tenant a responsible party liable to remediate any such condition (collectively, "**Interference**"); then Landlord shall defend, indemnify and hold Tenant's Parties harmless from and against all liabilities, claims, costs, and damages arising out of the Interference, including,

without limitation, the cost of any required or necessary investigation, monitoring, repair, cleanup, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the termination of this Lease, including reasonable attorneys' fees, penalties, fines and claims for contribution to the full extent that such action is attributable to the Interference; provided that, Landlord's foregoing obligation shall not apply to extent that such liabilities, claims, costs, damages and depreciation arise from the use, generation, storage, release, or emission of Hazardous Materials by Tenant's Parties or their contractors, invitees, or other guests. Landlord's obligations under this Section 6(d)(iii) shall survive the expiration or termination of this Lease.

(iv) To Landlord's actual knowledge, except as disclosed in those documents listed in **Exhibit H**, there are no Hazardous Materials present at the Project, including in the soil or groundwater at the Project. "**Landlord's actual knowledge**" means the present, actual knowledge of Joseph Ernst, without any duty of inquiry or investigation.

e. Floor Load. Tenant shall design the installation of its trade fixtures and equipment, including racking and equipment platforms, and operate its equipment so as not to overload and damage the floor of the Premises, ordinary wear and tear excepted.

7. Services and Utilities.

a. Landlord's Services. There shall be available to the Premises gas, electricity, water and related sewer capacity as described in Schedule 1 to **Exhibit B** as being part of Landlord's Work. Tenant shall be responsible for establishing accounts to obtain service (other than any initial hookups required by Landlord pursuant to the previous sentence) and paying for all utilities and services to the Premises.

b. No Landlord Liability. Landlord will use due diligence to resume any service that Landlord is obligated to provide pursuant to Section 7(a) if such service is curtailed or interrupted, provided that, except as expressly provided in Section 16 and this Section 7(b), Landlord shall not be liable to Tenant or those claiming under it for damages, nor shall there be any abatement of Base Rent or other amounts payable by Tenant under this Lease, arising out of any curtailment or interruption whatsoever in utility services, and no such interruption or cessation of service shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, or render Landlord liable to Tenant for damages, or relieve Tenant from performance of Tenant's obligations under this Lease including the obligation to pay Rent. Notwithstanding the foregoing, (i) if any interruption or cessation of any Essential Utilities continue for five (5) consecutive business days after Landlord receives written notice from Tenant of the interruption or cessation; (ii) such interruption or cessation actually renders any portion of the Premises unusable for the normal conduct of Tenant's business and Tenant, in fact, ceases to use and occupy such portion of the Premises for the normal conduct of its business; and (iii) such interruption or cessation is either due to Landlord's negligence or due to causes within Landlord's control and the repair of such interruption or cessation is within Landlord's control, then all Base Rent and Operating Expenses payable hereunder with respect to such portion of the Premises rendered unusable for the normal conduct of Tenant's business and in which Tenant, in fact, ceases to use and occupy, shall be abated beginning with the sixth (6th) business day after the date on which Landlord received Tenant's notice of the interruption, and such abatement shall continue until such time that the subject Essential Utilities is/are restored. As used herein, "**Essential Utilities**" means only electricity, water, sewer and natural gas service. The foregoing right to seek specific performance and abatement of Base Rent shall be Tenant's sole and exclusive remedies, at law or in equity, for any interruption of utilities service to the Premises, subject to the terms of Section 11 below, which will supersede this Section 7(b) with respect to any interruption caused by a casualty event, and subject to the terms of Section 16, which governs with respect to Landlord's defaults under this Lease.

c. Energy Consumption Data. To the extent Landlord is required by any present or future law, ordinance, rule, regulation or order of any governmental authority having jurisdiction over the Premises to disclose or cause the applicable utility and energy providers to disclose the energy consumption data relating to the Premises, Tenant shall cooperate with Landlord in disclosing the energy consumption data relating to the Premises, including authorizing the applicable utility and energy providers to upload energy consumption data related to the Premises; provided, that, (i) Landlord shall only disclose such information to the extent required by such law, ordinance, rule,

regulation or order of any governmental authority and shall otherwise keep such information strictly confidential and (ii) Landlord may disclose such information on a confidential basis to its directors, officers, managers, employees, agents, advisers, consultants, investors and prospective investors, prospective purchasers, lenders and prospective lenders. If Landlord violates the foregoing obligation of confidentiality, Tenant's sole and exclusive remedy shall be to seek injunctive relief or pursue Landlord for Tenant's actual damages resulting from such violation, and in no event shall a violation by Landlord of the foregoing confidentiality provision give rise to a right for Tenant to terminate this Lease.

8. Maintenance, Repairs and Alterations.

a. Landlord's Obligations/Tenant's Waiver. Subject to the provisions of Section 10 below, and except for damages caused by Tenant's Parties or their contractors, invitees or other guests, Landlord shall keep in good condition and repair only (1) the foundation, floor slabs (excluding non-structural portion of the floor slabs), exterior structural walls, structural columns, structural support beams, girders, load-bearing walls of the Building and structural elements of the roof (Landlord's obligations with respect to such structural elements, the "**Landlord's Structural Repair Obligations**") and (2) underground utilities serving the Project. Pursuant to Section 4, Landlord's Structural Repair Obligations are expressly excluded from Operating Expenses. The term "walls" as used herein shall not include windows, glass or plate glass, doors, special store fronts or office entries; (ii) the term "roof" does not include gutters or downspouts, and (iii) the term "foundation" does not include any wearing surface of the floor slab or any floor coverings. Landlord's Structural Repair Obligations shall not include the repair of any structural elements of the Building constructed by or on behalf of Tenant from and after the Term Commencement. Notwithstanding the above, if the necessity for any replacement or repairs are due to Tenant's or its employees, contractors, agents or vendors own misconduct or negligence or caused by Tenant's violation of the terms of this Lease, then Landlord shall perform such repairs or replacements at Tenant's expense and Tenant shall reimburse Landlord for the cost, plus an administrative fee in the amount of 5% of the actual costs of performing such work within thirty (30) days after receipt of invoice as Additional Rent. Notwithstanding anything herein to the contrary, Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Project or the Building in good order, condition and repair. Landlord shall make all repairs under this Section within a reasonable time after Landlord learns of the need for such repairs but in any event within thirty (30) days after Tenant notifies Landlord of the need for such repairs.

b. Tenant's Obligations. Tenant shall, at Tenant's expense and in accordance with the Rules and Regulations, keep the Premises and the Land in a clean, safe and orderly condition and maintain in good condition and repair the entirety of the Premises and the Land (other than the portions required to be maintained by Landlord pursuant to Section 8(a) above), including, but not limited to, the roof membrane, the Building's HVAC, electrical, mechanical and plumbing systems, and fire sprinkler and other life safety systems (collectively, the "**Building Systems**"), exterior glass, floors and floor coverings, ceiling (ceiling tiles and grid), landscaping, parking areas (including security lighting around the parking areas), security fencing and other fencing on the Premises and the Land, Tenant Improvements, Alterations, fire extinguishers, outlets and fixtures, and any appliances (including dishwashers, hot water heaters and garbage disposers) in the Premises and repairs and repairs and replacements of other components of the Building that would ordinarily be treated as a "capital expenditure" under generally accepted accounting principles, subject to Section 8(c). Notwithstanding anything to the contrary herein, Landlord shall perform and construct, and Tenant shall have no responsibility to perform or construct any repair, maintenance or improvements that are required due to construction defects discovered in the first two (2) years of the Term. To the extent that any Warranty (as defined in Section 3.4 of the Work Letter) covers an item that Tenant is responsible for maintaining or repairing pursuant to the Lease, Tenant will be solely responsible for enforcing such Warranty. In such event, such assignment shall remain in effect until the expiration or earlier termination of this Lease, whereupon each such assigned Warranty shall automatically revert to Landlord. In confirmation of such reversion Tenant shall execute and deliver promptly any assignment or certificate or other document reasonably required by Landlord. As provided above in this Section 8(b) and in the Work Letter, Tenant shall have the benefit of any Warranties obtained by Landlord in connection with the original construction of the Project, and Landlord will provide to Tenant copies of any such Warranties to Tenant upon request and, notwithstanding the foregoing, will reasonably cooperate with Tenant to enforce any such Warranties, at Tenant's sole cost and expense. If Tenant fails to perform any maintenance required

hereunder within thirty (30) days after Landlord's written notice (except when the repairs require more than thirty (30) days for performance and Tenant commences the repair within thirty (30) days and continues to diligently pursue the repair to completion), Landlord may, but shall not be required to, enter the Premises and perform such maintenance; provided that (1) no such written notice shall be required in the event of an emergency and (2) the 30-day cure period permitted in this sentence shall run concurrently with any grace or cure periods permitted under Section 14. Landlord's reasonable out-of-pocket costs thereof as set forth in Landlord's demand and supportive documentation to Tenant, plus an administrative fee in the amount of 5% of such costs shall automatically become due and payable as Additional Rent. If Landlord is obligated to make alterations to the Building that are required under applicable Laws as a result of Tenant's particular use of the Premises or Alterations made by Tenant or by Landlord at the request of Tenant, then Tenant shall reimburse Landlord within thirty (30) days following its demand for all costs incurred by Landlord, plus an administrative fee of 5% of such costs, in making such alterations.

c. Major Replacements; Reimbursement of Major Replacement Expenditures. Tenant shall be responsible for making repairs and replacements of the Building Systems (as defined below) and other components of the Building that would ordinarily be treated as a "capital expenditure" under generally accepted accounting principles (each, a "**Capital Replacement**"), except for Landlord's Structural Repair Obligations and Major Replacements. To the extent that any single Capital Replacement exceeds (i) $75,000.000 or (ii) in the last two years of the Term, $50,000 (each a "**Major Replacement**" and the costs incurred by Landlord in connection with a Major Replacement being a "**Major Replacement Expenditure**"), Landlord shall be responsible for making such Major Replacement and for the cost of the Major Replacement Expenditure; provided, however, Landlord will be permitted to include in the Operating Expenses annual installments for the amortization of each Major Replacement Expenditure over the useful life of the applicable Major Replacement. Tenant will provide notice to Landlord if Tenant determines, in its reasonable business judgement, that a Major Replacement is required, and Landlord will have the right to review and inspect the equipment or the portion of the Building requiring the Major Replacement and to approve the Major Replacement, which approval will not be unreasonably withheld, conditioned, or delayed. If Landlord does not, in the exercise of its reasonable business judgment, determine that a Major Replacement is required, then Tenant shall proceed with a repair (as required herein), unless such repair also constitutes a Major Replacement. Upon Landlord's approval of a Major Replacement, Landlord will cause such Major Replacement to be performed. If Landlord and Tenant cannot agree on whether a required Capital Replacement is a Major Replacement, Landlord shall obtain a bid from a contractor reasonably acceptable to Landlord and Tenant for the performance of such work, and the bid from such contractor (i.e., the cost of the proposed Capital Replacement) shall be determinative as to whether or not such Capital Replacement constitutes a Major Replacement.

9. Tenant's Alterations. Except for the Improvements (as defined in the Work Letter), the construction of which is governed by the Work Letter, Tenant shall not, without Landlord's prior consent, make any alterations, improvements or additions in or about the Premises (collectively, "**Alterations**"), provided that Landlord agrees not to unreasonably withhold, condition or delay its consent to Alterations. As a condition to giving such consent to any Alterations (to the extent expressly provided in Section 1(c)), Landlord may require that Tenant remove (or leave in place and convey to Landlord) any such Alterations at the end of the term and restore the portions of the Premises affected by such removal to their condition existing prior to installation of the relevant Alterations, reasonable wear and damage by casualty excepted. Before commencing any work relating to Alterations (other than Decorative Changes), Tenant shall notify Landlord of the expected date of commencement thereof and of the anticipated cost thereof. Tenant shall furnish complete drawings and specifications (which shall be in electronic form, if required by Landlord) describing such Alterations ("**Plans**") (other than Decorative Changes, and other Permitted Alterations costing less than $25,000 and not requiring a building permit (collectively, "**Minor Alterations**")), and all building permits for such Alterations (if such permits are required for such Alterations pursuant to applicable Laws). Tenant shall not commence any such Alterations until Landlord has reviewed and consented to the work as described in such Plans. Approval by Landlord of any of Tenant's Plans prepared in connection with any Alterations shall not constitute a representation or warranty of Landlord as to the adequacy or sufficiency of such Plans or the improvements to which they relate, for any use, purpose, or condition, but such approval shall merely be the consent of Landlord as required hereunder. Tenant shall reimburse Landlord within thirty (30) days following its demand for any reasonable, third-party, out-of-pocket costs incurred by Landlord in having such Plans reviewed by its consultants, to the extent such costs do not exceed $7,500 per project. Tenant shall give Landlord at least five (5) business days' notice prior to commencing any Alterations (other than Decorative Changes) and Landlord shall then have the right at any time and

from time to time to post and maintain on the Premises such notices of non-responsibility as Landlord reasonably deems necessary to protect the Project, the Building and Landlord from mechanics' liens or any other liens. In any event, Tenant shall pay when due all claims for labor or materials furnished to or for Tenant at or for use in the Project. Tenant shall not permit any mechanics' liens to be levied against the Project for any labor or materials furnished to Tenant or claimed to have been furnished to Tenant or to Tenant's agents or contractors in connection with work performed or claimed to have been performed on the Project by or at the direction of Tenant. All Alterations performed by or on behalf of Tenant shall be done by contractors reasonably approved by Landlord, in a first-class, workmanlike manner in compliance with all applicable Laws as well as the requirements of insurers of the Project and the Building that are communicated to Tenant in writing. Prior to commencing any Alterations, if required by Landlord, Tenant shall maintain builder's risk insurance in an amount no less than the value of the completed work of alteration, addition or improvement on an all-risk basis, covering all perils then customarily covered by such insurance. All contractors performing Alterations other than Minor Alterations to the portions of the Project that Landlord is required to maintain pursuant to Section 8(a) above are subject to Landlord's reasonable prior approval. Further, all of Tenant's contractors performing Alterations other than Decorative Changes, regardless of whether such contractors require Landlord's approval must provide evidence that they have the insurance required under Section 6.3 of the Work Letter, or other insurance reasonably acceptable to Landlord, prior to entering the Premises to perform any work. Notwithstanding anything in this Section 9 to the contrary, upon Landlord's request, Tenant shall promptly remove, or cause to be removed, any contractor, subcontractor or material supplier from the Project and the Building if the work or presence of such person or entity results in material damage to the Project or the Building. Tenant shall indemnify, hold harmless and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. In the event that Tenant shall not, within thirty (30) days following Tenant's actual notice of the imposition of any lien or stop notice, cause such lien or stop notice to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein or by law, the right, but not the obligation, to cause the same to be released by such means as it may deem proper, including payment of the claim giving rise to such lien, after providing five (5) days' prior written notice to Tenant of Landlord's intent to do so. All such sums paid by Landlord and expenses reasonably incurred in connection therewith, including attorneys' fees and costs, shall be payable to Landlord by Tenant on demand. Upon completion of any work performed for Tenant costing in excess of $100,000, Tenant shall deliver to Landlord evidence of full payment for the Alterations and full and unconditional waivers and releases of liens for all labor, services and/or materials used, copies of any building permits that were required for such work pursuant to applicable Laws, and, if the work involves any significant physical alteration of the Premises, at least three (3) sets of "as built" drawings and specifications (as well as a set in PDF or CAD format, if requested by Landlord). Unless Landlord requires their removal, as set forth above, all Alterations shall become the property of Landlord and remain upon and be surrendered with the Premises at the termination or expiration of the term; provided that Tenant's machinery, equipment and trade fixtures and other personal property, other than any which may be permanently affixed to the Premises so that they cannot be removed without material damage to the Premises, shall remain the property of Tenant and shall be removed by Tenant on or before such time. For the avoidance of doubt, the items set forth in **Exhibit I** shall be considered Tenant's personal property and shall not become the property of Landlord. Notwithstanding the foregoing, after completion of the Improvements, Tenant shall not be required to obtain the consent or approval of Landlord in connection with the construction or installation of any of the following Alterations: (a) decorations, painting, plastering, carpeting or other floor coverings, or window coverings, within the Building that will not require Landlord to modify its then-current insurance coverage for Alterations and do not require a building permit ("**Decorative Changes**"); and (b) alterations or improvements wholly within the Building that do not affect in any material way the Building Systems or the structural components of the Building and which cost less than One Hundred Thousand Dollars ($100,000.00) in one single instance or series of related alterations performed within a calendar year period (provided that Tenant shall not perform any improvements, alterations or additions to the Premises in stages as a means to subvert this provision) (collectively the "**Permitted Alterations**"). Tenant shall provide Landlord prior notice of any Permitted Alterations (other than Decorative Changes) and copies of Plans (if any), all building permits for such Permitted Alterations (if such permits are required for such Permitted Alterations pursuant to applicable Laws) and the contracts for any Permitted Alterations other than Decorative Changes prior to the commencement of such work. Following completion of any Permitted Alterations, Tenant shall deliver to Landlord copies of any building permits that were required for such work pursuant to applicable Laws. Landlord shall respond to any request for consent to an Alteration by Tenant under this Section 9 no later than five (5) business days after Landlord receives such request. Landlord's failure to respond to Tenant's request for consent during such period shall be deemed Landlord's consent to such request. Any rejection by Landlord of Plans

submitted by Tenant shall include a description of Landlord's specific objections and the parties shall thereafter work together in good faith to arrive at a mutually agreeable set of Plans. Notwithstanding anything to the contrary contained herein, Tenant shall not penetrate the roof of the Building in any manner, nor install or construct any Alterations, additions or improvements thereon, nor otherwise use or occupy the roof at any time during the Term hereof, to the extent any of the foregoing would violate, void or reduce the roof warranty unless, in each instance, given prior written approval from Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Landlord hereby consents to Tenant's installation of (i) a backup generator and (ii) other building equipment that (A) is required for the Permitted Use, (B) serves the Premises and (C) is approved by Landlord pursuant to the terms of Section 9 ((i) and (ii) collectively, the "**Building Equipment**"), either as a part of the Tenant's Work or a subsequent Alteration in a location approved by Landlord, in its reasonable discretion, within the Tenant Exclusive Outdoor Areas provided that Tenant otherwise complies with this Section 9.

10. Insurance and Indemnity.

a. Tenant's Insurance. Tenant shall obtain and maintain during the term of this Lease: (i) workers compensation insurance as required by Law; (ii) employers liability insurance with limits of at least: $1,000,000 each accident for bodily injury by accident, $1,000,000 policy limit for bodily injury by disease and $1,000,000 each employee for bodily injury by disease with a waiver of subrogation in favor of Landlord, Ernst Development Partners, Inc., and other entities having an equity interest in the Project designated by Landlord to be named as additional insureds (collectively, the "**Additional Insureds**"); (iii) automobile liability insurance providing coverage for all owned, hired and non-owned automobiles with limits of at least $1,000,000 combined single limit each accident for bodily injury and property damage; (iv) commercial general liability insurance with a combined single limit for personal injury and property damage of at least $5,000,000 each occurrence and $5,000,000 annual aggregate; (v) a Commercial Pollution Legal Liability Insurance with coverage limits of not less than $2,000,000 annual aggregate covering claims arising out of or related to Tenant's acts or omissions with respect to Hazardous Materials during the term of the Lease, provided that if such coverage is no longer available at commercially reasonable rates, then Tenant shall be required to carry such coverage only if Tenant intends to use (or is using) any portion of the Project for the use, generation, storage, or disposal of Hazardous Materials (other than in de minimis quantities common in a normal office use [e.g., cleaning supplies]); and (vi) Umbrella or Excess liability over general liability, automobile liability and employers' liability in an amount not less than $5,000,000 per occurrence and $5,000,000 aggregate. Tenant's commercial general liability insurance policy shall include coverage for premises and operations liability, products and completed operations liability, broad form property damage, blanket contractual liability and personal and advertising liability. All of Tenant's liability insurance shall provide that (A) the insurer has the duty to defend all insureds, (B) defense costs do not deplete policy limits; (C) the Additional Insureds are named as additional insureds on the liability policies pursuant to an endorsement or policy provision at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" endorsement form; (D) the insurer acknowledges acceptance of the mutual waiver of claims by Landlord and Tenant pursuant to Section 10(b) below or the subject policy expressly permits the insured to contractually waive the insurer's rights of subrogation; and (E) such insurance is primary with respect to Landlord and that any other insurance maintained by Landlord is excess and noncontributing with such insurance. Tenant shall also obtain and maintain insurance ("**Personal Property Insurance**") covering all Tenant's personal property and fixtures from time to time in, on, or at the Premises, in an amount not less than one hundred percent (100%) of the full replacement cost, without deduction for depreciation, providing protection against events protected under "All Risk Coverage," as well as against sprinkler damage, vandalism and malicious mischief. Any proceeds from the Personal Property Insurance may be used for the repair or replacement of the personal property damaged or destroyed, unless this Lease is terminated under an applicable provision herein. Tenant shall also maintain in full force and effect during the term business interruption insurance with a limit of liability in an amount of at least approximately twelve (12) months of Base Rent. Prior to the commencement of the term, Tenant shall deliver to Landlord certificates of insurance with endorsements. No later than five (5) days following the expiration of such policy or any renewal thereof, Tenant shall deliver to Landlord replacement or renewal binders, followed by certificates and endorsements within a reasonable time thereafter. Tenant shall have the right to provide all insurance coverage required herein to be provided by Tenant pursuant to blanket policies so long as such coverage is expressly afforded by such policies for the location which is the Premises. All insurance shall be written by carriers which are admitted in California and which have a rating by A.M. Best Insurance Service, or its successor, of at least "A-/VII" or equivalent. Tenant shall increase the amounts of insurance as required by any lender of Landlord if consistent with then customary

practice for comparable tenants operating for comparable purposes from comparable premises in the vicinity of the Premises (and Landlord shall deliver to Tenant documentation evidencing such customary practice).

b. Mutual Waiver. Notwithstanding anything to the contrary herein, Landlord hereby waives and releases all claims against Tenant and Tenant's members, managers, officers, directors, partners, employees, agents, contractors, subcontractors and representatives for loss or damage to the property of Landlord to the extent that such loss or damage arises from a risk that is insured against under any valid and collectable insurance policy insuring Landlord or required to be maintained by Landlord under this Lease, or would have been insured against but for any deductible amount under any such policy. Tenant waives and releases all claims against Landlord, Landlord's Affiliates, Landlord's members and managers and agents, and its and their respective members, managers, officers, directors, partners, employees, contractors, agents and representatives (collectively with Landlord, "**Landlord's Parties**"), for loss or damage to Tenant's property to the extent such loss or damage arises from a risk that is insured against under any valid and collectable insurance policy insuring Tenant or required to be maintained by Tenant under this Lease, or would have been insured against but for any deductible amount under any such policy. The waivers contained in this paragraph shall apply without regard to the negligence of the entity so released. All of Landlord's and Tenant's repair and indemnity obligations under this Lease shall be subject to the waivers contained in this paragraph (for the sake of clarity, any indemnity obligations with respect to third-party claims are not affected by such waivers).

c. Tenant's Waiver and Indemnity. Landlord shall not be liable to Tenant for any loss, injury or other damage to Tenant or to Tenant's property in or about the Project from any cause (including defects in the Project or in any equipment in the Project; fire, explosion or other casualty; bursting, rupture, leakage or overflow of any plumbing or other pipes or lines, sprinklers, tanks, drains, drinking fountains or washstands in, above, or about the Project; or acts of other occupants at the Project), except to the extent such loss, injury or other damage is caused by the violation of this Lease, negligence, or willful misconduct of Landlord's Parties. Notwithstanding any other provision of this Lease to the contrary, in no event shall Landlord be liable to Tenant for any punitive or consequential damages or damages for loss of business by Tenant. Tenant hereby waives all claims against Landlord for any such loss, injury or damage and the cost and expense of defending against claims relating thereto, except to the extent caused by the violation of this Lease, willful misconduct or negligence of Landlord. Notwithstanding any other provision of this Lease to the contrary, in no event shall Landlord be liable to Tenant for any punitive or consequential damages or damages for loss of business by Tenant. Tenant shall indemnify, hold Landlord's Parties harmless from and defend Landlord's Parties against all out-of-pocket claims, liabilities, losses, damages and expenses (including reasonable attorneys' fees and costs): (i) arising in the Premises or from the use of the Premises by Tenant, (ii) as a result of Tenant's breach of this Lease, or (iii) arising from the negligence or willful misconduct of Tenant's Parties and their contractors, invitees, and other guests in, upon or about the portions of the Project outside the Premises, except (in each instance under clauses (i), (ii) and (iii)) to the extent such claims, liabilities, losses, damages and expenses are caused by the violation of this Lease, negligence, or willful misconduct of Landlord's Parties. The foregoing indemnity obligation of Tenant shall include reasonable attorneys' fees, investigation costs and all other costs and expenses incurred by any of Landlord's Parties from the first notice that any claim or demand is to be made or may be made. The provisions of this Section 10(c) shall survive the expiration or termination of this Lease with respect to any damage, injury or death occurring prior to such time.

d. Landlord's Indemnity. Landlord shall indemnify, protect, hold Tenant, Tenant's Affiliates, Tenant's members and manager and agents, and its and their respective members, managers, officers, directors, partners, employees, agents, and representatives (collectively with Tenant, "**Tenant's Parties**") harmless from and defend Tenant and Tenant's Parties against all out-of-pocket claims, liabilities, losses, damages and expenses (including reasonable attorneys' fees and costs) arising from the violation of this Lease, negligence or willful misconduct of Landlord's Parties. The foregoing indemnity obligation of Landlord shall include reasonable attorneys' fees, investigation costs and all other costs and expenses incurred by any of Tenant's Parties from the first notice that any claim or demand is to be made or may be made. The provisions of this Section 10(d) shall survive the expiration or termination of this Lease with respect to any damage, injury or death occurring prior to such time

e. Landlord's Insurance. Landlord shall during the term hereof maintain "all-risk" property insurance covering 100% of the replacement value of the Building (including the Tenant Improvements and any Tenant's

Work and Alterations and any other leasehold improvements installed and paid for by Tenant), as well as such liability insurances and other coverages, including earthquake coverage, in Landlord's discretion.

11. Damage or Destruction.

a. Insured Loss. If during the Term the Building is totally destroyed, or partially destroyed, by fire or other casualty in such a way that Tenant's use of the Premises is materially interfered with, from a risk which is wholly covered by insurance proceeds made available to Landlord for such purpose (provided a risk will not be deemed to be not covered by insurance by virtue of the operation of any deductibles, failure of Landlord to maintain the insurance required hereunder or if the amount of the uninsured loss is less than ten percent (10%) of the replacement cost of the Building), Landlord shall proceed with reasonable diligence to repair the damage or destruction and this Lease shall not be terminated; provided that if in the reasonable opinion of Landlord's architect or contractor the work of repair cannot reasonably be completed using appropriate diligence within twelve (12) months following the date of destruction or damage and Landlord does not actually intend to restore the damage, Landlord may at its election terminate this Lease by notice given to the Tenant within thirty (30) days following the event or such longer period as may reasonably be necessary to obtain information from its architect or contractor.

b. Uninsured Loss. If during the Term the Building is totally destroyed, or partially destroyed in such a way that Tenant's use of the Premises is materially interfered with, from a risk which is not wholly covered by insurance proceeds made available to Landlord for repair or reconstruction (as described in Section 11(a) above), Landlord may at its election by notice to Tenant given within thirty (30) days following the event or such longer period as may reasonably be necessary for Landlord to obtain information from its architect or contractor, either restore the Premises (which restoration shall not exceed twelve (12) months from the date of damage) or, unless Tenant agrees in a written agreement acceptable to Landlord's lender and reasonably acceptable to Landlord and accompanied by evidence of sufficient available funds, to pay for such repairs or restoration and if Landlord does not actually intend to restore the damage, terminate this Lease.

c. Repair after Damage or Destruction. If the Lease is not terminated following a total or partial destruction of the Building, then Landlord shall, subject to the provisions of this Section, use commercially reasonable efforts to promptly commence and pursue to completion the repair of such damage so that the Building is restored to the condition existing prior to the casualty, including restoration of all items described in the Work Letter as Landlord's Work and all Alterations and Tenant's Work (which restoration shall not exceed twelve (12) months from the date of damage), subject to restrictions and modifications as may be required by applicable law.

d. Abatement of Rent. In case of destruction or damage which materially interferes with Tenant's use of the Premises, Base Rent and Tenant's share of Operating Expenses shall be abated from (i) the date of destruction to (ii) the earlier of the date of substantial completion of the restoration of the Premises or the termination of this Lease pursuant to this Section 11, in either case based upon the portion of the Premises that Tenant has reasonably ceased to use and occupy during the relevant period as a result of such damage. Except for such abatement, Tenant shall have no claim against Landlord for any loss suffered by Tenant due to damage or destruction of the Premises or any work of repair undertaken as herein provided. Tenant expressly waives the provisions of Section 1932 and Section 1933(4) of the California Civil Code and any other applicable Laws providing for termination of a hiring upon destruction of the thing hired, which are superseded by this Section 11. If the damage to or destruction of the Premises is, in whole or in part, the result of the willful misconduct of Tenant's Parties or their contractors performing construction, maintenance or repair work on the Building (except for those contractors approved by Landlord), Tenant shall be entitled to an abatement of Rent as provided in this Section 11(d), provided, however, the abatement of Rent shall be limited to the extent Landlord actually receives proceeds of insurance in connection with the interruption of Rent payable hereunder. Landlord shall use reasonable efforts to obtain such proceeds of insurance.

e. Tenant's Termination Rights. If destruction or damage to the Premises occurs, then Tenant may elect to terminate this Lease by giving Landlord notice of such election within thirty (30) days after Landlord's period to terminate has expired (or after Landlord has delivered notice to Tenant of its intent to repair) if Landlord's estimate of the time required to complete Landlord's repair obligations under this Lease is greater than the Required Repair Period. As used herein, the term "**Required Repair Period**" means twelve (12) months following the event of

destruction or damage unless such damage to or destruction of the Premises is, in whole or in part, the result of the negligent acts or omissions of Tenant's Parties or their contractors performing construction, maintenance or repair work on the Building (except for those contractors approved by Landlord) in which event such period shall be four hundred and fifty (450) days from the event of such destruction or damage. If Tenant fails to deliver timely notice to Landlord of its election to terminate this Lease pursuant to this Section 11(e), then Tenant's rights to terminate this Lease as a result of such fire or other casualty shall be deemed to have been waived, other than Tenant's right to terminate the Lease with respect to Landlord's failure to complete the restoration by the Outside Restoration Date as provided below. If Landlord commences restoration of the Premises and fails to restore the Premises in accordance with Section 11(c) within the Required Repair Period, Landlord may, by notice to Tenant, extend its time to restore the Premises for an additional period equal to Landlord's initial estimate for such restoration, but in no event in excess of 120 days plus the number of days of extension due to Excusable Delay (the "**Outside Restoration Date**"). If Landlord has not completed its work in accordance with Section 11(c) on or before the Outside Restoration Date, then Tenant may, as its sole and exclusive remedy, elect in writing, within 30 days after the Outside Restoration Date but prior to completion of such work, to terminate this Lease effective as of a date which is 15 days after the date of Tenant's termination notice provided such restoration is not completed within such 15 day period. Notwithstanding the foregoing, Tenant shall not have the right to terminate this Lease pursuant to Section 11(e) if the damage to or destruction of the Premises is, in whole or in part, the result of the intentional or willful misconduct of Tenant's Parties or their contractors performing construction, maintenance or repair work on the Building (except for those contractors approved by Landlord).

12. Eminent Domain. If (a) all or substantially all of the Project should be taken as a result of the exercise of the power of eminent domain or sold by Landlord under threat thereof, or (b) if more than fifty percent (50%) of the Improvements are so taken, this Lease shall, at Tenant's option, terminate and the Rent shall be abated during the unexpired portion of this Lease, effective on the date physical or legal possession is taken by the condemning authority. Any election by Tenant to terminate this Lease in accordance with this Section 12 shall be evidenced by a written notice of termination delivered to Landlord within thirty (30) days after the date physical or legal possession of the Project is taken by the condemning authority. At any time following Term Commencement, if Tenant either does not have the right or elects not to terminate this Lease as provided above, then following such partial taking, Landlord shall, subject to the terms of this Lease and availability of proceeds from compensation awarded for any such taking, make all necessary repairs or alterations to the remaining portions of the Project as may be required, as reasonably determined by Tenant, to make the remaining portions of the Project an architectural whole. In the event of any taking or such sale, Landlord shall be entitled to any and all compensation, damages, income, rent, awards, or any interest therein whatsoever which may be paid or made in connection therewith. Tenant shall have no claim against Landlord. Notwithstanding the foregoing, Tenant shall be entitled to receive, or to prosecute a separate claim for, an award for a temporary taking of the Premises or a portion thereof where this Lease is not terminated (to the extent such award relates to the unexpired term), an award or portion thereof separately designated for relocation expenses or the interruption of or damage to Tenant's business or as compensation for Tenant's personal property, trade fixtures or Alterations, to the extent such awards do not reduce an award paid to Landlord. In the event of a partial taking of the Project which does not result in a termination of this Lease, Base Rent and Tenant's share of Operating Expenses payable by Tenant thereafter shall be equitably reduced on a pro rata basis based upon the relative area taken as compared to the total area of the Premises prior to the taking. To the extent permitted by applicable Law, Tenant waives any benefit of California Code of Civil Procedure Sections 1265.130 and 1265.150, their successors and any other law that provides a tenant with any abatement or termination rights or the rights to receive any condemnation awards by virtue of the power of eminent domain, other than as described above.

13. Assignment and Subletting.

a. General Restriction. Tenant shall not assign this Lease or any interest herein or sublet the Premises or any part thereof, or permit the use of the Premises (by means other than assignment of this Lease or sublet of the Premises) by any party other than Tenant, either directly or by operation of law, without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall not mortgage, pledge, hypothecate, or otherwise place a lien upon this Lease or any interest herein without the prior consent of Landlord, which consent may be withheld by Landlord in its absolute discretion. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease after the expiration of applicable

notice and cure periods. In connection with each consent requested by Tenant, Tenant shall submit to Landlord the terms of the proposed transaction, the identity of the parties to the transaction, the proposed documentation for the transaction, current financial statements of any proposed assignee or sublessee and all other information reasonably requested by Landlord within five (5) days of receipt of Tenant's request concerning the proposed transaction and the parties involved therein, and Landlord shall reasonably approve or disapprove Tenant's request within twenty (20) days. As a further condition to any consent granted by Landlord, the proposed assignee shall agree in writing that upon succession to the interest of Tenant in the relevant portion of the Premises, such assignee shall perform for the benefit of Landlord all of Tenant's obligations under this Lease. Landlord and Tenant acknowledge that in exercising Landlord's reasonable discretion to approve or disapprove of a proposed assignment or sublease hereunder, Landlord may consider any and all relevant information regarding such proposed assignment or sublease and any proposed assignee, or sublessee.

b. Definition of Assignment. As used in this Section 13, the term "assign" or "assignment" shall include, without limitation, any sale, transfer or other disposition of all or any portion of Tenant's estate under this Lease, whether voluntary or involuntary, and whether by operation of law or otherwise including any of the following:

(i) Subject to the last sentence of this Section 13(b), if Tenant is a corporation or a limited liability company: (1) a sale of all or substantially all of the assets of Tenant, (2) if Tenant is a corporation with fewer than two hundred fifty (250) shareholders or a limited liability company, sale or other transfer of a controlling percentage of the capital stock or the managing members' interest in Tenant, if Tenant is a corporation with two hundred fifty (250) or more shareholders, then a transfer of its stock shall not be deemed an assignment of the Lease), or (3) the transfer of a majority beneficial interest in Tenant. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least fifty percent (50%) of the total combined voting power of all classes of Tenant's stock issued, outstanding and permitted to vote for the election of directors, or, in the case of a limited liability company, at least fifty percent (50%) of the voting right of the managing members' interest;

(ii) If Tenant is a trust, the transfer of more than fifty percent (50%) of the beneficial interest of Tenant, or the dissolution of the trust;

(iii) If Tenant is a partnership or joint venture, the withdrawal, or the transfer of the interest of any general partner or joint venturer or the dissolution of the partnership or joint venture; or

(iv) If Tenant is composed of tenants-in-common, the transfer of interest of any co-tenants, or the partition or dissolution of the co-tenancy.

Notwithstanding the foregoing, so long as the tenant under this Lease is a publicly traded company, then a transfer of stock shall not be deemed an assignment of the Lease.

c. Permitted Transfers.

(i) Notwithstanding anything in this Section 13 to the contrary, Tenant may, without the consent of Landlord and without being subject to Landlord's profit sharing rights, undergo a deemed assignment as described in Section 13(b) above or assign this Lease or sublet the Premises to any Affiliate of Tenant, any entity that is a successor of Tenant by merger, consolidation, reorganization or similar change, or any entity that acquires all or substantially all of the assets or stock of Tenant (each a "**Permitted Transferee**"), provided that any such transfer to a Permitted Transferee shall be subject to the following conditions: (a) at least five (5) days prior to the effective date of the assignment or sublease, Tenant shall deliver to Landlord written notice thereof and, no later than ten (10) days after such transfer, deliver to Landlord a copy of the relevant assignment or sublease instrument; (b) such assignment or sublease is not used as a subterfuge by Tenant to avoid its obligations under this Lease or the restrictions on transfers pursuant to this Section 13; (c) any such assignment, sublease or transfer shall be subject to all of the other terms, covenants and conditions of the Lease (other than the contrary terms in this Section 13); (d) the Permitted

Transferee, if an assignee of this Lease, shall expressly assume the obligations of Tenant under this Lease arising after the assignment; and (e) the net worth of the successor entity (other than an Affiliate) is at least equal to that of Tenant immediately prior to the transfer. Notwithstanding an assignment to a Permitted Transferee, unless released by Landlord in writing, Tenant shall remain primarily liable for all obligations of "Tenant" under this Lease. "**Affiliate**" means any entity that is Controlled by, under common Control with, or that Controls the subject entity. "**Control**", as used in the previous sentence, mean the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of an entity, possession of the right to vote more than fifty percent (50%) of the voting interests in the entity, and the power to control the direction, policies and management of such entity.

(ii) Notwithstanding anything to the contrary in this Section 13, in addition to Tenant's rights under Section 13(c)(i), Tenant may from time to time, without the prior consent of Landlord, sublease a portion of the Premises to an entity in which Tenant or its Affiliates have a material, direct investment or a collaboration agreement (such parties collectively being the "**Additional Permitted Subtenants**") subject to the following conditions: (i) each Additional Permitted Subtenant shall have executed a sublease in a form meeting the requirements below and satisfactory to Landlord in its reasonable discretion, (ii) each Additional Permitted Subtenant shall use the Premises in compliance with all applicable provisions of this Lease, (iii) the use of the space is not a use which materially increases Landlord's obligations under this Lease, (iv) Tenant shall be fully responsible for the conduct of such Additional Permitted Subtenant within the Premises and the Project, and Tenant's indemnification obligations set forth in Section 10 of this Lease shall apply with respect to the conduct of such Additional Permitted Subtenants, (v) in no event shall the space in the Premises occupied by Additional Permitted Subtenants exceed twenty percent (20%) of the area of the Premises, and (vi) in no event shall the space in the Premises occupied by any one Additional Permitted Subtenant exceed ten percent (10%) of the area of the Premises. The form sublease with respect to Additional Permitted Subtenants referenced in clause (i) above shall set forth, among other things: (A) that the Additional Permitted Subtenant's occupancy is subject and subordinate to the terms and conditions of this Lease, (B) that upon a termination of the Lease, the Additional Permitted Subtenant shall vacate the Premises, (C) that Landlord and the Additional Permitted Subtenant have no direct relationship, (D) that the Additional Permitted Subtenant waives all claims against Landlord and Landlord's authorized representatives for damage to person or property, including such subtenant's personal property maintained at the Premises, and (E) that the Additional Permitted Subtenant indemnifies Landlord's Parties to the same extent of Tenant's indemnification of the Landlord's Parties hereunder, including indemnification against all claims, loss, cost, liability, damage and expense, including, without limitation, reasonable attorneys' fees and costs, arising out of the negligence or willful misconduct of that Additional Permitted Subtenant. Tenant shall promptly deliver to Landlord each sublease executed by an Additional Permitted Subtenant.

(iii) Any purported assignment or sublease to a Permitted Transferee or to an Additional Permitted Subtenant that does not satisfy the requirements of this Section 13(c) is voidable by Landlord and shall constitute a violation of this Lease, subject to Section 14(a)(iv) below.

d. Assignment or Subletting by Sublessee. Any assignment or sublet by a sublessee of its sublease shall be subject to Landlord's prior consent in the same manner as if Tenant were entering into a new sublease.

e. Assignment Consideration. In the case of an assignment other than to a Permitted Transferee, Tenant shall pay to Landlord one half of all sums or other economic consideration received by Tenant as compensation to Tenant for such assignment (excluding any amounts for equipment, services or other property provided by Tenant, except to the extent in excess of fair market value), after first deducting the actual, out-of-pocket cost of any real estate commissions, legal fees, tenant improvements, concessions, and other costs reasonably incurred to effect the assignment. If such consideration is received by Tenant in installments, the portion of each installment to be paid to Landlord shall be determined by subtracting from the installment an amount equal to the total amount of the foregoing permitted deductions divided by the total number of installments.

f. Subletting Consideration. In the case of a subletting other than to a Permitted Transferee, Tenant shall pay to Landlord one half of all sums or economic consideration received (excluding any amounts for

equipment, services or other property provided by Tenant, except to the extent in excess of fair market value therefor) in excess of the sum of (i) the then Rent due under this Lease for the relevant period, prorated to reflect only that portion allocable to the sublet portion of the Premises, and (ii) the actual, out-of-pocket costs of any real estate commissions legal fees, demising and improvement costs, concessions, and all other costs reasonably incurred to effect the subletting and are reasonably documented by Tenant, provided such amounts shall first be deducted from sublease rents before any excess rents are payable to Landlord. For the purpose of determining the amount of excess rent under this Section 13(f), during the period between the Term Commencement and the Base Rent Commencement, Tenant shall be deemed to be paying Base Rent in the amount of the Initial Base Rent.

g. Assignment of Consideration. Tenant hereby irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any subletting of all or a part of the Premises, and Landlord as assignee and as attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's applications, may collect such rent and apply it toward Tenant's obligations under this Lease; except that during the existence of an Event of Default by Tenant, Tenant shall have the right to collect such rent.

i. Effect of Assignment or Subletting. Regardless of Landlord's consent, no subletting or assignment shall release Tenant of Tenant's obligations or alter the primary liability of Tenant to pay the rental and to perform all other obligations to be performed by Tenant under this Lease. The acceptance of rental by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. If there is an Event of Default by any assignee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee or successor. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees of Tenant, with notification to Tenant, or any successor of Tenant, and without obtaining its or their consent thereto and such action shall not relieve Tenant of liability under this Lease.

j. Landlord's Costs. If Tenant shall request the consent of Landlord to any assignment or subletting, then Tenant shall pay Landlord's reasonable out-of-pocket costs, including attorneys' fees, incurred in connection therewith, as documented by Landlord, not to exceed (i) $7,500, in the aggregate, per request in the case of a sublease and (ii) $10,000, in the aggregate, per request in the case of an assignment.

k. No Merger. The voluntary or other surrender of this Lease by Tenant, the mutual cancellation thereof or the termination of this Lease by Landlord as a result of an Event of Default by Tenant shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

14. Default by Tenant.

a. Events of Default. Any of the following events shall constitute an "**Event of Default**" under this Lease and all references thereto shall mean the following:

(i) Tenant's failure to pay any Base Rent or other sum payable under this Lease (including without limitation a sum to restore the Deposit under Section 23) when due, where such failure shall continue for a period of five (5) days after notice from Landlord of such delinquency; provided, however, that once Landlord has delivered a second notice of such a failure during any calendar year, any subsequent failure to pay Base Rent or other sums when due shall constitute an Event of Default without the requirement of notice;

(ii) The bankruptcy or insolvency of Tenant, any transfer by Tenant in fraud of creditors, assignment by Tenant for the benefit of creditors, or the commencement of any proceedings of any kind by or against Tenant under any provision of the Title 11 of the United States Code or its successor ("**Bankruptcy Code**"), or under any other insolvency, bankruptcy or reorganization law, unless any such proceedings are dismissed within ninety (90) days thereafter; the appointment of a receiver for a substantial

part of the assets of Tenant unless dismissed within sixty (60) days; or the levy upon this Lease or any estate of Tenant under this Lease by any attachment or execution unless released within thirty (30) days;

(iii) The abandonment of the Premises, together with Tenant's failure to maintain the Premises in accordance with this Lease;

(iv) Tenant's failure to perform any of the other terms, covenants, agreements or conditions set forth in this Lease or act by Tenant in violation of this Lease (other than Tenant's breach of Section 13(a) and (c), as to which a ten (10) day cure period shall apply, or the provisions of Section 18 regarding delivery of financial statements and estoppels, as to which a five (5) day cure period shall apply beyond the period provided in Section 18 to deliver the relevant statements) and, if the failure is curable, the continuation of such breach for a period of thirty (30) days after notice from Landlord or beyond the time reasonably necessary for cure if the failure is of the nature to require more than thirty (30) days to remedy, but in any event, within ninety (90) days following Landlord's notice; provided that if Tenant has committed an Event of Default with respect to a violation of Law more than twice in any twelve-month period and written notice of Tenant's failure has been given by Landlord in such instance, then no cure period shall thereafter be applicable under this Lease; or

(v) Tenant's failure to provide, renew, supplement, or replace the Letter of Credit or provide a cash equivalent when and as provided under Section 24 within five (5) days after the date when due.

b. Landlord's Remedies. Upon the occurrence of any Event of Default by Tenant under this Lease, Landlord may, at its option and without any further notice or demand, in addition to any other rights and remedies given under this Lease or by law, do any of the following:

(i) Landlord shall have the right, so long as such Event of Default continues, to give written notice of termination to Tenant and on the date specified in such notice this Lease shall terminate;

(ii) In the event of any such termination of this Lease, Landlord may then or at any time thereafter, reenter the Premises and remove therefrom all persons and property and again repossess and enjoy the Premises, without prejudice to any other remedies that Landlord may have by reason of Tenant's Event of Default or of such termination;

(iii) In the event of any such termination of this Lease, and in addition to any other rights and remedies Landlord may have, Landlord shall have all of the rights and remedies of a landlord provided by Section 1951.2 of the California Civil Code. The amount of damages which Landlord may recover in event of such termination shall include, without limitation, (1) the worth at the time of award (computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent) of the amount by which the unpaid Base Rent for balance of the term after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided, (2) all legal expenses and other related costs reasonably incurred by Landlord following Tenant's Event of Default, (3) all costs incurred by Landlord in restoring the Premises to good order and condition, or, to the extent allocable to the remainder of the Term, in remodeling, renovating or otherwise preparing the Premises for reletting, and (4) all costs (including, without limitation, any brokerage commissions) incurred by Landlord in reletting the Premises, to the extent allocable to the remainder of the Term.

(iv) Landlord shall also have the remedy described in California Civil Code Section 1951.4 (lessor may continue the lease in effect after lessee's breach and abandonment and recover Base Rent and additional rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations);

(v) For the purpose of determining the unpaid Base Rent in the event of a termination of this Lease, or the Base Rent due under this Lease in the event of a reletting of the Premises, the monthly Base Rent reserved in this Lease shall be deemed to be the Base Rent due under Section 3 above;

(vi) Landlord's acceptance of payment from Tenant of less than the amount of Base Rent then due shall not constitute a waiver of any rights of Landlord or Tenant including, without limitation, any right of Landlord to recover possession of the Premises; and

(vii) After terminating this Lease, Landlord may remove any and all personal property located in the Premises and place such property in a public or private warehouse or elsewhere at the sole cost and expense of Tenant, provided Landlord will provide written notice of such removal and storage to Tenant promptly after any such personal property is removed from the Premises.

c. Waiver of Reinstatement. Tenant hereby waives all rights under California Code of Civil Procedure Section 1179 and California Civil Code Section 3275 providing for relief from forfeiture and any other right now or hereafter existing to redeem the Premises or reinstate this Lease after termination pursuant to this Section 14 or by order or judgment of any court or by any legal process.

d. Continuation of the Lease. Even though an Event of Default by Tenant has occurred under this Lease, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession. Landlord may enforce all its rights and remedies under this Lease, including the right to recover rental as it becomes due under this Lease. Acts of maintenance or preservation, efforts to relet the Premises, or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease, shall not constitute a termination of Tenant's right to possession.

e. Waiver of Jury Trial. If and to the extent permitted under applicable Law, Landlord and Tenant shall not seek jury trial, hereby waive trial by jury and any objection to venue in the county in which the Building is located and hereby consent to the personal jurisdiction of the courts of the state in which the Premises is located in any action, proceeding or counterclaim brought by either party against the other on any matters not relating to personal injury or property damage but otherwise arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, any claim or injury or damage or the enforcement of any remedy under any statute, whether any of the foregoing is based upon this Lease or law.

f. Non-Exclusive Remedies. The remedies provided for in this Lease are in addition to any other remedies available to Landlord at law or in equity, by statute or otherwise.

g. Reimbursement of Landlord. In addition to the foregoing remedies for Events of Default, subject to Section 20, Landlord is entitled to reimbursement of all of Landlord's fees, expenses and damages, including, without limitation, reasonable attorneys' fees and paralegal and other professional fees and expenses, including expert witness or appraisal fees and expenses, that Landlord incurs in protecting its interests in any bankruptcy or insolvency proceeding involving Tenant (including, without limitation, any proceeding under the Bankruptcy Code) by, without limitation, (i) exercising and advocating rights under Section 365, or its successor, of the Bankruptcy Code, (ii) proposing a plan of reorganization and objecting to competing plans or (iii) filing motions for relief from stay. Such fees and expenses are payable on demand or, in any event, upon assumption or rejection of this Lease in bankruptcy.

15. Landlord's Right to Cure Events of Default. If Tenant shall fail to pay any sum of money, other than rental, required to be paid by it under this Lease or shall fail to perform any other act on its part to be performed under this Lease and such failure shall continue for thirty (30) days after notice thereof by Landlord, Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such other act on Tenant's part to be made or performed as in this Lease provided. All sums so paid by Landlord and all necessary incidental costs shall be deemed additional rent under this Lease and shall be payable to Landlord on written demand. Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of the nonpayment thereof by Tenant as in the case of an Event of Default by Tenant in the payment of rental.

16. Default by Landlord.

a. Default and Remedies. The occurrence of any one or more of the following events shall constitute a default under this Lease by Landlord: Landlord's failure to do, observe, keep, and perform any of the terms, covenants, conditions, agreements, or provisions of this Lease required to be done, observed, kept, or performed by Landlord within thirty (30) days after written notice by Tenant to Landlord of said failure (except when the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed in default if it commences performance within the thirty (30)-day period and thereafter diligently pursues the cure to completion). Notwithstanding the foregoing, in the event Tenant notifies Landlord that Landlord's breach creates an emergency situation or is of such a nature that impairs Tenant's ability to operate at the Premises (which shall include, by way of illustration and not limitation, obstructions or disruptions to parking, access to the Premises, visibility, utilities, roof leaks, health and safety, and quiet enjoyment), then Landlord shall be required to remedy such breach as soon as commercially reasonable and in any event without delay. In the event of a default by Landlord, or failure to remedy a breach as set forth in the preceding sentence, Tenant may, as Tenant's sole and exclusive remedies, (i) pursue specific performance, (ii) seek recovery of Tenant's actual money damages for loss arising from Landlord's uncured breach under this Lease or (iii) cure any default of Landlord as and to the extent provided below in this Section 16. Notwithstanding anything in this Lease to the contrary, in no event shall this Lease be terminated. In the event of any breach or default by Landlord of any term or provision of this Lease, Tenant must look solely to the amount of Landlord's equity or interest then owned by Landlord in the Project and any proceeds therefrom; however, in no event, shall any deficiency judgment or any money judgment of any kind be sought or obtained against Landlord. IN NO EVENT SHALL LANDLORD'S OR TENANT'S MEMBERS OR MANAGERS OR ITS OR THEIR DIRECT OR INDIRECT MANAGERS, MEMBERS, PARTNERS, SHAREHOLDERS OR AFFILIATES, ANY OFFICER, MANAGER, MEMBER, DIRECTOR, EMPLOYEE, OR AGENT OF THE FOREGOING, OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF HAVE ANY PERSONAL LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS LEASE OR THE PREMISES, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.

b. Cure by Tenant. Notwithstanding any other provision of the Lease to the contrary (but subject to the provisions of Section 11 and Section 12), if, after Term Commencement, Landlord fails to perform Essential Repairs, Tenant may deliver a notice describing with reasonable specificity Landlord's failure to perform Essential Repairs (a "**Cure Notice**"). If Landlord fails to cure such failure within thirty (30) days after Landlord's receipt of the Cure Notice (unless the failure is due to Excusable Delay or is of a nature that cannot reasonably be cured within thirty (30) days, in which event Landlord shall be allowed an additional reasonable period of time to diligently pursue cure of such failure), Tenant may deliver an additional notice to Landlord ("**Second Cure Notice**") stating (A) that Landlord has failed to cure the failure to perform Essential Repairs within the cure period set in the third sentence of this Section 16(b), (B) the action that Tenant maintains is necessary to cure such failure and (C) the action that Tenant proposes to take to cure such failure of Landlord (the "**Cure Action**"). If within three (3) additional business days after Landlord's receipt of the Second Cure Notice, Landlord fails to cure such failure (unless such failure is of a nature that cannot reasonably be cured within such three (3) business days, in which event Landlord shall be allowed an additional reasonable period of time to diligently pursue cure of such failure), then Tenant may proceed to undertake the Cure Action, subject to the provisions in Section 16(c) below. Provided however, in the event any such failure of Landlord creates a Repair Emergency the required notice to Landlord may be given verbally to the property manager, as hereafter may be changed from time to time by Landlord or its property manager by written notice to Tenant. Tenant shall confirm any verbal notice by written notice to Landlord given on the same day (or if the Repair Emergency occurs outside of normal business hours, then by written notice given the next business day). In the event of a Repair Emergency, (1) if Landlord has not commenced to perform such Essential Repairs within two (2) business days following Landlord's receipt of the Cure Notice, then Tenant may deliver a Second Cure Notice (without regard for the time periods for cure set forth above) and (2) if Landlord has not commenced to perform such Essential Repairs within one (1) business day following Landlord's receipt of the Second Cure Notice then Tenant may proceed to undertake the Cure Action, without regard for the time periods for cure set forth above and subject to the provisions in Section 16(c) below. As used herein, the term "**Essential Repair**" means a maintenance or repair obligation under Sections 8(a) or a failure to restore Essential Utilities (but only to the extent that Tenant would otherwise be entitled to an abatement of Rent pursuant to Section 7(b) as a result of such failure). As used herein, the term "**Repair Emergency**" means the

failure of Landlord as described in the first sentence of this Section 16(b) that creates an imminent and unreasonable risk of serious bodily injury or material property damage.

c. Requirements of Tenant's Cure Right. If Tenant takes any Cure Action permitted by Section 16(b) above with respect to any failure of Landlord to perform any Essential Repairs, Tenant shall comply with and observe the requirements set forth below. Prior to commencement of any repair by Tenant, Tenant shall submit for Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed, plans and specifications for such repair work ("**Repair Plans**"), and such of the following as requested by Landlord: opinions from engineers reasonably acceptable to Landlord stating that such work will not in any way adversely affect the Building Systems, including, without limitation, the mechanical, heating, plumbing, security, ventilating, air conditioning, electrical, and the fire and life safety systems in the Building, necessary permits and licenses, certificates of insurance, and such other documents in such form reasonably requested by Landlord. If, within two (2) business days following Landlord's receipt of the Repair Plans, Landlord has not either approved the Repair Plans or reasonably disapproved the Repair Plans (providing with reasonable specificity the reasons for such disapproval), Landlord will be deemed to have approved the Repair Plans. Tenant shall use only the services of any qualified contractor which regularly performs similar work in comparable buildings in Oakland Metropolitan Area. For all such work, Tenant shall use only materials and parts of kind and quality at least equal to the original and consistent with the Construction Document Packages. Notwithstanding the foregoing, Tenant shall use only such contractor, materials, parts and techniques required under any warranty then in effect and of which Tenant is notified (in writing or verbally in event of a Repair Emergency). Tenant shall furnish names and addresses of all contractors and subcontractors and copies of all contracts. Upon completion of such repair, Tenant shall deliver to Landlord an as-built set of plans and specifications (digitized if available), if any, for such repair or maintenance. Tenant shall not conduct any such repair in a manner that will draw picketers or demonstrators without the prior consent of Landlord. Tenant shall comply with and observe the same requirements under Section 9 (except to the extent expressly set forth in, or inconsistent with, this Section 16) that would apply if Tenant seeks to perform Alterations and with other applicable provisions of the Lease. In addition, any Cure Action shall be (i) subject to Tenant's indemnification obligations set forth in Section 9 of this Lease, (ii) subject to Tenant's other obligations under this Lease, including without limitation, Tenant's obligations with respect to Alterations and liens, and (iii) such action shall be diligently prosecuted to completion and shall be undertaken in a good and workmanlike manner and in compliance with all Laws. If any Cure Action to be undertaken by Tenant in accordance with the foregoing affects elements of the structural frame of the Building or the Building Systems, Tenant shall engage Landlord's contractors to effectuate such action.

d. Payment by Landlord and Offset. Promptly following completion of any work by Tenant pursuant to Section 16(b), Tenant shall deliver to Landlord Tenant's request for reimbursement of the actual, costs reasonably incurred by Tenant for the work permitted pursuant to Section 16(b), which request shall include the contractors and materials used, copy of all required permits and governmental approvals, copy of receipt(s) showing Tenant's payment to those providing services or materials, and valid, final, unconditional mechanics' lien releases and waivers from all contractors, subcontractors and suppliers providing services or materials. Within thirty (30) days after receipt of such invoice and documentation, Landlord shall reimburse Tenant the amount, if any, not reasonably disputed by Landlord, as more particularly set forth below (the "**Undisputed Amount**"). Provided however, alternatively, within thirty (30) days after receipt of such invoice Landlord may give Tenant written notice of Landlord's reasonable objection to the payment of such invoice, setting forth with reasonable specificity Landlord's reasons for its claim that such action was not required to be taken by Landlord pursuant to the terms of the Lease, or that the work by Tenant was defective (or otherwise did not correctly repair the problem), or that the charges were not reasonably incurred (in which case Landlord shall pay the amount it contends was reasonably incurred for the repair required under the Lease) (a "**Dispute Notice**"). If Landlord does not deliver Tenant a Dispute Notice within the time period set forth above, Landlord will be deemed to have approved such invoice and documentation. In the event Tenant disputes Landlord's timely delivered Dispute Notice, Tenant may, as its sole and exclusive remedy, bring a claim against Landlord for payment of the amount due in accordance with the foregoing. If Landlord fails to pay Tenant any Undisputed Amount within ten (10) days after Landlord's approval (or deemed approval) of such invoice or documentation, then, notwithstanding any other provision of this Lease that prohibits any such withholding, deduction or offset of Rent, in lieu of its receipt of such unpaid amounts, Tenant may, as its sole and exclusive remedy for such failure, offset against Rent the Undisputed Amount, plus interest at the Default Rate on the Undisputed Amount until the full amount of the unpaid amounts, together with all interest thereon, has been recouped by Tenant. Tenant

acknowledges and agrees that Landlord's acceptance of such offset shall not in and of itself be an admission by Landlord that it is responsible for such expense, and Landlord reserves the right to contest the amount of such expense and/or Landlord's liability therefor. Notwithstanding the foregoing, the maximum amount of Rent which Tenant shall be entitled to offset in any calendar year shall be 20% of the Base Rent for such period, and shall be limited to a maximum of 30% of each installment of the payment of Base Rent (the "**Maximum Annual Rent Abatement**"); provided, however, Tenant's offset rights with respect to amounts owed to Tenant pursuant to a final, non-appealable judgment in court or an award shall not be subject to any limitation, including, without limitation, the Maximum Annual Rent Abatement.

e. Cure Rights Personal to Tenant. The right of cure and offset set forth in this Section 16 is personal to the original Tenant and may not be exercised by any other party, provided however, in the event this Lease is assigned to a Permitted Transferee that satisfies the provisions of Section 13(c), the right to cure and offset set forth in this Section 16 may be exercised by Tenant or by such Permitted Transferee, and such Permitted Transferee may exercise the right without Tenant joining in or consenting to such exercise, and notwithstanding any provision of the Lease to the contrary, Tenant shall remain liable for all obligations under the Lease, including those resulting from any such exercise, with the same force and effect as if Tenant had joined in the exercise of the right to cure.

f. Effect of Cure on Operating Expenses. Notwithstanding the undertaking of a Cure Action by Tenant pursuant to this Section 16, the cost of such Cure Action, whether paid by Landlord to Tenant or offset from Tenant's Rent obligations as provided herein, shall be an Operating Expense to the extent the cost of such Cure Action would have constituted an Operating Expense if performed by Landlord; provided however, any interest payable to Tenant pursuant to the terms of this Section 16 shall not be an Operating Expense and shall be the sole cost of Landlord.

17. Intentionally Omitted.

18. Estoppel Certificate and Financial Statements.

a. Tenant's Estoppel Certificate. Tenant shall at any time within ten (10) business days following written request from Landlord execute, acknowledge and deliver to Landlord a statement certifying: (i) that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect); (ii) the date to which the Base Rent and other sums payable under this Lease have been paid; (iii) the amount of the Letter of Credit or Deposit, as applicable; (iv) acknowledging that there are not, to Tenant's actual knowledge, any uncured defaults on the part of Landlord under this Lease, or specifying such defaults, if any, which are claimed; and (v) such other factual matters as may reasonably be requested by Landlord.

b. Reliance and Failure to Deliver. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Building. Tenant's failure to deliver such statement within such time shall be deemed Tenant's confirmation that: (i) this Lease is in full force and effect, without modification except as may be represented by Landlord; (ii) there are no uncured defaults in Landlord's performance; and (iii) not more than one month's Base Rent has been paid in advance.

c. Financial Statements. Tenant shall deliver to Landlord within thirty (30) days following Landlord's request, the most recent complete and accurate financial statements of Tenant. Such statements shall be prepared in accordance with generally accepted accounting principles, to the extent applicable to Tenant's business, consistently applied, and shall be certified as accurate and complete by an independent certified public accountant. All such financial statements shall be received by Landlord in confidence and may only be disclosed by Landlord to its current and/or prospective lenders and/or purchasers who shall also be instructed to maintain such information in confidence pursuant to Section 26(m) of this Lease. Notwithstanding the foregoing, so long as Tenant is a publicly traded company, Tenant shall have no obligations under this Section 18(c).

19. Subordination; Amendment for Lender.

a. This Lease shall be subordinate to any mortgage, deed of trust, ground lease, underlying lease or any other hypothecation for security (each an "**Encumbrance**") hereafter placed upon the Project and to any

and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof; provided, however, that such subordination shall only be effective as to such future Encumbrances on the Project if the applicable holder of the Encumbrance executes a commercially reasonable subordination, non-disturbance and attornment agreement ("**SNDA**"), which shall, among other provisions, provide that notwithstanding any subordination in such SNDA, Tenant's right to quiet possession of the Premises shall not be disturbed if there is not an Event of Default by Tenant unless this Lease is otherwise terminated pursuant to its terms. If any holder of an Encumbrance on the Project shall elect to have this Lease prior to the lien of its Encumbrance, and shall give notice thereof to Tenant, this Lease shall be deemed prior to such Encumbrance, whether this Lease is dated prior to or subsequent to the date of said Encumbrance or the date of recording thereof. If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, Tenant shall attorn to the purchaser at the foreclosure sale or to the grantee under the deed in lieu of foreclosure; if any master lease to which this Lease is subordinate is terminated, Tenant shall attorn to the master lessor, provided that for any of the foregoing events, Tenant has received an executed, commercially reasonable SNDA. Promptly following the request of any such purchaser, grantee, or master lessor, Tenant shall execute and deliver a new lease, in the form of this Lease, with such requesting party as Landlord. Within ten (10) business days following Landlord's request or the request of any such mortgagee, beneficiary or master lessor, Tenant shall execute an SNDA or any other documents reasonably required to effectuate such subordination or to make this Lease prior to the lien of any mortgage, deed of trust or master lease, as the case may be, or to evidence such attornment. Landlord represents that, as of the Execution Date, Landlord has not obtained financing from any lender with an Encumbrance on the Premises or any part or interest therein. Tenant acknowledges that, prior to the Execution Date, Tenant has received a copy of the preliminary title report with respect to the Land, which is attached hereto as part of **Exhibit E-1**, which report does not include an exception to title with respect to an Encumbrance.

b. Modification for Lender. Within ten (10) business days of Landlord's request therefor, Tenant shall execute and deliver such amendments to this Lease as shall have been reasonably required by Landlord's lender in connection with the making of a loan to be secured by the Project, provided that such amendment does not increase the obligations of Tenant under this Lease or materially and adversely affect Tenant's leasehold interest or its other rights under this Lease. Any costs incurred by Tenant to enter into any such amendment shall be borne by Landlord.

20. Attorneys' Fees. If either party commences an action or proceeding against the other party arising out of or in connection with this Lease, or institutes any proceeding in a bankruptcy or similar court which has jurisdiction over the other party or any or all of its property or assets, the prevailing party in such action or proceeding and in any appeal in connection therewith shall be entitled to have and recover from the unsuccessful party reasonable attorneys' fees, court costs, expenses and other costs of investigation and preparation. If such prevailing party recovers a judgment in any such action, proceeding, or appeal, such attorneys' fees, court costs and expenses shall be included in and as a part of such judgment.

21. Notices. All notices, consents, demands and other communications from one party to the other given pursuant to the terms of this Lease shall be in writing and shall be provided (i) if to Tenant, by personal delivery at the address specified in the Basic Lease Information or to such other place and with such other copies as Tenant may from time to time designate in a notice to Landlord, (ii) by deposit in the United States mail, certified or registered, postage prepaid, or (iii) by delivery by a generally recognized overnight courier service, charges prepaid and addressed as follows: (a) if to Tenant, at the address specified in the Basic Lease Information or to such other place and with such other copies as Tenant may from time to time designate in a notice to Landlord or (b) if to Landlord, at the address specified in the Basic Lease Information, or to such other place and with such other copies as Landlord may from time to time designate in a notice to Tenant. Notices, demands or declarations given under this Lease will be deemed to have been given when received or when receipt is refused.

22. Signage. At Tenant's cost, Tenant may erect, install and maintain signage of a kind and size and in a location (including monument signage and signage on the Building eyebrow) that is permitted by local regulatory codes and other applicable Laws, provided that Tenant shall obtain Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, with respect to the method of attachment of such signage to the Building. Tenant shall maintain such signage in accordance with applicable Laws.

23. Security Deposit. Upon execution of this Lease Tenant shall deliver to Landlord a security deposit in the amount specified in the Basic Lease Information (the "**Deposit**"). The Deposit shall be held by Landlord as security for the performance by Tenant of all of the provisions of this Lease. Following an Event of Default by Tenant under this Lease, Landlord may use, apply or retain all or any portion of the Deposit for the payment of any rent or other charge in default, or the payment of any other sum to which Landlord may become obligated by Tenant's default, or to compensate Landlord for any expense, loss or damage which Landlord may suffer thereby. If Landlord so uses or applies all or any portion of the Deposit, then within ten (10) days after demand therefor Tenant shall deposit cash with Landlord in an amount sufficient to restore the Deposit to the full amount thereof, and Tenant's failure to do so prior to the expiration of all applicable notice and cure periods shall be an uncurable Event of Default under this Lease. Landlord shall not be required to keep the Deposit separate from its general accounts. The Deposit, or so much thereof as has not theretofore been applied by Landlord, shall be returned, without payment of interest for its use, to Tenant (or, at Landlord's option, to the last assignee, if any, of Tenant's interest under this Lease) not later than 30 days after the later of the date of termination or expiration of the Lease or the date that Tenant delivers possession of the Premises to Landlord, unless a longer time is reasonably required to ascertain damages payable from the Deposit (not to exceed sixty (60) days). No trust relationship is created herein between Landlord and Tenant with respect to the Deposit. Tenant waives the provisions of California Civil Code Section 1950.7, and all other present and future laws to the extent the same restrict the amount or types of claim that a landlord may make upon a security deposit or, to the extent in conflict with the express terms of this Lease, imposes upon a landlord or a successor any obligation with respect to the handling or return of security deposits. Upon final determination of the Initial Base Rent pursuant to Section 3(a), if the Deposit then held by Landlord is greater than the Initial Base Rent, Landlord shall promptly refund such excess to Tenant, and if the Deposit held by Landlord is less than the Initial Base Rent, then Tenant shall deposit such shortfall amount with Landlord within ten (10) days after notice from Landlord.

24. Letter of Credit. At Tenant's election, in lieu of the Deposit provided in Section 23, Tenant shall, within two business days of the mutual execution and delivery of this Lease, deliver to Landlord an irrevocable, unconditional and transferable (without cost to beneficiary) standby Letter of Credit ("**Letter of Credit**"), in a form reasonably approved by Landlord and meeting the requirements of this Section 24, in the amount stated in the Basic Lease Information. The following provisions shall apply to the Letter of Credit:

a. The Letter of Credit shall be governed by ISP98, as revised from time to time, issued by a commercial bank ("**Issuer**") reasonably satisfactory to Landlord with offices for banking purposes in the San Francisco Bay Area, and drawable by sight draft presented by Landlord from time to time. Landlord hereby approves the following banks as an Issuer: Wells Fargo Bank. The Letter of Credit shall name Landlord as beneficiary, permit multiple drawings, be fully transferable by Landlord, and otherwise be in form and substance reasonably satisfactory to Landlord. The Letter of Credit shall also provide that it shall be deemed automatically renewed, without amendment, for consecutive periods of one (1) year each during the Term plus sixty (60) days after the Term Expiration (the "**LC Term Expiration**"), unless the Issuer delivers written notice ("**Issuer Notice**") to Landlord (with a simultaneous copy to Tenant) by any method specified for giving of notices under this Lease, as amended, not less than forty-five (45) days preceding the then-Term Expiration of a Letter of Credit that it elects not to have that Letter of Credit renewed. If Landlord receives an Issuer Notice and, not later than fifteen (15) business days preceding the Term Expiration of the expiring Letter of Credit, Tenant fails to furnish Landlord with a replacement of the expiring Letter of Credit pursuant to and meeting the conditions of this Section 24, then Landlord shall have the right to draw the full amount of that Letter of Credit by delivering to the Issuer a statement that Tenant has failed timely to deliver to Landlord a replacement Letter of Credit pursuant to and meeting the conditions of this Section, in which event the Issuer shall disburse the full amount of the expiring Letter of Credit to Landlord and Landlord shall hold such amount pursuant to Section 24(f), below. Tenant shall, at any time after Landlord draws the Letter of Credit, be entitled to provide Landlord with a replacement Letter of Credit that satisfies the requirements hereunder, at which time Landlord shall return the cash proceeds of the original Letter of Credit drawn by Landlord to the extent Landlord has not applied such funds in curing an Event of Default by Tenant hereunder.

b. The Letter of Credit shall be held by Landlord for the faithful performance of all terms, covenants and conditions of this Lease. The Letter of Credit shall be returned to Tenant within sixty (60) days after the later of the date of termination or expiration of the Lease or the date Tenant delivers possession of the Premises to Landlord, unless a longer time is reasonably required to ascertain damages payable from the Letter of Credit (not

to exceed an additional 30 days). Tenant agrees that Landlord may, without waiving any of Landlord's other rights and remedies under this Lease, draw upon the Letter of Credit and apply the proceeds of the Letter of Credit (i) in whole or in part to remedy, or compensate Landlord for any damages arising from any Event of Default by Tenant; (ii) in whole if a petition is filed by or against Tenant or, if Tenant is not the "Applicant" under the Letter of Credit, then by or against the Applicant, under Title 11 of the United States Code, or a proceeding has been commenced by or against Tenant or, if Tenant is not the Applicant under the Letter of Credit, then by or against the Applicant, under any other state or federal insolvency laws or under the insolvency laws of another country (any such proceeding defined herein as a "Bankruptcy Case"); or (iii) in whole if a renewal/extension of, amendment to or replacement or evidence of the restoration of the Letter of Credit as required under Section 24(a) is not timely received by Landlord in form and substance reasonably acceptable to Landlord. If Landlord draws on the Letter of Credit, Tenant shall within five (5) business days restore the amount of the Letter of Credit to the full amount of the Letter of Credit as required to be maintained under this Section 24 pursuant to a replacement thereof or an amendment thereto in form and substance reasonably satisfactory to Landlord, or shall provide cash in lieu thereof, failing which Landlord may, without waiving its other remedies hereunder, draw down any sums then remaining unpaid under the Letter of Credit. If Landlord draws upon the Letter of Credit pursuant to subpart (i) above, Landlord shall only draw upon the Letter of Credit to the extent needed to cure such Event of Default. In the event Landlord improperly draws upon the Letter of Credit or misapplies the Letter of Credit proceeds, Tenant shall have the right to offset such amounts against Rent and Tenant shall have no right or claim (and Landlord shall have no liability to Tenant) with respect to the funds so improperly drawn or misapplied.

c. If Landlord's interest in the Premises is sold or otherwise assigned or transferred, then Tenant shall, upon ten (10) days prior notice from Landlord, at Tenant's sole cost and expense, cause Issuer to amend the Letter of Credit, in form and substance reasonably satisfactory to Landlord, to transfer them to the new Landlord designated by Landlord in its notice, effective on the date designated by Landlord in its notice.

d. Any draw under the Letter of Credit shall be subscribed by a representative of Landlord. The Issuer shall have no obligation to verify any matter or statement made in connection with any draw under the Letter of Credit and no good faith error in connection with any such matter or statement shall affect the validity of any draw by Landlord. No draw under the Letter of Credit or failure or delay of Landlord to draw any portion of the Letter of Credit shall constitute a waiver of Landlord's right to do so at any time thereafter, a waiver of Landlord's other rights and remedies under this Lease, or a waiver of any default with respect to this Lease. Tenant agrees that Tenant shall have no right to apply any portion of the cash security or proceeds of the Letter of Credit against any of Tenant's obligations to pay rent or perform obligations under the Lease.

e. Landlord and Tenant acknowledge and agree that in no event or circumstance shall the Letter of Credit or any renewal thereof or any proceeds thereof be (i) deemed to be or treated as a "security deposit" within the meaning of California Civil Code Section 1950.7, (ii) subject to the terms of such Section 1950.7, or (iii) intended to serve as a "security deposit" within the meaning of such Section 1950.7. The parties hereto (A) recite that the Letter of Credit are not intended to serve as a security deposit and such Section 1950.7 and any and all other Laws applicable to security deposits in the commercial context ("**Security Deposit Laws**") shall have no applicability or relevancy thereto and (B) waive 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.

f. In the event Landlord draws down on the Letter of Credit, the proceeds of the Letter of Credit may be held by Landlord and applied by Landlord against any Base Rent or Additional Rent payable by Tenant under this Lease that is not paid when due and/or to pay for all losses and damages that Landlord has suffered or that Landlord reasonably estimates that it will suffer as a result of any Event of Default by Tenant under this Lease. Any unused proceeds of the Letter of Credit shall constitute the property of Landlord and need not be segregated from Landlord's other assets. Tenant hereby (i) agrees that (A) Tenant has no property interest whatsoever in the proceeds from any such draws, and (B) such proceeds shall not be deemed to be or treated as a "security deposit" under the Security Deposit Laws, and (ii) waives all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws. Landlord agrees that the amount of any proceeds of the Letter of Credit received by Landlord, and not used to pay for any losses and/or damages suffered by Landlord (or reasonably estimated by Landlord that it will suffer) as provided for in this Section 24(f) (the "**Unused Letter of Credit Proceeds**"),

shall be paid by Landlord to Tenant (x) upon receipt by Landlord of a replacement of the Letter of Credit in the full amount of the Letter of Credit, which replacement Letter of Credit shall comply in all respects with the requirements of this Section 24, or (y) within sixty (60) days after the later of the date of termination or expiration of the Lease or the date Tenant delivers possession of the Premises to Landlord, unless a longer time is reasonably required to ascertain damages payable from the Unused Letter of Credit Proceeds (not to exceed an additional 30 days), and except as provided otherwise herein; provided, however, that if prior to the LC Term Expiration a voluntary petition is filed by Tenant, or an involuntary petition is filed against Tenant by any of Tenant's creditors, under the U. S. Bankruptcy Code or any state bankruptcy code, then Landlord shall not be obligated to make such payment in the amount of the Unused Letter of Credit Proceeds until either all preference issues relating to payments under this Lease have been resolved in such bankruptcy or reorganization case or such bankruptcy or reorganization case has been dismissed.

g. Upon final determination of the Initial Base Rent pursuant to Section 3(a), if the amount of the Letter of Credit then held by Landlord is not equal to the Initial Base Rent, then Tenant shall promptly obtain a revised Letter of Credit in an amount equal to the Initial Base Rent.

h. If Tenant delivers a replacement or amended Letter of Credit to Landlord when and as required under this Section 24 in the form required herein, Landlord shall exchange the Letter of Credit then held by Landlord for the replacement or amended Letter of Credit delivered by Tenant. Tenant may at any time substitute a cash Deposit for the Letter of Credit, and upon such substitution, Landlord shall return the Letter of Credit to Tenant.

25. Right of First Offer.

a. Offer Notice. Landlord shall not sell or otherwise convey Landlord's fee title in the Project (the "**Fee Interest**") to any unaffiliated third party, unless Landlord shall have first given Tenant the one-time opportunity (subject to the terms of this Section 25) to buy the Fee Interest in accordance with this Section 25 ("**Right of First Offer**"). In the event that Landlord desires to transfer the Fee Interest to an unaffiliated third party after the date of this Lease, Landlord shall first deliver to Tenant a written notice ("**Offer Notice**"), which shall include, in good faith, the following terms: (i) the purchase price, (ii) the amount of any earnest money deposit, (iii) the length of any due diligence period, and (iv) the date of closing ("**Offer Terms**").

b. Acceptance; Counteroffer. Upon receipt of an Offer Notice, Tenant shall have the right to either (i) purchase the Fee Interest on the terms and conditions provided in the Offer Notice provided that Tenant exercises its right to purchase in strict accordance with this Section 25(b), (ii) reject the Offer Notice by delivering a notice to Landlord or failing to respond within the time period set forth below or (iii) reject the Offer Notice by delivering a notice to Landlord setting forth the terms upon which Tenant desires to purchase the Fee Interest, which notice shall include Tenant's Offer Terms (such notice under this clause (ii), a "**Counteroffer**"). If Tenant desires to exercise such right to purchase the Fee Interest pursuant to the Offer Notice, Tenant must deliver to Landlord written notice of its exercise of such right (the "**Election Notice**") within the ten (10) business days after Tenant's receipt of the Offer Notice, and if Tenant desires to deliver a Counteroffer to Landlord, Tenant must deliver such Counteroffer to Landlord within the same ten (10) business day period. If Tenant delivers a Counteroffer, Landlord shall, within five (5) business days of Landlord's receipt thereof, notify Tenant of its acceptance or rejection of such Counteroffer, and any failure of Landlord to respond within such period shall be deemed to be Landlord's rejection of the Counteroffer. If Tenant elects to purchase the Fee Interest pursuant to the Offer Notice (as set forth in clause (i) above) or if Tenant delivers a Counteroffer that Landlord accepts, Landlord and Tenant shall proceed to use commercially reasonable, good faith efforts to negotiate a purchase and sale agreement (the "**Purchase Agreement**"), which Purchase Agreement shall include the terms set forth in the Offer Notice or the Counteroffer and such other terms otherwise agreed upon by Landlord and Tenant, for a period of not more than 30 days. Notwithstanding the foregoing, if at the time Tenant delivers the Election Notice or Counteroffer or during the negotiation of the Purchase Agreement an Event of Default under this Lease has occurred and is continuing, the Election Notice (or the Counteroffer, as applicable) shall be ineffective (or *void ab initio*). Upon the full execution and delivery of a Purchase Agreement this Section 25 will immediately be null and void and of no further force or effect and whether or not a closing occurs thereunder or the Purchase Agreement is terminated for any reason.

c. Rejection. If (i) Tenant rejects the Offer Notice without delivering a Counteroffer, (ii) Tenant fails to respond to the Offer Notice within said ten (10) business day period, (iii) Landlord rejects Tenant's Counteroffer, (iv) Tenant fails to negotiate the Purchase Agreement in good faith (e.g. attempting to renegotiate terms in the Offer Notice), (v) the Purchase Agreement is not mutually executed or delivered within the 30-day period provided in Section 25(b) despite the parties' commercially reasonable, good faith efforts, or (vi) the Purchase Agreement is mutually executed and delivered but then Tenant elects not to close or fails to close under the terms of the Purchase Agreement, then Landlord shall have the right to sell the Fee Interest to a third party any terms and conditions Landlord so desires.

d. Second Offer. Notwithstanding the foregoing, if Tenant has delivered a Counteroffer to Landlord that Landlord has rejected and Landlord thereafter desires to sell the Fee Interest to a third party on terms and conditions materially more favorable to a third-party purchaser than the Offer Terms set forth in the Counteroffer, Landlord shall, prior to entering into a binding agreement to sell the Fee Interest to such third party, offer to sell the Fee Interest to Tenant on the terms and conditions proposed (or to be proposed) to such third-party purchaser (a "**Second Offer**"). Landlord's good faith and reasonable judgment regarding the favorability of the Offer Terms offered to a third party versus the Offer Terms contained in any Counteroffer shall be determinative (i.e., whether or not such terms are more or less favorable than those set forth in the Counteroffer). If Landlord is required to deliver a Second Offer to Tenant, then Landlord shall send a notice to Tenant setting forth the Offer Terms (the "**Second Offer Notice**") and Tenant shall, by written notice to Landlord either accept or reject such Second Offer within five (5) business days of Tenant's receipt thereof. Tenant's failure to timely accept the Second Offer shall be deemed to be a rejection of the Second Offer. Upon Tenant's rejection (or deemed rejection) of any Offer Notice (without an accompanying Counteroffer) or, if applicable, Tenant's rejection of any Second Offer Notice, this Section 25 will immediately be null and void and of no further force or effect and whether or not a closing with a third party occurs thereafter for any reason. For avoidance of doubt, the obligations of Landlord and the rights of Tenant set forth in this Section 25 are personal to the original Landlord (and its transferee pursuant to Section 26(u)) and the original Tenant named herein and Affiliate or Permitted Transferee of such Landlord and Tenant, and shall not be applicable to any successor-in-interest to Landlord or Tenant (other than an Affiliate or Permitted Transferee of such party succeeding directly to such party's interest herein).

e. Sales of Majority Interests in Landlord. Any transfer of a majority or more of the Interests in Landlord (as defined below) to a third party that is not currently (i) a direct or indirect owner of Landlord or an Affiliate of such owner or (ii) an Affiliate of Landlord, shall constitute a sale of the Fee Interest for the purposes of this Section 25. Landlord shall not consummate such transfer unless the Fee Interest is offered to Tenant in accordance with Section 25(a). Such offer shall be set forth in an Offer Notice, which shall include, in good faith, the following terms: (i) the purchase price, (ii) the amount of any earnest money deposit, (iii) the length of any due diligence period, and (iv) the date of closing. An "**Interest in Landlord**" shall mean a direct partnership, membership or shareholder interest, as applicable, in Landlord or in any entity that owns, directly or indirectly, all or substantially all of the interests in Landlord and that does not own any other material assets other than income derived from the ownership of Landlord.

f. Exclusions. This Section 25 shall not apply to any (a) transfers of interests in connection with any mortgage financing transactions, (b) transfers by devise or descent or by operation of law upon the death of an owner of Landlord, (c) transfers by an owner who has become incapacitated, (d) if Landlord is a publicly traded entity, any transfers of interests in Landlord, (e) transfers of interests in connection with a foreclosure or a transfer in lieu of foreclosure, (f) any transfers by any lender that has taken ownership of the Fee Interest, whether directly or through an affiliated entity, (g) transfer of interests by Landlord at or prior to Closing, (h) grants of easements, covenants, restrictions and licenses with respect to the Premises or (i) sale of a portfolio of real properties that includes property in addition to the Premises.

26. General Provisions.

a. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of California.

b. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision under this Lease.

c. Prior Agreements. This Lease contains all agreements of the parties with respect to any matter mentioned herein, supersedes any verbal and any prior written understanding, conditions, representations, agreements or covenants and may be modified in writing only, signed by the parties.

d. No Waiver. No waiver by Landlord or Tenant of any provision under this Lease shall be deemed a waiver of any other provision or of any subsequent breach by Landlord or Tenant of the same or any other provision. Landlord's or Tenant's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Landlord's or Tenant's consent to or approval of any subsequent act by Tenant or Landlord. The acceptance of Base Rent, additional rent or any partial payment under this Lease by Landlord shall not be a waiver of any preceding breach by Tenant of any provision under this Lease, other than the failure of Tenant to pay the particular Base Rent or additional rent accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such payment.

e. Holding Over. If Tenant remains in possession of the Premises or any part thereof after the expiration of the Term, such occupancy shall be a tenancy at sufferance at a rental in the amount of: 1) if, not later than 90 days prior to the expiration of the Term, Tenant delivers written notice to Landlord of Tenant's intent to hold over, then (a) during the first 60 days of the hold over, one hundred twenty-five percent (125%) of the last month's Base Rent plus all other charges payable under this Lease and upon all of the other terms of this Lease and (b) thereafter, one hundred fifty percent (150%) of the last month's Base Rent plus all other charges payable under this Lease and upon all of the other terms of this Lease, and (2) if Tenant fails to deliver written notice to Landlord of Tenant's intent to hold over not later than 90 days prior to the expiration of the Term, then one hundred fifty percent (150%) of the last month's Base Rent plus all other charges payable under this Lease and upon all of the other terms of this Lease. However, if Landlord has executed a lease with another tenant for all or a portion of the Premises and any unauthorized holding over will delay or prevent Landlord from delivering possession of all or a part of the Premises to another tenant or from commencing work to make all or part of the Premises available to another tenant, and Landlord has delivered written notice to Tenant specifying the same, then from the date of Landlord's delivery of such notice the rental rate applicable to such tenancy at sufferance shall be one hundred fifty percent (150%) of the last month's Base Rent (notwithstanding any previous notice from Tenant as set forth above) plus all other charges payable under this Lease and upon all of the other terms of this Lease. Notwithstanding the foregoing, Landlord's acceptance of Rent from Tenant during any period of tenancy at sufferance shall not be deemed to be the consent of Landlord to Tenant's continued occupancy of the Premises, and if Tenant remains in possession of the Premises or any part thereof after the expiration of the Term without Landlord's consent, Landlord shall have all remedies at law or in equity. In addition, if Tenant remains in possession of the Premises or any part thereof for more than sixty (60) days following the expiration of the Term with or without Landlord's consent, then, in addition to Landlord's remedies as set forth above, Tenant shall defend and indemnify Landlord from all loss, liabilities, damages and costs, including consequential damages and attorneys' fees, incurred by Landlord and resulting from Tenant's failure to surrender possession of the Premises to Landlord when and as required under this Lease. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

f. Successors and Assigns. Subject to the provisions of this Lease restricting assignment or subletting by Tenant, this Lease shall bind the parties, their personal representatives, successors and assigns.

g. Landlord's Entry. Landlord and its agents shall have the right to enter the Premises, upon at least one (1) business day's notice, at reasonable times during normal business hours (except in the event of emergencies, in which event no such entry limitations shall apply) for the purpose of inspecting the same, showing the same to prospective purchasers or lenders and making such alterations, repairs, improvements or additions to the Premises or to the Building as Landlord is required or permitted to make pursuant to the terms of this Lease. Landlord and its agents, employees or contractors shall use commercially reasonable efforts to minimize interference with Tenant's use, operations and access to and from the Premises and shall comply with Tenant's reasonable security measures, including Tenant's restriction of access to secure areas reasonably designated by Tenant. In addition, Landlord shall take reasonable measures to secure access to any keys to the Premises that are in Landlord's possession. Landlord may at any time during the last sixty (60) days of the term place on or about the Project any ordinary "For Lease" sign.

h. Authority. If Landlord or Tenant is a corporation, limited liability company or other entity, Landlord and Tenant represent and warrant to the other party that each individual executing this Lease on behalf of such party is duly authorized to execute and deliver this Lease on its behalf and that this Lease is binding upon the entity in accordance with its terms.

i. Landlord Defined. The term **"Landlord"** as used in this Lease means the then owner of the Building and in the event of a sale of the Building the selling owner shall be automatically relieved of all obligations of Landlord under this Lease, except for acts or omissions of Landlord occurring prior to such sale, provided that Landlord's purchaser or assignee expressly assumes Landlord's duties and covenants under this Lease first accruing on and after the date of such sale.

j. Brokers. Tenant and Landlord each warrant that it has had no dealings with any real estate broker or agent in connection with the Premises or this Lease. Tenant shall indemnify, defend, reimburse and hold Landlord's Parties harmless from and against any and all claims, demands, costs, charges, losses and liabilities (including, without limitation, reasonable attorneys' fees and costs) incurred by Landlord's Parties asserted by any broker, agent, finder or other party for a fee or commission based upon dealings of that party with Tenant in connection with the Premises or this Lease. Landlord shall indemnify, defend and reimburse Tenant's Parties harmless from and against any and all claims, demands, costs, charges, losses and liabilities (including, without limitation, reasonable attorneys' fees and costs) incurred by Tenant's Parties asserted by any broker, agent, finder or other party for a fee or commission based upon the dealings of that party with Landlord in connection with the Premises or the Lease.

k. Intentionally Deleted.

l. OFAC Certification. Tenant represents, warrants and covenants that Tenant is not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated and Blocked Person" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control. Landlord represents, warrants and covenants that Landlord is not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated and Blocked Person" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control.

m. Confidentiality. The parties agree that the terms of this Lease shall not be confidential. Subject to obligations, if any, under applicable Laws to disclose information to third parties, any confidential or financial nonpublic information that is disclosed or discovered in connection with the negotiation and performance of this Lease shall be confidential and constitute proprietary information. Neither party, nor its respective owners, members, managers, shareholders, partners, officers, directors, employees, agents or attorneys, shall disclose such information to any other person without the prior written consent of the other party hereto, except that either party may disclose such information to its attorneys and accountants, and to any governmental entity, agency or person to whom disclosure is required by applicable Laws or ordered by a court of competent jurisdiction, and in connection with any action brought to enforce the terms of this Lease. Any party disclosing any material information about this Lease shall require the recipient of the information to keep it confidential. Either party may restrain or enjoin any breach or threatened breach of the provisions of this Section 26(m) and in the event of an actual breach of such provisions, the aggrieved party may seek to recover actual damages. The foregoing remedies shall be the sole and exclusive remedies of the parties for a breach by the other party of the provisions of this Section 26(m) and in no event shall a breach of the provisions of this Section 26(m) give rise to a right on the part of either party to terminate this Lease.

n. Dates and Time. As used herein, the term "business day" shall mean all days, excluding Saturdays, Sundays and all days observed by either the State of California or the United States government as legal holidays. All references to "days" that do not specifically refer to "business days" will refer to calendar days. Time is of the essence for the performance of each term, condition and covenant of this Lease and the exercise by Tenant of every right or option contained in this Lease and for the giving of any notice in each case for which deadlines for the performance, exercise or giving of such notice, as applicable, are expressly set forth herein. The foregoing shall not

operate, however, to reduce the time period allocated for the performance of any obligation or the curing of any default if a time period is specified in the Lease for the performance of such obligation.

o. Disclosures. Landlord hereby makes the following disclosures which Tenant acknowledges having received and reviewed before its execution and delivery of this Lease:

(i) Pursuant to California Civil Code Section 1938, Landlord hereby notifies Tenant that neither the Building nor the Premises have been inspected by a Certified Access Specialist. A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

(ii) Pursuant to Health & Safety Code §25359.7, landlords are required to give notice to prospective tenants of the actual or possible presence of hazardous substances on or beneath their property. Landlord's knowledge regarding the possible presence of hazardous materials and substances, if any, is limited to any that may be described in any environmental site assessment or other report listed in **Exhibit H**, copies of which shall be provided to Tenant by Landlord prior to Tenant's execution of this Lease.

p. Excusable Delays. Subject to the terms of the Work Letter and except as otherwise set forth herein (including Section 2(a)), all dates and time periods set forth in this Lease with respect to performance by a party shall be subject to extension for the period of Excusable Delay in the performance of the affected party's obligations (other than its obligations to pay or deposit money), provided that the party whose performance is affected by the Excusable Delay provide written notice to the other party of such Excusable Delay within five (5) business days after the occurrence of the condition or event giving rise to the Excusable Delay; provided, however, Excusable Delay shall not delay Tenant's Rent abatement or termination rights in Section 2(a) except as may be expressly set forth in Section 2(a) or in the Work Letter. An "**Excusable Delay**" shall be one that results from (i) events of force majeure, such as casualty, strike, labor action, act of war, or unusually severe weather, that prevent performance, (ii) unusual delay in the issuance of permits or governmental inspections, (iii) from the wrongful act or omission of the other party, (iv) the value engineering of the Landlord's Work and Tenant Improvements, as described in Section 4.1(f) or (v) another cause beyond the reasonable control of the party claiming the Excusable Delay.

q. Recordation. Tenant shall not have the right to record the Lease. Tenant shall have the right to record a memorandum of this Lease, in a form approved by Landlord in its reasonable discretion, setting forth the following terms only: (i) the term of the Lease, including the Term Commencement, Term Expiration, and Option Periods, and (ii) the existence of the Right of First Offer. Not later than thirty (30) days after Landlord's request following (A) the expiration or termination of this Lease and (B) the termination of the Right of First Offer, Tenant shall execute, acknowledge, and deliver to Landlord a termination or quitclaim of such memorandum (which shall be limited to the Right of First Offer if this Lease has not terminated) in a form reasonably requested by Landlord (together with such other documentation reasonably required by a title company or required by a governmental authority in connection with such termination or quitclaim) to be recorded in the real property records upon the earlier to occur of: (1) Term Expiration and (2) the termination, expiration, or other lapse of the Right of First Offer.

r. Parking. Tenant shall have the right to use, on an unreserved basis, not less than the Tenant Allocable Share of Parking Spaces, on the Land and Adjacent Project. In addition, Tenant may designate parking spaces on the Project that are immediately adjacent to the Building as being reserved for specific uses (e.g., visitor parking). As used herein, the term "**Adjacent Project**" means the project adjacent to the Premises, being located at 1601, 1701, 1751, 1801 and 1851 Harbor Parkway and 1750 North Loop Road in Alameda, California. As used herein, the term "**Tenant Allocable Share of Parking Spaces**" means the number of parking spaces calculated as follows: (i) a fraction, (A) the numerator of which is rentable square footage of the Building and (B) the denominator of which is the total

rentable square footage of the Building and the Adjacent Project (excluding the 1750 Space), multiplied by (ii) the aggregate number of actual parking spaces on the Land and the Adjacent Property (excluding parking spaces designated, as of the Effective Date, for the exclusive use of the portion of the Adjacent Property known as 1750 North Loop Road, Alameda, California (the "**1750 Space**"). Upon the request of Landlord, Tenant shall enter into an amendment to its lease covering a portion of the Adjacent Property with the owner thereof (which is an Affiliate of Landlord) providing that Tenant will have the right to use a proportionate amount of parking spaces, calculated in the same manner as the Tenant Allocable Share of Parking Spaces (i*.e.,* replacing clause (A) above in such calculation with the square footage occupied by Tenant in the Adjacent Property).

s. Exhibits. The exhibits and any addendum specified in the Basic Lease Information are attached to this Lease and by this reference made a part of this Lease.

t. Counterparts. This Lease may be executed in counterparts and all of such counterparts, taken together, shall constitute one and the same instrument. Signatures to this Lease may be delivered electronically in portable document format (.pdf) or by facsimile, and such electronic signatures are deemed original signatures to this Lease.

u. Land Purchase Agreement; Closing. Landlord and Tenant acknowledge that (i) the closing of the acquisition of the Land pursuant to the Land Purchase Agreement (the "**Closing**") is currently anticipated to occur on or about February 7, 2020 (the "**Existing Closing Date**"), (ii) Landlord is negotiating an amendment to the Land Purchase Agreement to extend either or both the diligence period or Existing Closing Date to accommodate obtaining entitlements for the construction of the Improvements prior to Closing (such amendment, the **"PSA Amendment**"), (iii) Peet's Coffee Inc. may require an increase in the purchase price for the Land pursuant to the Land Purchase Agreement as consideration for the extension of the diligence period or closing date in the PSA Amendment, (iv) prior to the Closing, Landlord has no right, title, or interest in the Land except for the rights of Landlord to acquire fee ownership interest of the Land pursuant to the referenced Land Purchase Agreement, and (v) Landlord has no right to bind or act on behalf of the existing owner of the Fee Interest. Landlord shall use commercially reasonable efforts (e.g. by pursuing entitlements) to cause the Closing to occur on or before the Existing Closing Date (as such date may be extended by the PSA Amendment). Landlord and Tenant agree that if the Land Purchase Agreement is terminated, then this Lease shall terminate, and neither party shall have any obligation to the other hereunder accruing thereafter; provided, however, Landlord shall promptly notify Tenant of the termination of the Land Purchase Agreement and any monies previously paid by Tenant to Landlord for Landlord's account and not as a reimbursement to Landlord for a cost incurred by Landlord on Tenant's behalf (*i.e*., monies paid to Landlord to pay the invoices of the Architect, mechanical, plumbing and electrical engineers and other design professionals for the design, permitting, and other pre-construction costs for the Tenant Improvements pursuant to the pre-lease services side letter between Landlord and Tenant) shall be reimbursed to Tenant. Any monies paid to Landlord with respect to a cost incurred by Landlord on Tenant's behalf pursuant to such side letter are not reimbursable to Tenant upon a termination of the Land Purchase Agreement and resulting termination of this Lease. Notwithstanding the above, Landlord and Tenant agree that this Lease is an effective and binding contract between them as of the Execution Date. Upon the Closing, no further documentation shall be required to evidence the continued effectiveness of this Lease; provided, however, at the request of either party, both parties will execute a document confirming the occurrence of the Closing. Tenant acknowledges and agrees that, in connection with the Closing, Landlord will assign its rights under the Land Purchase Agreement to an entity affiliated with Landlord or its principals that will be formed to acquire the Land. Accordingly, Landlord will assign its right and obligations under this Lease to the successor-in-interest to the rights and obligations of Landlord under the Land Purchase Agreement acquiring the fee interest to the Land. If the Closing has not occurred by the earlier of (A) the Existing Closing Date (as such date may be extended by the Land Purchase Agreement, the PSA Amendment or any subsequent amendment to the Land Purchase Agreement) or (B) June 30, 2020, then either Landlord (only if the Land Purchase Agreement has terminated and Landlord and its affiliates have determined in good faith and in the exercise of commercially reasonable business judgment not to purchase the Land) or Tenant, may terminate this Lease by prior written notice to the other party. For the purposes of clarification, until July 1, 2020, neither party may terminate this Lease if the Land Purchase Agreement is still in effect and the date for the scheduled Closing thereunder (as the same may have been extended) has not occurred. Promptly following the Closing, Landlord shall cause the Land to be consolidated into a single parcel if such consolidation has not occurred prior to the Closing. Except as provided in this sentence, Landlord shall not amend the Land Purchase Agreement in a manner that increases

the purchase price for the Land above $9,779,859.70 without Tenant's prior written approval; provided, however if (1) Landlord desires amend the Land Purchase Agreement in a manner that increases the purchase price for the Land above $9,779,859.70, (2) Landlord requests Tenant's consent to such amendment and (3) Tenant rejects Landlord's request within three business days, then Landlord may, nevertheless amend the purchase price for the Land; provided, however in no event will an increase in the purchase price for the Land of more than $9,779,859.70 be included in Total Development Costs, subject to the terms of Section 4.1 of **Exhibit B**. For purposes of clarification, any portion of an increase in the purchase price for the Land results in a total land purchase price of $9,779,859.70 or less will be included in the Total Development Costs, subject to the terms of Section 4.1 of **Exhibit B**, and any portion of an increase in the purchase price for the Land above $9,779,859.70 that Tenant approves in writing will also be included in the Total Development Costs, subject to the terms of Section 4.1(f) of **Exhibit B**.

v. Landlord and Tenant acknowledge that the parties and their counsel have reviewed, fairly negotiated and revised this Lease and that the normal rule of construction to the effect that any ambiguities in a document are to be resolved against the original drafter of this Lease shall not be employed in the interpretation of this Lease. The use of captions, headings, boldface, italics or underlining is for convenience only, and will not affect the interpretation of this Lease.

w. All obligations of Landlord and Tenant hereunder not fully performed as of the expiration or earlier termination of the Term of this Lease shall survive the expiration or earlier termination of the Term hereof, including without limitation, all payment obligations with respect to taxes and insurance and all obligations concerning the condition and repair of the Premises.

x. Whenever this Lease requires an approval, consent, determination or judgment by either Landlord or Tenant, unless another standard is expressly set forth, such approval, consent, determination or judgment and any conditions imposed thereby shall be reasonable and shall not be unreasonably withheld or delayed.

y. Any expenditure by a party permitted or required under this Lease, for which such party demands reimbursement from the other party, shall be reasonably incurred, and shall be substantiated by documentary evidence available for inspection and review by the other party.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Lease as of the Execution Date.

LANDLORD:

ERNST DEVELOPMENT PARTNERS, INC.
a California corporation

By: /s/ Joe Ernst
Name: Joe Ernst
Title: President

TENANT:

EXELIXIS, INC.,
a Delaware corporation

By: /s/ Michael M. Morrissey, Ph.D.
Name: Michael M. Morrissey, Ph.D.
Title: President & CEO

By: /s/ Christopher J. Senner
Name: Christopher J. Senner
Title: EVP & CFO

EXHIBIT B

INITIAL IMPROVEMENTS WORK LETTER

ARTICLE 1.
GENERAL

1.1 Allocation of Responsibility. This Initial Improvements Works Letter exhibit (the "**Work Letter**") describes the allocation of responsibility between Landlord and Tenant for the design and initial construction of improvements at the Project.

1.2 Landlord's Work. Landlord shall provide the base building and other improvements substantially as described in **Schedule 1** ("**Landlord's Work**"). Landlord shall complete Landlord's Work at its sole cost and expense (subject to Section 2.7(c) below) in a good and workmanlike manner, free of defects and using new materials and equipment of good quality. Landlord's Work shall also include obtaining, at Landlord's sole cost, all permits and/or government approvals for the construction of Landlord's Work.

1.3 Tenant Improvements. Landlord shall also cause to be designed and permitted, and shall retain a contractor to cause to be performed, work of general construction consisting of improvements at the Project other than the Landlord's Work (collectively, "**Tenant Improvements**" and together with Landlord's Work the "**Improvements**"), as described below, which Tenant Improvements shall be paid for in accordance with Article 4. Landlord shall complete the Tenant Improvements in a good and workmanlike manner, free of defects and using new materials and equipment of good quality. Notwithstanding anything in this Work Letter to the contrary, Landlord shall not be obligated to procure and install any furniture, fixtures and equipment for Tenant other than as documented in the TI Construction Documents (as defined below) approved by Landlord (collectively, the "**Excluded Work**").

1.4 Progress Schedule. The initial progress schedule for the completion of the Improvements is attached hereto as **Schedule 2** (the "**Progress Schedule**") and represents Landlord's good faith estimate of the timeline for the completion of the Improvements; provided, however, that Tenant (a) acknowledges that such initial Progress Schedule (i) will be further revised in accordance with the terms of this Work Letter and (ii) takes into account the process for obtaining the bids described in Section 3.2 below and estimates for the time for the Substantial Completion of the Improvements, but may not reflect the actual time for performance set forth in the bids selected, as described in Section 3.2 and (b) agrees that Landlord shall revise the Progress Schedule to reflect the schedule approved by Landlord and Tenant (or deemed approved) in accordance with Section 3.2 below. The Progress Schedule shall be adjusted from time to time to account for the actual progress of the work, provided Tenant will be provided with written notice of any material changes. Notwithstanding anything to the contrary herein, for the purpose of determining Tenant's rights under Section 2(a) of the Lease, the Estimated Date of Substantial Completion shall not be adjusted except (A) in accordance with Section 3.2, (B) as expressly provided in this Work Letter for Excusable Delay, (C) pursuant to an executed Change Order requested by Tenant or (D) or as otherwise approved by Tenant. The parties acknowledge that because Tenant Delays (including pursuant to Change Orders) advance the date of the Term Commencement as provided in the Lease, Tenant Delays shall be included in the Estimated Date of Substantial Completion in the Progress Schedule for the sole purpose of informing the parties of and tracking the estimated date of Substantial Completion of the Improvements. Except as expressly provided to the contrary, all time periods referred to in this Work Letter shall be computed on a calendar basis with no allowance for holidays or weekends.

1.5 Ownership of Tenant Improvements. All Tenant Improvements which may be installed or placed in or about the Project shall be and become the property of Landlord. Landlord and Tenant both understand, acknowledge and agree that Tenant's machinery, equipment, trade fixtures, and other items of personal property that are not permanently attached to the Building or Land that may be purchased and installed during the construction of the Tenant Improvements (but that do not constitute Tenant Improvements or that are listed on **Exhibit I**), shall not be subject to this Section 1.5 and, instead, shall be considered owned solely by Tenant.

1.6 Condition of Premises. At the time of delivery of the Premises to Tenant, and Substantial Completion of the Improvements (but excluding any punchlist items and subject to any outstanding permit or other requirements resulting from any Tenant's Work), the Improvements, Building and Land shall be (a) in compliance with all applicable Laws, including, without limitation, all handicapped accessibility standards, such as those promulgated under the Americans With Disabilities Act; and (b) vacant, broom-clean, in good condition, with all Building Systems in good operating condition.

ARTICLE 2.
DRAWINGS AND SPECIFICATIONS

2.1 Architect. Landlord and Tenant have selected Brick Architecture (the "**Architect**"), as the architect for the Improvements.

2.2 Selection of Other Design Professionals. The mechanical, plumbing and electrical engineers and other design professionals engaged by Landlord (other than Architect) in connection with the Improvements shall be subject to Tenant's prior approval, which shall not unreasonably be withheld. Landlord's request for Tenant's approval shall include the engineer's or design professional's bid for the proposed work, together with the bids from two other engineers or design professionals if the scope of work for such bids pertains to a material trade; provided, however, Landlord shall have no obligation to select the lowest bid and may take into consideration the time and cost implications of performance by such professionals. If Landlord does not receive Tenant's response within five (5) business days of Landlord's request for approval of a design professional, Landlord's selection of such design professional shall be deemed approved.

2.3 Consultation; Information from Tenant. Upon Landlord's request, Tenant shall consult with Landlord and the Architect, and, within three (3) business days of Landlord's request, shall use commercially reasonable efforts to furnish the Architect with all information reasonably requested by Landlord that may be necessary to finalize the TI Schematics (as defined below) within the time set forth in this Work Letter and in the Progress Schedule. Provided that Landlord receives confirmation from Tenant that Tenant has received Landlord's request for such additional information (e.g. an email read receipt from the construction representative designated by Tenant in Article 7 below), any delay in furnishing such information beyond such 3-business day period shall constitute a day-for-day Tenant Delay, subject to the terms of Section 5.3.

2.4 Preconstruction Cost Estimate. As soon as practicable (but in no event later than five (5) business days prior to the date for finalization of the Initial Pre-Construction Cost Estimate set forth in the Progress Schedule), Landlord shall prepare for Tenant's review an initial estimate of the design, permitting, and other pre-construction costs for the Tenant Improvements (the "**Initial Pre-Construction Cost Estimate**"). Tenant will have five (5) business days to approve or disapprove of the Initial Pre-Construction Cost Estimate, any disapproval to be made with reasonable specificity. If Tenant timely disapproves of the Initial Pre-Construction Cost Estimate in any respect, Landlord and Tenant shall use good faith efforts to agree on a revised Initial Pre-Construction Cost Estimate within five (5) business days after Landlord's receipt of Tenant's disapproval. Such agreed upon (or, if applicable, deemed-approved) estimate shall be referred to as the "**Pre-Construction Cost Estimate**". Landlord shall, not more frequently than monthly, submit a summary to Tenant by the 15th day of each month stating any pre-construction costs allocable to the Tenant Improvements, together with documentation describing in reasonable detail the work completed or to be completed in connection with such payment. All pre-construction costs properly allocable to the Tenant Improvements shall be paid by Tenant in the manner set forth in Article 4, below.

2.5 Schematic Documents.

(a) Landlord shall cause the Architect to deliver to Tenant one (1) PDF copy and two (2) hardcopies of the drawings and specifications for Landlord's Work based on **Schedule 1** (the "**Base Building Schematics**"). Tenant shall review and approve the Base Building Schematics in accordance with Section 2.7. Landlord shall use commercially reasonable efforts to cause the Architect to deliver to Tenant the Base Building Schematics on or before the date set forth in the Progress Schedule for Landlord's delivery of the Base Building Schematics.

(b) Landlord shall cause the Architect to deliver to Tenant a PDF copy and two (2) hardcopies of drawings and specifications showing the intended design character and finishes, including materials, of the major elements of the Tenant Improvements (the "**TI Schematics**" and together with the Base Building Schematics, the "**Schematics**"), including the following documents: (a) scaled floor plan(s) showing all proposed partitions, doors and large fixtures; (b) reflected ceiling plan(s), including a lighting plan; and (c) architectural sections, and structural, plumbing and mechanical drawings showing any new or proposed additions to or modifications of structural, plumbing or mechanical systems in the Building. As a part of Landlord's submission of the TI Schematics to Tenant, a condition to giving such consent to any Alterations (except Alterations that constitute Tenant Improvements (other than laboratory improvements) and Alterations that constitute general office improvements), Landlord may require that Tenant remove (or leave in place and convey to Landlord) any such Alterations at the end of the term and restore the portions of the Project affected by such removal to their condition existing prior to installation of the relevant Alterations, reasonable wear and damage by casualty excepted Tenant shall review and approve the TI Schematics in accordance with Section 2.7. All TI Schematics, TI Construction Document Packages (as defined below), and TI Construction Documents (as defined below) shall be reimbursable from the Allowance (as defined below) after Closing; provided, however, that Landlord shall pay for revisions requested by Landlord. As provided in Section 26(u) of the Lease, monies paid to Landlord with respect to a cost incurred by Landlord on Tenant's behalf pursuant to the side letter with respect to pre-lease services are not reimbursable to Tenant if the Closing does not occur and this Lease is terminated. Landlord shall use commercially reasonable efforts to cause the Architect to deliver to Tenant the Tenant Schematics on or before the date set forth in the Progress Schedule for Landlord's delivery of the Tenant Schematics.

2.6 Construction Drawings and Specifications.

(a) Landlord shall cause the Architect to submit to Tenant after approval of the Base Building Schematics those sets of construction drawings for the Landlord's Work referred to in the Progress Schedule, e.g. the design development package, permit submittal package, etc. (each a "**Base Building Construction Document Package**"), which shall include two (2) prints and electronic files of the relevant construction drawings for the Landlord's Work. Tenant shall review and approve each Base Building Construction Document Package in accordance with Section 2.7, and the Base Building Construction Document Package approved (or deemed approved) by Tenant shall be referred to collectively as the "**Base Building Construction Documents**". Landlord shall use commercially reasonable efforts to cause the Architect to deliver to Tenant the Base Building Construction Document Package within the number of days set forth in the Progress Schedule between the deadline for Tenant's approval of the Base Building Schematics (regardless of whether Tenant has so approved the Base Building Schematics) and the deadline for the delivery of the subject Base Building Construction Document Packages. Any delay by Landlord in causing the Architect to deliver the Base Building Construction Documents shall not constitute a Tenant Delay.

(b) Landlord shall cause the Architect to submit to Tenant after approval of the TI Schematics those sets of construction drawings for the Tenant Improvements referred to in the Progress Schedule, e.g. the design development package, permit submittal package, etc. (each a "**TI Construction Document Package**" and collectively with the Base Building Construction Document Packages, the "**Construction Document Packages**"), which shall include two (2) prints and electronic files of the relevant construction drawings for the Tenant Improvements. Tenant shall review and approve each TI Construction Document Package in accordance with Section 2.7, and the TI Construction Document Packages approved (or deemed approved) by Tenant shall be referred to collectively as the "**TI Construction Documents**" (and together with the Base Building Construction Documents, the "**Construction Documents**"). Landlord shall cause the Architect to deliver to Tenant each of the TI Construction Document Package within the number of days set forth in the Progress Schedule between the deadline for Tenant's approval of the TI Schematics (regardless of whether Tenant has so approved the TI Schematics) and the deadline for the delivery of the subject TI Construction Document Package. Any delay by Landlord in causing the Architect to deliver the TI Construction Documents shall not constitute a Tenant Delay.

2.7 Submission, Acceptance, and Change Procedures.

(a) The Schematics shall be subject to Landlord's and Tenant's review and consent, which shall not be unreasonably withheld. Unless otherwise set forth herein, Tenant shall respond with any objections to the

Schematics within five (5) business days after receipt by Tenant of such documents, specifying the reasons for any rejection or requested clarifications with sufficient detail that will enable Landlord to address Tenant's objections. If Tenant has not delivered written notice of such an objection within such five (5) business day period, Tenant shall be deemed to have approved such Schematics. Landlord shall deliver Tenant's timely objections to the relevant consultants and contractors for revisions, and shall use commercially reasonable efforts to cause the relevant consultants and contractors to deliver revised Schematics within ten (10) business days after receipt of Tenant's objections. Tenant will have five (5) business days to review the revised Schematics and to approve or disapprove of same; provided, however that Tenant's review of the revised Schematics shall be limited to the extent to which the revisions do not address Tenant's previous objections or basis for disapproval, provided that Tenant may request Changes (as defined below) other than those required to comply with the foregoing, in accordance with Section 2.7(c). This process of review and resubmission shall continue as described above for as long as necessary until Tenant approves (or is deemed to have approved) the Schematics.

(b) The Construction Document Packages shall be subject to Landlord's and Tenant's review and consent, which shall not be unreasonably withheld. Tenant may object to the Construction Document Packages only to the extent they are inconsistent with the final approved Schematics or previous Construction Document Packages or are not in compliance with applicable Laws, provided that Tenant may request Changes (as defined below) other than those required to comply with the foregoing, in accordance with Section 2.7(c). Unless otherwise set forth herein, Tenant shall respond with any objections to each initial Base Building Construction Document Package and initial TI Construction Document Package within ten (10) business days after receipt by Tenant of such documents, specifying the reasons for any rejection or requested clarifications with sufficient detail that will enable Landlord to address Tenant's objections (for subsequent revisions Tenant's response period shall be five (5) business days). If Tenant has not delivered written notice of such an objection within such ten (10) or five (5) business day period, as applicable, Tenant shall be deemed to have approved that Construction Document Package. Landlord shall deliver Tenant's timely objections to the relevant consultants and contractors for revisions, and shall use commercially reasonable efforts to cause the relevant consultants and contractors to deliver the relevant revised Construction Document Package within ten (10) business days after receipt of Tenant's objections. Tenant will have five (5) business days to review the revised Construction Document Package and to approve or disapprove of same; provided, however that Tenant's review of the revised Construction Document Package shall be limited to the extent to which the revisions do not address Tenant's previous objections or basis for disapproval, provided that Tenant may request Changes (as defined below) other than those required to comply with the foregoing, in accordance with Section 2.7(c). This process of review and resubmission shall continue as described above for as long as necessary until Tenant approves (or is deemed to have approved) the relevant Construction Document Package.

(c) If Tenant requests in writing any change, addition or alteration in or to any Schematics, Construction Documents, or other Construction Document Package that previously had been approved by Tenant ("**Changes**"), Landlord shall cause the Architect to prepare an estimate of the time and cost to revise the Schematics, Construction Documents, or Construction Document Package, as applicable, in accordance with the Changes. Landlord shall notify Tenant of the Architect's estimated time for and cost of the Changes. Within five (5) business days after delivery of such estimate to Tenant, Tenant shall notify Landlord in writing whether Tenant approves such estimate. If Tenant approves such estimate, then Landlord shall cause the Architect to prepare revised Schematics, Construction Documents, or Construction Document Package, as applicable, implementing Tenant's requested Changes, and any delay in completion of the Improvements resulting from the implementation of such Changes shall be a Tenant Delay in accordance with Section 5.3, to the extent set forth in an executed Change Order (as defined below). Landlord shall deliver such revised or additional documentation to Tenant for its review promptly upon Landlord's receipt of such documentation from the Architect. Within five (5) business days after delivery of the revised or additional documentation to Tenant, Tenant shall notify Landlord in writing whether Tenant approves the Changes reflected in such documents. If Tenant approves the Changes, Landlord shall prepare a change order ("**Change Order**") addressing the approved Changes, the incremental increase in the Tenant Improvement Costs or costs of Landlord's Work caused thereby, if any ("**Change Order Costs**") and the estimated number of Tenant Delay days that will result from the Changes. If Tenant fails to execute and return the Change Order to Landlord within five (5) business days after submittal by Landlord, Tenant will be deemed to have elected to not proceed with the subject Changes and construction of the Improvements shall proceed as provided in accordance with the previously approved Schematics, Construction Documents, or other Construction Document Package. If Tenant timely executes and returns the Change Order, Tenant

must timely pay (subject to the Allowance balance) all associated Change Order Costs (to the extent set forth in the executed Change Order) in the manner set forth in Article 4, below. If Tenant does not timely pay all associated Change Order Costs (to the extent set forth in the executed Change Order) in the manner set forth in Article 4, below, then, at Landlord's election, either (i) the Change Order shall be null and void and Tenant will be deemed to have elected to not proceed with the subject Changes and construction of the Improvements shall proceed as provided in accordance with the previously approved Schematics, Construction Documents, or other Construction Document Package or (ii) Landlord may proceed with the subject Changes and Tenant's failure to timely pay shall be deemed to be a Contribution Failure. Notwithstanding anything in this Section 2.7(c) to the contrary, Landlord shall cause the General Contractor to proceed with the Improvements based on the approved Construction Document Packages between the time a Tenant requests a Change and the time that Tenant has executed a Change Order and has paid the associated Change Order Cost. Except with respect to errors made by the Architect or other design professionals, Tenant is assuming the risk that the General Contractor performs work that is inconsistent with the Change Order during such period of time or that will further increase the Change Order Cost. All Changes shall be subject to Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed. Whether or not Tenant executes a Change Order, the cost of preparing any additional or revised documentation pursuant to this subsection shall be a Tenant Improvement Cost, and, subject to the terms of Article 4 (including the application of the Allowance), Tenant shall be responsible for such costs.

(d) Notwithstanding anything in this Work Letter to the contrary, Landlord may disapprove of any proposed Tenant Improvements or any proposed Changes that, in Landlord's reasonable judgment, (i) would not comply with applicable Laws, (ii) would affect the structural components of the Building in a manner that materially and adversely affects Landlord's obligations under the Lease, (iii) would alter the exterior of the Building in a manner that materially and adversely affects Landlord's obligations or costs under the Lease, (iv) increase the scope of Landlord's Work beyond standard shell and core for the Building, unless such increased scope is paid for by Tenant, or involve the relocation or removal of material improvements comprising Landlord's Work (e.g. removing or relocating staircases, restroom cores provided as part of Landlord Work or elevators) or (v) would likely delay the completion of the Improvements by more than two (2) months. Landlord's review and acceptance or approval of any documents shall not be deemed to constitute any statement regarding the fitness or suitability of the design or construction of the Improvements for Tenant's intended use nor an approval of the Improvements which does not meet legal requirements.

(e) Notwithstanding anything in this Work Letter to the contrary, if the City of Alameda or other governmental entity imposes conditions to the approval of the Final Development Plan, Major Design Review, Planned Development Amendment, or Parcel Map or Lot Line Adjustment Map with respect to the Project that would require completion of indirect offsite improvements (i.e., community benefits), and Tenant does not approve of any of the conditions imposed thereby, then within ten (10) business days after Tenant is notified in writing by Landlord of such conditions to approval, Tenant may elect to terminate this Lease by written notice to Landlord stating the fees or offsite improvements that are not approved, provided that (x) Tenant shall reimburse to Landlord Landlord's documented third-party costs incurred in connection with the Lease, including Land purchase and planning related costs and any deposits made by Landlord, and (y) Tenant's election shall be null and void if Landlord, within three (3) business days of receipt of Tenant's notice, elects by notice to Tenant to pay the costs of the fees or offsite improvements disapproved by Tenant. Notwithstanding the foregoing, Tenant's termination right pursuant to this subsection (e) shall terminate and have no further force or effect on and after the Closing.

(f) Except as otherwise expressly provided in this Work Letter, all consents and approvals that Landlord or Tenant may give pursuant hereto shall not be unreasonably withheld, conditioned or delayed. If Tenant reasonably withholds its approval to any request by Landlord under this Work Letter and Landlord submits a subsequent request for Tenant's approval for the same matter (a "**Subsequent Request**"), then Tenant may only withhold its consent to such Subsequent Request if the Subsequent Request fails to address the grounds set forth in Tenant's previous objection. Unless a different time period is specified in this Work Letter, Tenant shall have five (5) business days to respond to each Subsequent Request.

(g) If Landlord requests Tenant's approval for any matter specified in this Work Letter (including, without limitation, approval of: design professionals pursuant to Section 2.2; the Pre-Construction Cost

Estimate pursuant to Section 2.4; the Schematics pursuant to Section 2.7(a); the Construction Document Packages pursuant to Sections 2.6(b) and 2.7(b); and the Contractors and the Cost Estimate pursuant to Section 3.2) and Tenant does not approve such matter or respond with a reasonable basis for disapproval within the applicable time period set forth in this Work Letter or if Tenant withholds its consent in a manner not permitted by this Work Letter (e.g., Tenant withholds its consent on grounds not set forth in Tenant's previous objection in the case of a Subsequent Request for approval), then such failure (or withholding of consent, as the case may be) shall constitute a Tenant Delay, subject to the terms of Section 5.3, and, if Landlord requests Tenant's approval for any matter specified in this Work Letter and seven (7) days of Tenant Delay have accrued with respect to such request, then, at Landlord's election, Tenant shall be deemed to have approved such matter.

(h) If the Contract (as defined in the Fourth Amendment) terminates or Closing (as defined in the Fourth Amendment) otherwise fails to occur, then Landlord and Tenant shall cooperate to promptly revise any Schematics and Construction Document Packages to reflect a design for the Improvements that will meet City of Alameda applicable development standards despite the failure of the Closing (as defined in the Fourth Amendment) to occur. "**Fourth Amendment**" means that certain Fourth Amendment to Lease Agreement dated August 30, 2019 between Hillwood Enterprises, L.P. and Tenant.

ARTICLE 3.
CONSTRUCTION OF THE IMPROVEMENTS

3.1 **Management Fee**. In consideration for Landlord's managing the design, permitting, and construction of the Improvements, the Total Development Costs (as defined in **Exhibit D-1** to the Lease) shall include a management fee, subject to Section 4.1(f) below, as provided in **Exhibit D-1** to the Lease.

3.2 **Contractors and Contracts**. Landlord and Tenant have selected Pankow Builders (the "**General Contractor**") as the general contractor for the construction of the Improvements. Landlord shall enter into contracts for the construction of the Improvements with General Contractor, as provided below. Landlord shall directly retain (or retain through the General Contractor) all contractors under guaranteed maximum price or lump sum contracts (collectively with the General Contractor, the "**Contractors**"). Each of the Contractors in a material trade shall be subject to Tenant's reasonable approval and be subject to bidding as set forth below. A "material trade" shall include, without limitation, site work, landscaping, roofing, drywall, concrete, steel, elevator, mechanical, electrical and plumbing. If Landlord does not receive Tenant's response within five (5) business days of Landlord's request for approval of a Contractor, Landlord's selection of such Contractor shall be deemed approved. Landlord shall cause the General Contractor to obtain at least three (3) competitive bids for each of the material trades for Landlord's Work and the Tenant Improvements. Landlord will deliver copies of all such bids to Tenant promptly following Landlord's receipt thereof, and such subcontractors shall be approved by each of Landlord and Tenant in its reasonable discretion. Such competitive bids shall include a schedule with a timeline to complete the work being bid. Based on such subcontractor bids, Landlord shall obtain an estimate of the Tenant Improvement Costs (as defined below) and the cost of Landlord's Work. Unless required by law, this Lease shall not be subject to prevailing wage requirements nor require that any contractors hired in connection with this Lease be affiliated with any union or comply with any union requirements (except if affiliated with a union). Landlord shall promptly revise (a) the schedule for the Landlord's Work and the Tenant Improvements to reflect the differences between the times contained in the selected bids and the times contained in the initial Progress Schedule and (b) the cost estimate of Landlord's Work and the Tenant Improvement Costs and submit the same to Tenant for review (the **"Cost Estimate**"). Within five (5) business days after Landlord's submission of the schedule and cost estimates to Tenant, Tenant shall either (i) approve such schedule and cost estimate and, in the case of the Tenant Improvement Costs, be obligated to pay for all such costs exceeding the Allowance in accordance with the disbursement procedures set forth below, or (ii) disapprove such schedule and cost estimate, in which case Tenant shall provide Landlord with additional information adequate to permit the prompt revision of the Construction Documents and re-pricing of the Landlord's Work or the Tenant Improvement Costs, as applicable. Tenant's failure to respond within such five (5) business-day period shall be deemed to be Tenant's approval of such schedule and cost estimate. Upon completion of the re-pricing of the Tenant Improvement Costs (or, if applicable, Landlord's Work), Landlord shall deliver the revised schedule and estimate of the Tenant Improvement Costs (or, if applicable, Landlord's Work) to Tenant for approval in the same manner as set forth above and once approved, such schedule and estimate shall be final and deemed approved by the parties, subject to Change Order

Costs; provided if Tenant does not respond to the final estimate in the five (5) business day period, Tenant will be deemed to have approved such final schedule and estimate. Upon approval (or deemed approval) of a Cost Estimate by Tenant and the Construction Documents, Landlord shall enter into a guaranteed maximum price contract for each of the Landlord's Work and Tenant Improvements (collectively, the "**GMP Contract**") with General Contractor and any lump sum contracts with other Contractors (collectively with the GMP Contract, the "**Contracts**") and give notice to Tenant of the total Tenant Improvement Costs (as defined below) and total costs for Landlord's Work. Along with such notice, Landlord shall deliver to Tenant a budget showing the portion of the Tenant Improvement Costs that will be paid from the Allowance and that portion that will be paid by Tenant as Tenant's Contribution (as defined below). Notwithstanding the foregoing, Tenant shall be permitted to value engineer the Improvements to reduce costs; provided, however, except as provided in Section 4.1(f), (i) any cost associated with such value engineering by Tenant will be the responsibility of Tenant, subject to Landlord's obligations with respect to the Allowance pursuant to Article 4, (ii) any changes requested by Tenant as a part of the value engineering process shall be a Change subject to Section 2.7(c) and (iii) accordingly, any delays associated with the Tenant's efforts to value engineer the Improvements will constitute a Tenant Delay to the extent such value engineering (or delays associated therewith) causes actual delays in the completion of the Improvements beyond the Estimated Date of Substantial Completion.

3.3 **Construction Generally**. Landlord shall cause the Improvements to be diligently constructed by the Contractors in conformance with the Construction Documents, as finally accepted or consented to by Landlord and Tenant pursuant to this Work Letter.

3.4 **Warranties and Guaranties**. Landlord shall obtain from the General Contractor and each manufacturer of equipment installed in the Premises as part of the Improvements a standard construction or manufacturer's warranty or guaranty, as applicable, in favor of Landlord and Tenant warranting that the Improvements, in the case of the General Contractor, or the equipment provided, in the case of the manufacturers, shall be free from any defects of workmanship and materials for a period of not less than one (1) year from the date of Substantial Completion (each a "**Warranty**").

ARTICLE 4.
COSTS AND ALLOWANCE

4.1 **Allowance and Costs Generally.**

(a) Allowance. Landlord shall pay towards the costs of the Tenant Improvements, including all pre-construction costs, permit fees, project management, and costs of constructing the Tenant Improvements (collectively, the "**Tenant Improvement Costs**"), an amount equal to $75.00 per rentable square foot of the Building (as determined by Architect and reasonably approved by Tenant in the Construction Documents in accordance with ANSI/BOMA Z65.3-2018 Gross Area 1 (Leasing Method) (the "**BOMA Standard**")) (the "**Allowance**"), except that the Allowance shall not be used to pay for Tenant's machinery, equipment and trade fixtures and other personal property (other than as documented in the approved TI Construction Documents), any Excluded Costs or any costs associated with construction management personnel engaged by Tenant in connection with this Lease. For the avoidance of doubt, all Excluded Costs shall be payable solely by Landlord and shall not be included in the calculation of Tenant Improvement Costs for the purpose of determining Tenant's Contribution. Except as expressly set forth herein, Landlord's payment of the Allowance or the Tenant Improvement Costs (if such amount is less than the Allowance), shall satisfy in full Landlord's obligation to pay the Allowance hereunder, and Landlord shall not be obligated to make any payment for any subsequent alterations or improvements to the Project whether or not the entire Allowance was expended on the initial Tenant Improvements. Notwithstanding the foregoing, in the event the entire Allowance is not expended on the initial Tenant Improvements, any remaining amounts may be used for Tenant's Work subject to a draw procedure agreed to by Landlord and Tenant in their reasonable discretion, including reasonable requirements regarding lien waivers delivered by Tenant. Furthermore, notwithstanding the foregoing, if an Event of Default is continuing at the time Landlord's payment of any portion of the Allowance is due under this Work Letter, then, in addition to any other remedies available to Landlord in this Work Letter or elsewhere in the Lease, Landlord may stop construction (including any pre-construction work) of the Improvements until such Event of Default is cured. If Landlord stops construction due to an Event of Default, then any such delay shall be a Tenant Delay and Tenant shall be responsible for all costs in connection with remobilizing the Contractors and recommencing construction.

(b) Amount of Tenant's Contribution. Except with respect to Landlord's Work, Excluded Costs, and as otherwise expressly stated herein, the Tenant Improvements and all work necessary to complete the Project for Tenant's occupancy shall be completed at Tenant's sole cost and expense, including without limitation architectural, engineering, permit and inspection fees, and all costs of construction and materials; provided that Landlord shall contribute the Allowance towards the Tenant Improvement Costs, which Allowance shall be disbursed on the terms and conditions set forth in this Article 4. For the avoidance of doubt, Tenant shall bear and pay the Tenant Improvement Costs in excess of the Allowance other than Excluded Costs (as defined in **Exhibit D-1** to the Lease) ("**Tenant's Contribution**"), despite any increase in such costs.

(c) Payment of Tenant's Contribution. In the event that the estimated (as reasonably determined by the Landlord) or actual Tenant Improvement Costs are greater than the Allowance (i.e. Tenant is expected to pay Tenant's Contribution), then within fifteen (15) business days after Tenant's receipt of a monthly invoice from Landlord for the portion of Tenant's Contribution due that month in accordance with this subsection, Tenant shall pay to Landlord such portion of Tenant's Contribution. The estimated Tenant Improvement Costs (as reasonably determined by Landlord) and the actual Tenant Improvement Costs (and, accordingly, Tenant's Contribution) shall only be adjusted from time to time based on Changes approved by Landlord and Tenant. Subject to the restriction that disbursements of the Allowance must be permissible under Section 4.1(a) and subject to the maximum Allowance under Section 4.1(a), Landlord's monthly invoice to Tenant for the Tenant's Contribution shall be for an amount equal to the product of (i) the Tenant Improvement Costs incurred that month and (ii) a fraction, the numerator of which is Tenant's Contribution and the denominator of which is the Tenant Improvement Costs.

(d) TI Account; TI Deposit Agreement. Notwithstanding anything in this Work Letter to the contrary, if Landlord's construction lender for the Project (the "**Construction Lender**") requires that Tenant deposit Tenant's Contribution and/or the Tenant's Excess Development Costs into a separate account with Landlord's Construction Lender (the "**TI Account**"), then Landlord and Tenant shall enter into an agreement with Landlord's Construction Lender, in a form acceptable to each of Landlord and Tenant in its reasonable discretion, requiring the deposit of the Tenant's Contribution and/or the Tenant's Excess Development Costs into the TI Account and governing the disbursements of such deposited funds (such agreement, the "**TI Deposit Agreement**"). Landlord shall use commercially reasonable efforts to deliver a draft TI Deposit Agreement as soon as practical after identifying a Construction Lender. If Tenant, Landlord and Landlord's Construction Lender cannot agree on a form of TI Deposit Agreement, provided that Tenant has acted reasonably, Tenant shall not be obligated to enter into the TI Deposit Agreement or deposit Tenant's Contribution and/or the Tenant's Excess Development Costs in a TI Account; provided, however, if required by Construction Lender, Tenant will be required to provide a Letter of Credit pursuant to Section 4.1(e) below. Not later than two (2) business days after Landlord enters into the Contracts, Tenant shall deposit in the TI Account the amount of Tenant's Contribution and/or the Tenant's Excess Development Costs (the "**Tenant's Deposit**"). The funds in the TI Account with respect to both the Tenant Contribution and the Tenant's Excess Development Costs shall be accounted for separately and funds deposited with respect to Tenant's Contribution shall not be used to pay for Tenant's Excess Development Costs (and vice versa). In the event there are approved Change Order Costs in connection with an executed Change Order, then, no later than five (5) business days after Landlord's request (accompanied by contract documentation in reasonable detail supporting such request), Tenant shall deposit into the TI Account any amount by which Tenant's Contribution exceeds Tenant's Deposit with respect to Tenant's Contribution. Furthermore, in the event there are approved changes in the Total Development Costs in connection with an executed Change Order, then, no later than five (5) business days after Landlord's request (accompanied by contract documentation in reasonable detail supporting such request), Tenant shall deposit into the TI Account any amount by which Tenant's Excess Development Costs exceeds the portion of the Tenant's Deposit with respect to Tenant's Excess Development Costs. The Tenant's Deposit shall be disbursed according to the procedures set forth in the TI Deposit Agreement. Disbursements of the Allowance shall be made pari passu with disbursements of the Tenant's Deposit from the TI Account provided that such disbursements of the Allowance are otherwise permissible pursuant to this Work Letter.

(e) Letter of Credit; Tenant's Contribution; Tenant's Excess Development Costs. At Tenant's election, in lieu of the Tenant's Deposit provided in Section 4.1(d) if required by Landlord's Construction Lender, Tenant may provide an irrevocable, unconditional and transferable (without cost to beneficiary) standby Letter of Credit ("**TI Letter of Credit**"), in a form reasonably approved by Construction Lender and meeting the requirements of this Section

4.1(e), in the amount of the Tenant's Contribution and/or the Tenant's Excess Development Costs that would be required in a TI Account had Tenant elected to so deposit the Tenant's Contribution and/or the Tenant's Excess Development Costs in such TI Account, as the same may be increased or decreased from time to time. Tenant shall fund Tenant's Contribution and/or Tenant's Excess Development costs according to the procedures set forth in Sections 4.1(c) and (f) of **Exhibit B** of this Lease, and disbursements of the Allowance shall be made pari passu with Tenant's payments of installments of the Tenant's Contribution and/or Tenant's Excess Development Costs.

(i) The TI Letter of Credit shall be governed by ISP98, as revised from time to time, issued by Wells Fargo or another commercial bank ("**TI LC Issuer**") reasonably satisfactory to the Construction Lender with offices for banking purposes in the San Francisco Bay Area, and drawable by sight draft presented by Construction Lender from time to time. The TI Letter of Credit shall name Construction Lender as beneficiary, permit multiple drawings, be fully transferable by Construction Lender, and otherwise be in form and substance reasonably satisfactory to Construction Lender. The TI Letter of Credit shall also provide that it shall be deemed automatically renewed, without amendment, for Substantial Completion plus sixty (60) days after Substantial Completion (the "**TI LC Term Expiration**"), unless the TI LC Issuer delivers written notice ("**TI LC Issuer Notice**") to the Construction Lender (with a simultaneous copy to Tenant) by any method specified for giving of notices under this Lease, as amended, not less than forty-five (45) days preceding the then TI-LC Term Expiration of the TI Letter of Credit that it elects not to have that TI Letter of Credit renewed. If the Construction Lender receives a TI LC Issuer Notice and, not later than fifteen (15) business days preceding the TI LC Term Expiration of the expiring TI Letter of Credit, Tenant fails to furnish the Construction Lender with a replacement of the expiring TI Letter of Credit pursuant to and meeting the conditions of this Section 4.1(e), then the Construction Lender shall have the right to draw the full amount of that TI Letter of Credit by delivering to the TI LC Issuer a statement that Tenant has failed timely to deliver to Construction Lender a replacement TI Letter of Credit pursuant to and meeting the conditions of this Section, in which event the TI LC Issuer shall disburse the full amount of the expiring TI Letter of Credit to Construction Lender and Construction Lender shall hold such amount pursuant to Section 4.1(e)(vi), below. Tenant shall, at any time after Construction Lender draws the TI Letter of Credit, be entitled to provide Construction Lender with a replacement TI Letter of Credit that satisfies the requirements hereunder, at which time Construction Lender shall return the cash proceeds of the original TI Letter of Credit drawn by Construction Lender to the extent Construction Lender has not applied such funds as provided in Section 4.1(e)(vi) below. Tenant shall have the right to reduce the amount of the TI Letter of Credit no more often than monthly by the amount of the payments of Tenant's Contribution and Tenant's Excess Development Costs, and Tenant's obligation to deliver the TI Letter of Credit is conditioned on the Construction Lender's agreement to be bound by the terms of this Section 4.1(e). In addition, Tenant shall increase the amount of the TI Letter of Credit, no more often than monthly, by increases in the unpaid portions of Tenant's Contribution and Tenant's Excess Development Costs (*i.e.*, due to Change Orders).

(ii) The TI Letter of Credit shall be held by Landlord and Construction Lender for the faithful performance of the obligations of Tenant under this Lease with respect to Tenant's Contribution and/or the Tenant's Excess Development Costs. The TI Letter of Credit shall be returned to Tenant within a reasonable time after Construction Lender determines in its sole but reasonable discretion that substantial completion of the Improvements has occurred. Tenant agrees that (i) Construction Lender may, without waiving any of Landlord's other rights and remedies under this Lease, draw upon the TI Letter of Credit and apply the proceeds of the TI Letter of Credit in whole or in part to remedy Tenant's failure to disburse the Tenant's Contribution or Tenant's Excess Development Costs within applicable notice and cure periods or (ii) Construction Lender may, without waiving any of Landlord's other rights and remedies under this Lease, draw upon the TI Letter of Credit and hold the proceeds of the TI Letter of Credit pursuant to Section 4.1(e)(vi) in whole if a renewal/extension of, amendment to or replacement or evidence of the restoration of the TI Letter of Credit as required under Section 4.1(e)(i) is not timely received by Construction Lender in form and substance reasonably acceptable to Construction Lender. If Construction Lender draws on the TI Letter of Credit, Tenant shall within five (5) business days restore the amount of the TI Letter of Credit to the full amount of the TI Letter of Credit as required to be maintained under this Section 4.1(e) pursuant to a replacement thereof or an amendment thereto in form and substance reasonably satisfactory to Landlord, or shall provide cash in lieu thereof, failing which Construction Lender may, without waiving its other remedies

hereunder, draw down any sums then remaining unpaid under the TI Letter of Credit. If Construction Lender draws upon the TI Letter of Credit pursuant to subpart (i) above in this Section 4.1(e)(ii), Construction Lender shall only draw upon the TI Letter of Credit to the extent needed to make the required payments of the Tenant's Contribution or Tenant's Excess Development Costs. In the event Landlord or improperly draws upon the TI Letter of Credit or misapplies the TI Letter of Credit Construction Lender proceeds, Tenant shall have the right to offset such amounts against Rent and Tenant shall have no right or claim (and Landlord shall have no liability to Tenant) with respect to the funds so improperly drawn or misapplied.

(iii) If Construction Lender's interest in the Premises is sold or otherwise assigned or transferred, then Tenant shall, upon ten (10) days prior notice from Landlord, at Tenant's sole cost and expense, cause TI LC Issuer to amend the TI Letter of Credit, in form and substance reasonably satisfactory to Construction Lender, to transfer them to the new Construction Lender designated by Landlord in its notice, effective on the date designated by Landlord in its notice.

(iv) Any draw under the TI Letter of Credit shall be subscribed by a representative of Construction Lender, as the case may be. The TI LC Issuer shall have no obligation to verify any matter or statement made in connection with any draw under the TI Letter of Credit and no good faith error in connection with any such matter or statement shall affect the validity of any draw by Landlord or Construction Lender. No draw under the TI Letter of Credit or failure or delay of Construction Lender to draw any portion of the TI Letter of Credit shall constitute a waiver of Landlord's Construction Lender's right to do so at any time thereafter, a waiver of Landlord's other rights and remedies under this Lease, or a waiver of any default with respect to this Lease. Tenant agrees that Tenant shall have no right to apply any portion of the cash security or proceeds of the TI Letter of Credit against any of Tenant's obligations to pay rent or perform obligations under the Lease.

(v) Landlord and Tenant acknowledge and agree that in no event or circumstance shall the TI Letter of Credit or any renewal thereof or any proceeds thereof be (i) deemed to be or treated as a "security deposit" within the meaning of California Civil Code Section 1950.7, (ii) subject to the terms of such Section 1950.7, or (iii) intended to serve as a "security deposit" within the meaning of such Section 1950.7. The parties hereto (A) recite that the TI Letter of Credit are not intended to serve as a security deposit and such Security Deposit Laws shall have no applicability or relevancy thereto and (B) waive 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.

(vi) In the event Landlord or Construction Lender draws down on the TI Letter of Credit, the proceeds of the TI Letter of Credit may be held by Landlord or Construction Lender and applied by Construction Lender against any Tenant's Contribution or Tenant's Excess Development Costs payable by Tenant under this Lease that is not paid when due. The amount of any proceeds of the TI Letter of Credit received by Construction Lender, and not used to pay for any Tenant's Contribution or Tenant's Excess Development Costs as provided for in this Section 4.1(e) (the "**Unused TI Letter of Credit Proceeds**"), shall be paid by Construction Lender to Tenant (x) upon receipt by Construction Lender of a replacement of the TI Letter of Credit in the full amount of the TI Letter of Credit, which replacement TI Letter of Credit shall comply in all respects with the requirements of this Section 4.1(e), or (y) within a reasonable time after Construction Lender determines in its sole but reasonable discretion that substantial completion of the Improvements has occurred.

(vii) If the amount of the TI Letter of Credit then held by Construction Lender is not equal to the estimate of the total Tenant's Contribution and Tenant's Excess Development Costs, then Tenant shall (or may) promptly obtain a revised TI Letter of Credit in an amount equal to the total Tenant's Contribution and Tenant's Excess Development Costs. In the event there are approved Change Order Costs in connection with an executed Change Order, then, no later than five (5) business days after Landlord's request (accompanied by contract documentation in reasonable detail supporting such request), Tenant promptly obtain a revised TI Letter of Credit in an amount equal to the total Tenant's Contribution and Tenant's Excess

Development Costs (if the TI Letter of Credit is in amount less than the Total Tenant's Contribution and Tenant's Excess Development Costs).

(viii) If Tenant delivers a replacement or amended TI Letter of Credit to Construction Lender when and as required under this Section 4(e) in the form required herein, Construction Lender shall exchange the TI Letter of Credit then held by Construction Lender for the replacement or amended TI Letter of Credit delivered by Tenant. Tenant may at any time substitute a cash Tenant's Deposit in a TI Deposit Account pursuant to a TI Deposit Agreement for the TI Letter of Credit, and upon such substitution, Construction Lender shall return the TI Letter of Credit to Tenant.

(f) Excess Development Costs. Subject to the terms of this Section 4.1(f), Landlord's obligation to solely fund Total Development Costs will not exceed $525 per rentable square foot in the Building (the "**Initial Cost Limit**"). If Total Development Costs exceed the Initial Cost Limit, then (i) Landlord shall be responsible for 50% of the Total Development Costs in excess of the Initial Cost Limit ("**Landlord's Excess Development Costs**") and (ii) Tenant shall be responsible for the remaining 50% of Total Development Costs in excess of the Initial Cost Limit (the "**Tenant's Excess Development Costs**", together with Landlord's Excess Development Costs, the "**Excess Development Costs**"), subject to the application of the Allowance as set forth in this Section 4.1(f). In the event that the estimated (as reasonably determined by the Landlord) or actual Total Development Costs are greater than the Initial Cost Limit (*i.e.*, Landlord is expected to pay the Landlord's Excess Development Cost and Tenant is expected to pay Tenant's Excess Development Costs), then Landlord shall promptly notify Tenant (the "**Excess Development Cost Notice**"). Thereafter, Landlord and Tenant shall work in good faith, for a period not to exceed thirty (30) days from the date that Landlord delivers the Excess Development Cost Notice to Tenant (the "**VE Period**"), to value engineer the Improvements in an effort to decrease the Total Development Costs below the Initial Cost Limit. Any cost associated with such value engineering design process will be the responsibility of Tenant, subject to Landlord's obligations with respect to the Allowance pursuant to Article 4, and any changes requested by Tenant as a part of the value engineering process shall be a Change subject to Section 2.7(c); provided, however, any delays associated with the Tenant's efforts to value engineer the Improvements will not constitute a Tenant Delay but will constitute an Excusable Delay as provided below, and the parties anticipate that any such Change shall result in a decrease in the Total Development Costs (*i.e.*, that there will be no additional Change Order Costs beyond the cost of value engineering). If, within the VE Period, Landlord and Tenant are unable to value engineer the Landlord's Work so that the Total Development Costs are below the Initial Cost Limit, then Landlord shall notify Tenant of the amount of Excess Development Cost (after taking into account the reduction, if any, in the Total Development Costs that result from Landlord's and Tenant's efforts to value engineer the Improvements) within five (5) business days after the expiration of the VE Period and shall commence (or recommence) the process for the approval of the Construction Document Packages or the construction of the Improvements, as applicable. Thereafter, unless Section 4.1(d) governs (i.e. that Tenant is depositing Tenant's Deposit into the TI Account), Landlord shall invoice Tenant on a monthly basis for the Tenant's Excess Development Costs (as provided in this Section 4.1(f) below), and the within 30 days following Tenant's receipt of a monthly invoice from Landlord for the portion of the Tenant's Excess Development Costs due that month in accordance with this subsection, Tenant shall pay to Landlord such portion of the Tenant's Excess Development Costs. The estimated Total Development Costs (as reasonably determined by Landlord) and the actual Total Development Costs (and, accordingly, the Excess Development Costs) shall only be adjusted from time to time based on Changes approved by Landlord and Tenant. In lieu of the payment of any invoice for Tenant's Excess Development Costs, Tenant may notify Landlord of its election to apply the Allowance towards such Excess Development Costs. Any application of the Allowance towards Tenant's Excess Development Costs shall be subject to the maximum Allowance under Section 4.1(a). In addition, if Tenant fails to timely pay any invoice for Tenant's Excess Development Costs (or notify Landlord of its election to apply the Allowance towards any invoice for Tenant's Excess Development Costs), such failure shall be a Contribution Failure as set forth in Section 5.3 below. Landlord's monthly invoice to Tenant for Tenant's Excess Development Costs shall be for an amount equal to the product of (i) the Total Development Costs incurred that month (provided that Tenant's Excess Development Costs will not be excluded from Total Development Costs for purposes of this calculation) and (ii) a fraction, the numerator of which is the Tenant's Excess Development Costs and the denominator of which is the Total Development Costs (provided that Tenant's Excess Development Costs will not be excluded from Total Development Costs for purposes of this calculation). The period of time between Landlord's delivery of the Excess Development Cost Notice and Landlord's commencement (or recommencement) of the process for the approval of the Construction Document Packages or the construction of the Improvements, as applicable, shall constitute

Excusable Delay to the extent such value engineering (or delays associated therewith) causes actual delays in the completion of the Improvements beyond the Estimated Date of Substantial Completion.

ARTICLE 5.
TIME FOR PERFORMANCE; SUBSTANTIAL COMPLETION AND ACCEPTANCE

5.1 Response Times. Unless otherwise provided in this Work Letter, each party shall promptly respond to requests for information, review, approval and acceptance and in all events within three (3) business days following delivery of the request. If Tenant does not respond in writing to any request for approval submitted to Tenant under this Work Letter within any time period stated herein for Tenant to give or reject such approval, or within three (3) business days if no specific time period applies to such request, time being of the essence, then Tenant will be deemed to have given its approval.

5.2 Excusable Delay. Promptly after an Excusable Delay occurs, Landlord shall deliver to Tenant a revised Progress Schedule reflecting such Excusable Delay. Notwithstanding anything in the Lease to the contrary, for the purposes of calculating the rent penalty date in Section 2(a) of the Lease, clause (v) of the definition of Excusable Delay in Section 26(p) of the Lease shall not include delays by caused by the general contractor or any subcontractors (or delays resulting from the failure of either to perform in accordance with the GMP Contract). Notwithstanding anything in the Lease to the contrary, for the purposes of calculating the Outside Completion Date, (a) clause (i) of the definition of Excusable Delay in Section 26(p) of the Lease is limited to only earthquakes that impact the Oakland/Alameda construction market generally and that cause actual delays in the completion of the Improvements beyond the Estimated Date of Substantial Completion; provided, however, in no event shall the Outside Completion Date be extended for more than 90 days as a result of earthquakes, (b) clause (ii) of the definition of Excusable Delay shall not apply for purposes of extending the Outside Completion Date, (c) there shall be no limitation on the extension of the Outside Completion Date pursuant to clauses (iii) and (iv) of the definition of Excusable Delay and (d) clause (v) of the definition of Excusable Delay is limited to only shortages in or the availability of materials or labor required for construction that impacts the Oakland/Alameda construction market generally and that cause actual delays in the completion of the Improvements beyond the Estimated Date of Substantial Completion not to exceed thirty (30) days. For purposes of calculating the Outside Completion Date (and determining whether Tenant may exercise its termination right pursuant to Section 2(a) of the Lease), to the extent the Outside Completion Date is extended pursuant to clause (iii) of the definition of Excusable Delay, any day of Tenant Delay so extending the Outside Completion Date shall not also be counted to advance the date that Substantial Completion of the Improvements (for purposes of determining whether Tenant may exercise its termination right pursuant to Section 2(a) of the Lease). If this Lease is not terminated pursuant to Section 2(a) hereof, then days of Tenant Delay will be used to determine the date that Substantial Completion of the Improvements would have occurred and the Premises would have been delivered to Tenant in the required condition but for the Tenant Delay for all other purposes under this Lease.

5.3 Tenant Delay. If Landlord is actually delayed in completing the Improvements as a result of

(a) Any Changes requested by Tenant (to the extent the delay is set forth in an executed Change Order),

(b) Any Changes to the Landlord's Work required by unusual specialized requirements in the TI Construction Documents, other than changes to the Landlord's Work relating to compliance with applicable laws obligations that are solely Landlord's responsibility, pursuant to the express terms of this Work Letter,

(c) A Tenant Delay as set forth in Section 2.7(g) of this Work Letter or Tenant's failure to otherwise comply with the time deadlines expressly set forth in this Work Letter,

(d) Tenant's failure to timely approve any matter requiring Tenant's approval (provided, however, that Tenant's failure to timely approve such matter will not be deemed a Tenant Delay if Tenant disapproved such matter because Tenant determined that the items submitted to Tenant were deficient [for example, if the proposed Construction Documents did not reflect a logical extension of the approved Schematics]),

(e) Tenant's rejections of Landlord's submissions without reasonable basis or unreasonable requests by Tenant for clarifications or revisions in such submissions,

(f) hindrance or disruption of the Contractors' work resulting from the performance of the Tenant's Work, if any,

(g) Any other acts or omissions of Tenant, or its agents, or employees which actually delays the Substantial Completion,

(h) Landlord requests Tenant's approval for any matter specified in this Work Letter (including, without limitation, approval of: design professionals pursuant to Section 2.2; the Pre-Construction Cost Estimate pursuant to Section 2.4; the Schematics pursuant to Section 2.7(a); the Construction Document Packages pursuant to Section 2.7(b); and the Contractors and the Cost Estimate pursuant to Section 3.2) and:

(i) Tenant does approve such matter or respond with a reasonable basis for disapproval within the applicable time period set forth in this Work Letter or

(ii) if Tenant has timely responded to such request with a reasonable basis for disapproval, then, if Landlord submits a Subsequent Request that addresses Tenant's original reasonable basis for disapproval, Tenant does not approve such Subsequent Request within five (5) business days after such Subsequent Request,

(i) delay or hindrance in obtaining any occupancy certificates or other permits for the Improvements as a result of Tenant's Work,

(j) Tenant's failure to timely make a deposit into the TI Account, failure to timely make a payment of Tenant's Contribution, or other failure to pay when due all amounts payable by Tenant pursuant to this Work Letter,

(k) Tenant's material breach of the Lease, including without limitation its obligations under this Work Letter,

(l) Tenant's requirement for materials, components, finishes or improvements which are not available in a commercially reasonable time given the anticipated date of Substantial Completion of the Tenant Improvements, as set forth in the Progress Schedule in the amount of time specified by Landlord at the time it approves the same, or

(m) any other circumstance which is deemed or stated herein or in the Lease to constitute a Tenant Delay hereunder;

then any such delay under the foregoing clauses shall be a "**Tenant Delay**" to the extent that Landlord is actually delayed in Substantial Completion beyond the Estimated Date of Substantial Completion as a result of such action of Tenant. If a Tenant Delay occurs, then Term Commencement shall be deemed to be the date that Substantial Completion of the Improvements and delivery of the Premises to Tenant in the required condition would have occurred but for the Tenant Delay (such date will be reasonably determined by Landlord in consultation with the Architect and the General Contractor). Notwithstanding the foregoing, except with respect to a Tenant Delay due to Tenant's failure to comply with time deadlines expressly set forth in this Work Letter or a circumstance which is deemed to constitute a Tenant Delay hereunder, no Tenant Delay shall be deemed to have occurred unless and until Landlord has delivered notice of the event or circumstance that Landlord determines is a Tenant Delay and Tenant has failed to cure such event or circumstance within one (1) business day following the date of delivery of such notice; provided, however, Landlord shall have no obligation to give notice of a Tenant Delay as a condition to the occurrence thereof in the event such Tenant Delay arises from Tenant's failure to take a specified action within a time period expressly required by the terms of this Work Letter. Promptly after a Tenant Delay in accordance with the foregoing occurs, Landlord shall deliver to Tenant a revised Progress Schedule reflecting the Tenant Delay and the new Estimated Date of Substantial

Completion. Furthermore, if Tenant fails to make any payment due in this Work Letter within the period required by this Work Letter (a ""**Contribution Failure**"), then (in addition to any other remedies available to Landlord in this Work Letter or elsewhere in the Lease) (x) Landlord may, after five (5) business days' prior written notice to Tenant, stop construction (including any pre-construction work) of the Improvements until such payment is made by Tenant or, if applicable, the TI Account is funded by Tenant in accordance with this Work Letter and any resulting stoppage shall be a Tenant Delay to the extent that Landlord is actually delayed in Substantial Completion beyond the Estimated Date of Substantial Completion as a result thereof, (y) Tenant's failure on the first or second occasion to timely make such payment where such failure shall continue for a period of five (5) days after notice from Landlord of such delinquency shall be an event of default under the Lease and (z) Tenant's failure on a third occasion to timely make such payment shall be an event of default under the Lease. If Landlord stops construction due to a Contribution Failure, Tenant shall be responsible for all costs in connection with remobilizing the Contractors and recommencing construction.

5.4 Substantial Completion; Acceptance. For the purposes of the Lease and this Work Letter, "**Substantial Completion**" of the Improvements will have occurred upon the later to occur of Substantial Completion of each of the Landlord's Work and the Tenant Improvements in accordance with the Construction Documents (as evidenced by certification by the Architect on form AIA G704, as described below), except to the extent that only minor punch list items remain to be performed so that Tenant can occupy or utilize the Premises for its intended use, and are otherwise in the condition required under Section 1.6 of this Work Letter. With respect to Landlord's Work, Substantial Completion shall be evidenced by a certificate of substantial completion (AIA G704) issued by the Architect and a copy of the permit job card confirming approval of final inspection, and, with respect to the Tenant Improvements, Substantial Completion shall be evidenced by (i) a certificate of substantial completion (AIA G704) issued by the Architect, (ii) a copy of the permit job card confirming approval of final inspection (iii) Architect's measurement and determination of the Rentable Area of the Premises, and (iv) the issuance of a temporary certificate of occupancy from the City of Alameda; provided, however, that if Landlord is unable to obtain a temporary certificate of occupancy because of Tenant's ongoing performance of the Tenant's Work, then Substantial Completion of the Tenant Improvements will have occurred on the date on which all of the events set forth in subclauses (i)-(iii) of the preceding sentence have occurred. Landlord shall notify Tenant in writing at least ten (10) days prior to the date that Landlord anticipates that Substantial Completion of the Improvements will occur, and Tenant shall arrange promptly to inspect the Premises. Provided that Substantial Completion of the Improvements has occurred, Tenant shall accept delivery of the Premises on the date that Substantial Completion occurs, and Landlord shall complete any punch list items remaining to be performed within thirty (30) days after the date Tenant accepts the Premises or as soon thereafter as reasonably practicable. Architect's measurement of the rentable square footage of the Building shall be calculated pursuant to the BOMA Standard and will be subject to Tenant's approval and will not be subject to remeasurement. The Verification Memorandum will include the square footage of the Building as measured by Architect.

ARTICLE 6.
TENANT'S WORK

6.1 General Requirements for Tenant's Work.

(a) If Tenant desires to have any contractors perform any work in the Project or on the Land prior to Substantial Completion of the Improvements (such work by Tenant or its contractors, the "**Tenant's Work**"), Tenant and the Tenant's Parties shall have the right to enter the Project to perform such work and such work shall be subject to the safety, scheduling and coordination requirements of the General Contractor. The provisions of the Lease that apply to the Alterations (e.g., the approval by Landlord and Tenant's construction thereof) shall apply to Tenant's Work. Tenant shall deliver to Landlord at least five (5) business days prior to the commencement of any of Tenant's Work, the following information and materials:

(i) The names and addresses of the subcontractors which will perform Tenant's Work.

(ii) A construction schedule for the significant tasks in Tenant's Work which is in substantially the format of the schedule for construction of the Improvements maintained by the General Contractor and which is coordinated with construction of the Improvements.

(iii) Evidence of Tenant's compliance with the insurance requirements set forth in the Lease and in this Work Letter.

(iv) An itemized budget for the costs of permits, architectural and engineering and permit fees and construction costs to be incurred, together with copies of executed agreements with all design professionals and Tenant's contractor.

(v) Copies of all permits which may be required in connection with Tenant's Work.

(b) The process of construction of Tenant's Work shall comply in all respects with applicable Laws.

(c) Tenant shall pay for all utility services furnished to the Project for Tenant's Work in effect at the time of construction, including costs of temporary power, as well as all hoisting, debris removal and other costs incurred by the Contractors after its notice to Tenant and delivery of a cost estimate, together with its usual mark-up for overhead and profit, as a result of or in order to accommodate Tenant's Work .

(d) Tenant's Work shall be subject to the inspection of Landlord and its consultants at reasonable intervals and Tenant's contractors shall make reasonable accommodations to facilitate such inspection.

(e) Tenant's contractor shall present to Landlord and maintain on site at all times one (1) full set of the construction documents for Tenant's Work which have been accepted by Landlord and evidence final approval by all other governmental agencies having jurisdiction over the construction and occupancy of the Project. Such documents shall be carefully annotated during construction to reflect any material deviations in the Tenant's Work "as-built" from that initially shown, and upon completion of Tenant's Work, such drawings and electronic files or copies thereof shall be delivered to Landlord which describe accurately all of Tenant's Work as built.

(f) Tenant shall perform or cause Tenant's contractor to perform Tenant's Work to avoid any labor dispute which causes or is likely to cause stoppage or impairment of construction of the Improvements or delivery service or any other services in the Building or to the Project. In the event there shall be any such stoppage or impairment as the result of any such labor dispute or potential labor dispute, Tenant shall, after reasonable notice, promptly undertake such commercially reasonable actions as may be necessary to eliminate such dispute or potential dispute, to the extent permitted by law, including, but not limited to, (i) removing all disputants related to Tenant's contractor or its subcontractors from the Building and the Project until such time as the labor dispute no longer exists, (ii) seeking an injunction in the event the dispute arises out of any alleged breach of contract between Tenant and Tenant's contractor, and (iii) filing appropriate unfair labor practice charges in the event of a union jurisdictional dispute.

6.2 **Temporary Facilities During Construction/Clean-Up Responsibilities.** Tenant shall provide and pay for all temporary utility facilities used exclusively in connection with the construction of Tenant's Work and shall pay for all utilities consumed in connection with Tenant's Work and the removal of all debris, as necessary, created by the construction of Tenant's Work. Storage of Tenant's contractors' construction material, tools, equipment and debris shall be confined to the Project or such other areas as shall be reasonably designated by Landlord. Tenant shall comply with all reasonable rules and regulations provided by Landlord in connection with Tenant's construction, including, but not limited to access, truck traffic control, employee and contractor parking, loading, the use of elevators and hoists, all matters concerning fire safety, dust control and hours of construction. Tenant shall remove all debris resulting from Tenant's Work on a daily basis, repair any damage caused to the Building, the Project, or the Improvements and use commercially reasonable efforts to keep the portions of the Project used by Tenant in a neat, orderly condition. Landlord shall determine whether construction debris disposal related to Tenant's Work shall be in separate containers contracted for by Tenant's contractor or in containers arranged for by Landlord's contractor. Tenant shall pay for all related to disposal of debris from Tenant's Work and for costs for any separate containers contracted for by Tenant's contractor

6.3 **Insurance.** Tenant shall maintain, or cause its contractors to maintain during the period performance of Tenant's Work, in addition to the insurance required to be carried by Tenant pursuant to the Lease, all of the

insurance coverage in the minimum limits set forth below. Tenant shall not permit its contractors to commence any work until all required insurance has been obtained and certificates of such insurance have been delivered to Landlord.

(a) Tenant's General Contractor's Required Minimum Coverage and Limits of Liability:

(i) Worker's Compensation, as required by law, and including Employer's Liability Insurance with a limit of not less than $1,000,000.00, and any insurance required by the Employee Benefit Acts or other statutes applicable in the jurisdiction where the work is to be performed as will protect the contractor and sub-contractors from any and all liability under the aforementioned acts.

(ii) Commercial General Liability Insurance (including Contractor's Protective Liability) in an amount not less than $2,000,000 for any one occurrence whether involving bodily injury liability (or death resulting therefrom) or property damage liability or a combination thereof with an aggregate limit of $2,000,000. Such insurance shall provide for explosion, collapse and underground coverage. Such insurance shall insure Landlord, Tenant and Tenant's general contractor against any and all claims for bodily injury, including death resulting therefrom and damage to or destruction of property of any kind whatsoever and to whomsoever belonging and arising from operations under the contract or contracts for Tenant's Work, whether such operations are performed by Tenant's general contractor, sub-contractors, or any of their sub-contractors, or by anyone directly or indirectly employed by any of them.

(iii) Umbrella/Excess Liability coverage in an amount not less than $5,000,000 in excess of Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance, and Employers Liability Insurance.

(iv) Comprehensive Automobile Liability Insurance, including the ownership, maintenance, and operation of any automotive equipment, owned, hired, and non-owned, in an amount not less than $1,000,000 for any one occurrence whether involving bodily injury liability (or death resulting therefrom) or property damage liability or a combination thereof. Such insurance shall insure Tenant's general contractor and subcontractors against any and all claims for bodily injury, including death resulting therefrom and damage to the property of others caused by accident and arising from operations under the contract or contracts for Tenant's Work, whether such operations are performed by the general contractor, subcontractors, or by anyone directly or indirectly employed by any of them.

(v) Owner's Protective Liability Insurance to insure Landlord and Tenant against any and all liability to third parties for damage due to bodily injury (or death resulting therefrom) and property damage of others or a combination thereof which may arise from work in connection with the Project, and any other liability for damages which Tenant's general contractor and/or subcontractors are required to insure against under any provisions herein. Said insurance shall be provided in an amount not less than $3,000,000 for any one occurrence whether involving bodily injury liability (or death resulting therefrom) or property damage liability or a combination thereof; which limits may be provided by a combination of underlying and excess or umbrella coverage which follows the form of the underlying coverage.

(vi) "All Physical Loss" Builder's Risk insurance covering Tenant's Work. The policy shall include as insureds Tenant, Landlord and its contractor and subcontractors, as their interests may appear. The amount of the insurance shall be one hundred percent (100%) of the replacement cost of Tenant's Work.

(vii) With respect to Tenant's contractors whose scope of work includes or involves Hazardous Materials, Contractor's Pollution Liability Insurance covering the General Contractor and all subcontractors in an amount of not less than Two Million Dollars ($2,000,000) with a maximum deductible of One Hundred Thousand Dollars ($100,000) with coverage continuing for ten years after completion of construction. Such insurance shall name Landlord as an additional insureds.

(b) All insurance required under Section 6.3(a) other than Worker's Compensation and Builder's Risk insurance shall include as additional insureds Landlord, its property manager and any lender having a

security interest in the Project. All insurance required under this Work Letter shall be endorsed to provide for at least thirty (30) days' prior written notice to Landlord for cancellation, nonrenewal or material reduction in coverage to the extent such endorsement is available from such contractor's insurer at a commercially reasonable rate. The Worker's Compensation Insurance shall contain an endorsement waiving all rights of subrogation against such persons and entities. In addition to the evidence of insurance described above, Tenant shall deliver to Landlord upon request copies of policies of insurance or certificates thereof; and the policies of insurance required pursuant to this Work Letter shall in all other respects be kept and maintained, in accordance with the provisions of the Lease relating to insurance maintained by Tenant thereunder.

6.4 LANDLORD MAKES NO REPRESENTATIONS REGARDING AND SHALL HAVE NO LIABILITY FOR ANY ABSENCE DURING ANY PERIOD OF EARLY ENTRY BY TENANT OR ITS CONTRACTORS INTO THE BUILDING OF (A) ELECTRICAL POWER OR (B) SECURITY FOR ANY OF TENANT'S PARTIES' PROPERTY LOCATED AT THE PROJECT.

DURING TENANT'S OR ANY TENANT PARTIES' OCCUPANCY OF THE PREMISES OR ACCESS TO THE PROJECT DURING ANY PERIOD OF EARLY ENTRY OF THE PROJECT, TENANT HEREBY ASSUMES ALL RISK OF DAMAGE TO AND THEFT OF TENANT'S PROPERTY AND INJURY TO PERSONS, IN, ON, OR ABOUT THE PROJECT AT TENANT'S REQUEST (EACH, A "**TENANT RISK PARTY**") FROM ANY CAUSE WHATSOEVER AND AGREES THAT LANDLORD AND THE LANDORD PARTIES SHALL NOT BE LIABLE TO TENANT OR A TENANT PARTY FOR, AND ARE HEREBY RELEASED FROM ANY RESPONSIBILITY FOR, ANY DAMAGE TO OR THEFT OF PROPERTY OR INJURY TO PERSONS, WHICH DAMAGE, THEFT OR INJURY IS SUFFERED BY TENANT OR ANY TENANT PARTIES EXCEPT THAT ARISING OUT OF OR CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LANDLORD'S PARTIES.

ARTICLE 7.
CONSTRUCTION REPRESENTATIVES

Construction Representatives. Tenant and Landlord shall each designate in writing one or more representatives to act on its behalf in dealing with the other party in matters relating to Improvements. Each of the representatives shall: (a) use commercially reasonable efforts to (and shall have the right to) attend or have its designee attend each project meeting as scheduled by Landlord and fully participate and cooperate with each other to ensure the orderly progression of the Improvements; and (b) be qualified to render decisions that are within their delegation of authority or, if outside their delegation of authority, to obtain such decisions in an expedited manner to ensure scope, cost and schedule are maintained. Each party shall be bound by any consents or approvals given by such designated representatives. All consents and approvals or other notice or communications sent by email from one designated representative to the other will have the same binding force and effect as if sent in writing in accordance with the notice requirements of the Lease and will be deemed received on the business day sent if sent before 3:00 PM PST on such day. Either party may, at any time, change its designated representative by giving a minimum of three (3) business days' notice of a change of designation, but such change will not affect or make void any previous rendered decisions, approvals or consents of such party's previous designated representative. The designated representatives shall exert commercially reasonable efforts to render decisions and take actions in a timely manner so as to avoid unreasonable delay in the other party's work and actions with respect to the construction of the Improvements. Tenant hereby designates Dana Aftab (email: XXX@XXX; telephone: XXX-XXX-XXXX) as its designated representative. Landlord hereby designates Laura Billings (email: XXX@XXX; telephone: XXX-XXX-XXXX), as its designated representative.

EXHIBIT D-1

BASE RENT DETERMINATION

Initial Base Rent shall be calculated using the following formula:

(Total Development Costs (up to Initial Cost Limit) x .0775)/12 + (Landlord's Excess Development Costs x .10)/12

"**Total Development Costs**" means the sum of the following:

1. acquisition costs for the Land, including, but not limited to, Landlord's due diligence costs, closing costs and the purchase price for the Land pursuant to the Land Purchase Agreement (approximately $36.17/sf, subject to further adjustment as described in the Land Purchase Agreement, and further subject to Section 26(u));
2. the guaranteed maximum price or stipulated sum contract amounts for the Contracts (as defined in the Work Letter), including a general contractor fee not to exceed 4.00% and general conditions not to exceed 12%, for construction of site work, building shell and core per the Construction Documents approved by Tenant and Landlord;
3. the Allowance (as defined in the Work Letter);
4. Contract fees and expenses for project architects, engineers and consultants for the Improvements, which fees shall be in conformance with market;
5. Fees and permit costs for the Improvements for the City of Alameda, including but not limited to fees to the health department and other agencies of the City of Alameda;
6. utility company fees for the Improvements;
7. construction financing costs, insurance costs, Landlord legal fees, and construction interest, at a rate not to exceed the maximum (non-default) interest rate set forth in the instrument evidencing such construction financing, actually incurred from the Execution Date to Base Rent Commencement (the "**Development Period**"), but excluding an interest reserve;
8. estimated carry costs for the Project during the Development Period, excluding such carry costs that Tenant pays as Additional Rent between Term Commencement and Base Rent Commencement;
9. a project contingency amount with respect to the Improvements equal to ten (10%) percent of Total Development Costs only to the extent properly incurred for costs otherwise permitted hereunder during the Development Period, excluding land costs (the "**Project Contingency Amount**"), which amount shall include the Contingency Excluded Costs (as provided below) and shall not include the Non-Contingency Excluded Costs (as provided below); and
10. a development and construction management fee equal to three percent (3%) of Total Development Costs (other than such fee).

Notwithstanding the foregoing, Total Development Costs shall exclude the amount of Tenant's Contribution and the Tenant's Excess Development Costs, if any. The Contingency Excluded Costs and the Non-Contingency Excluded Costs (each as defined below) are referred to herein collectively as the "**Excluded Costs**").

The following costs shall be excluded from Total Development Costs, except to the extent such costs are included in the Total Development Costs as a part of the Project Contingency Amount (the "**Contingency Excluded Costs**"):

1. costs for improvements which are not shown on or described in the Construction Documents approved by Tenant pursuant to the Work Letter; provided, however such costs shall only be included in the Project Contingency Amount to the extent Landlord verifies that such improvements are necessary for the construction of the Project;
2. costs incurred as a consequence of unforeseen conditions affecting the Project;
3. attorneys' fees and other costs in connection with disputes with third parties that did not arise through the acts or omissions of Tenant or its contractors, invitees or other guests; provided, however, such costs shall only be included in the Project Contingency Amount to the extent such disputes are not the result of

the negligent act or omission or willful misconduct of Landlord and to the extent such costs are not covered by Landlord's insurance;
4. costs incurred as a consequence of delay in construction of the Improvements (unless the delay is a Tenant Delay);
5. costs as a consequence of casualties; provided, however the costs that may be included in the Project Contingency Amount are limited to deductibles and non-insured losses;
6. wages, labor and overhead for overtime and premium time; and
7. construction costs in excess of the Cost Estimate approved by Tenant, except for increases set forth in executed Change Orders requested by Tenant.

Notwithstanding the foregoing, the Contingency Excluded Costs numbered 3 through 7 immediately above shall be included in the Project Contingency Amount only to the extent approved by Tenant, which approval shall not be unreasonably withheld, conditioned or delayed; provided that it shall be unreasonable for Tenant to withhold its consent if Landlord delivers to Tenant reasonably sufficient evidence that such costs are incurred or to be incurred to maintain the critical path for the construction of the Improvements.

The following costs shall be excluded from Total Development Costs and shall not be included in the Project Contingency Amount (the "**Non-Contingency Excluded Costs**"):

1. costs for indirect offsite improvements (i.e. community benefits) that were not disclosed to Tenant at or prior to the approval of the development plan for the Project;
2. costs incurred due to the presence of hazardous materials not caused by Tenant's Parties or their contractors, invitees, or other guests;
3. costs incurred as a consequence of construction defects;
4. costs incurred as a consequence of a default by a Contractor (as defined in the Work Letter) under its Contract (as defined in the Work Letter);
5. costs recoverable by Landlord upon account of warranties and insurance;
6. penalties and late charges attributable to Landlord's failure to pay construction costs, unless such failure was caused by Tenant;
7. any leasing commissions with respect to the Lease; and
8. the costs of the Excluded Work (as defined in the Work Letter), unless and to the extent that Landlord and Tenant agree to include any Excluded Work in the scope of the Tenant Improvements.

EXHIBIT D-2

PROFORMA BASE RENT SCHEDULE

Month Beg	Month End	Initial Base Rent /Mo PSF (1)	Initial Base Rent /Yr PSF	Annual NNN Rent $$
1	2	$0.00	$0.00	$0
3	14	$3.30	$39.60	$8,712,000
15	26	$3.40	$40.80	$8,976,000
27	38	$3.50	$42.00	$9,240,000
39	50	$3.61	$43.32	$9,530,400
51	62	$3.72	$44.64	$9,820,800
63	74	$3.83	$45.96	$10,111,200
75	86	$3.94	$47.28	$10,401,600
87	98	$4.06	$48.72	$10,718,400
99	110	$4.18	$50.16	$11,035,200
111	122	$4.31	$51.72	$11,378,400
123	134	$4.44	$53.28	$11,721,600
135	146	$4.57	$54.84	$12,064,800
147	158	$4.71	$56.52	$12,434,400
159	170	$4.85	$58.20	$12,804,000
171	182	$5.00	$60.00	$13,200,000
183	194	$5.15	$61.80	$13,596,000
195	206	$5.30	$63.60	$13,992,000
207	218	$5.46	$65.52	$14,414,400
219	230	$5.62	$67.44	$14,836,800
231	242	$5.79	$69.48	$15,285,600

(1) Yr 1 = Total Development Costs x Rent Yield / 12, rounded to 2 decimal points; 3% escalation each year, thereafter, rounded to 2 decimal points each year

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO
EXCHANGE ACT RULES 13a-14(a) and 15d-14(a),
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Michael M. Morrissey, Ph.D., certify that:

1. I have reviewed this Form 10-Q of Exelixis, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ MICHAEL M. MORRISSEY

Michael M. Morrissey, Ph.D.
President and Chief Executive Officer
(Principal Executive Officer)

Date: October 30, 2019

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO
EXCHANGE ACT RULES 13a-14(a) and 15d-14(a),
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Christopher J. Senner, certify that:

1. I have reviewed this Form 10-Q of Exelixis, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ CHRISTOPHER J. SENNER

Christopher J. Senner
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

Date: October 30, 2019

Exhibit 32.1

CERTIFICATIONS OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, Michael M. Morrissey, Ph.D., the President and Chief Executive Officer of Exelixis, Inc. (the "Company"), and Christopher J. Senner, the Executive Vice President and Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Quarterly Report on Form 10-Q for the period ended September 27, 2019, to which this Certification is attached as Exhibit 32.1 (the "Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

In Witness Whereof, the undersigned have set their hands hereto as of the 30th day of October 2019.

/s/ MICHAEL M. MORRISSEY

Michael M. Morrissey, Ph.D.

President and Chief Executive Officer
(Principal Executive Officer)

/s/ CHRISTOPHER J. SENNER

Christopher J. Senner

Executive Vice President and Chief Financial Officer
(Principal Financial Officer)