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 March 31, 2019

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the Transition Period from to

Commission File Number 001-36189

Tandem Diabetes Care, Inc.

(Exact name of registrant as specified in its charter)

Delaware **(State or other jurisdiction of incorporation or organization)**	**20-4327508** **(I.R.S. Employer Identification No.)**
11075 Roselle Street **San Diego, California** **(Address of principal executive offices)**	**92121** **(Zip Code)**

(858) 366-6900
Registrant's telephone number, including area code

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

Title of Each Class	Name of Exchange on Which Registered
Common Stock, par value $0.001 per share	**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 (§232.405 of this chapter) 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 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 Exchange 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 April 26, 2019, there were 58,067,241 shares of the registrant's Common Stock outstanding.

TABLE OF CONTENTS

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

TANDEM DIABETES CARE, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except par value)

	March 31, 2019 (Unaudited)	December 31, 2018 (Note 1)
Assets		
Current assets:		
Cash and cash equivalents	$ 40,445	$ 41,826
Short-term investments	85,159	87,201
Accounts receivable, net	33,027	35,193
Inventories, net	22,826	19,896
Prepaid and other current assets	4,571	3,769
Total current assets	186,028	187,885
Property and equipment, net	17,182	17,151
Operating lease right-of-use assets	10,087	-
Patents, net	1,048	1,130
Other long-term assets	353	128
Total assets	$ 214,698	$ 206,294
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 11,206	$ 6,824
Accrued expense	3,376	3,930
Employee-related liabilities	17,047	24,030
Deferred revenue	5,460	4,600
Common stock warrants	29,762	17,926
Operating lease liabilities	3,703	-
Other current liabilities	6,126	8,978
Total current liabilities	76,680	66,288
Deferred rent—long-term	-	3,799
Operating lease liabilities - long-term	10,685	-
Other long-term liabilities	6,371	4,932
Total liabilities	93,736	75,019
Commitments and contingencies (Note 9)		
Stockholders' equity:		
Common stock, $0.001 par value; 200,000 shares authorized as of March 31, 2019 and December 31, 2018. 57,982 and 57,554 shares issued and outstanding at March 31, 2019 and December 31, 2018, respectively.	58	57
Additional paid-in capital	743,930	731,306
Accumulated other comprehensive income (loss)	41	(13)
Accumulated deficit	(623,067)	(600,075)
Total stockholders' equity	120,962	131,275
Total liabilities and stockholders' equity	$ 214,698	$ 206,294

See accompanying notes to unaudited condensed consolidated financial statements.

TANDEM DIABETES CARE, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(Unaudited)
(In thousands, except per share data)

	Three Months Ended March 31,	
	2019	2018
Sales	$ 65,995	$ 27,277
Cost of sales	32,642	15,873
Gross profit	33,353	11,404
Operating expenses:		
Selling, general and administrative	34,961	20,914
Research and development	9,389	5,975
Total operating expenses	44,350	26,889
Operating loss	(10,997)	(15,485)
Other income (expense), net:		
Interest and other income	757	91
Interest and other expense	(6)	(3,071)
Change in fair value of stock warrants	(12,746)	(14,228)
Total other expense, net	(11,995)	(17,208)
Net loss	$ (22,992)	$ (32,693)
Other comprehensive loss:		
Unrealized gain on short-term investments	$ 50	$ —
Foreign currency translation	4	—
Comprehensive loss	$ (22,938)	$ (32,693)
Net loss per share, basic and diluted	$ (0.40)	$ (1.82)
Weighted average shares used to compute basic and diluted net loss per share	57,771	17,993

See accompanying notes to unaudited condensed consolidated financial statements.

TANDEM DIABETES CARE, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Unaudited)
(In thousands)

	Common Stock		Additional Paid-in	Accumulated Other Comprehensive	Accumulated	Total Stockholders'
	Shares	Amount	Capital	Income (Loss)	Deficit	Equity (Deficit)
Balance at December 31, 2018	57,554	$ 57	$ 731,306	$ (13)	$ (600,075)	$ 131,275
Exercise of stock options	409	1	1,898	—	—	1,899
Exercise of common stock warrants	19	—	64	—	—	64
Fair value of common stock warrants at time of exercise	—	—	910	—	—	910
Stock-based compensation	—	—	9,752	—	—	9,752
Foreign currency translation	—	—	—	4	—	4
Unrealized gain on short-term investments	—	—	—	50	—	50
Net loss	—	—	—	—	(22,992)	(22,992)
Balance at March 31, 2019	57,982	$ 58	$ 743,930	$ 41	$ (623,067)	$ 120,962

	Common Stock		Additional Paid-in	Accumulated Other Comprehensive	Accumulated	Total Stockholders'
	Shares	Amount	Capital	Income (Loss)	Deficit	Equity (Deficit)
Balance at December 31, 2017	10,119	$ 10	$ 448,455	$ —	$ (477,614)	$ (29,149)
Adjustment to retained earnings from adoption of ASC 606	—	—	—	—	150	150
Issuance of common stock in public offering, net of underwriter's discount and offering costs	34,500	36	63,994	—	—	64,030
Exercise of common stock warrants	1,937	2	6,776	—	—	6,778
Fair value of common stock warrants at time of exercise	—	—	1,599	—	—	1,599
Stock-based compensation	80	—	1,134	—	—	1,134
Net loss	—	—	—	—	(32,693)	(32,693)
Balance at March 31, 2018	46,636	$ 47	$ 521,958	$ -	$ (510,157)	$ 11,848

See accompanying notes to unaudited condensed consolidated financial statements.

TANDEM DIABETES CARE, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(In thousands)

	Three Months Ended March 31, 2019	Three Months Ended March 31, 2018
Operating activities		
Net loss	$ (22,992)	$ (32,693)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization expense	1,438	1,493
Interest expense related to amortization of debt discount and debt issuance costs	—	692
Provision for allowance for doubtful accounts	342	359
Provision for inventories reserve	679	107
Change in fair value of common stock warrants	12,746	14,228
Amortization of premium (discount) on short-term investments	(94)	59
Stock-based compensation expense	9,834	1,192
Other	27	148
Changes in operating assets and liabilities:		
Accounts receivable, net	1,821	7,657
Inventories, net	(3,690)	342
Prepaid and other current assets	(1,036)	(745)
Other long-term assets	(225)	(18)
Accounts payable	4,376	(1,654)
Accrued expense	(553)	366
Employee-related liabilities	(6,982)	(3,978)
Deferred revenue	861	349
Other current liabilities	(2,120)	(356)
Deferred rent	—	(185)
Other long-term liabilities	1,444	365
Net cash used in operating activities	(4,124)	(12,272)
Investing activities		
Purchase of short-term investments	(42,914)	(9,000)
Proceeds from sales and maturities of short-term investments	45,100	—
Purchase of property and equipment	(1,408)	(514)
Net cash provided by (used in) investing activities	778	(9,514)
Financing activities		
Proceeds from public offering, net of offering costs	—	64,157
Proceeds from exercise of common stock warrants	64	6,512
Proceeds from issuance of common stock under Company stock plans	1,898	—
Net cash provided by financing activities	1,962	70,669
Effect of foreign exchange rates on cash	3	—
Net increase (decrease) in cash and cash equivalents and restricted cash	(1,384)	48,883
Cash and cash equivalents and restricted cash at beginning of period	41,826	23,700
Cash and cash equivalents and restricted cash at end of period	$ 40,445	$ 72,583
Supplemental disclosures of cash flow information		
Interest paid	$ -	$ 2,379
Supplemental schedule of noncash investing and financing activities		
Right-of-use assets obtained in exchange for operating lease obligations	$ 3,053	$ —
Debt discount included in other long-term liabilities	$ —	$ 827
Public offering costs included in accounts payable	$ —	$ 129
Property and equipment included in accounts payable	$ 130	$ 217

See accompanying notes to unaudited condensed consolidated financial statements.

NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Basis of Presentation

The Company

Tandem Diabetes Care, Inc. is a medical device company focused on the design, development and commercialization of products for people with insulin-dependent diabetes. The Company is incorporated in the state of Delaware. Unless the context requires otherwise, the terms the "Company" or "Tandem" refer to Tandem Diabetes Care, Inc.

The Company manufactures and sells insulin pump products that are designed to address large and differentiated needs of the insulin-dependent diabetes market. The Company's manufacturing and sales activities primarily focus on the t:slim X2 Insulin Delivery System (t:slim X2), the Company's flagship pump platform that is capable of remote feature updates and designed to display continuous glucose monitoring (CGM), sensor information directly on the pump home screen. The Company's insulin pump products are compatible with the Tandem Device Updater, a Mac and PC-compatible tool for the remote update of Tandem insulin pump software. The Company's insulin pump products are generally considered durable medical equipment, and have an expected lifespan of at least four years. In addition to selling insulin pumps, the Company sells disposable products that are used together with the pumps and are replaced every few days, including cartridges for storing and delivering insulin, and infusion sets that connect the insulin pump to a user's body.

The Company began commercial sales of its first product, t:slim, in August 2012 and subsequently commercialized t:flex in May 2015, t:slim G4 in September 2015 and t:slim X2 in October 2016. The t:slim X2 hardware platform now represents 100% of new pump shipments, but the Company will continue to provide ongoing service and support to existing t:slim, t:slim G4 and t:flex customers. In September 2017, the Company received approval by the United States Food and Drug Administration (FDA) for the integration of t:slim X2 with the Dexcom MOBILE G5 CGM. In June 2018, the Company received FDA approval for t:slim X2 with Basal-IQ technology, the Company's first-generation Automated Insulin Delivery (AID) algorithm, and the first insulin pump designated as compatible with integrated CGM (iCGM) devices. The Company commenced commercial sales of this product integrated with the Dexcom G6 CGM in August 2018.

During the third quarter of 2018, the Company commenced sales of the t:slim X2 in select geographies outside the United States, including Australia, Italy, New Zealand, Scandinavia (Denmark, Norway and Sweden), South Africa, Spain, and the United Kingdom. Direct sales efforts in Canada began in the fourth quarter of 2018.

As of March 31, 2019, the Company had $125.6 million in cash and cash equivalents and short-term investments. The Company has incurred operating losses since its inception and, as reflected in the accompanying financial statements, the Company had an accumulated deficit of $623.1 million as of March 31, 2019, which included a net loss of $23.0 million for the three months ended March 31, 2019. Management believes that the cash, cash equivalents and short-term investments on hand will be sufficient to satisfy the Company's liquidity requirements for at least the next 12 months from the date of this filing.

The Company's ability to execute on its business strategy, meet its future liquidity requirements, and achieve and maintain profitable operations, is dependent on a number of factors, including its ability to continue to gain market acceptance of its products and achieve a level of revenues adequate to support its cost structure, achieve renewal pump sales objectives, develop and launch new products, maximize manufacturing efficiencies, satisfy increasing production requirements, leverage the investments made in its sales, clinical, marketing and customer support organizations, and operate its business and manufacture and sell products without infringing third party intellectual property rights.

The Company has funded its operations primarily through private and public equity, and through debt financing which has since been fully repaid. The Company may in the future seek additional capital from public or private offerings of its capital stock, or it may elect to borrow capital under new credit lines or from other sources. If the Company issues equity or debt securities to raise additional funds, its existing stockholders may experience dilution, it may incur significant financing costs, and the new equity or debt securities may have rights, preferences and privileges senior to those of its existing stockholders. There can be no assurance that equity or debt financing will be available on acceptable terms, or at all.

Basis of Presentation

The Company has prepared the accompanying unaudited condensed consolidated financial statements in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP) for interim financial information and pursuant to the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and disclosures required by U.S. GAAP for complete financial statements. In the opinion of management, all adjustments which are of a normal and recurring nature, considered necessary for a fair presentation of the financial information contained herein, have been included.

Interim financial results are not necessarily indicative of results anticipated for the full year or any other period(s). These unaudited condensed consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements and accompanying notes included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2018 (Annual Report), from which the balance sheet information herein was derived. These unaudited condensed consolidated financial statements exclude disclosures required by U.S. GAAP for complete financial statements.

The condensed consolidated financial statements include the accounts of Tandem Diabetes Care, Inc. and its wholly owned subsidiary in Canada. All significant intercompany balances and transactions have been eliminated in consolidation.

2. Summary of Significant Accounting Policies

There have been no material changes in our significant accounting policies during the three months ended March 31, 2019, as compared with those disclosed in the Annual Report other than adoption of the new lease accounting standard (See Note 6, “Leases”).

Use of Estimates

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, and the disclosure of contingent assets and liabilities in the Company’s consolidated financial statements and accompanying notes as of the date of the consolidated financial statements. Some of those judgments can be subjective and complex, and therefore, actual results could differ materially from those estimates under different assumptions or conditions.

Segment Reporting

Operating segments are identified as components of an enterprise about which discrete financial information is available for evaluation by the chief operating decision-maker (CODM) in making decisions regarding resource allocation and assessing performance. The Company’s current product offering consists primarily of insulin pumps, disposable cartridges and infusion sets for the storage and delivery of insulin. The Company has viewed its operations and managed its business as one segment as key operating decisions and resource allocations are made by the CODM using consolidated financial data.

Accounts Receivable

The Company grants credit to various customers in the ordinary course of business. The Company maintains an allowance for doubtful accounts for potential credit losses. Provisions are made based on historical experience, assessment of specific risk, review of outstanding invoices, and various assumptions and estimates that are believed to be reasonable under the circumstances. Uncollectible accounts are written off against the allowance after appropriate collection efforts have been exhausted and when it is deemed that a balance is uncollectible.

Fair Value of Financial Instruments

The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable, accrued expense, and employee-related liabilities are reasonable estimates of their fair values because of the short-term nature of these assets and liabilities. Short-term investments are carried at fair value. The Company believes the fair value of its operating lease liabilities at March 31, 2019 approximated its carrying value, based on the borrowing rates that were available for loans with similar terms. The estimated fair value of certain of the Company’s common stock warrants was determined using the Black-Scholes pricing model as of March 31, 2019 and December 31, 2018 (see Note 5, “Fair Value Measurements”).

Revenue Recognition

Revenue is generated primarily from sales of insulin pumps, disposable cartridges and infusion sets to individual customers and third-party distributors that resell the product to insulin-dependent diabetes customers. The Company is paid directly by customers who use the products, distributors and third-party insurance payors.

In January 2018, the Company adopted the Revenue from Contracts with Customers Standard which superseded existing revenue guidance under U.S. GAAP and International Financial Reporting Standards. Pursuant to the Revenue from Contracts with Customers Standard's core principle, subsequent to January 1, 2018, the Company recognizes revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods or services. The Company elected to implement this new standard utilizing the modified retrospective method. Under this approach, the Company applied the new standard to all new contracts initiated on or after the effective date and, for contracts which had remaining obligations as of the effective date, the Company recorded an adjustment to the opening balance of accumulated deficit. The accounting for the significant majority of the Company's revenues was not impacted by the new guidance. As a result, on January 1, 2018, the Company recorded a net reduction to accumulated deficit in the amount of $149,000, reflecting the impact of the accounting change.

Prior to the implementation of this new standard, revenue was recognized when persuasive evidence of an arrangement existed, delivery had occurred and title passed, the price was fixed or determinable, and collectability was reasonably assured.

The Company considers the individual deliverables in its product offering as separate performance obligations. The transaction price is determined based on the consideration expected to be received, based either on the stated value in contractual arrangements or the estimated cash to be collected in non-contracted arrangements. The Company allocates the consideration to the individual performance obligations and recognizes the consideration based on when the performance obligation is satisfied, considering whether or not this occurs at a point in time or over time. Generally, insulin pumps, cartridges, infusion sets and accessories are deemed performance obligations that are satisfied upon delivery, while access to the complementary products, such as the t:connect cloud-based data management application and the Tandem Device Updater, are considered performance obligations satisfied over the typical four-year warranty period of the insulin pumps. There is no standalone value for these complementary products. Therefore, the Company determines their value by applying the expected cost plus margin approach and then allocates the residual to the insulin pumps. At March 31, 2019 and December 31, 2018, $4.7 million and $3.8 million, respectively, were recorded as deferred revenue for these performance obligations that are satisfied over time.

Additionally, the Company offers a 30-day right of return to its customers from the date of shipment of any of its insulin pumps, provided a physician's confirmation of the medical reason for the return is received. Estimated allowances for sales returns are based on historical returned quantities as compared to pump shipments in those same periods of return. The return rate is then applied to the sales of the current period to establish a reserve at the end of the period. The return rates used in the reserve are adjusted for known or expected changes in the marketplace when appropriate. The allowance for product returns is recorded as a reduction of revenue and an increase in deferred revenue in the period in which the related sale is recorded. The amount recorded on the Company's balance sheets for product return allowance was $0.2 million and $0.3 million at March 31, 2019 and December 31, 2018, respectively. Actual product returns have not differed materially from estimated amounts reserved in the accompanying condensed consolidated financial statements.

Warranty Reserve

The Company generally provides a four-year warranty on its insulin pumps to end user customers and may replace any pumps that do not function in accordance with the product specifications. Insulin pumps returned to the Company may be refurbished and redeployed. Additionally, the Company offers a six-month warranty on disposable cartridges and infusion sets. Estimated warranty costs are recorded at the time of shipment. Warranty costs are estimated based on the current expected product replacement cost and expected replacement rates based on historical experience. The Company evaluates the reserve quarterly and makes adjustments when appropriate. Changes to the actual replacement rates or the expected product replacement cost could have a material impact on the Company's estimated warranty reserve.

As of March 31, 2019 and December 31, 2018, the warranty reserve was $10.8 million and $9.1 million, respectively. The following table provides a reconciliation of the change in product warranty liabilities from December 31, 2018 through March 31, 2019 (in thousands):

Balance at December 31, 2018	$	9,138
Provision for warranties issued during the period		3,384
Settlements made during the period		(2,043)
Increases in warranty estimates		298
Balance at March 31, 2019	$	10,777

Current portion	$	4,404
Non-current portion		6,373
Total	$	10,777

Stock-Based Compensation

Stock-based compensation cost is measured at the grant date based on the estimated fair value of the award, and the portion that is ultimately expected to vest is recognized as compensation expense over the requisite service period on a straight-line basis. The Company estimates the fair value of stock options issued under the Company's 2013 Stock Incentive Plan (2013 Plan), and the fair value of the employees' purchase rights under under the Company's 2013 Employee Stock Purchase Plan (ESPP), using a Black-Scholes option-pricing model on the date of grant. The Black-Scholes option-pricing model requires the use of subjective assumptions about a number of key variables, including stock price volatility, expected term, and risk-free interest rate. For awards that vest based on the achievement of service conditions, the Company recognizes expense using the straight-line method less estimated forfeitures based on historical experience.

Net Loss Per Share

Basic net loss per share is calculated by dividing the net loss by the weighted average number of common shares that were outstanding for the period, without consideration for common stock equivalents. Diluted loss per share is calculated in accordance with the treasury stock method and reflects the potential dilution that would occur if securities or other contracts to issue common stock were exercised or converted to common stock. Dilutive common share equivalents are comprised of warrants, potential awards granted pursuant to the ESPP, and options outstanding under the Company's other equity incentive plans. For warrants that are recorded as a liability in the accompanying balance sheet, the calculation of diluted loss per share requires that, to the extent the average market price of the underlying shares for the reporting period exceeds the exercise price of the warrants and the presumed exercise of such securities are dilutive to loss per share for the period, an adjustment to net loss used in the calculation is required to remove the change in fair value of the warrants from the numerator for the period. Likewise, an adjustment to the denominator is required to reflect the related dilutive shares, if any, under the treasury stock method. For all periods presented, there is no difference in the number of shares used to calculate basic and diluted shares outstanding due to the Company's net loss position.

Potentially dilutive securities not included in the calculation of diluted net loss per share (because inclusion would be anti-dilutive) are as follows (in thousands, in common stock equivalent shares):

	Three Months Ended March 31,	
	2019	**2018**
Warrants to purchase common stock	785	7,323
Options to purchase common stock	5,475	419
ESPP	142	-
	6,402	7,742

Recent Accounting Pronouncements

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments,* or ASU 2016-13, which modifies the measurement and recognition of credit losses for most financial assets and certain other instruments. The new standard requires the use of forward-looking expected credit loss models based on historical experience, current conditions, and reasonable and supportable forecasts that affect the collectability of the reported amount, which may result in earlier recognition of credit losses under the new standard. This new standard also requires that credit losses related to available-for-sale debt securities be recorded as an allowance through net income rather than reducing the carrying amount under the current, other-than-temporary-impairment model. The standard is effective for public business entities for annual periods beginning after December 15, 2019, and interim periods within those years. The Company plans to implement the new standard in the first quarter of 2020, and is in the process of reviewing its credit loss models to assess the impact of the adoption of the standard on its consolidated financial statements.

In August 2018, the FASB issued Accounting Standards Update No. 2018-13, *Fair Value Measurement: Disclosure Framework – Changes to the Disclosure Requirements for Fair Value Measurement*, which adds and modifies certain disclosure requirements for fair value measurements. Under the new guidance, entities will no longer be required to disclose the amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy, or valuation processes for Level 3 fair value measurements. However, public companies will be required to disclose the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and related changes in unrealized gains and losses included in other comprehensive income. This update is effective for annual periods beginning after December 15, 2019, and interim periods within those periods, and early adoption is permitted. The Company is in the process of determining the impact of the adoption of the standard on its consolidated financial statements as well as whether to early adopt the new standard.

In August 2018, the FASB issued ASU 2018-15, *Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*, or ASU 2018-15, that changes the accounting for implementation costs incurred in a cloud computing arrangement that is a service contract. The update aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. The implementation costs should be presented as a prepaid asset on the balance sheet and expensed over the term of the hosting arrangement. The standard is effective for annual periods, including interim periods within those annual periods, beginning after December 15, 2019. Early adoption is permitted. The Company is in the process of assessing the impact of the adoption of the standard on its consolidated financial statements.

3. Short-Term Investments

The Company invests in marketable securities, principally debt instruments of the U.S Government, and financial institutions and corporations with strong credit ratings. The following represents a summary of the estimated fair value of short-term investments as of March 31, 2019 and December 31, 2018 (in thousands):

At March 31, 2019	Maturity (in years)	Amortized Cost	Unrealized Gain	Unrealized Loss	Estimated Fair Value
Available-for-sale securities:					
Commercial paper	Less than 1	$ 29,795	$ 4	$ —	$ 29,799
U.S. Treasury securities	Less than 1	8,939	3	—	8,942
Corporate debt securities	Less than 1	46,388	31	(1)	46,418
Total		$ 85,122	$ 38	$ (1)	$ 85,159

At December 31, 2018	Maturity (in years)	Amortized Cost	Unrealized Gain	Unrealized Loss	Estimated Fair Value
Available-for-sale securities:					
Commercial paper	Less than 1	$ 53,559	$ —	$ (22)	$ 53,537
U.S. Treasury securities	Less than 1	17,937	—	(2)	17,935
Corporate debt securities	Less than 1	15,718	12	(1)	15,729
Total		$ 87,214	$ 12	$ (25)	$ 87,201

4. Inventories

Inventories consisted of the following as of March 31, 2019 and December 31, 2018 (in thousands):

	March 31, 2019	December 31, 2018
Raw materials	$ 9,585	$ 6,622
Work-in-process	3,560	2,710
Finished goods	9,681	10,564
Total	$ 22,826	$ 19,896

5. Fair Value Measurements

Authoritative guidance on fair value measurements defines fair value, establishes a consistent framework for measuring fair value, and expands disclosures for each major asset and liability category measured at fair value on either a recurring or a nonrecurring basis. Fair value is intended to reflect an assumed exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, the authoritative guidance establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value as follows:

Level 1: Observable inputs such as unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities.

Level 2: Inputs, other than quoted prices in active markets, that are observable either directly or indirectly for substantially the full term of the asset or liability.

Level 3: Unobservable inputs in which there is little or no market data and that are significant to the fair value of the assets or liabilities, which require the reporting entity to develop its own valuation techniques that require input assumptions.

The following table presents information about the Company's financial assets and liabilities measured at fair value on a recurring basis as of March 31, 2019 and December 31, 2018, and indicates the fair value hierarchy of the valuation techniques utilized by the Company to determine such fair value (in thousands):

		Fair Value Measurements at March 31, 2019		
		(Level 1)	(Level 2)	(Level 3)
Assets				
Cash equivalents (1)	$ 28,087	$ 28,087	$ —	$ —
Commercial paper	29,799	—	29,799	—
U.S. Treasury securities	8,942	8,942	—	—
Corporate debt securities	46,418	—	46,418	—
Total assets	$ 113,246	$ 37,029	$ 76,217	$ —
Liabilities				
Common stock warrants	$ 29,762	$ —	$ —	$ 29,762
Total liabilities	$ 29,762	$ —	$ —	$ 29,762

		Fair Value Measurements at December 31, 2018		
		(Level 1)	(Level 2)	(Level 3)
Assets				
Cash equivalents (1)	$ 37,373	$ 37,373	$ —	$ —
Commercial paper	53,537	—	53,537	—
U.S. Treasury securities	17,935	17,935	—	—
Corporate debt securities	15,729	—	15,729	—
Total assets	$ 124,574	$ 55,308	$ 69,266	$ —
Liabilities				
Common stock warrants	$ 17,926	$ —	$ —	$ 17,926
Total liabilities	$ 17,926	$ —	$ —	$ 17,926

(1) Generally, cash equivalents include money market funds and investments with a maturity of three months or less from the date of purchase.

The Company's Level 2 financial instruments are valued using market prices on less active markets with observable valuation inputs such as interest rates and yield curves. The Company obtains the fair value of Level 2 financial instruments from quoted market prices, calculated prices or quotes from third-party pricing services. The Company validates these prices through independent valuation testing and review of portfolio valuations provided by the Company's investment managers. There were no transfers between Level 1 and Level 2 assets during the three months ended March 31, 2019.

The Company's Level 3 liabilities at March 31, 2019 and December 31, 2018 include the Series A warrants issued by the Company in connection with the public offering of common stock in October 2017. The Series A warrants have a term of five years and initially provided holders the right to purchase 4,630,000 shares of the Company's common stock at an exercise price of $3.50 per share. The Series A warrants were initially valued in the aggregate amount of $3.3 million on the date of issuance utilizing a Black-Scholes pricing model. As of March 31, 2019, there were Series A warrants to purchase 492,500 shares of common stock outstanding (see Note 8, "Stockholders' Equity").

The Company reassesses the fair value of the outstanding Series A warrants at each reporting date utilizing a Black-Scholes pricing model. Inputs used in the pricing model include the market price of the Company's common stock and estimates of stock price volatility, expected warrant life and risk-free interest rate. The Company develops its estimates based on publicly available historical data. The assumptions used to estimate the fair values of the common stock warrants at March 31, 2019 and December 31, 2018 are presented below:

	Series A Warrants	
	March 31, 2019	December 31, 2018
Risk-free interest rate	2.2%	3.0%
Expected dividend yield	0.0%	0.0%
Expected volatility	80.7%	78.3%
Expected term (in years)	3.5	3.8

The following table presents a summary of changes in the fair value of the Company's Level 3 financial liabilities for the three months ended March 31, 2019 and 2018:

	Three Months Ended	
	2019	2018
Balance at beginning of period	$ 17,926	$ 5,432
Increase (decrease) in fair value included in change in fair value of common stock warrants	12,746	14,228
Decrease in fair value from warrants exercised during the period	(910)	(1,599)
Balance at end of period	$ 29,762	$ 18,061

During the three months ended March 31, 2019, the Company issued 18,285 shares of common stock upon the exercise of Series A warrants. During the three months ended March 31, 2018, the Company issued 1,936,565 shares of common stock upon the exercise of certain warrants issued in the October 2017 Financing. There were 492,500 Series A warrants to purchase common stock outstanding as of March 31, 2019.

6. Leases

In February 2016, the FASB issued ASU 2016-02, *Leases* (ASU 2016-02). ASU 2016-02 and its related amendments (collectively referred to as ASC 842) requires lessees to recognize right-of-use assets and corresponding lease liabilities for all leases with lease terms of greater than twelve months. It also changes the definition of a lease and expands the disclosure requirements of lease arrangements. In July 2018, the FASB added a transition option for implementation that allows companies to continue to use the legacy guidance in ASC 840, Leases, including its disclosure requirements, in the comparative periods presented in the year of adoption. The new accounting standard must be adopted using the modified retrospective approach and was effective for the Company starting in the first quarter of fiscal 2019. The Company elected the transition option and certain practical expedients, and recognized a cumulative-effect transition adjustment for the recognition of right-of-use leased assets and corresponding operating lease liabilities of $12.4 million on the consolidated balance sheet upon adoption of this standard as of January 1, 2019. We did not restate prior periods. Deferred rent of $1.0 million and $3.8 million as of January 1, 2019 was reclassified from other current liabilities and deferred rent long-term, respectively, to a reduction of the right-of-use leased assets in connection with the adoption of this standard.

Our leases consist primarily of operating leases for general office space, laboratory, manufacturing, and warehouse facilities, and equipment. Leases with an initial term of 12 months or less are not recorded on the balance sheet. We recognize lease expense for these leases on a straight-line basis over the lease term. Because our leases do not provide an implicit interest rate, we use our incremental borrowing rate based on the information available at the lease commencement date in determining the present value of future lease payments. We used the incremental borrowing rate on January 1, 2019, for operating leases that commenced prior to that date. For lease agreements entered into or reassessed after the adoption of ASC 842, we combine lease and non-lease components.

Certain leases include an option to renew, with renewal terms that can extend the lease term for additional periods. The exercise of lease renewal options is at our sole discretion. The depreciable life of assets and leasehold improvements are limited by the expected lease term, unless there is a transfer of title or purchase option that is reasonably certain to be exercised.

In January 2019, the Company entered into a lease agreement for approximately 25,332 square feet of additional general administrative office space located at 10935 Vista Sorrento Parkway, San Diego, California. The initial lease term commenced in March 2019 and expires in September 2022. The Company has a one-time option to extend the term of the lease for a period of five years. The Company recognized right-of-use leased assets and corresponding operating lease liabilities of $3.1 million on the consolidated balance sheet in the first quarter of 2019 related to this lease. Future minimum payments under the lease are approximately $3.4 million as of March 31, 2019.

In March 2019, the Company entered into a lease agreement for approximately 40,490 square feet of space located at 6495 Marindustry Place, San Diego, California to house additional operations functions, including warehousing and shipping. Subject to limited exceptions, the initial lease term is expected to commence in May 2019 and expire in April 2026. The Company has a one-time option to extend the term of the lease for a period of no less than three years and no more than five years. The Company expects to recognize right-of-use leased assets and corresponding operating lease liabilities of approximately $3.4 million on the consolidated balance sheet upon the lease commencement in the second quarter of 2019. Future minimum payments under the lease are approximately $4.2 million as of March 31, 2019.

7. Term Loan Agreement

In August 2018, the Company fully repaid the term loan made by Capital Royalty Partners II, L.P. and its affiliated funds (CRG) pursuant to the Amended and Restated Term Loan Agreement (Term Loan Agreement). The term loan was collateralized by all assets of the Company. The balance of the outstanding debt at the time of repayment was $82.7 million. The repayment included approximately $1.1 million in accrued interest and $5.0 million in associated financing fees that became due. As a result of the repayment, the Company did not have any borrowings outstanding under the Term Loan Agreement as of March 31, 2019 or December 31, 2018.

Under the Term Loan Agreement, interest was payable at the Company's option, (i) in cash at a rate of 11.5% per annum, or (ii) at a rate of 9.5% of the 11.5% per annum in cash and 2.0% of the 11.5% per annum (PIK Loan) to be added to the principal of the loan and subject to accruing interest. Interest-only payments were due quarterly on March 31, June 30, September 30 and December 31 of each year of the interest-only payment period, which would have ended on December 31, 2019.

The Company entered into a series of amendments to the Term Loan Agreement between 2016 and 2018, which included the addition of a financing fee payable at the maturity of the Company's loans, the issuance of 193,788 ten-year warrants to CRG to purchase shares of the Company's common stock at an exercise price of $23.50 per share and certain other minimum financing covenants. The financing fee was applicable to the entire aggregate principal amount of borrowings outstanding, including total PIK Loans issued. The Company treated the execution of each of the Third, Fourth and Fifth Amendments to the Term Loan Agreement as a modification for accounting purposes. The present value of the future cash flows under these amendments did not exceed the present value of the future cash flows under the previous terms by more than 10%.

During the first quarter of 2018, in connection with the Fifth Amendment the Company increased the accrual for the financing fee to $5.0 million, or 6%, from $4.1 million, or 5% as of December 31, 2017. As of March 31, 2018, the Company had aggregate borrowings of $82.7 million outstanding under the Term Loan Agreement.

8. Stockholders' Equity

Public Offerings

In the first quarter of 2018, the Company completed a public offering of 34,500,000 shares of common stock at a public offering price of $2.00 per share. The gross proceeds to the Company from the offering were approximately $69.0 million, before deducting underwriting discounts and commissions and other offering expenses payable by the Company.

In the third quarter of 2018, the Company completed a public offering of 4,035,085 shares of common stock at a public offering price of $28.50 per share. The gross proceeds to the Company from the offering were $115.0 million, before deducting underwriting discounts and commissions and other offering expenses payable by the Company.

Shares Reserved for Future Issuance

The following shares of the Company's common stock were reserved for future issuance as of March 31, 2019 (in thousands):

Shares underlying outstanding warrants	785
Shares underlying outstanding stock options	7,655
Shares authorized for future equity award grants	-
Shares authorized for issuance as ESPP awards	2,021
	10,461

The Company issued 18,285 shares of its common stock upon the exercise of warrants during the three months ended March 31, 2019. The Company issued 8,603,321 shares of its common stock upon the exercise of warrants during the year ended December 31, 2018.

The Company issued 408,964 shares of its common stock upon the exercise of stock options during the three months ended March 31, 2019. The Company issued 136,042 shares of its common stock upon the exercise of stock options during the year ended December 31, 2018.

In the three months ended March 31, 2019, the Company granted stock options to purchase 1,318,180 shares of common stock, which are expressly subject to and conditioned upon the approval by our stockholders of an increase in the number of shares of common stock reserved for issuance under our 2013 Plan prior to December 31, 2019. If our stockholders do not approve this increase prior to December 31, 2019, then such option awards will automatically terminate. No stock-based compensation expense has been recognized for these contingent stock option grants.

The ESPP enables eligible employees to purchase shares of common stock using their after-tax payroll deductions, subject to certain conditions. Historically, offerings under the ESPP consisted of a two-year offering period with four six-month purchase periods which begin in May and November of each year. The Company previously suspended the ESPP in May 2017 due to a lack of available shares. In June 2018, the Company received approval from its stockholders to increase the number of shares reserved for issuance under the ESPP by 2,000,000 shares. A new offering commenced under the ESPP on June 15, 2018, and the first purchase date was November 15, 2018. There were no shares of common stock purchased under the ESPP in the three months ended March 31, 2019. There were 80,581 shares of common stock purchased under the ESPP during the year ended December 31, 2018.

Stock-Based Compensation

The assumptions used in the Black-Scholes option-pricing model are as follows:

	Stock Options Three Months Ended March 31,	
	2019	2018
Weighted average grant date fair value (per share)	$ 32.51	$ 1.86
Risk-free interest rate	2.5%	2.7%
Expected dividend yield	0.0%	0.0%
Expected volatility	71.6%	61.4%
Expected term (in years)	6.1	6.1

ESPP valuations using the Black-Scholes option-pricing model are performed on the grant date at the beginning of the purchase period which generally occurs in May and November of each year.

The following table summarizes the allocation of stock-based compensation expense included in the consolidated statement of operations (in thousands):

	Three Months Ended March 31,	
	2019	2018
Cost of sales	$ 1,139	$ 165
Selling, general & administrative	7,000	912
Research and development	1,695	115
Total	$ 9,834	$ 1,192

The total stock-based compensation expense capitalized as part of the cost of the Company's inventories was $0.3 million and $0.4 million as of March 31, 2019 and December 31, 2018, respectively.

9. Commitments and Contingencies

From time to time, the Company may be subject to legal proceedings arising in the ordinary course of business, including actions with respect to intellectual property, employment, regulatory, product liability and contractual matters. In connection with these matters, the Company regularly assesses the probability and amount (or range) of possible issues based on the developments in these matters. A liability is recorded in the consolidated financial statements if it is determined that it is probable that a loss has been incurred, and that the amount (or range) of the loss can be reasonably estimated. Because of the uncertainties related to any pending proceedings or matters, the Company is currently unable to predict their ultimate outcome and, with respect to any legal proceeding or regulatory matter where no liability has been accrued, to make a meaningful estimate of the reasonably possible loss (or range) of loss that could result from an adverse outcome. As of March 31, 2019 and December 31, 2018, there were no legal proceedings, regulatory matters, or other, disputes or claims for which a material loss was considered probable or for which the amount (or range) of loss was reasonably estimable. However, regardless of the outcome, legal proceedings, regulatory matters, and other disputes and claims can have an adverse impact on the Company because of legal costs, diversion of management time and resources, and other factors.

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

You should read the following discussion and analysis together with our financial statements and related notes in Part I, Item 1 of this Quarterly Report on Form 10-Q for the quarter ended March 31, 2019, or this Quarterly Report.

This Quarterly Report contains forward-looking statements within the meaning of the federal securities laws, which statements are subject to considerable risks and uncertainties. These forward-looking statements are intended to qualify for the safe harbor from liability established by the Private Securities Litigation Reform Act of 1995. All statements included or incorporated by reference in this Quarterly Report, other than statements of historical fact, are forward-looking statements. You can identify forward-looking statements by the use of words such as "may," "will," "could," "anticipate," "expect," "intend," "believe," "continue" or the negative of such terms, or other comparable terminology. Forward-looking statements also include the assumptions underlying or relating to such statements. In particular, forward-looking statements contained in this Quarterly Report may relate to, among other things, our future or assumed financial condition, results of operations, liquidity, business forecasts and plans, research and product development plans, manufacturing plans, strategic plans and objectives, capital needs and financing plans, product launches, regulatory approvals and competitive environment. We caution you that the foregoing list may not include all of the forward-looking statements made in this Quarterly Report.

Our forward-looking statements are based on our management's current assumptions and expectations about future events and trends, which affect or may affect our business, strategy, operations or financial performance. Although we believe that these forward-looking statements are based upon reasonable assumptions, they are subject to numerous known and unknown risks and uncertainties and are made in light of information currently available to us. Our actual financial condition and results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth below in the section entitled "Risk Factors" in Part II, Item 1A, and elsewhere in this Quarterly Report. You should read this Quarterly Report with the understanding that our actual future financial condition and results may be materially different from and worse than what we expect.

Moreover, we operate in an evolving environment. New risk factors and uncertainties emerge from time to time and it is not possible for our management to predict all risk factors and uncertainties, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

Forward-looking statements speak only as of the date they were made, and, except to the extent required by law or the rules of the NASDAQ Global Market, we undertake no obligation to update or review any forward-looking statement because of new information, future events or other factors.

We qualify all of our forward-looking statements by these cautionary statements.

Overview

We are a medical device company with an innovative approach to the design, development and commercialization of products for people with insulin-dependent diabetes. We believe our competitive advantage is rooted in our unique consumer-focused approach, and the incorporation of modern and innovative technology into our product offerings. Our manufacturing, sales and support activities exclusively focus on our flagship pump platform, the t:slim X2 Insulin Delivery System, or t:slim X2, and our complementary product offerings. The simple-to-use t:slim X2 is based on our proprietary technology platform and is the smallest durable insulin pump available. It is the only pump currently available in the United States that is capable of remote feature updates, which positions us well to address the evolving needs and preferences of differentiated segments of the insulin-dependent diabetes market. By delivering innovative hardware and software solutions, as well as best-in-class customer support, we aim to improve and simplify the lives of people with diabetes and their healthcare providers.

We have commercially launched six insulin pumps in the United States since inception, all of which have been developed using our proprietary technology platform. Three of these pumps have featured continuous glucose monitoring technology, or CGM. In the past four years, we have shipped approximately 96,000 pumps, more than 9,000 of which were in international markets, which is representative of our estimated global installed customer base on the typical four-year reimbursement cycle.

During the third quarter of 2018, we began selling the t:slim X2 with G5 in select geographies outside the United States, including Australia, Italy, New Zealand, Scandinavia (Denmark, Norway and Sweden), South Africa, Spain, and the United Kingdom. Direct sales efforts in Canada began in the fourth quarter of 2018.

We have discontinued sales of our original t:slim, t:flex and t:slim G4 pumps, and our t:slim X2 hardware platform now represents 100% of new pump shipments. However, we continue to provide ongoing service and support for our earlier products.

Our insulin pump products are generally considered durable medical equipment and have an expected lifespan of at least four years. In addition to selling insulin pumps, we sell disposable products that are used together with our pumps and replaced every few days, including cartridges for storing and delivering insulin, and infusion sets that connect the insulin pump to a user's body.

In the United States, our insulin pumps are compatible with the Tandem Device Updater, a revolutionary tool that allows pump users to update their pumps' software quickly and easily from a personal computer. The Tandem Device Updater provides our in-warranty domestic customers potential access to new and enhanced features and functionality faster than the industry has been able to in the past. The first use of our Tandem Device Updater was for deployment of the latest t:slim software to in-warranty t:slim pumps purchased before April 2015. Since that time, we set a new standard of care in our industry by offering all existing in-warranty t:slim X2 customers in the United States two significant software updates: (i) integration with the Dexcom G5 Mobile CGM system in September 2017 and (ii) an upgrade to our new Basal-IQ technology and integration with Dexcom's G6 CGM in August 2018. Our Tandem Device Updater positions us to bring future innovations including our Automated Insulin Delivery (AID) algorithms to t:slim X2 customers, independent of the typical four-year insurance pump reimbursement cycle. Though we have not utilized our Tandem Device Updater to perform software updates for devices outside the United States, we are currently developing that capability and intend to do so in the future.

For the three months ended March 31, 2019, and 2018, our consolidated sales were $66.0 million, and $27.3 million, respectively. For the three months ended March 31, 2019, and 2018, our net loss was $23.0 million, and $32.7 million, respectively. Worldwide pump sales accounted for 70% and 63% of our total sales, respectively, for the three months ended March 31, 2019 and 2018, while pump-related supplies and accessories accounted for the remainder in each year. Our accumulated deficit as of March 31, 2019 and December 31, 2018 was $623.1 million and $600.1 million, respectively. This included $169.9 million and $147.4 million of non-cash stock-based compensation charges and non-cash changes in the fair value of common stock warrants as of March 31, 2019 and December 31, 2018, respectively.

In the United States, we have rapidly increased sales since our commercial launch by expanding our sales, clinical and marketing organization, by developing, commercializing and marketing multiple differentiated products that utilize our proprietary technology platform and consumer-focused approach, and by providing strong customer support. More recently, our sales have further increased following the scaled launch of t:slim X2 in geographies outside the United States. We believe that by demonstrating our product benefits and the shortcomings of existing insulin therapies, more people will choose our insulin pumps for their therapy needs, allowing us to further penetrate and expand the market both domestically and outside the United States. We also believe we are positioned well to address consumers' needs and preferences with our current products and products under development and by offering customers access to our future innovations through the Tandem Device Updater, as they are approved by the United States Food and Drug Administration, or the FDA, and as we develop the capability to utilize the Tandem Device Updater to provide remote updates outside the United States. At the same time, by innovating and offering new product features and benefits using the t:slim X2 platform, we are able to leverage a shared global manufacturing and supply chain infrastructure. In the United States, we are able to leverage a single sales, marketing, and clinical organization, as well as our domestic customer support services. In Canada, we have a separate sales organization and customer support infrastructure, both of which benefit from close collaboration with our United States organization. In other international geographies, we have contracted with experienced distribution partners to commercialize and support our t:slim X2 platform.

Products Under Development

Our products under development support our strategy of focusing on both consumer and clinical needs, and include new AID systems, a next-generation hardware platform, and connected (mobile) health offerings. We intend to leverage our consumer-focused approach and proprietary technology platform to continue to develop products that have the features and functionalities that will allow us to meet the needs of people in differentiated segments of the insulin-dependent diabetes market:

- *t:slim X2 with Control IQ* – Our second-generation AID system is expected to integrate the t:slim X2 with the technology that we licensed from TypeZero Technologies, LLC, or TypeZero, and Dexcom's G6 CGM sensor. The iCGM designation for the system also provides the opportunity for integration development efforts with future iCGM sensors that may become available in the market. With our implementation of TypeZero's inControl AID algorithms, our product is intended to both increase and decrease basal insulin based on a user's predicted blood glucose levels from a compatible iCGM sensor, as well as deliver automated correction boluses. In conjunction with Dexcom and TypeZero, which was acquired by Dexcom in August 2018, we have integrated our technologies into the U.S. portion of the Clinical Acceptance of the Artificial Pancreas, or DCLP3, portion of the International Diabetes Closed Loop, or the IDCL, trial. The 6-month study was completed in April 2019. Our t:slim X2 with Control-IQ technology has also been evaluated in several early pediatric studies and we intend to support a pivotal study among pediatric patients with type 1 diabetes that will commence in the first half of 2019. Our goal is to commence commercial sales of the t:slim X2 with Control-IQ technology in the United States in the second half of 2019, followed by an international launch in 2020.

- *t:sport Insulin Delivery System* – Expected to be half the size of our t:slim X2 pump, the t:sport pump is being designed for people who seek even greater discretion and flexibility with the use of their insulin pump. We anticipate that t:sport will feature a 200-unit cartridge, an on-pump bolus button, a rechargeable battery, an AID algorithm, and a Bluetooth radio. t:sport is being designed for use with leading U-100 insulins, and we are evaluating the use of insulin concentrates to provide people with greater insulin needs. t:sport is expected to utilize a pumping mechanism that differs from our current Micro-Delivery technology.

- *Connected (Mobile) Health Offerings* - We are currently developing a mobile application that is being designed to utilize the capability of the Bluetooth radio integrated with the t:slim X2 to wirelessly upload pump data to t:connect, receive notification of pump alerts and alarms, integrate other health-related information from third party sources, and support future pump-control capabilities for our products under development. Subject to FDA approval, we intend to launch the first generation of our mobile application with a subset of these features in the United States in 2019.

Pump Shipments

Since inception, we have derived nearly all of our sales from the shipment of insulin pumps and associated supplies in the United States. Starting in the third quarter of 2018, we commenced sales of our t:slim X2 insulin pump in select international geographies. We consider the number of units shipped per quarter to be an important metric for managing our business.

In the first quarter of 2019, we shipped 14,732 insulin pumps worldwide compared to 4,444 insulin pumps shipped in the first quarter of 2018. In the United States we have shipped more than 86,000 pumps within the four-year period ended March 31, 2019. Pump shipments to customers in the United States by fiscal quarter were as follows:

	Pump Units Shipped for Each of the Three Months Ended in Respective Years(1) - U.S.				
	Total				
	March 31	June 30	September 30	December 31	Total
2012	-	9	204	844	1,057
2013	852	1,363	1,851	2,406	6,472
2014	1,723	2,235	2,935	3,929	10,822
2015	2,487	3,331	3,431	6,234	15,483
2016(2)	4,042	4,582	3,896	4,418	16,938
2017(2)	2,816	3,427	3,868	6,950	17,061
2018	4,444	5,447	7,379	12,935	30,205
2019	9,669	N/A	N/A	N/A	9,669

Pump shipments to international customers by fiscal quarter were as follows:

	Pump Units Shipped for Each of the Three Months Ended in Respective Years(1) - International				
	Total				
	March 31	June 30	September 30	December 31	Total
2018	N/A	N/A	1,055	3,233	4,288
2019	5,063	N/A	N/A	N/A	5,063

(1) The pump units shipped do not reflect returns or exchanges of pump products that occur in the ordinary course of business.

(2) 2016 and 2017 U.S. shipments do not include approximately 3,300 trade-ins fulfilled under the Technology Upgrade Program related to our commercial launch of t:slim X2

Trends Impacting Financial Results

Overall, we have experienced considerable sales growth since the commercial launch of our first product in the third quarter of 2012, while incurring operating losses since our inception. Our operating results have historically fluctuated on a quarterly or annual basis, particularly in periods surrounding anticipated regulatory approvals, and the commercial launch of products by us and our competitors.

We believe that our financial condition and operating results, as well as the decision-making process of our customers, has been and will continue to be impacted by a number of general trends, including the following:

- market acceptance of our products and competitive products by people with insulin-dependent diabetes, their caregivers and healthcare providers;
- seasonality in the United States associated with annual insurance deductibles and coinsurance requirements associated with the medical insurance plans utilized by our customers and the customers of our distributors;
- timing of holidays and summer vacations which may vary by geography;
- the buying patterns of our distributors and other customers;
- the timing of the commercialization of new products by us or our competitors;
- changes in the competitive landscape, including as a result of companies entering or exiting the diabetes therapy market;
- access to adequate coverage and reimbursement for our current and future products by third-party payors, and reimbursement decisions by third-party payors;
- the magnitude and timing of any changes to our facilities, manufacturing operations and other infrastructure; and
- anticipated and actual regulatory approvals of our products and competitive products.

In particular, we believe the following specific factors have, and could continue to, materially impact our business going forward:

- continued increase in demand following the commercial launch of t:slim X2 and the demonstrated success of our Tandem Device Updater, which we expect will positively impact our sales;
- anticipated new product launches;
- increased opportunity to achieve customer renewals as customers become eligible for insurance reimbursement to purchase a new insulin pump at the end of the typical four-year reimbursement cycle;
- opportunity to attract Animas customers, following the announcement by Johnson & Johnson that it discontinued the operations of Animas and will discontinue availability of pump supplies in late 2019;

- designation by UnitedHealthcare of one of our competitors as its preferred, in-network durable medical equipment provider of insulin pumps for most customers age seven and above, and

- expansion in select international geographies, which began in the third quarter of 2018.

In addition to working to achieve our sales growth expectations, we intend to continue to leverage our infrastructure investments to realize additional manufacturing, sales, marketing and administration cost efficiencies to improve our operating margins, including costs associated with our commercial launch in certain international markets. In the fourth quarter of 2018, we achieved profitability for the first time. However, we may be unable to sustain profitability in the near term. We believe we can ultimately achieve sustained profitability by driving incremental sales growth in U.S. and international markets, meeting our pump renewal sales objectives, increasing gross profits from additional sales of infusion sets, maximizing manufacturing efficiencies on increased production volumes; and leveraging the investments made in our sales, clinical, marketing and customer support organizations.

Components of Results of Operations

Sales

We offer products for people with insulin-dependent diabetes. We commenced commercial sales of our original t:slim insulin pump platform in the United States in the third quarter of 2012 and continued to launch various iterations of that platform during the following years. In October 2016, we began shipping our flagship pump platform, the t:slim X2 insulin pump. The t:slim X2 hardware platform, which includes remote software update capabilities, now represents 100% of our new pump shipments. Accordingly, in the third quarter of 2018 we discontinued new sales of all prior platform versions. Our products also include disposable cartridges and infusion sets. In addition, we offer accessories including protective cases, belt clips, and power adapters, although sales of these products are not significant.

We primarily sell our products through national and regional distributors in the United States on a non-exclusive basis. These distributors are generally providers of medical equipment and supplies to individuals with diabetes. Our primary end customers are people with insulin-dependent diabetes. Similar to other durable medical equipment, the primary payor is generally a third-party insurance carrier and the customer is usually responsible for any medical insurance plan copay or coinsurance requirements. We believe our existing sales, clinical, and marketing infrastructure will allow us to continue to increase sales by allowing us to promote our products to a greater number of potential customers, caregivers and healthcare providers.

In the third quarter of 2018, we commenced commercial sales of t:slim X2 with G5 in select international geographies. In Canada, we market with a direct sales force and, similar to the United States, use a distributor partner for certain billing and fulfillment activities. In other international markets, we expect that most of our commercial sales will initially be to independent distributors who will perform all sales, customer support and training in their respective markets. Historically, we have experienced consistent levels of reimbursement for our products in the United States, but we expect the average sales price will vary in international markets based on a number of factors, such as the nature of the reimbursement environment, government regulations and the extent to which we rely on distributor relationships to provide sales, clinical and marketing support.

In general, in the United States we have experienced, and expect to continue to experience, product shipments being weighted heavily towards the second half of the year, with the highest percentage of product shipments expected in the fourth quarter of the year due to the nature of the reimbursement environment. Consistent with our historical seasonality, we also expect domestic product shipments from the fourth quarter to the following first quarter to decrease significantly. Internationally, we do not expect this same impact from seasonality. We also believe the opportunity to transition former Animas customers during 2019 may also impact our quarterly sales trends worldwide.

In addition, our quarterly sales have fluctuated, and may continue to fluctuate, substantially in the periods surrounding anticipated and actual regulatory approvals and commercial launches of new products by us or our competitors. For instance, customers may defer a purchasing decision if they believe that a new product may be launched in the future. Additionally, upon the announcement of FDA approval or commercial launch of a new product, either by us or one of our competitors, potential new customers may reconsider their purchasing decision or take additional time to consider the anticipated or new approval or product launch in their purchasing decision. However, we are not able to quantify the extent of the impact of these or similar events on future purchasing decisions.

Cost of Sales

We manufacture our pumps and disposable cartridges at our manufacturing facility in San Diego, California. Infusion sets and pump accessories are manufactured by third-party suppliers. Cost of sales includes raw materials, labor costs, manufacturing overhead expenses, product training costs, freight, reserves for expected warranty costs, scrap and excess and obsolete inventories. Manufacturing overhead expenses include expenses relating to quality assurance, manufacturing engineering, material procurement, inventories control, facilities, equipment, information technology and operations supervision and management. We anticipate that our cost of sales will continue to increase as our products gain broader market acceptance and our product sales increase.

We expect our overall gross margin percentage, which for any given period is calculated as sales less cost of sales divided by sales, to improve over the long-term, as our sales increase and our overhead costs are spread over larger production volumes. We expect we will be able to leverage our manufacturing cost structure across our products that utilize the same proprietary technology platform and manufacturing infrastructure, and will be able to further reduce costs with increased automation, process improvements and raw materials cost reductions. Pumps have, and are expected to continue to have, a higher gross margin than our pump-related supplies. Therefore, the percentage of pump sales relative to total sales will have a significant impact on gross margin. We also expect our warranty costs per unit to decrease as we release product features and functionality utilizing the Tandem Device Updater. However, our overall gross margin may fluctuate in future quarterly periods as a result of numerous factors aside from those associated with production volumes and product mix. In addition, as demand for our products increases, we may make additional investments in manufacturing capacity or increase our reliance on third parties for manufacturing-related services, which could have a negative impact on gross margin.

Other factors impacting our overall gross margin may include, the changing percentage of products sold to distributors versus directly to individual customers, varying levels of reimbursement among third-party payors and in international markets, the timing and success of new regulatory approvals and product launches, the impact of the valuation of employee stock option grants and changes in our stock price on non-cash stock-based compensation expense allocated to cost of sales, warranty and training costs, cost associated with excess and obsolete inventories, and changes in our manufacturing processes, capacity, costs or output.

Selling, General and Administrative

Our selling, general and administrative, or SG&A, expenses primarily consist of salary, cash-based incentive compensation, fringe benefits and non-cash stock-based compensation for our executive, financial, legal, marketing, sales, clinical, customer support, technical services, insurance verification, regulatory affairs and other administrative functions. In particular, as of March 31, 2019, our sales and clinical organization consisted of approximately 70 territories and our operations in Canada were supported by a direct sales force of approximately 10 field representatives. Territories in the United States are maintained by sales representatives and field clinical specialists, and supported by managed care liaisons, additional sales management and other customer support personnel. We expect to modestly increase the number of our sales personnel in the near term in order to optimize the coverage of our existing territories. Other significant SG&A expenses include those incurred for product demonstration samples, commercialization activities associated with new product launches, travel, trade shows, outside legal fees, independent auditor fees, outside consultant fees, insurance premiums, facilities costs and information technology costs. Overall, we expect our SG&A expenses, including the cost of our customer support infrastructure, to increase as our customer base grows in the United States and in international markets. Additionally, we realized a notable increase in non-cash stock-based compensation expense allocated to SG&A beginning in the third quarter of 2018 due to the valuation of certain employee stock option grants and the significant increase in our stock price over the previous year. We expect higher non-cash stock-based compensation expense will be sustained in future quarters. Our SG&A expenses may also increase due to anticipated costs associated with additional compliance and regulatory reporting requirements.

Research and Development

Our research and development, or R&D, activities primarily consist of engineering and research programs associated with our products under development, as well as activities associated with our core technologies and processes. R&D expenses are primarily related to employee compensation, including salary, fringe benefits, non-cash stock-based compensation and temporary employee expenses. We also incur R&D expenses for supplies, development prototypes, outside design and testing services, depreciation, allocated facilities and information services, clinical trial costs, payments under our licensing, development and commercialization agreements and other indirect costs. We expect our R&D expenses to increase as we advance our products under development and develop new products and technologies, as well as continue to reflect a notable increase in non-cash stock-based compensation expense due to the valuation of certain employee stock option grants and the significant increase in our stock price over the previous year.

Other Income and Expense

Other income and expense primarily consists of changes in the fair value of certain warrants issued in our public offering of common stock in October 2017. In 2018, it also included interest expense and amortization of debt discount and issuance costs associated with our Amended and Restated Term Loan Agreement, or the Term Loan Agreement, with Capital Royalty Partners II, L.P. and its affiliated funds, or CRG. In August 2018, we fully repaid amounts due under the Term Loan Agreement. Prior to that, there was $82.7 million of outstanding principal under the Term Loan Agreement, which accrued interest at a rate of 11.5% per annum. As a result, we did not incur any interest expense or costs associated with the Term Loan Agreement subsequent to the third quarter of 2018. Other income also includes interest earned on our cash equivalents and short-term investments. We expect other income and expense to fluctuate from period to period primarily due to the revaluation of the outstanding Series A warrants, which expire in the fourth quarter of 2022.

Results of Operations

(in thousands, except percentages)	Three Months Ended March 31, 2019	Three Months Ended March 31, 2018
Sales:		
Domestic	$ 54,655	$ 27,277
International	11,340	-
Total sales	65,995	27,277
Cost of sales	32,642	15,873
Gross profit	33,353	11,404
Gross margin	51%	42%
Operating expenses:		
Selling, general and administrative	34,961	20,914
Research and development	9,389	5,975
Total operating expenses	44,350	26,889
Operating loss	(10,997)	(15,485)
Other income (expense), net:		
Interest and other income	757	91
Interest and other expense	(6)	(3,071)
Change in fair value of stock warrants	(12,746)	(14,228)
Total other expense, net	(11,995)	(17,208)
Net loss	$ (22,992)	$ (32,693)

Comparison of the Three Months Ended March 31, 2019 and 2018

Sales. For the three months ended March 31, 2019, sales were $66.0 million, which included $11.3 million of international sales. Sales were $27.3 million for the same period in 2018, which did not include international sales.

The total sales increase of $38.7 million was primarily driven by a 232% increase in worldwide pump shipments to 14,732 in the first quarter of 2019 compared to 4,444 in the first quarter of 2018. Worldwide pump shipments were positively impacted by strong demand for our products following the August 2018 domestic launch of t:slim X2 with Basal-IQ technology, and the commencement of commercial sales of t:slim X2 with G5 in select international geographies in the third quarter of 2018. Additionally, sales from pump-related supplies increased 95% primarily due to the overall increase in our installed base of customers reordering supplies.

Domestic sales by product were as follows (in thousands):

	Three Months Ended March 31, 2019	Three Months Ended March 31, 2018
Pump	$ 36,903	$ 17,094
Infusion sets	11,954	6,893
Cartridges	5,671	3,190
Other	127	100
Total Domestic sales	$ 54,655	$ 27,277

International sales by product were as follows (in thousands):

	Three Months Ended March 31,	
	2019	2018
Pump	$ 9,207	$ -
Infusion sets	1,297	-
Cartridges	822	-
Other	14	-
Total International sales	$ 11,340	$ -

Sales to domestic distributors accounted for 74% and 78% of our total domestic sales for the three months ended March 31, 2019 and 2018, respectively. Our percentage of sales to distributors versus individual customers is principally determined by the mix of customers ordering our products within the period and whether or not we have a contractual arrangement with their underlying third-party insurance payor. Sales to international distributors accounted for the vast majority of our total international sales.

Cost of Sales and Gross Profit. Our cost of sales for the three months ended March 31, 2019 was $32.6 million resulting in gross profit of $33.4 million, compared to $15.9 million cost of sales for the same period in 2018 resulting in gross profit of $11.4 million. The gross margin for the three months ended March 31, 2019 was 51% compared to 42% in the same period in 2018.

The increase in our gross profit for the three months ended March 31, 2019 was primarily the result of the 232% increase in pump shipments. Gross profit and gross margin also increased as a result of per unit manufacturing cost improvements from higher production volumes and overall manufacturing efficiencies gained from our new manufacturing facility which became fully operational at the beginning of 2018, partially offset by an increase in costs associated with excess and obsolete inventories. Additionally, we recognized a notable increase in non-cash stock-based compensation expense allocated to cost of sales of $1.1 million in the three months ended March 31, 2019 compared to $0.1 million in same period of 2018, due to the valuation of certain 2018 and 2019 employee stock option grants and the significant increase in our stock price. As a whole, other non-manufacturing costs, which primarily consist of warranty, freight and training costs, also reflected improvement on a per unit basis.

Selling, General and Administrative Expenses. SG&A expenses increased 67% to $35.0 million for the three months ended March 31, 2019 from $20.9 million for the same period in 2018. Employee-related expenses for our SG&A functions comprise the majority of SG&A expenses. The increase compared to 2018 was primarily the result of a $6.0 million increase in salaries, incentive compensation and other employee benefits due to an increase in personnel to support our growing installed customer base, as well as an increase of $6.1 million in non-cash stock-based compensation. The increase in stock-based compensation expense for the three months ended March 31, 2019 to $7.0 million is primarily due to the valuation of certain 2018 and 2019 employee stock option grants and the significant increase in our stock price. This higher level of expense is expected to continue in future quarters.

Research and Development Expenses. R&D expenses increased 57% to $9.4 million for the three months ended March 31, 2019 from $6.0 million for the same period in 2018. The increase in R&D expenses was primarily the result of an increase in non-cash stock-based compensation allocated to research and development of $1.6 million, as well as an increase of $1.5 million in salaries, incentive compensation and other employee benefits due to an increase in personnel to support our product development efforts. The increase in stock-based compensation expense for the three months ended March 31, 2019 to $1.7 million is primarily due to the valuation of certain 2018 and 2019 employee stock option grants and the significant increase in our stock price. This higher level of expense is expected to continue in future quarters.

Other Income and Expense. Other expense for the three months ended March 31, 2019 and 2018 was $12.0 million and $17.2 million, respectively. Other expense for the three months ended March 31, 2019 primarily consisted of a $12.7 million revaluation loss from the change in the fair value of the Series A warrants due to the significant appreciation of our stock price during the first quarter of 2019. Other expense for the three months ended March 31, 2018 primarily consisted of a $14.2 million revaluation loss from the change in fair value of certain warrants, as well as $3.1 million of interest expense associated with the Term Loan Agreement. There will be no interest expense or other costs associated with the Term Loan Agreement in future periods. Other income consisted primarily of interest earned on our cash equivalents and short-term investments, for which our average invested balances were significantly higher during the first quarter of 2019 compared to the first quarter of 2018.

Liquidity and Capital Resources

As of March 31, 2019, we had $125.6 million in cash and cash equivalents and short-term investments. We believe that our cash and cash equivalents and short-term investments balance is sufficient to satisfy our liquidity requirements for at least the next 12 months from the date of this filing.

Historically, our principal sources of cash have included private placements and public offerings of equity securities, debt financing, and cash collected from product sales. Since the beginning of 2018, we completed the following financing activities:

- In August 2018, we completed a registered public offering of 4,035,085 shares of common stock at a public offering price of $28.50 per share. The gross proceeds from the offering were approximately $115.0 million, before deducting underwriting discounts and commissions and other offering expenses.

- In February 2018, we completed a registered public offering of 34,500,000 shares of common stock at a public offering price of $2.00 per share. The gross proceeds from the offering were approximately $69.0 million, before deducting underwriting discounts and commissions and other offering expenses.

- Between January 2018 and March 2019, we received proceeds of $29.7 million from the exercise of 8,754,050 outstanding warrants which were originally registered in a public offering of common stock in October 2017. As of March 31, 2019, there were warrants to purchase 492,500 shares outstanding relating to the October 2017 offering.

Our historical cash outflows have primarily been associated with cash used for operating activities such as the development and commercialization of our products, the expansion and support of our sales, marketing, clinical and customer support organizations, the expansion of our R&D activities, the acquisition of intellectual property, expenditures related to increases in our manufacturing capacity and improvements to our manufacturing efficiency, overall facility expansion, and other working capital needs. Additionally, we have used cash to pay the interest expense associated with our Term Loan Agreement. The outstanding balance associated with the Term Loan Agreement was fully repaid in August 2018, which will result in no interest expense or other costs associated with the Term Loan Agreement in future periods.

We expect our sales performance and the resulting operating income or loss, as well as the status of each of our new product development programs, will significantly impact our cash flow from operations, liquidity position and cash management decisions.

The following table shows a summary of our cash flows for the three months ended March 31, 2019 and 2018:

	Three Months Ended March 31,	
(in thousands)	**2019**	**2018**
Net cash provided by (used in):		
Operating activities	$ (4,124)	$ (12,272)
Investing activities	778	(9,514)
Financing activities	1,962	70,669
Total	$ (1,384)	$ 48,883

Operating activities. Net cash used in operating activities was $4.1 million for the three months ended March 31, 2019, compared to $12.3 million for the same period in 2018. The decrease in net cash used in operating activities was primarily associated with a reduction in net loss when adjusted for non-cash expenses, particularly the change in the fair value of Series A and Series B warrants and increased stock-based compensation expense, offset by net changes in working capital. Our operating loss for the three months ended March 31, 2018 included $2.4 million in cash paid for interest. Working capital changes primarily consisted of a reduction in employee related liabilities for annual incentive-compensation payments and an increase in inventories, offset by an increase in accounts payable mainly related to the purchase of inventories. Accounts receivable decreased to $33.0 million at March 31, 2019 from $35.2 million at December 31, 2018, as a result of slightly lower sales in the first quarter of 2019 as compared to the fourth quarter of 2018. Inventories increased to $22.8 million at March 31, 2019 from $19.9 million at December 31, 2018, due to our strategic plan to rebuild inventory levels following the strong sales demand in the fourth quarter of 2018.

Investing activities. Net cash provided by investing activities was $0.8 million for the three months ended March 31, 2019, which was primarily related to $45.1 million in proceeds from sales and maturities of short-term investments, offset by purchases of short-term investments of $42.9 million, and $1.4 million in purchases of property and equipment. Net cash used in investing activities was $9.5 million for the three months ended March 31, 2018, which was primarily related to purchases of short-term investments of $9.0 million.

Financing activities. Net cash provided by financing activities was $2.0 million for the three months ended March 31, 2019, which primarily consisted of $1.9 million in proceeds from the exercise of employee stock options. Net cash provided by financing activities was $70.7 million for the three months ended March 31, 2018, consisted primarily of net proceeds of approximately $64.2 million from the public offering of our common stock in February 2018, as well as proceeds of $6.5 million from the exercise of Series A and Series B warrants issued in October 2017.

Our liquidity position and capital requirements are subject to fluctuation based on a number of factors, including the following:

- our ability to generate sales, the timing of those sales, the mix of products sold and the collection of receivables from period to period;
- the timing and amount of any additional financings, including the exercise of the remaining Series A warrants and proceeds from the issuance of equity awards pursuant to employee stock plans;
- fluctuations in gross margins and operating margins; and
- fluctuations in working capital, including changes in accounts receivable, inventories, accounts payable, and employee related liabilities.

Our primary short-term capital needs are expected to include expenditures related to:

- support of our commercialization efforts related to our current and future products;
- research and product development efforts, including clinical trial costs;
- acquisition of equipment and other fixed assets;
- additional facilities leases and manufacturing equipment to support business growth and increase manufacturing capacity; and
- payments under our licensing, development and commercialization agreements.

Although we believe the foregoing items reflect our most likely uses of cash in the short-term, we cannot predict with certainty all of our particular cash uses or the timing or amount of cash used. In addition, from time to time we may consider opportunities to acquire other products or technologies that may enhance our product platform or technology, expand the breadth of our markets or customer base, or advance our business strategies. Any such transaction may require short-term expenditures that may impact our capital needs. If for any reason cash generated from operations is insufficient to satisfy our working capital requirements, we may in the future be required to seek additional capital from public or private offerings of our capital stock, or we may elect to borrow amounts under new credit lines or from other sources. If we issue equity or debt securities to raise additional funds, our existing stockholders may experience dilution, we may incur significant financing or debt service costs, and the new equity or debt securities may have rights, preferences and privileges senior to those of our existing stockholders. There can be no assurance that financing will be available on acceptable terms, or at all. Our ability to raise additional financing may be negatively impacted by a number of factors, including our recent and projected financial results, recent changes in and volatility of our stock price, perceptions about the dilutive impact of financing transactions, the competitive environment in our industry, and uncertainties regarding the regulatory environment.

Indebtedness

Repayment of Term Loan Agreement

In August 2018, we fully repaid our term loan with CRG pursuant to the Term Loan Agreement. The balance of the outstanding debt at the time of repayment was $82.7 million. The repayment included approximately $1.1 million in accrued interest and $5.0 million in associated financing fees that became due. Therefore, we did not have any borrowings outstanding under the Term Loan Agreement as of March 31, 2019 and December 31, 2018. At the time of repayment, the remaining $5.3 million debt discount balance associated with the financing fees and certain debt issuance costs was accelerated and recognized as a loss on extinguishment of debt during the third quarter of 2018.

Critical Accounting Policies

Our discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these consolidated financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and the disclosure of contingent assets and liabilities in our consolidated financial statements. We evaluate our estimates and judgments on an ongoing basis. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about our financial condition and results of operations that are not readily apparent from other sources. Actual results may differ from these estimates.

There have been no material changes to our critical accounting policies and estimates from the information provided in Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations – Critical Accounting Policies Involving Management Estimates and Assumptions," included in our Annual Report on Form 10-K for the year ended December 31, 2018, or the Annual Report, other than adoption of the new lease accounting standard. Refer to Note 6, "Leases" in the Notes to Unaudited Condensed Consolidated Financial Statements for further details.

Off-Balance Sheet Arrangements

As of March 31, 2019, we did not have any off-balance sheet arrangements.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

We invest our excess cash primarily in commercial paper, corporate debt, government-sponsored enterprise securities and U.S. government treasury securities. Some of the financial instruments in which we invest have market risk associated with them, in that a change in prevailing interest rates may cause the principal amount of the instrument to fluctuate. Other financial instruments in which we invest potentially subject us to credit risk, in that the value of the instrument may fluctuate based on the issuer's ability to pay.

The primary objectives of our investment activities are to maintain liquidity and preserve principal while maximizing the income we receive from our financial instruments without significantly increasing risk. We have established guidelines regarding approved investments and maturities of investments, which are primarily designed to maintain liquidity and preserve principal.

Because of the short-term maturities of our financial instruments, we do not believe that an increase or decrease in market interest rates would have any significant impact on the realized value of our investment portfolio. If a 10% change in interest rates were to have occurred on March 31, 2019, this change would not have had a material effect on the fair value of our investment portfolio as of that date.

Our operations are primarily located in the United States, and nearly all of our sales since inception have been made in U.S. dollars. With the exception of a portion of our sales in Canada, our sales outside the United States are currently made to independent distributors under agreements denominated in U.S. dollars. Accordingly, we have assessed that we do not currently have any material exposure to foreign currency rate fluctuations. As our business in markets outside of the United States increases, we may be exposed to foreign currency exchange risk. We believe this is currently limited to our operations in Canada, where fluctuations in the rate of exchange between the U.S. dollar and the Canadian dollar, could adversely affect our financial results. In addition, from time to time, we may have foreign exchange risk associated with currency exposure related to existing assets and liabilities, committed transactions and forecasted future cash flows. In certain circumstances, we may seek to manage such foreign exchange risk by using derivative instruments such as foreign exchange forward contracts to hedge our risk. In general, we may hedge material foreign exchange exposures up to 12 months in advance. However, we may choose not to hedge some exposures for a variety of reasons including prohibitive economic costs.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934, as amended, or the Exchange Act, that are designed to ensure that information required to be disclosed in our periodic and current reports that we file with the Securities and Exchange Commission, or the SEC, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable and not absolute assurance of achieving the desired control objectives. In reaching a reasonable level of assurance, management necessarily is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. In addition, the design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Control systems can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

As of March 31, 2019 we carried out an evaluation under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level as of March 31, 2019.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) during the quarter ended March 31, 2019 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

From time to time, we are involved in various legal proceedings, disputes and other claims arising in the ordinary course of our business, including actions with respect to intellectual property, employment, product liability and contractual matters. Although the results of legal proceedings and claims cannot be predicted with certainty, we currently believe that the final outcome of these ordinary course matters will not, individually or in the aggregate, have a material adverse effect on our business, financial position, results of operations, cash flows or future prospects. However, regardless of the outcome, legal proceedings and claims can have an adverse impact on us because of legal costs, diversion of management time and resources, and other factors.

Item 1A. Risk Factors

An investment in our common stock involves risks. You should consider carefully the risks described below, together with all of the other information included in this Quarterly Report, as well as in our other filings with the SEC, in evaluating our business. If any of the following risks actually occur, our business, financial condition, operating results and future prospects could be materially and adversely affected. In that case, the trading price of our common stock may decline and you might lose all or part of your investment. The risks described below are not the only ones we face. Additional risks that we currently do not know about or that we currently believe to be immaterial may also impair our business, financial condition, operating results and prospects. Certain statements below are forward-looking statements.

The risk factors set forth below marked with an asterisk (*) next to the title contain changes to the description of the risk factors previously disclosed in Part I, Item 1A of the Annual Report.

Risks Related to our Business and our Industry

We have incurred significant operating losses since inception and cannot assure you that we will achieve profitability.*

Since our inception in January 2006, we have incurred a significant net loss. As of March 31, 2019, we had an accumulated deficit of $623.1 million. To date, we have financed our operations primarily through public and private sales of our equity securities, debt financing, and cash collected from sales of our products. We have devoted substantially all of our resources to the development and commercialization of our products, the scaling of our manufacturing operations and commercial organization, the research and development of our current products and products under development, and the assembly of a management team to manage our business.

We began commercial sales of our first commercial product, the t:slim Insulin Delivery System, or t:slim, in the third quarter of 2012. In October 2016, we launched t:slim X2, our flagship pump platform, and in August 2017, we commenced commercial sales of t:slim X2 with Dexcom G5 Mobile CGM integration. The t:slim X2 hardware platform now represents nearly 100% of new pump shipments. In June 2018, we received FDA approval to sell our new t:slim X2 with Basal-IQ technology, which is integrated with Dexcom G6 CGM, and commenced sales and shipments of the t:slim X2 with Basal-IQ technology in the United States during the third quarter of 2018. In addition, we commenced sales and shipments of our t:slim X2 with G5 integration in select markets outside the United States during the third quarter of 2018.

Since the first quarter of 2013, we have been able to manufacture and sell our insulin pump products at a cost and in volumes sufficient to allow us to achieve a positive overall gross margin. For the years ended December 31, 2018 and 2017, our gross profit was $89.8 million and $44.1 million, respectively. Although we have achieved a positive overall gross margin, we still operate at a significant net loss and expect that we will continue to do so for the foreseeable future.

To implement our business strategy and achieve profitability, we need to, among other things, increase sales of our products and the gross profit associated with those sales, maintain an appropriate customer service and support infrastructure, fund ongoing research and development activities, create additional efficiencies in our manufacturing processes, and obtain regulatory clearance or approval to commercialize our products currently under development both domestically and internationally. Our expenses may continue to increase as we pursue these objectives and make investments in our business. Additional increases in our expenses without commensurate increases in sales could significantly increase our operating losses.

The extent of our future operating losses and the timing of our profitability are highly uncertain in light of a number of factors, including the timing of the launch of new products and product features by us and our competitors, market acceptance of our products and competitive products by people with insulin-dependent diabetes, their caregivers and healthcare providers, and the timing of regulatory approval of our products and the products of our competitors. Any additional operating losses will have an adverse effect on our stockholders' equity, and we cannot assure you that we will ever be able to achieve or sustain profitability.

We currently rely on sales of insulin pump products to generate a significant portion of our revenue, and any factors that negatively impact sales of these products may adversely affect our business, financial condition and operating results.*

We generate nearly all of our revenue from the sale of t:slim X2 insulin pumps and the related insulin cartridges and infusion sets. Sales of these products may be negatively impacted by many factors, including:

- market acceptance of the insulin pumps and related products manufactured and sold by our key competitors, including Medtronic plc, or Medtronic;
- the potential that breakthroughs for the monitoring, treatment or prevention of diabetes may render our insulin pumps obsolete or less desirable;
- adverse regulatory or legal actions relating to our insulin pump products or similar products or technologies;
- failure of our Tandem Device Updater to accurately and timely provide customers with remote access to new product features and functionality as anticipated, or our failure to obtain regulatory approval for any such updates;
- changes in reimbursement rates or policies relating to insulin pumps or similar products or technologies by third-party payors, such as the decision by UnitedHealthcare that restricts a majority of its members from accessing our pumps;
- our inability to enter into contracts with third-party payors on a timely basis and on acceptable terms;
- problems arising from the expansion of our manufacturing capabilities and commercial operations, or destruction, loss, or temporary shutdown of our manufacturing facilities; and
- claims that any of our insulin pump products, or any component thereof or related supplies or systems, infringes on patent rights or other intellectual property rights of third parties.

In addition, sales of any of our current or future insulin pump products with CGM integration are subject to the continuation of our applicable agreements with Dexcom, which under some circumstances are subject to termination by Dexcom, with or without cause, on relatively short notice. Sales of our products may also be negatively impacted in the event of any regulatory or legal actions relating to Dexcom's CGM products, or in the event of any disruption to the availability of the applicable CGM related supplies, such as sensors or transmitters, in a given market in which our products are sold. Sales of our products may also be adversely impacted if Dexcom's CGM products are not viewed as superior to competing CGM products in markets where our products are sold.

Furthermore, sales of our products may be adversely impacted by negative perceptions regarding our financial stability relative to that of our competitors, and our ability to sustain our business operations on a long-term basis. These perceptions may cause people with insulin-dependent diabetes, their caregivers and healthcare providers, as well as independent distributors and third-party payors, to question our ability to continue to sell our products, provide customer service, support our commercial organization, and fulfill our strategic objectives. These concerns may arise from a number of factors, including our recent and projected financial results, changes in and volatility of our stock price, the competitive environment in our industry, and uncertainties regarding the regulatory environment. Any such concerns, whether actual or perceived, could cause consumers to delay the purchase of our products or purchase competitive products.

Because we currently rely on sales of our t:slim X2 insulin pump and related products to generate a significant majority of our revenue, any factors that negatively impact sales of these products, or result in sales of these products increasing at a lower rate than expected, could adversely affect our business, financial condition and operating results.

Our ability to maintain and grow our revenue depends in part on retaining a high percentage of our customer base.

A key to maintaining and growing our revenue is the retention of a high percentage of our customers due to the potentially significant revenue generated from ongoing purchases of disposable insulin cartridges and other supplies. In addition, our pumps are designed and tested to remain effective for at least four years and a satisfied customer may consider purchasing another product from us when the time comes to replace the pump. We have developed retention programs aimed at our customers, their caregivers and healthcare providers, which include training specific to our products, ongoing support by sales and clinical employees, and 24/7 technical support and customer service. Demand for our products from our existing customers could decline, or could fail to increase in line with our projections, as a result of a number of factors, including the introduction of competitive products, breakthroughs for the monitoring, treatment or prevention of diabetes, changes in reimbursement rates or policies, manufacturing problems, perceived safety or reliability issues with our products or the products of our competitors, the failure to secure regulatory clearance or approvals in a timely manner or at all, or for other reasons. The failure to retain a high percentage of our customers and increase sales to these customers consistent with our forecasts would have a material adverse effect on our business, financial condition and operating results.

We operate in a very competitive industry and if we fail to compete successfully against our existing or potential competitors, many of whom have greater resources than us, our sales and operating results may be negatively affected.

The medical device industry is intensely competitive, subject to rapid change and highly sensitive to the introduction of new products, treatment techniques or technologies, as well as other activities of industry participants. We believe our products compete, and will continue to compete, directly with a number of traditional insulin pumps, as well as other methods for the treatment of diabetes, including Multiple Daily Injection, or MDI, therapy.

Our primary competitors are major medical device companies that are either publicly traded companies or divisions or subsidiaries of publicly traded companies. For instance, Medtronic MiniMed, a division of Medtronic, has been the market leader for many years and has the majority share of the traditional insulin pump market in the United States. However, the market for insulin pumps continues to experience significant changes. For instance, in October 2017, Johnson & Johnson announced its plans to discontinue the operations of Animas and to exit the insulin pump business entirely. Animas designated Medtronic as a preferred partner to facilitate the transition of their respective insulin pump customers. In addition, over the past several years Eli Lilly & Co. announced that it was developing an insulin pump and Becton Dickinson announced that it plans to launch an insulin pump designed for persons with type 2 diabetes. There are also a number of other companies developing and marketing their own insulin delivery systems and/or related software applications, including insulin pumps and Bluetooth-enabled insulin pens to support MDI therapy. While these industry changes are significant, it is difficult to know how they will impact our business or the competitive landscape in which we operate. Our key competitors, most notably Medtronic, enjoy several competitive advantages over us, including:

- greater financial and human resources for sales and marketing, product development, customer service and clinical resources;
- greater ability to respond to competitive pressures and regulatory uncertainty;
- established relationships with healthcare providers, third-party payors and regulatory agencies;
- established reputation and name recognition among healthcare providers and other key opinion leaders in the medical industry generally and the diabetes industry in particular;
- greater market share and established base of customers;
- products supported by long-term clinical data;
- larger and more established distribution networks;
- greater ability to cross-sell products or provide incentives to healthcare providers to use their products; and
- more experience in conducting research and development, manufacturing, clinical trials, and obtaining regulatory approval or clearance.

In some instances, our competitors offer products that include features that we do not currently offer. For instance, Medtronic offers a traditional insulin pump with a hybrid closed-loop AID functionality and a new CGM system and Insulet offers an insulin pump with a tubeless delivery system that does not utilize an infusion set. These specific features may make the competitive products more desirable to customers and healthcare providers, which could negatively impact sales of our products.

In addition, the competitive environment in which we operate has resulted and may continue to result in competitive pressures on our manufacturers, suppliers, distributors, collaboration partners and other business constituents. For example, we have entered into development agreements with Dexcom, which provide us non-exclusive licenses to integrate various generations of Dexcom CGM technology with our insulin pump products. In the fourth quarter of 2017, Abbott Laboratories launched a new blood glucose monitoring system in the United States which competes with the Dexcom technology, and another CGM product with CE mark approval was approved in the second quarter of 2018 for sale in the United States. Competitive pressures within our industry could negatively impact the financial condition of our business partners, impact their ability to fulfill contractual obligations to us, and result in harm to our financial condition and operating results.

For these and other reasons, we may not be able to compete successfully against our current or potential future competitors. As a result, our product sales may be negatively affected, which could have a material adverse impact on our financial condition and operating results.

Competitive products or other technological developments and breakthroughs for the monitoring, treatment or prevention of diabetes may render our products obsolete or less desirable.

Our ability to achieve our strategic objectives will depend, among other things, on our ability to develop and commercialize products for the treatment of diabetes that offer distinct features and functionality, are easy-to-use, receive adequate coverage and reimbursement from third-party payors, and are otherwise more appealing than available alternatives. Our primary competitors, as well as a number of other companies and medical researchers are pursuing new delivery devices, delivery technologies, sensing technologies, treatment techniques, procedures, drugs and other therapies for the monitoring, treatment and prevention of diabetes. Any breakthroughs in diabetes monitoring, treatment or prevention could reduce the potential market for our products or render our products obsolete altogether, which would significantly reduce our sales or cause our sales to grow at a slower rate than we currently expect. In addition, even the perception that new products may be introduced, or that technological or treatment advancements could occur, could cause consumers to delay the purchase of our products.

Because the insulin-dependent diabetes market is large and growing, we anticipate companies will continue to dedicate significant resources to developing competitive products and technologies. The introduction by competitors of products that are or claim to be superior to our products may create market confusion that may make it difficult to differentiate the benefits of our products over competitive products. In addition, some of our competitors employ aggressive pricing strategies, including the use of discounts, rebates, low cost product upgrades or other financial incentives that could adversely affect sales of our products. If a competitor develops a product that competes with or is perceived to be superior to our products, or if competitors continue to utilize strategies that place downward pressure on pricing within our industry, our sales may decline, our operating margins could be reduced and we may fail to meet our financial projections, which would materially and adversely affect our business, financial condition and operating results.

Moreover, we have designed our products to resemble modern consumer electronic devices to address certain embarrassment and functionality concerns consumers have raised with respect to traditional pumps. The consumer electronics industry is itself highly competitive, and characterized by continuous new product introductions, rapid developments in technology, and subjective and changing consumer preferences. If, in the future, consumers cease to view our products as contemporary or convenient as compared to then-existing consumer electronics technology, our products may become less desirable.

The failure of our insulin pump and related products to achieve and maintain market acceptance could result in us achieving sales below our expectations, which would cause our business, financial condition and operating results to be materially and adversely affected.*

Our current business strategy is highly dependent on our insulin pump and related products achieving and maintaining market acceptance. In order for us to sell our products to people with insulin-dependent diabetes, we must convince them, their caregivers and healthcare providers that our products are an attractive alternative to competitive products for the treatment of diabetes, including traditional insulin pump products and MDI therapies, as well as alternative diabetes monitoring, treatment or prevention methodologies. Market acceptance and adoption of our products depends on educating people with diabetes, as well as their caregivers and healthcare providers, about the distinct features, ease-of-use, positive lifestyle impact, and other perceived benefits of our products as compared to competitive products. If we are not successful in convincing existing and potential customers of the benefits of our products, or if we are not able to achieve the support of caregivers and healthcare providers for our products, our sales may decline or we may achieve sales below our expectations.

Market acceptance of our products could be negatively impacted by many factors, including:

- the failure of our products to achieve and maintain wide acceptance among people with insulin-dependent diabetes, their caregivers, healthcare providers, third-party payors and key opinion leaders in the diabetes treatment community;

- lack of evidence supporting the safety, ease-of-use or other perceived benefits of our products over competitive products or other currently-available insulin treatment methodologies;

- perceived risks or uncertainties associated with the use of our insulin pump products or similar products or technologies generally;

- adverse regulatory or legal actions relating to our insulin pump products or similar products or technologies;

- results of clinical studies relating to our existing products or products under development or similar competitive products.

In addition, even if we are able to convince people with insulin-dependent diabetes, their caregivers or healthcare providers that our products compare favorably to the products and treatment alternatives offered by our competitors, negative perceptions regarding our financial stability relative to that of our competitors, and our ability to sustain our business operations on a long-term basis, could cause consumers to delay the purchase of our products or to purchase competitive products.

Furthermore, the rapid evolution of technology and treatment options within our industry may cause consumers to delay the purchase of our products in anticipation of advancements or breakthroughs, or the perception that advancements or breakthroughs could occur, in our products or the products offered by our competitors. It is also possible that consumers interested in purchasing any of our future products currently under development may delay the purchase of one of our current products.

If our insulin pump products do not achieve and maintain widespread market acceptance, we may fail to achieve sales consistent with our projections, in which case our business, financial condition and operating results could be materially and adversely affected.

Our ability to achieve profitability will depend, in part, on our ability to reduce the per unit cost of our products by increasing production volume and manufacturing efficiency, and by reducing raw material and component costs, labor, product-training, warranty and manufacturing overhead costs per unit.*

We believe our ability to reduce the per unit cost of our insulin pumps and related products will have a significant impact on our ability to achieve profitability. Our cost of sales includes raw materials and component parts, labor costs, product training expenses, freight, warranty, scrap and excess and obsolete inventories. It also includes manufacturing overhead costs, including expenses relating to quality assurance, inventories procurement and control, facilities, equipment, information technology and operations management. If we are unable to sustain or reduce our overall cost of sales, including through arrangements such as volume purchase discounts, negotiation of pricing and cost reductions with our suppliers, more efficient training programs for customers, and improved warranty performance, it will be difficult to reduce our per unit costs and our ability to achieve profitability will be constrained.

In addition, the per unit cost of our products is significantly impacted by our overall production volumes, and any factors that prevent our products from achieving market acceptance, cause our production volumes to decline, or result in our sales growing at a slower rate than we expect, would significantly impact our expected per unit costs, which would adversely impact our gross margins. In addition, we may not achieve anticipated improvements in manufacturing productivity following the relocation of our manufacturing operations to our Barnes Canyon facility or as we undertake other actions to expand our manufacturing capacity. Furthermore, while we currently believe our proprietary technology platform will allow us to efficiently design and develop new products, changes in the market that require us to modify or replace our existing platform will reduce the efficiencies gained through our platform and could increase our per unit costs or prevent those costs from declining. If we are unable to effectively manage our overall costs while increasing our production volumes and lowering our per unit costs, we may not be able to achieve or sustain profitability, which would have an adverse impact on our business, financial condition and operating results.

Failure to secure or retain adequate coverage or reimbursement for our current products and our potential future products by third-party payors could adversely affect our business, financial condition and operating results.

We have derived nearly all of our revenue from sales of insulin pumps, and related insulin cartridges and infusion sets, and expect to continue to do so in the foreseeable future. A substantial portion of the purchase price of an insulin pump is typically paid for by third-party payors, including private insurance companies, preferred provider organizations and other managed care providers. Future sales of our current and future products will be limited unless our customers can rely on third-party payors to pay for all or part of the associated purchase cost. Access to adequate coverage and reimbursement for our current and future products by third-party payors, both domestically and internationally, is essential to the acceptance of our products by customers.

As guidelines in setting their coverage and reimbursement policies, many third-party payors in the United States use coverage decisions and payment amounts determined by the Centers for Medicare and Medicaid Services, or CMS, which administers the U.S. Medicare program. Medicare periodically reviews its reimbursement practices for diabetes-related products. Medicare previously implemented a competitive bidding process for blood glucose strip reimbursement, which resulted in a significant reduction in the reimbursement rate for those products. In 2017, Medicare announced, and then shortly thereafter suspended, a competitive bidding process for insulin pumps. As a result, there is uncertainty as to the future Medicare reimbursement rate for our products. It is also possible that CMS may review and modify the current coverage and reimbursement of diabetes-related products in connection with anticipated changes to the regulatory approval process for insulin pumps and related products, software applications and services. In addition, third-party payors that do not follow the CMS guidelines may adopt different coverage and reimbursement policies for our current and future products. It is possible that some third-party payors will not offer any coverage for our current or future products. For instance, UnitedHealthcare has designated one of our competitors as their preferred, in-network durable medical equipment provider of insulin pumps for most customers age seven or above. We expect this decision will prevent a majority of UnitedHealthcare members from purchasing an insulin pump from us for the foreseeable future. It is possible that other third-party payors may adopt similar policies in the future, which would adversely impact our ability to sell our products.

We currently have contracts establishing reimbursement for our insulin pump products with approximately 184 national and regional third-party payors in the United States. While we may enter into additional contracts both domestically and internationally, with third-party payors and adding coverage for future products under our current agreements, we cannot guarantee that we will succeed in doing so or that the reimbursement contracts that we are able to negotiate will enable us to sell our products on a profitable basis. In particular, we do not have experience securing reimbursement in international markets. In addition, existing contracts with third-party payors generally can be modified or terminated by the third-party payor without cause and with little or no notice to us. Moreover, compliance with the administrative procedures or requirements of third-party payors may result in delays in processing approvals by those third-party payors for customers to obtain coverage for our products. Failure to secure or retain adequate coverage or reimbursement for our current and future products by third-party payors, or delays in processing approvals by those payors, could result in the loss of sales, which could have a material adverse effect on our business, financial condition and operating results.

Further, the healthcare industry in the United States is increasingly focused on cost containment as government and private insurers seek to control healthcare costs by imposing lower payment rates and negotiating reduced contract rates with third-party payors. If third-party payors deny coverage or reduce their current levels of payment, or if our production costs increase faster than increases in reimbursement levels, we may be unable to sell our products on a profitable basis.

We may face unexpected challenges in marketing and selling our products, and training new customers on the use of our products, which could harm our ability to achieve our sales forecasts.

We have limited experience marketing and selling our products as well as training new customers on their use, particularly in international markets. In addition, the vast majority of our existing customers are individuals with type 1 diabetes, and we have limited experience marketing and selling our products to customers with type 2 diabetes. We anticipate that selling our products to customers with higher insulin requirements, including customers with type 2 diabetes, may be even more difficult following our decision to discontinue sales of new t:flex pumps in the third quarter of 2018.

We expect to derive nearly all of our revenue from the sale of our t:slim X2 insulin pump, and the related insulin cartridges and infusion sets, unless and until we receive regulatory clearance or approval for other products currently under development. As a result, our financial condition and operating results are and will continue to be highly dependent on our ability to adequately promote, market and sell our t:slim X2 insulin pump and related products, and the ability of our diabetes educators to train new customers on the use of our products. If our sales and marketing representatives or diabetes educators fail to achieve their objectives, our sales could decrease or may not increase at levels that are in line with our forecasts.

If we are unable to maintain our existing sales, marketing, clinical and customer service infrastructure, we may fail to increase our sales to meet our forecasts.*

A key element of our business strategy involves our sales, clinical, marketing and customer service personnel driving adoption of our products. We have increased the number of sales, marketing, clinical and customer service personnel employed by us since the initial commercial launch of t:slim in 2012. However, we have faced considerable challenges in growing and managing these resources, including with respect to recruiting, training and assimilation of new territories and accounts. We expect to continue to face significant challenges as we manage and grow our infrastructure in the future and work to motivate and retain the individuals who make up our existing infrastructure. These challenges may be even greater in connection with our commercial expansion outside the United States, where we have limited experience. Unexpected turnover among our sales, marketing, clinical and customer service personnel, or unanticipated challenges in recruiting additional personnel, would have a negative impact on our ability to achieve our sales projections. Further, if a sales, marketing or clinical representative was to depart and be retained by one of our competitors, we may fail to prevent him or her from helping competitors solicit business from our existing customers, which could adversely affect our sales. Similarly, if we are not able to recruit and retain a network of diabetes educators and customer service personnel, we may not be able to successfully train and service new customers, which could delay new sales and harm our reputation.

We expect the management of our sales, marketing, clinical and customer service personnel will continue to place significant burdens on our management team. If we are unable to retain our personnel in line with our strategic plans, we may not be able to effectively commercialize our existing products or products under development, or enhance the strength of our brand, either of which could result in the failure of our sales to increase in line with our projections or cause sales to decline.

Our sales and marketing efforts are dependent on independent distributors who are free to market products that compete with our products. If we are unable to maintain or expand our network of independent distributors, our sales may be negatively affected.

For the year ended December 31, 2018, sales to approximately 64 independent distributors represented approximately 79% of our sales. While our goal in the United States is to reduce the percentage of our sales to independent distributors over time as we enter into contracts with additional third-party payors, we believe a majority of our sales will continue to be to independent distributors for the foreseeable future, and it is possible that the percentage of our sales to independent distributors could even increase in the near term, particularly in light of our plans to primarily rely on independent distributors outside of the United States. For example, our dependence upon independent distributors domestically could increase if third-party payors decide to contract with independent distributors directly in lieu of contracting with us to supply our products to their members directly. Our dependence upon independent distributors could also increase if customers prefer to purchase all of their diabetes supplies through a single source, instead of purchasing pump-related products through us and other diabetes supplies through other suppliers. None of our independent distributors domestically has been required to sell our products exclusively and each of them may freely sell the products of our competitors. Our distributor agreements in the United States generally have one-year initial terms with automatic one-year renewal terms, and are terminable in connection with a party’s material breach. Our distributor agreements outside the United States generally have longer initial terms and, in addition to being terminable in connection with a party’s material breach, include provisions that allow us to terminate those agreements prior to their ordinary expiration in specified circumstances. If we are unable to maintain or expand our network of independent distributors, our sales may be negatively affected.

For the year ended December 31, 2018, our two largest independent distributors in the United States collectively comprised approximately 35% of our sales, and our nine independent international distributors collectively comprised approximately 5% of our sales. If any of our key independent distributors were to cease to distribute our products or reduce their promotion of our products as compared to the products of our competitors, our sales could be adversely affected. In that case, we may need to seek alternative independent distributors or increase our reliance on our other independent distributors or our direct sales representatives, which may not prevent our sales from being adversely affected. Additionally, to the extent we enter into additional arrangements with independent distributors to perform sales, marketing or distribution services, or other arrangements pursuant to which independent distributors may purchase product from us, the terms of the arrangements could result in our product margins to be lower than if we directly marketed and sold our products.

If the third parties on which we increasingly rely to assist us with our current and anticipated pre-clinical development or clinical trials do not perform as expected, we may not be able to obtain regulatory clearance or approval or commercialize our products.

As our clinical infrastructure expands, we expect to increasingly rely on third parties, such as contract research organizations, medical institutions, clinical investigators and contract laboratories to conduct some of our current and anticipated pre-clinical investigations and clinical trials. If we are not able to reach mutually acceptable agreements with these third parties on a timely basis, or these third parties do not successfully carry out their commitments or regulatory obligations or meet expected deadlines, or the quality or accuracy of the data they obtain is compromised due to the failure to adhere to agreed-upon clinical protocols or regulatory requirements or for other reasons, our pre-clinical development activities or clinical trials may be extended, delayed, suspended or terminated, and we may not be able to obtain regulatory clearance or approval for, or successfully commercialize, our products on a timely basis, if at all, and our business, operating results and prospects may be adversely affected. In particular, we currently expect to rely on data from the U.S. portion of the Clinical Acceptance of the Artificial Pancreas (DCLP3) portion of the IDCL Trial, to support our development of t:slim X2 with Control IQ technology. We may also rely on data from other portions of the larger IDCL Trial to support additional regulatory submissions. The IDCL Trial is being conducted entirely by third parties over which we have little or no control or influence. In the event that the IDCL Trial is not performed on a timely basis, or if the quality or accuracy of the data obtained from the IDCL Trial is compromised due to the failure to adhere to clinical protocols or regulatory requirements or for other reasons, our development activities for t:slim X2 with Control IQ technology may be negatively impacted.

We are increasingly dependent on clinical investigators and clinical sites to enroll patients in our current and anticipated clinical trials, and the failure to successfully complete the clinical trials could prevent us from obtaining regulatory approvals for or commercializing our products.

As part of our product development efforts, we expect to increasingly rely on clinical investigators and clinical sites to enroll patients in our clinical trials and other third parties to manage such trials and to perform related data collection and analysis. However, we may not be able to control the amount and timing of resources that clinical sites may devote to our clinical trials, especially with respect to the IDCL Trial that we intend to rely upon for the development of t:slim X2 with Control IQ technology. If these clinical investigators and clinical sites fail to enroll a sufficient number of patients, fail to ensure compliance by patients with clinical protocols, or fail to comply with regulatory requirements, we may be unable to successfully complete our clinical trials, which could prevent us from obtaining regulatory approvals for our products and commercializing our products, which would have an adverse impact on our business.

If important assumptions about the potential market for our products are inaccurate, or if we have failed to understand what people with insulin-dependent diabetes are seeking in an insulin pump, our business and operating results may be adversely affected.

Our business strategy was developed based on a number of important assumptions about the diabetes industry in general, and the insulin-dependent diabetes market in particular, any one or more of which may prove to be inaccurate or may change over time. For example, we believe that the benefits of insulin pump therapy as compared to other common insulin treatment alternatives will continue to drive growth in the market for insulin pump therapy. In addition, we believe the incidence of diabetes in the United States and worldwide is increasing. However, each of these assumptions may prove to be inaccurate and limited sources exist to compare treatment alternatives and obtain reliable market data. The actual incidence of diabetes, and the actual demand for our products or competitive products, could differ materially from our projections if our assumptions are incorrect. In addition, our strategy of focusing exclusively on the insulin-dependent diabetes market may limit our ability to increase sales or achieve profitability.

Another key element of our business strategy is utilizing market research to understand what people with diabetes are seeking to improve their diabetes therapy management. This strategy underlies our entire product design, marketing and customer support approach and is the basis on which we developed our current products and are pursuing the development of new products. However, our market research is based on interviews, focus groups and online surveys involving people with insulin-dependent diabetes, their caregivers and healthcare providers that represent only a small percentage of the overall insulin-dependent diabetes market. As a result, the responses we received may not be reflective of the broader market and may not provide us accurate insight into the desires of people with insulin-dependent diabetes. In addition, understanding the meaning and significance of the responses received during our market research necessarily requires that analysis be conducted and conclusions be drawn. We may not be able perform an analysis that yields meaningful results, or the conclusions we draw from the analysis could be misleading or incorrect. Moreover, even if our market research has allowed us to better understand the features and functionality consumers are seeking in an insulin pump to improve management of their diabetes therapy, there can be no assurance that consumers will actually purchase our products or that our competitors will not develop products with similar features.

We expect to face complexities frequently encountered by companies in competitive and rapidly-evolving markets, which may make it difficult to evaluate our business and forecast our future sales and operating results.

We operate in a competitive and rapidly-evolving market. Important industry changes, such as the FDA approval and launch of new products by our competitors and the announcement by Johnson & Johnson that it is discontinuing the operations of Animas and exiting the insulin pump business, as well changes specific to our business, such as the approval of t:slim X2 with Basal-IQ technology and our commencement of commercial sales in international markets during the third quarter of 2018, combine to make it more difficult for us to predict our future sales and operating results, as well as our expected timeframe to achieve profitability. In assessing our business prospects, you should consider these factors as well as the various risks and difficulties frequently encountered by companies in competitive and rapidly evolving markets, particularly those facing emerging growth companies that manufacture and sell medical devices.

These risks include our ability to:

- implement and execute our business strategy;
- manage and improve the productivity of our sales, clinical and marketing and customer service infrastructure to grow sales of our existing and proposed products, and enhance our ability to provide service and support to our customers;
- achieve and maintain market acceptance of our products and increase awareness of our brand among people with insulin-dependent diabetes, their caregivers and healthcare providers;
- comply with a broad range of regulatory requirements within a highly regulated industry;
- enhance our manufacturing capabilities, increase production of products efficiently while maintaining quality standards, and adapt our manufacturing facilities to the production of new products;
- respond effectively to competitive pressures and developments;
- enhance our existing products and develop proposed products;
- obtain and maintain regulatory clearance or approval to enhance our existing products and commercialize proposed products;
- perform clinical trials with respect to our existing products and proposed products; and
- attract, retain and motivate qualified personnel in various areas of our business.

As a result of these or other risks, we may not be able to execute key components of our business strategy, and our business, financial condition and operating results may suffer.

The Technology Upgrade Program resulted in accounting complexities that may lead to confusion when comparing our historical and future financial results.

While our Technology Upgrade Program expired on September 30, 2017, it resulted in a number of accounting complexities that will continue to make comparisons of our historical and future financial results more difficult. In particular, during the term of the Technology Upgrade Program, U.S. GAAP prevented us from recognizing, at the time of sale, up to 100% of the sales and cost of sales associated with the sale of our insulin pumps to eligible customers. Instead, depending on the type of pump sold, we were required to defer some or all of the sales and cost of sales until a later date. In light of the expiration of the Program, we are no longer subject to these accounting deferrals. However, in evaluating our 2017 financial results through December 31, 2017, as a result of the Technology Upgrade Program we recorded incremental net sales of $5.0 million that were previously deferred, with a corresponding increase of $3.1 million in gross profit. It is possible that we may offer other consumer-directed programs in the future, which may result in similar or additional accounting complexities.

Despite our efforts to explain the required accounting treatment for the Technology Upgrade Program, it is possible that there may be confusion when comparing our historical and future financial results, which may cause investors to avoid investing in our common stock and adversely impact our stock price.

Manufacturing risks may adversely affect our ability to manufacture products, which could negatively impact our sales and operating margins.*

Our business strategy depends on our ability to manufacture our current and proposed products in sufficient quantities and on a timely basis so as to meet consumer demand, while adhering to product quality standards, complying with regulatory requirements and managing manufacturing costs. We are subject to numerous risks related to our manufacturing capabilities, including:

- quality or reliability defects in product components that we source from third-party suppliers;
- our inability to secure product components in a timely manner, in sufficient quantities and on commercially reasonable terms;
- difficulty identifying and qualifying alternative suppliers for components in a timely manner;
- implementing and maintaining acceptable quality systems while experiencing rapid growth;
- our failure to increase production of products to meet demand;
- our inability to modify production lines and expand manufacturing facilities to enable us to efficiently produce future products or implement changes in current products in response to consumer demand or regulatory requirements;
- our inability to manufacture multiple products simultaneously while utilizing common manufacturing equipment; and
- potential damage to or destruction of our manufacturing equipment or manufacturing facility.

As demand for our products increases, and as the number of our commercial products expands, we will have to invest additional resources to purchase components, hire and train employees, and enhance our manufacturing processes and quality systems. We may also increase our utilization of external third-parties to perform contracted manufacturing services for us. In addition, although we expect some of our products under development to share product features and components with our current products, manufacturing of these products may require modification of our production lines, hiring of specialized employees, identification of new suppliers for specific components, implementing additional equipment and procedures, obtaining new regulatory approvals, or developing new manufacturing technologies. Ultimately, it may not be possible for us to manufacture these products at a cost or in quantities sufficient to make these products commercially viable.

If we fail to increase our production capacity to meet consumer demand while also maintaining product quality standards, obtaining and maintaining regulatory approvals, and efficiently managing costs, our sales and operating margins could be negatively impacted, which would have an adverse impact on our financial condition and operating results.

We depend on a limited number of third-party suppliers for certain components and products, and the loss of any of these suppliers, or their inability to provide us with an adequate supply of components or products, could harm our business.*

We currently rely, and expect to continue to rely, on third-party suppliers to supply components of our current products and our potential future products, including our disposable cartridges. For example, we rely on plastic injection molding companies to provide plastic molded components, electronic manufacturing suppliers to provide electronic assemblies, and machining companies to provide machined mechanical components. We also purchase all of our infusion sets and pump accessories from third-party suppliers. For our business strategy to be successful, our suppliers must be able to provide us with components and products in sufficient quantities, in compliance with regulatory requirements and quality control standards, in accordance with agreed-upon specifications, at acceptable costs and on a timely basis. For example, we have implemented a business strategy intended to increase our future sales of infusion sets, and any increase in the sales of our infusion sets could strain the ability of our suppliers to deliver products in a manner that meets our various requirements.

Although we have long-term supply agreements with many of our suppliers, these agreements do not include long-term capacity commitments. Under most of our supply agreements, we make purchases on a purchase order basis and have no obligation to buy any given quantity of components or products until we place written orders, and our suppliers have no obligation to manufacture for us or sell to us any given quantity of components or products until they accept an order. In addition, our suppliers may encounter problems that limit their ability to manufacture components or products for us, including financial difficulties or damage to their manufacturing equipment or facilities. As a result, our ability to purchase adequate quantities of our components or products may be limited. If we fail to obtain sufficient quantities of high-quality components to meet demand on a timely basis, we could lose customer orders, our reputation may be harmed and our business could suffer. Furthermore, negative perceptions among our suppliers regarding our financial stability, and our ability to sustain our business operations on a long-term basis, may cause one or more of our suppliers to terminate their relationship with us, or claim that our financial condition causes them to demand different payment terms.

We generally use a small number of suppliers for our components and products. Depending on a limited number of suppliers exposes us to risks, including limited control over cost, availability, quality and delivery schedules. Moreover, in some cases, we do not have long-standing relationships with our manufacturers and may not be able to convince suppliers to continue to make components available to us unless there is demand for such components from their other customers. As a result, there is a risk that certain components could be discontinued and no longer available to us. We have in the past been, and we may in the future be, required to make significant "last time" purchases of component inventories that is being discontinued by the manufacturer to ensure supply continuity. If any one or more of our suppliers cease to provide us with sufficient quantities of components in a timely manner or on terms acceptable to us, we would have to seek alternative sources of supply. Because of factors such as the proprietary nature of our products, our quality control standards and applicable regulatory requirements, we cannot quickly engage additional or replacement suppliers for some of our critical components. Failure of any of our suppliers to deliver products at the level our business requires could harm our reputation and limit our ability to meet our sales projections, which could have a material adverse effect on our business.

We may also have difficulty obtaining similar components from other suppliers that are acceptable to the FDA, or other regulatory agencies, and the failure of our suppliers to comply with regulatory requirements could expose us to regulatory action including warning letters, product recalls, termination of distribution, product seizures or civil penalties. Such a failure by our suppliers could also require us to cease using the components, seek alternative components or technologies, and modify our products to incorporate alternative components or technologies, which could necessitate additional regulatory approvals. Any disruption of this nature, or any increased expenses associated with any such disruption, could negatively impact our ability to manufacture our products on a timely basis, in sufficient quantities, or at all, which could harm our commercialization efforts and have a material adverse impact on our operating results.

If we cannot reliably manufacture our new infusion set connector, or if it does not achieve market acceptance, we may not achieve our financial projections.*

In September 2017, we began commercial sales in the United States of products with our customized t:lock connector, which is used to connect our pump cartridge to our infusion set offerings. Our t:lock connector replaced the standard Luer-lok connector that historically joined an infusion set to our proprietary disposable insulin cartridges. Concurrently, we began selling infusion sets that are compatible with t:lock.

We believe the transition period for our direct customers and distributors in the United States to utilize their inventories on hand before transitioning to t:lock is substantially complete. In addition, we are initially offering standard Luer-lok cartridges and infusion sets in select international markets, and expect to transition to our t:lock connector in international markets during 2019. Accordingly, we may continue offering both styles of cartridges and infusion sets to facilitate the transition of customer supplies through 2019, although there may be circumstances that require additional time for some direct customers and distributors to complete the transition. Our supplier of infusion sets must manufacture a variety of lengths and styles of infusion sets with t:lock that match our cartridges. Failure to do so, or to do so at the necessary production volumes, may result in our inability to convert customers to t:lock when anticipated, which would negatively impact our ability to achieve our financial projections. Due to the variability in purchasing patterns, standard Luer-lok inventories may not be consumed at the predicted rates and we may be required to offer both styles of insulin cartridges and infusion sets for a longer period than anticipated or we may be left with excess quantities of standard Luer-lok inventories that we cannot sell at standard prices or at all, which would negatively impact our results of operations.

While t:lock was designed based on customer feedback, and all standard Luer-lok infusion sets that we currently offer are also available with t:lock, it is possible that t:lock may not continue to gain market acceptance by current or potential customers, their caregivers, or healthcare providers. Any negative market response to t:lock may impact a current customer's decision to purchase a new pump from us at the time of renewal. In addition, potential customers may decide not to purchase our insulin pumps if they do not prefer t:lock or t:lock compatible infusion sets, which could have a material adverse impact on our business, financial condition and operating results.

We currently operate primarily at two locations in San Diego, California, and any disruption at these locations could adversely affect our business and operating results.

Substantially all of our current operations are conducted at two locations in San Diego, California, including our manufacturing processes, research and development activities, customer and technical support, and management and administrative functions. In addition, the majority of our inventories of component supplies and finished goods is stored at one of these locations. We also store finished goods at third-party warehouses in Carson, California and Austin, Texas for the fulfillment of certain customer orders. We take precautions to safeguard our facilities, including by acquiring insurance, employing back-up generators, adopting health and safety protocols and utilizing off-site storage of computer data. However, vandalism, terrorism or a natural disaster, such as an earthquake, fire or flood, or other catastrophic event, could damage or destroy our manufacturing equipment or our inventories of component supplies and finished goods, cause substantial delays in our operations, result in the loss of key information, result in reduced sales, and cause us to incur additional expenses. Our insurance coverage may not be sufficient to provide coverage with respect to the damages incurred in any particular case, and our insurance carrier may deny coverage with respect to all or a portion of our claims. Regardless of the level of insurance coverage or other precautions taken, damage to our facilities may have a material adverse effect on our business, financial condition and operating results.

We may not experience the anticipated operating efficiencies from the transition of our manufacturing operations to our new facility.*

At the beginning of 2018, we completed the transition of our manufacturing operations to our Barnes Canyon facility that we expect will allow for future product manufacturing expansion. However, we may not experience the anticipated operating efficiencies at the new facility, or we may experience efficiencies to a lesser extent than projected. If we fail to achieve the operating efficiencies that we anticipate, our manufacturing and operating costs may be greater than expected, which would have a material adverse impact on our operating results.

In September 2017, following a site inspection of our Barnes Canyon facility, the FDA issued a Form 483, List of Inspectional Observations, containing two observations. Following our receipt of the Form 483, we began implementing corrective and preventive actions to fully address the FDA observations, and in October 2017, we provided a written response to the FDA. In December 2017, we received a letter from the FDA stating that our initial written response did not fully address the FDA observations, and that the FDA would address the observations during its next regularly scheduled inspection of our facilities. If the FDA is not satisfied, it may issue a warning letter to us or may take other actions, any of which could have a material adverse effect on our business. On August 15, 2018, we closed the voluntary recall initiated on April 12, 2018 for 55 t:slim G4 pumps.

We expect that the management and support of our new manufacturing facility and the increase of our manufacturing volumes will place significant burdens on our management team, particularly in areas relating to operations, quality, regulatory, facilities and information technology. We may not be able to effectively manage our ongoing manufacturing operations and we may not achieve the operating efficiencies that we anticipate from the new facility. Further, additional increases in demand for our products may require that we further expand our business operations, which may require that we obtain additional facilities, make additional investments in capital equipment or increase our utilization of external third-parties to perform contracted manufacturing services for us.

If we do not enhance our product offerings through our research and development efforts, we may fail to effectively compete, which may impede our ability to become profitable.

In order to increase our sales and market share in the insulin-dependent diabetes market, we must enhance and broaden our product offerings in response to the evolving demands of people with insulin-dependent diabetes, their caregivers and healthcare providers, as well as competitive pressures and technologies. We may not be successful in developing, obtaining regulatory approval for, or marketing our proposed products when anticipated, or at all. In addition, notwithstanding our market research efforts, our future products may not be accepted by people with insulin-dependent diabetes, their caregivers, healthcare providers or third-party payors. The success of any proposed product offerings will depend on numerous factors, including our ability to:

- identify the product features and functionality that people with insulin-dependent diabetes, their caregivers and healthcare providers are seeking in an insulin pump, and successfully incorporate those features into our products;
- develop and introduce products in sufficient quantities and in a timely manner;
- offer products at a price that is competitive with other products then available;
- work with third-party payors to obtain reimbursement for our products;

- adequately protect our intellectual property and avoid infringing upon the intellectual property rights of third parties;
- demonstrate the safety and efficacy of proposed products; and
- obtain the necessary regulatory approvals for proposed products.

If we fail to generate demand by continuing to develop products that incorporate features and functionality requested by people with insulin-dependent diabetes, their caregivers or healthcare providers, or if we do not obtain regulatory clearance or approval for proposed products in time to meet market demand, we may be unable to compete and may fail to generate sales sufficient to achieve or maintain profitability. We have in the past experienced, and may in the future experience, delays in various phases of product development and commercialization, including during research and development, manufacturing, limited release testing, marketing and customer education efforts. Any delays in our anticipated regulatory submissions or approvals, or subsequent product launches, may significantly impede our ability to successfully compete in our markets. In particular, such delays could cause customers to delay or forego purchases of our products, or to purchase our competitors' products. Even if we are able to successfully develop proposed products when anticipated, these products may not produce sales in excess of the costs of development, and they may be quickly rendered obsolete by changing consumer preferences or the introduction by our competitors of products embodying new technologies or features, or alternative methods for the treatment of diabetes.

The safety and efficacy of our products is not supported by long-term clinical data, which could limit sales, and our products could cause unforeseen negative effects.

Our t:slim X2 insulin pump received pre-market clearance under Section 510(k) of the U.S. Federal Food, Drug, and Cosmetic Act, or FDCA. The 510(k) clearance process is shorter and typically requires the submission of less supporting documentation than other FDA approval processes and does not always require long-term clinical studies. t:slim X2 with G5 integration and t:slim X2 with Basal-IQ technology received FDA approval under a Premarket Approval, or PMA, application. However, currently there are only limited published studies to evaluate the safety or effectiveness of our PMA-approved products in a controlled setting. As a result, we currently lack the breadth of published long-term clinical data supporting the safety and efficacy of our products and the benefits they offer. For these reasons, people with insulin-dependent diabetes and healthcare providers may be slower to adopt or recommend our products, we may not have comparative data that our competitors have or are generating, third-party payors may not be willing to provide coverage or reimbursement for our products and we may be subject to greater regulatory and product liability risks. These and other factors could slow the adoption of our products and result in our sales being lower than anticipated. In addition, future studies or clinical experience may indicate that treatment with our products is not superior to treatment with competitive products. Such results could slow the adoption of our products and significantly reduce our sales, which could prevent us from achieving our forecasted sales targets or achieving or sustaining profitability.

If the results of clinical studies or other experience, such as our monitoring or investigation of customer complaints, indicate that our products may cause or create an unacceptable risk of unexpected or serious complications or other unforeseen negative effects, we could be required to inform our customers of these risks or complications or, in more serious circumstances, we could be subject to mandatory product recalls, suspension or withdrawal of FDA clearance or approval, which could result in significant legal liability, harm to our reputation, and a decline in our product sales.

Any alleged illness or injury associated with any of our products or product recalls may negatively impact our financial results and business prospects depending on a number of factors, including the scope and seriousness of the problem, degree of publicity, reaction of our customers and healthcare professionals, competitive response, and consumer perceptions generally. Even if such an allegation or product liability claim lacks merit, cannot be substantiated, is unsuccessful or is not fully pursued, the negative publicity surrounding any assertion that our products caused illness, injury or death could adversely affect our reputation with customers, healthcare professionals, third-party payors, and existing and potential collaborators, and could adversely affect our operating results and cause a decline in our stock price.

We may enter into collaborations, in-licensing arrangements, joint ventures, strategic alliances or partnerships with third parties that may not result in the development of commercially viable products or the generation of significant future revenues.

In the ordinary course of our business, we may enter into collaborations, in-licensing arrangements, joint ventures, strategic alliances or partnerships to develop proposed products and to pursue new markets, or we may amend or modify similar agreements that we already have in place. Proposing, negotiating and implementing collaborations, in-licensing arrangements, joint ventures, strategic alliances or partnerships may be a lengthy and complex process. Other companies, including those with substantially greater financial, marketing, sales, technology or other business resources, may compete with us for these opportunities. We may not identify or complete any such transactions or arrangements in a timely manner, on a cost-effective basis, on acceptable terms or at all. In addition, we may not realize the anticipated benefits of any such transaction or arrangement that we do identify and complete. In particular, these collaborations may not result in the development of products that achieve commercial success or result in positive financial results and could be terminated prior to developing any products.

Additionally, we may not be in a position to exercise sole decision-making authority regarding the transaction or arrangement, which could create the potential risk of creating impasses on decisions, and our collaborators may have economic or business interests or goals that are, or that may become, inconsistent with our business interests or goals. It is possible that conflicts may arise with our collaborators, such as conflicts concerning the achievement of performance milestones, or the interpretation of significant terms under any agreement, such as those related to financial obligations, termination rights or the ownership or control of intellectual property developed during the collaboration. If any conflicts arise with our current or future collaborators, they may act in their self-interest, which may be adverse to our best interest, and they may breach their obligations to us. In addition, we have limited control over the amount and timing of resources that our current collaborators, such as Dexcom and TypeZero, or any future collaborators devote to our arrangement with them or our future products. Disputes between us and our collaborators may result in litigation or arbitration which would increase our expenses and divert the attention of our management. Further, these transactions and arrangements are contractual in nature and may be terminated or dissolved under the terms of the applicable agreements and, in such event, we may not continue to have rights to the products relating to such transaction or arrangement or may need to purchase such rights at a premium.

For example, we have entered into multiple development agreements with Dexcom, which provide us non-exclusive licenses to integrate various currently available generations of Dexcom CGM technology with our insulin pump products. Our agreements with Dexcom currently run until June 2020 with automatic one-year renewals unless a party provides prior notice to the contrary. Under certain circumstances, these agreements may be terminated by either party without cause or on short notice. Our current agreements with Dexcom do not grant us rights to integrate future generations of Dexcom CGM technology with any of our current or future products. Termination of any of our agreements with Dexcom would require us to redesign certain current products and products under development, and attempt to integrate an alternative CGM system into our insulin pump systems, which would require significant development and regulatory activities that could result in an interruption or substantial delay in the availability of the product to our customers. The termination of our commercial agreements with Dexcom would disrupt our ability to commercialize our existing products and our development of future products, which could have a material adverse impact on our financial condition and results of operations, negatively impact our ability to compete and cause our stock price to decline.

We operate our business in regions subject to natural disasters and other catastrophic events, and any disruption to our business resulting from natural disasters will adversely affect our revenue and results of operations.

We operate our business in regions subject to natural disasters, including earthquakes, hurricanes, floods, fires and other catastrophic events. For example, our administrative offices located in San Diego are in an area that is prone to flooding, which has occasionally temporarily disrupted our business operations. Any natural disaster could adversely affect our ability to conduct business and provide products and services to our customers, and the insurance we maintain may not be adequate to cover our losses resulting from any business interruption resulting from a natural disaster or other catastrophic events. Any future disruptions to our operations could have a material adverse impact on our financial condition and results of operations in future periods.

Any significant disruptions to our information technology systems, or failures of our pumps' software to perform as we anticipate, could have an adverse effect on our business, financial condition and operating results.

The efficient operation of our business depends on our information technology systems. We rely on our information technology systems to effectively manage sales and marketing data, accounting and financial functions, manufacturing and quality records, inventories management, product development tasks, research and development data, customer service and technical support functions. Our information technology systems, including those that support t:connect, our current and future mobile applications, as well as those involved in the operation of our Tandem Device Updater, are vulnerable to damage or interruption from earthquakes, fires, floods and other natural disasters, terrorist attacks, attacks by computer viruses or hackers, power losses, and computer system or data network failures. In addition, our currently-marketed insulin pumps and our products currently under development contain software which could be subject to computer virus, hacker attacks or other failures. These risks significantly increased after July 2016, when we received FDA clearance of our Tandem Device Updater, which enables customers to remotely update software on their insulin pumps. We may also face new risks relating to our information technology systems as we begin to commercialize our products outside the United States and are subject to additional regulations relating to the use and protection of personal information and as we launch new mobile applications.

The failure of our or our service providers' information technology systems or our pumps' software or other mobile applications to perform as we anticipate or our failure to effectively implement new information technology systems and privacy policies and controls could disrupt our entire operation or adversely affect our software products. For example, we market our Tandem Device Updater as having the unique capability to deploy software updates to our pumps, which may allow customers remote access to new and enhanced features. The failure of our Tandem Device Updater to provide software updates as we anticipate, including as a result of our inability to secure and maintain necessary regulatory approvals, the inability of our pumps to properly receive software updates, errors or viruses embedded within the software being transmitted, or the failure of our customers to properly utilize the system to complete the update, could result in decreased sales, increased warranty costs, and harm to our reputation, all of which could have a material adverse effect on our business, financial condition and operating results.

We depend on the knowledge and skills of our senior management and other key employees, and if we are unable to retain and motivate them or recruit additional qualified personnel, our business may suffer.

We have benefited substantially from the leadership and performance of our senior management, as well as certain key employees. For example, key members of our management have experience successfully scaling an early stage medical device company to achieve profitability. Our success will depend on our ability to retain our current management and key employees, and to attract and retain qualified personnel in the future. Competition for senior management and key employees in our industry is intense and we cannot guarantee that we will be able to retain our personnel or attract new, qualified personnel. The loss of the services of certain members of our senior management or key employees could prevent or delay the implementation and completion of our strategic objectives, or divert management's attention to seeking qualified replacements. Each member of senior management as well as our key employees may terminate employment without notice and without cause or good reason. The members of our senior management are not subject to non-competition agreements. Accordingly, the adverse effect resulting from the loss of certain members of senior management could be compounded by our inability to prevent them from competing with us.

We depend upon key employees in a competitive market, and if we are unable to provide meaningful equity incentives to retain key personnel, it could adversely affect our ability to execute our business strategy.

We are highly dependent upon the members of our management team, as well as other key employees. Many of these individuals have been employed by us for many years, have played integral roles in the growth of our business, and will continue to provide value to us. In our industry, it is common to attract and retain executive talent and other employees with compensation packages that include a significant equity component. At this time, a substantial number of our outstanding equity awards issued prior to 2017, which generally were issued in the form of stock options, are significantly out of the money and unlikely to be exercised in the future. We have issued, and may continue to issue, additional equity incentives that we believe will enhance our ability to retain our current key employees and attract the necessary additional executive talent. However, even if we issue significant additional equity incentives, there can be no assurance that we will be able to attract and retain key executive talent. A loss of any of our key personnel, or our inability to hire new personnel, may have a material adverse effect on our ability to execute our business strategy.

If we are found to have violated laws protecting the confidentiality of patient health information or other personal information, we could be subject to civil or criminal penalties, which could increase our liabilities and harm our reputation or our business.

There are a number of domestic and international laws protecting the confidentiality and security of personal information, including laws and regulations under the federal U.S. Health Insurance Portability and Accountability Act of 1996, or HIPAA, Canada's Personal Information Protection and Electronic Documents Act, referred to as PIPEDA, and the EU General Data Protection Regulation, commonly known as GDPR. These requirements seek to protect medical records and other personal information from unauthorized access and to ensure that individuals know how we collect, use, store, and transfer their personal information.

If we, or any of our service providers who have access to the personal data for which we are responsible, are found to be in violation of the privacy and security requirements of HIPAA, PIPEDA, or GDPR, we could be subject to civil or criminal penalties, which could increase our liabilities, harm our reputation and have a material adverse effect on our business, financial condition and operating results. We believe we are in substantial compliance with the privacy and security requirements of these laws, however, even compliant entities can experience security breaches or have inadvertent failures that may result in potential claims and liability under such laws.

We may also face new risks relating to security laws and privacy rights as individual U.S states, E.U. member states, and other international jurisdictions adopt new data privacy laws and regulations as we begin to commercialize our products worldwide. As we continue to expand internationally, our business will need to be adapted to meet these and other similar legal requirements.

We are seeking approval to commercialize our products outside of the United States, which may result in a variety of risks associated with international operations that could materially adversely affect our business.

During 2018, we began commercialization of the t:slim X2 insulin pump in select geographies outside of the United States. We have limited experience commercializing our products outside of the United States and expect that we will be subject to additional risks related to international business markets, including:

- different regulatory requirements for product approvals in foreign countries;
- differing U.S. and foreign medical device import and export rules;
- more restrictive privacy laws relating to personal information of end users and employees, including GDPR;
- reduced protection for our intellectual property rights in foreign countries;
- unexpected changes in tariffs, trade barriers and regulatory requirements;
- different reimbursement systems;
- economic weakness, including inflation, or political instability in particular foreign economies and markets;
- compliance with tax, employment, immigration and labor laws for employees living or traveling abroad or with U.S. regulations that would apply to activities in such foreign jurisdictions, such as the U.S. Foreign Corrupt Practices Act;
- foreign taxes, including withholding of payroll taxes;
- foreign currency fluctuations, which could result in increased operating expenses and reduced revenues, and other obligations incident to doing business in another country; and
- business interruptions resulting from geopolitical actions, including war and terrorism, or natural disasters.

In addition, entry into international markets may require significant financial resources, impose additional demands on our manufacturing, quality, regulatory, customer support and other general and administrative personnel, and could divert management's attention from managing our core business. We have limited experience with regulatory environments and market practices internationally, and we may not be able to penetrate or successfully operate in new markets. Accordingly, if we are unable to expand internationally, manage the complexity of our global operations successfully or if we incur unanticipated expenses, we may not achieve the expected benefits of this expansion and our financial condition and results of operations could be materially and adversely impacted.

We may seek to grow our business through acquisitions of complementary products or technologies, and the failure to successfully manage acquisitions, or the failure to integrate them with our existing business, could have a material adverse effect on our business, financial condition and operating results.

From time to time, we may consider opportunities to acquire other products or technologies that may enhance our product platform or technology, expand the breadth of our markets or customer base, or advance our business strategies. Potential acquisitions involve numerous risks, including:

- problems assimilating the acquired products or technologies;
- issues maintaining uniform standards, procedures, controls and policies;
- unanticipated costs associated with acquisitions;
- diversion of management's attention from our existing business;
- risks associated with entering new markets in which we have limited or no experience; and
- increased legal and accounting costs relating to the acquisitions or to compliance with regulatory matters.

We have no current commitments with respect to any acquisition. We do not know if we will be able to identify acquisitions we deem suitable, whether we will be able to successfully complete any such acquisitions on favorable terms or at all, or whether we will be able to successfully integrate any acquired products or technologies into our business. Our potential inability to integrate any acquired products or technologies effectively may adversely affect our business, operating results and financial condition.

Risks Related to our Financial Results and Need for Financing

We may need to raise additional funds in the future and if we are unable to raise additional funds when necessary, we may not be able to achieve our strategic objectives.*

At March 31, 2019, we had $$125.6 million in cash, cash equivalents and short-term investments. Our management expects the continued growth of our business, including the expansion of our customer service infrastructure to support our growing base of customers, our plans to expand commercial sales of our products outside the United States, the growth of our manufacturing and warehousing operations and additional research and development activities, will continue to increase our expenses. In addition, the amount of our future product sales is difficult to predict and actual sales may not be in line with our forecasts. Accordingly, our future capital requirements will depend on many factors, including:

- the revenue generated by sales of our insulin pump products, and the related insulin cartridges and infusion sets, and any other future products that we may develop and commercialize;
- the gross profits and gross margin we realize from the sales we generate;
- the costs associated with maintaining an appropriate sales, clinical and marketing infrastructure;
- the expenses we incur or other capital expenditures we make to maintain or enhance our manufacturing operations, including the hiring of additional personnel, purchasing manufacturing equipment and other measures to add manufacturing capacity;
- the expenses associated with developing and commercializing our proposed products or technologies;
- the costs associated with maintaining and expanding our customer service infrastructure;
- the cost of obtaining and maintaining regulatory clearance or approval for our products and our manufacturing facilities;
- the cost of ongoing compliance with legal and regulatory requirements;
- the expenses we incur in connection with potential litigation or governmental investigations;

- expenses we may incur or other financial commitments we may make in connection with current and potential new business or commercial collaborations, development agreements or licensing arrangements;
- anticipated or unanticipated capital expenditures; and
- unanticipated general and administrative expenses.

As a result of these and other factors we may in the future seek additional capital from public or private offerings of our capital stock, or from other sources. If we issue equity or debt securities to raise additional funds, our existing stockholders may experience dilution, we may incur significant financing costs, and the new equity or debt securities may have rights, preferences and privileges senior to those of our existing stockholders. In addition, if we raise additional funds through collaborations, licensing, joint ventures, strategic alliances, partnership arrangements or other similar arrangements, it may be necessary to relinquish valuable rights to our potential future products or proprietary technologies, or grant licenses on terms that are not favorable to us.

If we are unable to raise additional capital when necessary, we may not be able to maintain our existing sales, marketing, clinical and customer service infrastructure, enhance our current products or develop new products, take advantage of future opportunities, respond to competitive pressures, changes in supplier relationships, or unanticipated changes in customer demand. Any of these events could adversely affect our ability to achieve our strategic objectives, which could have a material adverse effect on our business, financial condition and operating results.

Our operating results may fluctuate significantly from quarter to quarter.

There has been and may continue to be meaningful variability in our operating results from quarter to quarter, as well as within each quarter, especially around the time of anticipated new product launches or regulatory approvals by us or our competitors. Our operating results, and the variability of these operating results, will be affected by numerous factors, including:

- our ability to increase sales and gross profit from our insulin pump products, including the related insulin cartridges and infusion sets, and to commercialize and sell our future products;
- the number and mix of our products sold in each quarter;
- acceptance of our products by people with insulin-dependent diabetes, their caregivers, healthcare providers and third-party payors;
- the pricing of our products and competitive products, including the use of discounts, rebates or other financial incentives by us or our competitors;
- the effect of third-party coverage and reimbursement policies;
- our ability to maintain our existing infrastructure;
- the amount of, and the timing of the payment for, insurance deductibles required to be paid by our customers and potential customers under their existing insurance plans;
- interruption in the manufacturing or distribution of our products;
- our ability to simultaneously manufacture multiple products that meet quality, reliability and regulatory requirements;
- seasonality and other factors affecting the timing of purchases of our products;
- timing of new product offerings, acquisitions, licenses or other significant events by us or our competitors;
- results of clinical research and trials on our existing and future products;
- the ability of our suppliers to timely provide us with an adequate supply of components that meet our requirements;
- regulatory clearance or approvals affecting our products or those of our competitors; and
- the timing of revenue and expense recognition associated with our product sales pursuant to applicable accounting standards.

In addition, we expect our operating expenses will continue to increase as we expand our business, which may exacerbate the quarterly fluctuations in our operating results. If our quarterly or annual operating results fall below the expectation of investors or securities analysts, the price of our common stock could decline substantially. Further, any quarterly or annual fluctuations in our operating results may, in turn, cause the price of our common stock to fluctuate substantially, and these price fluctuations could result in further pressure on our stock price. We believe quarterly comparisons of our financial results are not necessarily meaningful and should not be relied upon as an indication of our future performance.

Risks Related to our Intellectual Property and Potential Litigation

Our ability to protect our intellectual property and proprietary technology is uncertain.*

We rely primarily on patent, trademark and trade secret laws, as well as confidentiality and non-disclosure agreements, to protect our proprietary technologies. As of March 31, 2019, our patent portfolio consisted of approximately 72 issued U.S. patents and 61 pending U.S. patent applications. Of these, our issued U.S. patents expire between approximately 2021 and 2036. We also have and are seeking patent protection for our proprietary technologies in other countries throughout the world. In addition, we have 11 U.S. trademark registrations and 15 foreign trademark registrations.

We have applied for patent protection relating to certain existing and proposed products and processes. If we fail to file a patent application timely in any jurisdiction, we may be precluded from doing so at a later date. Further, we cannot assure you that any of our patent applications will be approved in a timely manner or at all. The rights granted to us under our patents, and the rights we are seeking to have granted in our pending patent applications, may not be meaningful or provide us with any commercial advantage. In addition, those rights could be opposed, contested or circumvented by our competitors, or be declared invalid or unenforceable in judicial or administrative proceedings. The failure of our patents to adequately protect our technology might make it easier for our competitors to offer the same or similar products or technologies. Even if we are successful in receiving patent protection for certain products and processes, our competitors may be able to design around our patents or develop products that provide outcomes which are comparable to ours without infringing on our intellectual property rights. Due to differences between foreign and U.S. patent laws, our patented intellectual property rights may not receive the same degree of protection in foreign countries as they would in the United States. Even if patents are granted outside of the United States, effective enforcement in those countries may not be available.

We rely on our trademarks and trade names to distinguish our products from the products of our competitors, and have registered or applied to register many of these trademarks. We cannot assure you that our current or future trademark applications will be approved in a timely manner or at all. From time to time, third parties oppose our trademark applications, or otherwise challenge our use of the trademarks. In the event that our trademarks are successfully challenged, we could be forced to rebrand our products, which could result in loss of brand recognition, and could require us to devote additional resources to marketing new brands. Further, we cannot assure you that competitors will not infringe upon our trademarks, or that we will have adequate resources to enforce our trademarks.

We have entered into confidentiality agreements and intellectual property assignment agreements with our officers, employees, temporary employees and consultants regarding our intellectual property and proprietary technology. In the event of unauthorized use or disclosure or other breaches of those agreements, we may not be provided with meaningful protection for our trade secrets or other proprietary information.

If a competitor infringes upon one of our patents, trademarks or other intellectual property rights, enforcing those patents, trademarks and other rights may be difficult, expensive and time consuming. Patent law relating to the scope of claims in the industry in which we operate is subject to rapid change and constant evolution and, consequently, patent positions in our industry can be uncertain. Even if successful, litigation to defend our patents and trademarks against challenges or to enforce our intellectual property rights could divert management's attention from managing our business. Moreover, we may not have sufficient resources or incentive to defend our patents or trademarks against challenges or to enforce our intellectual property rights. Litigation also puts our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing. Additionally, pursuing litigation may provoke third parties to assert counterclaims against us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if any, may not be commercially valuable. The occurrence of any of these events may have a material adverse effect on our business, financial condition and operating results.

The medical device industry is characterized by patent litigation, and from time to time, we may be subject to litigation that could be costly, result in the diversion of management's time and efforts, or require us to pay damages.

Our success will depend in part on not infringing the patents or violating the other proprietary rights of third parties. Significant litigation regarding patent rights exists in our industry. Our competitors in both the United States and abroad, many of which have substantially greater resources and have made substantial investments in competing technologies, may have applied for or obtained or may in the future apply for and obtain, patents that will prevent, limit or otherwise interfere with our ability to make and sell our products. The large number of patents, the rapid rate of new patent issuances, and the complexities of the technology involved increase the risk of patent litigation.

From time to time, we may receive communications from third parties alleging our infringement of their intellectual property rights or offering a license to intellectual property that is alleged to relate to products that we are currently developing. Any intellectual property-related discussions, disputes or litigation could force us to do one or more of the following:

- stop selling our products or using technology that contains the allegedly infringing intellectual property;
- prevent or limit our ability to sell a product that we are currently developing;
- incur significant legal expenses;
- pay substantial damages to the party whose intellectual property rights we are allegedly infringing;
- redesign those products that contain the allegedly infringing intellectual property; or
- attempt to obtain a license to the relevant intellectual property from third parties, which may not be available on reasonable terms or at all.

We do not currently maintain insurance to cover the expense or any liability that may arise from an intellectual property dispute with a third party. Any litigation or claim against us, even those without merit, or even preparing for a potential dispute or litigation before it arises, may cause us to incur substantial costs, and could place a significant strain on our financial resources and divert the attention of management from our core business. Any litigation or claim against us may also harm our reputation. Further, as we launch new products and increase our sales, and the number of participants in the diabetes market increases, we believe the possibility of our involvement in intellectual property disputes will increase.

We may be subject to damages resulting from claims that we, or our employees, have wrongfully used or disclosed alleged trade secrets of our competitors or are in breach of non-competition or non-solicitation agreements with our competitors.

Many of our employees were previously employed at other medical device companies, including those that are our direct competitors or could potentially become our direct competitors. In some cases, those employees joined our company recently. We may be subject to claims that we, or our employees, have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of these former employers or competitors. In addition, we have been and may in the future be subject to allegations that we caused an employee to breach the terms of his or her non-competition or non-solicitation agreement. Litigation may be necessary to defend against these claims. Even if we successfully defend against these claims, litigation could cause us to incur substantial costs, and could place a significant strain on our financial resources, divert the attention of management from our core business and harm our reputation. If our defense to those claims fails, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. We cannot guarantee that this type of litigation will not continue, and any future litigation or the threat thereof may adversely affect our ability to hire additional direct sales representatives. A loss of key personnel or their work product could hamper or prevent our ability to commercialize proposed products, which could have an adverse effect on our business, financial condition and operating results.

We may incur product liability losses, and insurance coverage may be inadequate or unavailable to cover these losses.

Our business exposes us to potential product liability claims that are inherent in the design, manufacture, testing and sale of medical devices. We are subject to product liability lawsuits alleging that component failures, manufacturing flaws, design defects or inadequate disclosure of product-related risks or product-related information resulted in an unsafe condition, injury or death to customers. The risk of one or more product liability claims or lawsuits may be even greater after we launch new products with new features or enter new markets where we have no prior experience selling our products and rely on newly-hired staff or new independent distributors or contractors to provide new customer training and customer support. In addition, the misuse of our products or the failure of customers to adhere to operating guidelines could cause significant harm to customers, including death, which could result in product liability claims. We may also identify deficiencies in our products that we determine are immaterial and do not pose safety risks, and therefore decide not to initiate a voluntary recall. However, any such deficiency may be more significant than we expect and lead to product liability claims. Product liability lawsuits and claims, safety alerts or product recalls, with or without merit, could cause us to incur substantial costs, and could place a significant strain on our financial resources, divert the attention of management from our core business, harm our reputation and adversely affect our ability to attract and retain customers, any of which could have a material adverse effect on our business, financial condition and operating results.

Although we maintain third-party product liability insurance coverage, it is possible that claims against us may exceed the coverage limits of our insurance policies. Even if any product liability loss is covered by an insurance policy, these policies typically have substantial deductibles for which we are responsible. In addition, we expect the cost of our product liability insurance will increase as our product sales increase and we may also increase the amount of our deductibles over time. Product liability claims in excess of applicable insurance coverage could have a material adverse effect on our business, financial condition and operating results. In addition, any product liability claim brought against us, with or without merit, could result in further increases of our product liability insurance premiums. Insurance coverage varies in cost and can be difficult to obtain, and we cannot guarantee that we will be able to obtain insurance coverage in the future on terms acceptable to us or at all. Our inability to obtain sufficient insurance coverage to protect again potential product liability claims could prevent or limit our commercialization of current products or products currently under development.

Risks Related to our Legal and Regulatory Environment

Our products and operations are subject to extensive governmental regulation, and failure to comply with applicable requirements could cause our business to suffer.

The medical device industry is regulated extensively by governmental authorities, principally the FDA and corresponding state regulatory agencies. The regulations are very complex and are subject to rapid change and varying interpretations. Regulatory restrictions or changes could limit our ability to carry on or expand our operations or result in higher than anticipated costs or lower than anticipated sales. The FDA and other U.S. governmental agencies regulate numerous elements of our business, including:

- product design and development;
- pre-clinical and clinical testing and trials;
- product safety;
- establishment registration and product listing;
- labeling and storage;
- marketing, manufacturing, sales and distribution;
- pre-market clearance or approval;
- servicing and post-market surveillance;
- advertising and promotion; and
- recalls and field safety corrective actions.

Before we can market or sell a new regulated product or a significant modification to an existing product in the United States, we must obtain either clearance under Section 510(k) of the FDCA or approval of a PMA application from the FDA, unless an exemption from pre-market review applies. In the 510(k) clearance process, the FDA must determine that a proposed device is "substantially equivalent" to a device legally on the market, known as a "predicate" device, with respect to intended use, technology and safety and effectiveness, in order to clear the proposed device for marketing. Clinical data is sometimes required to support substantial equivalence. The PMA pathway requires an applicant to demonstrate the safety and effectiveness of the device based on extensive data. The PMA process is typically required for devices that are deemed to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices. We received approval of our PMA for t:slim G4 in September 2015 and of our PMA supplement for the t:slim X2 with G5 integration in August 2017. More recently, in June 2018, we received approval of our PMA for the t:slim X2 with Basal-IQ technology. Products that are approved through a PMA application generally need FDA approval before they can be modified. Similarly, some modifications made to products cleared through the 510(k) clearance process may require a new 510(k) submission. The process of obtaining regulatory clearances or approvals to market a medical device can be costly and time-consuming, and we may not be able to obtain these clearances or approvals on a timely basis or at all for our proposed products.

We may pursue 510(k) clearance for additional products or product modifications in the future. If the FDA requires us to go through a more rigorous examination for future products or modifications to existing products than we had expected, our product introductions or modifications could be delayed or canceled, which could cause our sales to decline or to not increase in line with our forecasts. We anticipate that certain of our products currently under development will require the more costly, lengthy and uncertain PMA approval process.

The FDA can delay, limit or deny clearance or approval of one of our devices for many reasons, including:

- our inability to demonstrate that our products are safe and effective for their intended users;
- the data from our clinical trials may be insufficient to support clearance or approval; and
- failure of the manufacturing process or facilities we use to meet applicable requirements.

In addition, the FDA may change its clearance and approval policies, adopt additional regulations or revise existing regulations, or take other actions which may prevent or delay approval or clearance of our products under development or impact our ability to modify our currently cleared or approved products on a timely basis. For example, based on feedback from the FDA, we recently received approval of a de novo 510(k) application to down-classify the t:slim X2 to a Class II device, under the new insulin pump classification referred to as ACE pumps, and we intend to separately file a PMA for our implementation of the Control-IQ technology. Ultimately, the FDA may not support our new regulatory filing strategy.

Any delay in, or failure to receive or maintain, clearance or approval for our products under development could prevent us from generating revenue from these products or achieving profitability. Additionally, the FDA and other regulatory authorities have broad enforcement powers. Regulatory enforcement or inquiries, or other increased scrutiny on us, could dissuade some customers from using our products and adversely affect our reputation and the perceived safety and efficacy of our products.

Failure to comply with applicable regulations could jeopardize our ability to sell our products and result in enforcement actions such as fines, civil penalties, injunctions, warning letters, recalls of products, delays in the introduction of products into the market, refusal of the FDA or other regulators to grant future clearances or approvals, delays by the FDA or other regulators in granting clearances or approvals, and the suspension or withdrawal of existing approvals by the FDA or other regulators. Any of these sanctions could result in higher than anticipated costs, lower than anticipated sales, and diversion of management time and resources, any of which could have a material adverse effect on our reputation, business, financial condition and operating results.

Further, we commenced commercial sales of our products in select international markets during the third quarter of 2018. As we expand our operations outside of the United States, we will become subject to various additional regulatory and legal requirements under the applicable laws and regulations of the international markets we enter. These additional regulatory requirements may involve significant costs and expenditures and, if we are not able to comply with any such requirements, our international expansion and business could be significantly harmed.

Modifications to our products may require new 510(k) clearances or PMAs, or may require us to cease marketing or recall the modified products until clearances are obtained.

Any modification to a 510(k)-cleared device that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, design, or manufacture, requires a new 510(k) clearance or, possibly, a PMA. The FDA requires every manufacturer to make this determination in the first instance, but the FDA may review any manufacturer's decision. The FDA may not agree with our decisions regarding whether new clearances or approvals are necessary for changes that we have made to our products. If the FDA disagrees with our determination and requires us to submit new 510(k) notifications or PMAs for modifications to our previously cleared or approved products, for which we concluded that new clearances or approvals were not necessary, we may be required to cease marketing or to recall the modified product until we obtain clearance or approval, and we may be subject to significant regulatory fines or penalties.

Further, the FDA's ongoing review of and potential changes to the 510(k) program may make it more difficult for us to modify our previously cleared products, either by imposing stricter requirements on when a new 510(k) for a modification to a previously cleared product must be submitted, or by applying more onerous review criteria to such submissions.

If we or our third-party suppliers fail to comply with the FDA's good manufacturing practice regulations, this could impair our ability to market our products in a cost-effective and timely manner.

We and our third-party suppliers are required to comply with the FDA's Quality System Regulation, or the QSR, which covers the methods and documentation of the design, testing, production, control, quality assurance, labeling, packaging, sterilization, storage and shipping of our products. The FDA audits compliance with the QSR through periodic announced and unannounced inspections of manufacturing and other facilities. The FDA may impose inspections or audits at any time. If we or our suppliers have significant non-compliance issues or if any corrective action plan that we or our suppliers propose in response to observed deficiencies is not sufficient, the FDA could take enforcement action against us. Any of the foregoing actions could have a material adverse effect on our reputation, business, financial condition and operating results.

A recall of our products, or the discovery of serious safety issues with our products, could have a significant negative impact on us.

The FDA has the authority to require the recall of commercialized products in the event of material deficiencies or defects in design or manufacture or in the event that a product poses an unacceptable risk to health. The FDA has broad discretion to require the recall of a product or to require that manufacturers alert customers of safety risks, and may do so even in circumstances where we do not believe our product poses an unacceptable risk to health. In addition, manufacturers may, under their own initiative, recall a product if any material deficiency in a product is found or alert customers of unanticipated safety risks. A government-mandated or voluntary recall by us, one of our distributors or any of our other third-party suppliers could occur as a result of an unacceptable risk to health, component failures, manufacturing errors, design or labeling defects or other deficiencies and issues. Recalls or notices relating to any products that we distribute would divert managerial and financial resources, and have an adverse effect on our reputation, financial condition and operating results.

Further, under the FDA's MDR regulations, we are required to report to the FDA any incident in which our product may have caused or contributed to a death or serious injury or in which our product malfunctioned and, if the malfunction were to recur, would likely cause or contribute to death or serious injury. Repeated product malfunctions may result in a voluntary or involuntary product recall, which could divert managerial and financial resources, impair our ability to manufacture our products in a cost-effective and timely manner and have an adverse effect on our reputation, financial condition and operating results.

Any adverse event involving any products that we distribute could result in future voluntary corrective actions, such as recalls or customer notifications, or regulatory agency action, which could include inspection, mandatory recall or other enforcement action. Any corrective action, whether voluntary or involuntary, will require the dedication of our time and capital, distract management from operating our business and may harm our reputation and financial results.

Our failure to comply with U.S. federal and state fraud and abuse laws, including anti-kickback laws and other U.S. federal and state anti-referral laws, could have a material adverse impact on our business.

There are numerous U.S. federal and state laws pertaining to healthcare fraud and abuse, including anti-kickback laws, physician self-referral laws, and false claims laws. Our relationships with healthcare providers and other third parties are subject to scrutiny under these laws. Violations of these laws are punishable by criminal and civil sanctions, including, in some instances, imprisonment and exclusion from participation in federal and state healthcare programs, including the Medicare, Medicaid and Veterans Administration health programs.

Healthcare fraud and abuse regulations are complex, and even minor irregularities can potentially give rise to claims that a statute or prohibition has been violated. The laws that may affect our ability to operate include:

- the federal healthcare programs' Anti-Kickback Statute, which prohibits, among other things, persons from knowingly and willfully soliciting, receiving, offering or providing 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;

- federal false claims 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 payors that are false or fraudulent;

- federal and state physician referral laws, such as the Stark Law, that prohibit a physician from referring Medicare or Medicaid patients to an entity providing "designated health services," including a company that furnishes durable medical equipment, with which the physician has a financial relationship;

- federal criminal laws enacted as part of HIPAA that prohibit executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters;

- federal disclosure laws, such as the Physician Payments Sunshine Act, which require certain manufacturers, including medical device manufacturers, to submit annual data pertaining to payments or other transfers of value to covered recipients, including physicians;

- the Federal Trade Commission Act and similar laws regulating advertisement and consumer protections;

- foreign and U.S. 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 payor, including commercial insurers; and

- federal and state laws governing the use, disclosure and security of protected health information, such as HIPAA and the Health Information Technology for Economic and Clinical Health.

Further, the Patient Protection and Affordable Care Act, as amended by the Healthcare and Education Affordability Reconciliation Act, or, collectively, the PPACA, among other things, amends the intent requirement of the federal anti-kickback and criminal healthcare fraud statutes. An individual or entity can now be found guilty under the PPACA without actual knowledge of the statute or specific intent to violate it. In addition, the PPACA provides that claims submitted in violation of the Anti-Kickback Statute automatically constitute false claims for purposes of the False Claims Act. Possible sanctions for violation of these laws include monetary fines, civil and criminal penalties, exclusion from Medicare, Medicaid and other federal healthcare programs, and forfeiture of amounts collected in violation of those prohibitions. Any violation of these laws, or any action against us for violation of these laws, even if we successfully defend against it, could result in a material adverse effect on our reputation, business, financial condition and operating results.

To enforce compliance with the federal laws, the U.S. Department of Justice, or the DOJ, has increased its scrutiny of interactions between healthcare companies and healthcare providers, which has led to a number of investigations, prosecutions, convictions and settlements in the healthcare industry. Dealing with investigations can be time- and resource-consuming and can divert management's attention from our core business. Additionally, if a healthcare company settles an investigation with the DOJ or other law enforcement agencies, we may be forced to agree to additional onerous compliance and reporting requirements as part of a consent decree or corporate integrity agreement. Any such investigation or settlement could increase our costs or otherwise have an adverse effect on our business.

The scope and enforcement of these laws is uncertain and subject to rapid change in the current environment of healthcare reform. Federal or state regulatory authorities might challenge our current or future activities under these laws. Any of these challenges could have a material adverse effect on our reputation, business, financial condition and operating results. Any state or federal regulatory review of us, regardless of the outcome, would be costly and time-consuming. Additionally, we cannot predict the impact of any changes in these laws, whether or not retroactive.

We may be liable if we engage in the promotion of the off-label use of our products.

Our promotional materials and training methods must comply with FDA and other applicable laws and regulations, including the prohibition against the promotion of the off-label use of our products or the pre-promotion of unapproved products. Healthcare providers may use our products off-label, as the FDA does not restrict or regulate a physician's choice of treatment within the practice of medicine. However, if the FDA determines that our promotional materials or training constitutes promotion of an off-label use or the pre-promotion of an unapproved product, it could request that we modify our training or promotional materials or subject us to regulatory or enforcement actions, including the issuance of an untitled letter, a warning letter, injunction, seizure, civil fine and criminal penalties. It is also possible that other federal, state or foreign enforcement authorities might take action if they consider our promotional or training materials to constitute promotion of an unapproved use, which could result in significant fines or penalties. Although our policy is to refrain from statements that could be considered off-label promotion of our products or pre-promotion of an unapproved product, the FDA or another regulatory agency could disagree and conclude that we have engaged in improper promotional activities. In addition, the off-label use of our products may increase the risk of product liability claims, which are expensive to defend and could result in substantial damage awards against us and harm our reputation.

Legislative or regulatory healthcare reforms may result in downward pressure on the price of and decrease reimbursement for our products, and uncertainty regarding the healthcare regulatory environment could have a material adverse effect on our business.

The sales of our products depend in part on the availability of coverage and reimbursement from third-party payors such as government health administration authorities, private health insurers, health maintenance organizations and other healthcare-related organizations. Both the federal and state governments in the United States continue to propose and pass new legislation and regulations designed to, among other things, expand healthcare coverage to more individuals, contain or reduce the cost of healthcare, and improve the quality of healthcare outcomes. This legislation and regulation may result in decreased reimbursement for medical devices, which may create additional pressure to reduce the prices charged for medical devices. Reduced reimbursement rates could significantly decrease our revenue, which in turn would place significant downward pressure on our gross margins and impede our ability to become profitable.

The PPACA substantially changed the way healthcare is financed by both governmental and private insurers, encourages improvements in the quality of healthcare items and services, and significantly impacts the medical device industry. However, a number of legislative changes have been proposed and adopted since the PPACA was enacted, and legislation has recently been proposed that could modify or repeal the PPACA. The uncertainties regarding the future of the PPACA, and other healthcare reform initiatives, may have an adverse effect on our customers' purchasing decisions regarding our products.

In the future, additional changes could be made to governmental healthcare programs that could significantly impact the success of our products. Cost control initiatives could decrease the price that we receive for our products. At this time, we cannot predict which, if any, additional healthcare reform proposals will be adopted, when they may be adopted or what impact they may have on the existing regulatory environment, or our ability to operate our business. Any of these factors could have a material adverse effect on our operating results and financial condition.

Our financial performance may be adversely affected by medical device tax provisions in the healthcare reform laws.

The PPACA imposes, among other things, an excise tax of 2.3% on any entity that manufactures or imports medical devices offered for sale in the United States, although this tax has been suspended for calendar years 2016, 2017, 2018 and 2019. It is unclear at this time if the moratorium will be further extended. We do not believe that our products are subject to this tax based on the retail exemption under applicable Treasury Regulations. However, the availability of this exemption is subject to interpretation by the IRS, and the IRS may disagree with our analysis. Absent further legislative action, the medical device excise tax applies to sales of taxable medical devices beginning on January 1, 2020, and future products that we manufacture, produce or import may be subject to this tax (unless the retail exemption or other applicable exemption applies). The financial impact this tax may have on our business is unclear and there can be no assurance that our business will not be materially adversely affected by it. Additionally, Congress could terminate the moratorium or further change the law related to the medical device tax in a manner that could adversely affect us.

Risks Related to our Common Stock

The price of our common stock may continue to fluctuate significantly.*

The trading price of our common stock has been volatile in recent years. We believe our stock price has been, and will continue to be, subject to wide fluctuations in response to a variety of factors, including the following:

- actual or anticipated fluctuations in our financial and operating results from period to period;

- our actual or perceived need for additional capital to fund our operations;

- market acceptance of our current products and products under development, and the recognition of our brand;
- introduction of proposed products, technologies or treatment techniques by us or our competitors;
- announcements of significant contracts, acquisitions or divestitures by us or our competitors;
- regulatory approval of our products or the products of our competitors, or the failure to obtain such approvals on the projected timeline or at all;
- speculative trading practices of market participants;
- issuance of securities analysts' reports or recommendations;
- threatened or actual litigation and government investigations;
- sales of shares of our common stock by our employees, directors or principal stockholders; and
- general political or economic conditions.

These and other factors might cause the market price of our common stock to fluctuate substantially. Fluctuations in our stock price may negatively affect the liquidity of our common stock, which could further impact our stock price.

In recent years, the stock market has experienced significant price and volume fluctuations. This volatility has had a significant impact on the market price of securities issued by many companies across many industries. These changes may occur without regard to the financial condition or operating performance of the affected companies. Accordingly, the price of our common stock could fluctuate based upon factors that have little or nothing to do with our company, and these fluctuations could materially reduce the market price of our common stock.

Anti-takeover provisions in our organizational documents and Delaware law may discourage or prevent a change of control, even if an acquisition would be beneficial to our stockholders, which could reduce our stock price and prevent our stockholders from replacing or removing our current management.

Our amended and restated certificate of incorporation and bylaws contain provisions that could delay or prevent a change of control of our company or changes in our board of directors that our stockholders might consider favorable. Some of these provisions:

- authorize the issuance of preferred stock with powers, preferences and rights that may be senior to our common stock, which can be created and issued by the board of directors without prior stockholder approval;
- provide for the adoption of a staggered board of directors whereby the board is divided into three classes each of which has a different three-year term;
- provide that the number of directors shall be fixed by the board;
- prohibit our stockholders from filling board vacancies;
- provide for the removal of a director only with cause and then by the affirmative vote of the holders of a majority of the outstanding shares;
- prohibit stockholders from calling special stockholder meetings;
- prohibit stockholders from acting by written consent without holding a meeting of stockholders;
- require the vote of at least two-thirds of the outstanding shares to approve amendments to the certificate of incorporation or bylaws; and

- require advance written notice of stockholder proposals and director nominations.

We are subject to the provisions of Section 203 of the Delaware General Corporation Law, which may prohibit certain business combinations with stockholders owning 15% or more of our outstanding voting stock. These and other provisions in our amended and restated certificate of incorporation, bylaws and Delaware law could make it more difficult for stockholders or potential acquirers to obtain control of our board of directors or initiate actions that are opposed by our then-current board of directors, including a merger, tender offer or proxy contest involving our company. Any delay or prevention of a change of control transaction or changes in our board of directors could cause the market price of our common stock to decline.

Our board of directors is authorized to issue and designate shares of our preferred stock in additional series without stockholder approval.

Our amended and restated certificate of incorporation authorizes our board of directors, without the approval of our stockholders, to issue 5,000,000 shares of our preferred stock, subject to limitations prescribed by applicable law, rules and regulations and the provisions of our amended and restated certificate of incorporation, as shares of preferred stock in series, and to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof. The powers, preferences and rights of these additional series of preferred stock may be senior to or on parity with our common stock, and the issuance of such shares in the future may reduce the value of our common stock.

U.S. federal income tax reform could adversely affect us and our stockholders.

On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act, or the TCJA, which significantly reforms the Internal Revenue Code of 1986, as amended, or the Code. The TCJA, among other things, includes changes to U.S. federal tax rates, imposes significant additional limitations on the deductibility of interest, allows for the expensing of capital expenditures, and puts into effect the migration from a “worldwide” system of taxation to a territorial system. We do not expect tax reform to have a material impact on our projection of minimal cash taxes. Our net deferred tax assets and liabilities were revalued at the newly-enacted U.S. corporate rate, and the impact was recognized in our tax expense, offset by a full valuation allowance, in the year of enactment. We continue to examine the impact that this tax reform legislation may have on our business. The impact of this tax reform on holders of our common stock is uncertain and could be adverse.

Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.

As of December 31, 2018, we had federal net operating loss, or NOL, carryforwards of approximately $352.7 million, not considering the limitation discussed below. The federal tax loss carryforwards begin to expire in 2026, unless previously utilized. In addition, if there is an “ownership change” with respect to our company, as defined under Section 382 of the Code the utilization of our NOL carryforwards may be subject to substantial limitations imposed by the Code, and similar state provisions. In general, an ownership change occurs whenever there is a shift in ownership of our company by more than 50% by one or more 5% stockholders over a specified time period.

Although we have not yet completed an update of our Section 382 analysis subsequent to December 31, 2017, offerings of our securities following that date may have caused an ownership change or could increase the likelihood that we undergo an ownership change for purposes of Section 382 of the Code in the future. Based on preliminary results of the Section 382 analysis, the Company anticipates that an ownership change may have occurred in 2018 and that the resulting limitation would significantly reduce the Company’s ability to utilize its net operating loss and credit carryovers before they expire. Limitations imposed on our ability to utilize NOL carryforwards could cause U.S. federal income taxes to be paid earlier than would be paid if such limitations were not in effect and could cause such NOL carryforwards to expire unused, in each case reducing or eliminating the benefit of such NOL carryforwards.

With respect to our NOLs generated in 2018 and thereafter, the TCJA may reduce the tax benefit of our NOLs. Under the TCJA, our ability to carry back NOLs incurred after December 31, 2017 to previous tax years is eliminated. Under prior law, we could carry back NOLs for two years and carry forward NOLs for 20 years. Under the TCJA, NOL carryforwards may be carried forward indefinitely. However, for NOLs arising after December 31, 2017, NOL carryforwards will be limited to 80% of our taxable income. Our NOLs generated in 2017 and in prior years will not be subject to the limitations under the TCJA.

We do not intend to pay cash dividends.

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings for use in the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future. Accordingly, investors may have to sell some or all of their shares of our common stock in order to generate cash flow from their investment.

The requirements of being a public company have increased our costs and will continue to strain our resources and divert management's attention.

As a public company, we are subject to the reporting requirements of the Exchange Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the listing requirements of the NASDAQ Global Market and other applicable securities rules and regulations. Compliance with these rules and regulations has increased our legal and financial compliance costs, made some activities more difficult, time-consuming or costly, and increased demand on our systems and resources.

The Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. In order to meet these additional requirements, significant resources and management oversight may be required. As a result, management's attention may be diverted from other business concerns, which could harm our business and operating results. Although we have hired additional employees to help us comply with these requirements, in the future we may need to hire more employees or utilize external consultants in order to further support our efforts, which will increase our expenses.

Regulations related to "conflict minerals" may cause us to incur additional expenses and could limit the supply and increase the cost of certain metals used in manufacturing our products.

The SEC adopted a rule requiring disclosures by public companies of specified minerals, known as conflict minerals, that are necessary to the functionality or production of products manufactured or contracted to be manufactured. The rule requires companies to perform due diligence, disclose and annually report to the SEC whether or not such minerals originate from the Democratic Republic of Congo or an adjoining country. The rule could affect sourcing at competitive prices and availability in sufficient quantities of certain minerals used in the manufacture of our products, which could increase our expenses. In addition, there may be material costs associated with complying with the disclosure requirements, such as costs related to determining the source of certain minerals used in our products, as well as costs of possible changes to products, processes, or sources of supply as a consequence of such verification activities.

If we fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately report our financial results or prevent fraud. As a result, stockholders could lose confidence in our financial and other public reporting, which would harm our business and the trading price of our common stock.

Effective internal controls over financial reporting are necessary for us to provide reliable financial reports and, together with adequate disclosure controls and procedures, are designed to prevent fraud. Any failure to implement required new or improved controls, or difficulties encountered in their implementation could cause us to fail to meet our reporting obligations. In addition, any testing by us conducted in connection with Section 404(a) of the Sarbanes-Oxley Act, or the subsequent testing by our independent registered public accounting firm conducted in connection with Section 404(b) of the Sarbanes-Oxley Act may reveal deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses or that may require prospective or retroactive changes to our consolidated financial statements or identify other areas for further attention or improvement. Inferior internal controls could also cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of our common stock.

We are required to disclose changes made to our internal control procedures on a quarterly basis and our management is required to assess the effectiveness of these controls annually. Undetected material weaknesses in our internal controls could lead to financial statement restatements and require us to incur the expense of remediation.

We may be at increased risk of securities class action litigation.

In the past, securities class action litigation has been instituted against companies following periods of volatility in the overall market and in the price of a company's securities. We believe this risk may be particularly relevant to us as we have experienced significant stock price volatility in recent years. If we face such litigation, it could result in substantial costs and a diversion of management's attention and resources, which could harm our business, financial condition and results of operations. Our stock price volatility and the increase in our market capitalization during the past year may also result in higher expenses associated with our directors' and officers' liability insurance program.

If securities or industry analysts do not publish research, or publish inaccurate or unfavorable research, about our business, our stock price and trading volume could decline.

The trading market for our common stock depends, in part, on the research and reports that securities or industry analysts publish about us or our business. If one or more of the analysts who cover us downgrade our stock or publish inaccurate or unfavorable research about our business, our stock price would likely decline. In addition, if our operating results fail to meet the forecasts of analysts, our stock price would likely decline. If one or more of these analysts cease coverage of our company or fail to publish reports on us regularly, demand for our common stock could decrease, which might cause our stock price and trading volume to decline.

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

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

Exhibit Number	Exhibit Description	Incorporated by Reference				Provided Herewith
		Form	File No.	Date of First Filing	Exhibit Number	
10.1	Lease Agreement, dated January 22, 2019, by and between Tandem Diabetes Care, Inc. and TREA PACIFIC PLAZA, LLC					X
10.2	Lease Agreement, dated March 14, 2019 by and between Tandem Diabetes Care, Inc. and R.E. Hazard Contracting Company					X
10.3*	2019 Sr. Management Cash Bonus Plan					X
10.4*	First Amendment to Amended and Restated Employment Severance Agreement by and between John F. Sheridan and Tandem Diabetes Care, Inc.					X
31.1	Certification of John F. Sheridan, Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
31.2	Certification of Leigh A. Vosseller, Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
32.1**	Certification of John F. Sheridan, Chief Executive Officer, pursuant to U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
32.2**	Certification of Leigh A. Vosseller, Chief Financial Officer, pursuant to U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
101.INS	XBRL Instance Document.					X
101.SCH	XBRL Taxonomy Extension Schema Document.					X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.					X
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.					X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.					X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.					X

* Indicates management contract or compensatory plan.

** This certification is not deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent that the registrant specifically incorporates it by reference.

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.

Tandem Diabetes Care, Inc.

Dated: April 30, 2019

By: /s/ John F. Sheridan
John F. Sheridan
President and Chief Executive Officer
(on behalf of the registrant and as the registrant's
Principal Executive Officer)

By: /s/ Leigh A. Vosseller
Leigh A. Vosseller
Executive Vice President, Chief Financial Officer and Treasurer
(on behalf of the registrant and as the registrant's
Principal Financial and Accounting Officer)

Exhibit 10.1

OFFICE LEASE

by and between

TREA PACIFIC PLAZA, LLC,
a Delaware limited liability company
("Landlord")

and

TANDEM DIABETES CARE, INC.,
a Delaware corporation
("Tenant")

Dated as of

January 10, 2019

CALIFORNIA WITH BASE YEAR

OFFICE LEASE

This OFFICE LEASE (this "Lease") is made between TREA PACIFIC PLAZA, LLC, a Delaware limited liability company ("Landlord"), and the Tenant described in *Item 1* of the Basic Lease Provisions.

LEASE OF PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to all of the terms and conditions set forth herein, those certain premises (the "Premises") described in *Item 3* of the Basic Lease Provisions and as shown in the drawing attached hereto as *Exhibit A-1*. The Premises are located in the Building described in *Item 2* of the Basic Lease Provisions. The Building is located on that certain land (the "Land"), which is also improved with landscaping, parking facilities and other improvements, fixtures and common areas and appurtenances now or hereafter placed, constructed or erected on the Land (sometimes referred to herein as the "Project").

BASIC LEASE PROVISIONS

1. **Tenant:**TANDEM DIABETES CARE, INC., a Delaware corporation ("Tenant")

2. **Building:**PACIFIC PLAZA AT TORREY HILLS
10935 Vista Sorrento Parkway
San Diego, California 92130

3. **Description of Premises:**Suite 200

Rentable Area: 25,332 rentable square feet

Project Size: 220,348 rentable square feet (subject to Paragraph 18)

4. **Tenant's Proportionate Share:**11.49% (See Paragraph 3)

5. **Base Rent:**(See Paragraph 2)

Lease Months	Monthly Base Rent
1* - 12	$92,461.80
13 - 24	$95,235.65
25 - 36	$98,092.72
37 - 42	$101,035.50

*Subject to partial abatement as provided in Paragraph 2(e)

6. **Installments Payable Upon Execution:**$92,461.80 for Base Rent for Month 1

7. **Security Deposit Payable Upon Execution:**$101,035.50 (See Paragraph 2(c))

8. **Base Year for Operating Expenses:**2019 (See Paragraph 3)

9. **Initial Term:**Forty-two (42) months, commencing on the Commencement Date and ending on the day immediately preceding the last day of the forty-second (42nd) full calendar month following the Commencement Date (See Paragraph 1)

10. Estimated Commencement Date:	March 1, 2019
11. Estimated Termination Date:	August 31, 2022
12. Broker(s) (See <u>Paragraph 19(k)</u>):	Newmark Knight Frank, representing Landlord, and Hughes Marino, representing Tenant
13. Number of Parking Spaces:	Tenant shall have the right to use up to eighty-eight (88) uncovered, unreserved parking spaces at no charge throughout the Initial Term at a ratio of 3.75 unreserved parking stalls per 1,000 usable square feet in the Premises, calculated based on 23,365 usable square feet of Premises. Tenant's parking spaces shall be located in one of the two (2) parking structures in the Project. (See <u>Paragraph 18</u>)
14. Addresses for Notices: TENANT: Prior to occupancy of the Premises: 11075 Roselle Street San Diego, CA 92121 Attn: David Berger, Executive Vice President and General Counsel After occupancy of the Premises: 10935 Vista Sorrento Parkway Suite 200 San Diego, California 92130	**LANDLORD:** TIAA-CREF 4675 MacArthur Court, Suite 1100 Newport Beach, California 92660 Attn: John Cornuke, Director – Asset Management With a copy to: Pillsbury Winthrop Shaw Pittman LLP 12255 El Camino Real, Suite 300 San Diego, CA 92130 Attn: Eric Kremer
15. Address for Payment of Rent:	All payments payable under this Lease shall be sent to Landlord at: TREA Pacific Plaza LLC P.O. Box 51114 Los Angeles, California 90074 or to such other address as Landlord may designate in writing.
16. Guarantor:	None
17. Effective Date:	January 10, 2019
18. Tenant Improvements:	Landlord, at Landlord's sole cost and expense, on a turnkey basis, shall install certain tenant improvements in the Premises in accordance with <u>*Exhibit B*</u> attached hereto.
19. The "State" is the state, commonwealth, district or jurisdiction in which the Building is located.	California

This Lease consists of the foregoing introductory paragraphs and Basic Lease Provisions, the provisions of the Standard Lease Provisions (the "Standard Lease Provisions") (consisting of Paragraph 1 through Paragraph 19 which follow), *Exhibit A* through *Exhibit E*, and *Rider No. 1* through *Rider No. 3*, all of which are incorporated herein by this reference. In the event of any conflict between the provisions of the Basic Lease Provisions and the provisions of the Standard Lease Provisions, the Standard Lease Provisions shall control.

STANDARD LEASE PROVISIONS

1. **TERM**

(a) The Initial Term of this Lease and the Rent (defined below) shall commence on the Commencement Date (defined below). Unless earlier terminated in accordance with the provisions hereof, the Initial Term of this Lease shall be the period shown in *Item 9* of the Basic Lease Provisions. As used herein, "Lease Term" shall mean the Initial Term referred to in *Item 9* of the Basic Lease Provisions, subject to any extension of the Initial Term hereof exercised in accordance with the terms and conditions expressly set forth herein (the "Expiration Date"). Unless Landlord is terminating this Lease prior to the Expiration Date in accordance with the provisions hereof, Landlord shall not be required to provide notice to Tenant of the Expiration Date. This Lease shall be a binding contractual obligation effective upon execution hereof by Landlord and Tenant, notwithstanding the later commencement of the Initial Term of this Lease. The terms "Tenant Improvements," "Commencement Date," and "Substantial Completion" or "Substantially Completed" are defined in the attached *Exhibit B* Work Letter. "Tenant Delays" consist of those delays defined in *Exhibit B*.

(b) The Premises will be delivered to Tenant when the Tenant Improvements have been Substantially Completed. If the Commencement Date is delayed or otherwise does not occur on the Estimated Commencement Date, set forth in *Item 10* of the Basic Lease Provisions, this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom, subject to the provisions of Section 3(c) of the attached *Exhibit B* Work Letter.

(c) Upon Substantial Completion of the Tenant Improvements, Landlord shall prepare and deliver to Tenant, a factually correct Commencement Letter in the form of *Exhibit E* attached hereto (the "Commencement Letter") which Tenant shall acknowledge by executing a copy and returning it to Landlord. If Tenant fails to sign and return the Commencement Letter to Landlord within ten (10) days of its receipt from Landlord, the Commencement Letter as sent by Landlord shall be deemed to have correctly set forth the Commencement Date and the other matters addressed in the Commencement Letter. Failure of Landlord to send the Commencement Letter shall have no effect on the Commencement Date.

(d) So long as Landlord has received from Tenant the first month's installment of Base Rent due pursuant to Item 6 of the Basic Lease, certificates evidencing the insurance required to be carried by Tenant under this Lease, the Security Deposit, and so long as Tenant and its contractors and employees do not interfere with the completion of the Tenant Improvements in any material respect, Landlord shall use commercially reasonable efforts to give Tenant's designated contractors access to the Premises thirty (30) days prior to the Commencement Date (the "Early Access Period") for purposes of installing Tenant's furniture, fixtures, and equipment ("Tenant's Work"). Tenant's Work shall be performed by Tenant at Tenant's sole cost and expense. Tenant's access to the Premises during the Early Access Period shall be subject to all terms and conditions of this Lease, except that Tenant shall not be obligated to pay Rent during the Early Access Period. Should Landlord determine such early access interferes with Landlord's Work, Landlord may deny Tenant access to the Premises until Landlord's Work is completed to the point where such interference no longer exists. Tenant shall promptly surrender any keys or other means of access to the Premises and otherwise comply with such denial.

2. **BASE RENT AND SECURITY DEPOSIT**

(a) Tenant agrees to pay during each month of the Lease Term as Base Rent ("Base Rent") for the Premises the sums shown for such periods in *Item 5* of the Basic Lease Provisions.

(b) Except as expressly provided to the contrary herein, Base Rent shall be payable in consecutive monthly installments, in advance, without demand, deduction or offset, commencing on the Commencement Date and continuing on the first day of each calendar month thereafter until the expiration of the Lease Term. The first full monthly installment of Base Rent shall be payable upon full execution of this Lease. The obligation of Tenant to pay Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. If the Commencement Date is a day other than the first day of a calendar month, or the Lease Term expires on a day other than the last day of a calendar month, then the Rent for such partial month shall be calculated on a per diem basis. In the event Landlord delivers possession of the Premises to Tenant prior to the Commencement Date, Tenant agrees it shall be bound by and subject to all terms, covenants, conditions and obligations of this Lease during the period between the date possession is delivered and the Commencement Date, other than the payment of Base Rent, in the same manner as if delivery had occurred on the Commencement Date.

(c) Simultaneously with the full execution of this Lease, Tenant has paid or will pay Landlord the security deposit (the "Security Deposit") in *Item 7* of the Basic Lease Provisions as security for the performance of the provisions hereof by Tenant, if applicable. Landlord shall not be required to keep the Security Deposit separate from its general funds and Tenant shall not be entitled to interest thereon.

If Tenant defaults with respect to any provision of this Lease, including, without limitation, the provisions relating to the payment of Rent or the cleaning of the Premises upon the termination of this Lease, or amounts which Landlord may be entitled to recover pursuant to the provisions of Section 1951.2 of the California Civil Code, Landlord may, but shall not be required to, use, apply or retain all or any part of the Security Deposit (i) for the payment of any Rent or any other sum in default, (ii) for the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default hereunder, or (iii) to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default hereunder, including, without limitation, costs and reasonable attorneys' fees incurred by Landlord to recover possession of the Premises following a default by Tenant hereunder. The use or application of the Security Deposit or any portion thereof shall not prevent Landlord from exercising any other right or remedy provided hereunder or under any Law and shall not be construed as liquidated damages.

If any portion of the Security Deposit is so used or applied, Tenant shall, upon demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit within ten (10) business days to the appropriate amount, as determined hereunder. If Tenant shall fully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant (or to the last assignee of Tenant's interest hereunder) within thirty (30) days following the expiration of the Lease Term; provided, however, that Landlord may retain the Security Deposit until such time as any amount due from Tenant in accordance with Paragraph 3 below has been determined and paid to Landlord in full. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code. Tenant also waives all provisions of law, now or hereafter in force, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any Tenant Affiliates (as defined in Paragraph 6(g)(i) below).

(d) The parties agree that for all purposes hereunder the Premises shall be stipulated to contain the number of square feet of Rentable Area described in *Item 3* of the Basic Lease Provisions. Upon the request of either Tenant or Landlord during any extension or renewal of the Initial Term, Landlord's space planner shall verify the exact number of square feet of Rentable Area in the Premises. If during any extension or renewal of the Initial Term there is a variation of three percent (3%) or more from the number of square feet specified in *Item 3* of the Basic Lease Provisions, Landlord and Tenant shall execute an amendment to this Lease for the purpose of making appropriate adjustments to the Base Rent, the Security Deposit, Tenant's Proportionate Share and such other provisions hereof as shall be appropriate under the circumstances. Landlord calculated the Rentable Area described in Item 3 of the Basic Lease Provisions using the BOMA 2017 "Standard Method for Measuring Floor Area in Office Buildings."

(e) Notwithstanding anything to the contrary contained in this Lease, and provided that Tenant faithfully performs all of the terms and conditions of this Lease, Landlord hereby agrees to abate Tenant's obligation to pay Base Rent for months two (2) through seven (7) of the Initial Term. During such abatement period, Tenant shall still be responsible for the payment of all of its other monetary obligations otherwise payable under this Lease during such period.

3. **ADDITIONAL RENT**

(a) If Operating Expenses (defined below) for the Project for any calendar year during the Lease Term exceed Base Operating Expenses (defined below), Tenant shall pay to Landlord as additional rent ("Additional Rent") an amount equal to Tenant's Proportionate Share (defined below) of such excess.

(b) "Tenant's Proportionate Share" is, subject to the provisions of Paragraph 18, the percentage number described in *Item 4* of the Basic Lease Provisions. Tenant's Proportionate Share represents, subject to the provisions of Paragraph 18, a fraction, the numerator of which is the number of square feet of Rentable Area in the Premises and the denominator of which is the number of square feet of Rentable Area for lease to third parties in the Project, as determined by Landlord pursuant to Paragraph 18.

(c) "Base Operating Expenses" means all Operating Expenses incurred or payable by Landlord during the calendar year specified as Tenant's Base Year in *Item 8* of the Basic Lease Provisions. If Landlord incurs Operating Expenses during the Term that were not a part of the Operating Expenses for the entire Base Year, such as earthquake insurance, such cost shall be added to the calculation of the Base Operating Expenses as if they had been incurred for the entire Base Year so that Base Operating Expenses are not understated in the future. Likewise, if Landlord does not incur Operating Expenses during the Term that were a part of Operating Expenses for all or a portion of the Base Year, such as earthquake insurance, such cost shall be deducted from the calculation of the Base Operating Expenses as if they had not been incurred during all or any portion of the Base Year so that Base Operating Expenses are not overstated in the future.

(d) "Operating Expenses" means all costs, expenses and obligations incurred or payable by Landlord in connection with the operation, ownership, management, repair or maintenance of the Building and the Project during or allocable to the Lease Term, consistently determined and applied from year-to-year throughout the Term, including without limitation, the following:

(i) Any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, charge, improvement bond, tax, water and sewer rents and charges, utilities and communications taxes and charges or similar or dissimilar imposition imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, or any other governmental charge, general and special, ordinary and extraordinary, foreseen and unforeseen, which may be assessed against any legal or equitable interest of Landlord in the Premises, Building, Common Areas or Project (collectively, ("Taxes"). Taxes shall also include, without limitation:

(A) any tax on Landlord's "right" to rent or "right" to other income from the Premises or as against Landlord's business of leasing the Premises;

(B) any assessment, tax, fee, levy or charge 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 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. It is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies and charges be included within the definition of "Taxes" for the purposes of this Lease;

(C) any assessment, tax, fee, levy or charge allocable to or measured by the area of the Premises or other premises in the Building or the rent payable by Tenant hereunder or other tenants of the Project, including, without limitation, any gross receipts tax or excise tax levied by state, city or federal government, or any political subdivision thereof, with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof but not on Landlord's other operations;

(D) 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 Premises;

(E) any assessment, tax, fee, levy or charge by any governmental agency related to any transportation plan, fund or system (including assessment districts) instituted within the geographic area of which the Project is a part; and/or

(F) any costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in attempting to protest, reduce or minimize Taxes.

(ii) The cost of services and utilities (including taxes and other charges incurred in connection therewith) provided to the Premises, the Building or the Project, including, without limitation, water, power, gas, sewer, waste disposal, telephone and cable television facilities, fuel, supplies, equipment, tools, materials, service contracts, janitorial services, waste and refuse disposal, window cleaning, maintenance and repair of sidewalks and Building exterior and services areas, gardening and landscaping; insurance, including, but not limited to, public liability, fire, property damage, wind, hurricane, earthquake, terrorism, flood, rental loss, rent continuation, boiler machinery, business interruption, contractual indemnification and All Risk or Causes of Loss - Special Form coverage insurance for up to the full replacement cost of the Project and such other insurance as is customarily carried by operators of other similar class office buildings in the city in which the Project is located, to the extent carried by Landlord in its discretion, and the deductible portion of any insured loss otherwise covered by such insurance; the cost of compensation, including employment, welfare and social security taxes, paid vacation days, disability, pension, medical and other fringe benefits of all persons at or below the level of Project manager (including independent contractors) who perform services connected with the operation, maintenance, repair or replacement of the Project; any association assessments, costs, dues and/or expenses relating to the Project, personal property taxes on and maintenance and repair of equipment and other personal property used in connection with the operation, maintenance or repair of the Project; repair and replacement of window coverings provided by Landlord in the premises of tenants in the Project; such reasonable auditors' fees and legal fees as are incurred in connection with the operation, maintenance or repair of the Project; administration fees; a property management fee (which fee may be imputed if Landlord has internalized management or otherwise acts as its own property manager, in an amount not to exceed on an annual basis, three percent (3%) of the annual gross receipts of the Project); the maintenance of any easements or ground leases benefiting the Project, whether by Landlord or by an independent contractor; a reasonable allowance for depreciation of personal property used in the operation, maintenance or repair of the Project in accordance with generally accepted accounting practices ("GAAP") applied on a consistent basis; license, permit and inspection fees; all costs and expenses required by any governmental or quasi-governmental authority or by applicable law, for any reason, including capital improvements, provided such capital improvements are required to comply with laws first enacted after the Commencement Date and do not involve structural elements, and the cost of any capital repairs, replacements and improvements made to the Project by Landlord that reduce operating expenses (but only to the extent such reduction is realized), and the costs to keep the Project operating in the same condition the Project is in on the Commencement Date (such costs to be amortized over the useful life of such capital repair, replacement or improvement as Landlord shall reasonably determine together with interest thereon at the rate of six percent per annum or such higher rate as may have been paid by Landlord on funds borrowed for the purpose of funding such improvements); the cost of air conditioning, heating, ventilating, plumbing, elevator maintenance and repair (to include the replacement of components) and other mechanical and electrical systems repair and maintenance; sign maintenance; and Common Area (defined below) repair, resurfacing, operation and maintenance; the reasonable cost for temporary lobby displays and events commensurate with the operation of a similar class building, and the cost of providing security services, if any, deemed appropriate by Landlord.

The following items shall be excluded from Operating Expenses:

(A) leasing commissions, attorneys' fees, costs and disbursements and other expenses incurred in connection with leasing, renovating or improving vacant space in the Project for tenants or prospective tenants of the Project;

(B) costs (including permit, license and inspection fees) incurred in renovating or otherwise improving or decorating, painting or redecorating space for tenants or vacant space;

(C) Landlord's costs of any services sold to tenants for which Landlord is entitled to be reimbursed by such tenants as an additional charge or rental over and above the Base Rent and Operating Expenses payable under the lease with such tenant or other occupant;

(D) any depreciation or amortization of the Project except as expressly permitted herein;

(E) costs incurred due to a violation of Law (defined below) by Landlord relating to the Project;

(F) interest on debt or amortization payments on any mortgages or deeds of trust or any other debt for borrowed money;

(G) all items and services for which Tenant or other tenants reimburse Landlord outside of Operating Expenses;

(H) repairs or other work occasioned by fire, windstorm or other work paid for through insurance or condemnation proceeds (excluding any deductible);

(I) legal expenses incurred for (i) negotiating lease terms for prospective tenants, (ii) negotiating termination or extension of leases with existing tenants, (iii) proceedings against any other specific tenant relating solely to the collection of rent or other sums due to Landlord from such tenant, or
(iv) the development and/or construction of the Project;

(J) repairs resulting from any defect in the original design or construction of the Project or the Tenant Improvements;

(K) costs of items considered capital improvements, capital repairs or capital expenditures under GAAP, except as expressly otherwise provided in Paragraph 3(d)(ii) of this Lease;

(L) costs and expenses incurred with respect to the removal of Hazardous Materials (defined below) not attributable to Tenant's, or Tenant's representative's, contractor's, or other persons' permitted in or invited to the Premises or the Project by Tenant, acts or omissions;

(M) costs and expenses (including penalties) incurred with respect to compliance with applicable laws and other legal requirements in effect prior to the Commencement Date;

(N) costs to the extent arising from the gross negligence or willful misconduct of Landlord or its agents, employees, vendors, contractors, or providers of materials or services (including Landlord's failure to maintain the insurance it is required to maintain under this Lease);

(O) costs related to the operation of the business of the entity which constitutes Landlord as the same are distinguished from the costs of operating the Building and the Project;

(P) any excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes applied or measured by Lessor's general or net income (as opposed to rents, receipts, or income directly attributable to operation of the Project);

(Q) any property management fee payable by Tenant exceeding on an annual basis, three percent (3%) of annual Base Rent (i.e., Tenant's Proportionate Share of such management fee on an annual basis shall not exceed three percent (3%) of the annual Base Rent payable by Tenant under the Lease); and

(R) any costs expressly excluded from Operating Expenses elsewhere in the Lease.

(e) Operating Expenses for any calendar year during which actual occupancy of the Project is less than one hundred percent (100%) of the Rentable Area of the Project shall be appropriately adjusted to reflect one hundred percent (100%) occupancy of the existing Rentable Area of the Project during such period. In determining Operating Expenses, if any services or utilities are separately charged to tenants of the Project or others, Operating Expenses shall be adjusted by Landlord to reflect the amount of expense which would have been incurred for such services or utilities on a full time basis for normal Project operating hours. Operating Expenses for the Tenant's Base Year for Operating Expenses (as defined in *Item 8* of the Basic Lease Provisions) shall not include Operating Expenses attributable to temporary market-wide labor-rate increases and/or utility rate increases due to extraordinary circumstances, including, but not limited to Force Majeure, conservation surcharges, boycotts, embargoes, or other shortages. In no event shall the components of utilities for any calendar year related to electrical costs be less than the components of electrical costs in the Base Year for Operating Expenses. In the event (i) the Commencement Date shall be a date other than January 1, (ii) the date fixed for the expiration of the Lease Term shall be a date other than December 31, (iii) of any early termination of this Lease, or (iv) of any increase or decrease in the size of the Premises, then in each such event, an appropriate adjustment in the application of this Paragraph 3 shall, subject to the provisions of this Lease, be made to reflect such event on a basis reasonably determined by Landlord to be consistent with the principles underlying the provisions of this Paragraph 3. In addition, Landlord shall have the right, from time to time, to equitably allocate and prorate some or all of the Operating Expenses among different tenants and/or different buildings of the Project and/or on a building-by-building basis (the "Cost Pools"), adjusting Tenant's Proportionate Share as to each of the separately allocated costs based on the ratio of the Rentable Area of the Premises to the Rentable Area of all of the premises to which such costs are allocated. Such Cost Pools may include, without limitation, the office space tenants and retail space tenants of the buildings in the Project, provided all such allocations are equitable.

(f) Prior to the commencement of each calendar year of the Lease Term following the Commencement Date, Landlord shall have the right to give to Tenant a written estimate of Tenant's Proportionate Share of excess Operating Expenses, if any, for the Project for the ensuing year. Landlord shall not have the right to make more than one (1) revision of such estimate per calendar year. Tenant shall pay such estimated amount to Landlord in equal monthly installments, in advance on the first day of each month. Within a reasonable period after the end of each calendar year (but in all events not later than June 1 thereafter), Landlord shall furnish Tenant a statement indicating in reasonable line item detail the excess of Operating Expenses over Base Operating Expenses for such period and the parties shall, within thirty (30) days thereafter, make any payment or allowance necessary to adjust Tenant's estimated payments to Tenant's actual share of such excess as indicated by such annual statement. Any payment due Landlord shall be payable by Tenant within ten (10) business days of demand from Landlord. Any amount due Tenant shall be credited against installments next becoming due under this Paragraph 3(f).

(g) All capital levies or other taxes assessed or imposed on Landlord upon the rents payable to Landlord under this Lease and any excise, transaction, sales or privilege tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises and/or the Project or any portion thereof shall be paid by Tenant to Landlord monthly in estimated installments as additional rent to be allocated to monthly Operating Expenses.

(h) Tenant shall pay prior to delinquency, all taxes and assessments levied against any personal property, Alterations, tenant improvements or trade fixtures of Tenant in or about the Premises,. If any such taxes or assessments are levied against Landlord or Landlord's property or if the assessed value of the Project is increased by the inclusion therein of a value placed upon such personal property or trade fixtures, Tenant shall within thirty (30) days of presentation of a tax bill for such levy reimburse Landlord for the taxes and assessments so levied against Landlord, or such taxes, levies and assessments resulting from such increase in assessed value. To the extent that any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced to Tenant by Landlord. In the event that the Project is owned by an entity the property of which is exempt from taxation pursuant to the California Revenue and Taxation Code, Tenant's possessory interest may be subject to property taxation pursuant to Section 107.6 of the California Revenue and Taxation Code and to the payment of

property taxes levied on that interest. The full cash value, as defined in Sections 110 and 110.1 of the California Revenue and Taxation Code, of the possessory interest, upon which property taxes will be based, shall equal the greater of (A) the full cash value of the possessory interest or (B) if Tenant has leased less than all of the Project, Tenant's allocable share of the full cash value of the Project that would have been enrolled if the Project had been subject to property tax upon acquisition by Landlord. The full cash value as provided for pursuant to either (A) or
(B) of the preceding sentence shall reflect the anticipated term of possession if, on the lien date described in Section 2192 of the California Revenue and Taxation Code, that term is expected to terminate prior to the end of the next succeeding fiscal year. Tenant's allocable share shall, subject to the preceding sentence, be the Rentable Area of the Premises divided by the Rentable Area of the Project. Tenant shall have the right to contest the amount of such possessory tax in accordance with applicable law.

(i) Any delay or failure of Landlord in (i) delivering any estimate or statement described in this Paragraph 3, or (ii) computing or billing Tenant's Proportionate Share of excess Operating Expenses shall not constitute a waiver of its right to require an increase in Rent, or in any way impair the continuing obligations of Tenant under this Paragraph 3; provided, however, that notwithstanding anything to the contrary contained in this subparagraph (i), Tenant shall not be responsible for Tenant's Proportionate Share of excess Operating Expenses attributable to any calendar year first billed to Tenant more than two (2) years after the earlier of the expiration of the applicable calendar year or the Expiration Date. In the event of any dispute as to any Additional Rent due under this Paragraph 3, Tenant, an officer of Tenant or Tenant's certified public accountant (but (a) in no event shall Tenant hire or employ an accounting firm or any other person to audit Landlord as set forth under this Paragraph who is compensated or paid for such audit on a contingency basis and (b) in the event Tenant hires or employs an independent party to perform such audit, Tenant shall provide Landlord with a copy of the engagement letter) shall have the right after reasonable notice and at reasonable times to inspect Landlord's accounting records at Landlord's accounting office (which shall be located in Southern California). If, after such inspection, Tenant still disputes such Additional Rent, upon Tenant's written request therefor, a certification as to the proper amount of Operating Expenses and the amount due to or payable by Tenant shall be made by an independent certified public accountant mutually agreed to by Landlord and Tenant. If Landlord and Tenant cannot mutually agree to an independent certified public accountant, then such dispute shall be resolved by binding arbitration pursuant to Paragraph 19(y) and the auditor so chosen shall conduct the certification as to the proper amount of Tenant's Proportionate Share of Operating Expenses due by Tenant for the period in question. Such certification shall be final and conclusive as to all parties. If the certification reflects that Tenant has overpaid Tenant's Proportionate Share of Operating Expenses for the period in question, then Landlord shall credit such excess to Tenant's next payment of Operating Expenses or, at the request of Tenant, promptly refund such excess to Tenant and conversely, if Tenant has underpaid Tenant's Proportionate Share of Operating Expenses, Tenant shall promptly pay such additional Operating Expenses to Landlord. Tenant agrees to pay the cost of such certification and the investigation with respect thereto and no adjustments in Tenant's favor shall be made unless it is reasonably determined that Landlord's original statement was in error in Landlord's favor by more than four percent (4%). Tenant waives the right to dispute any matter relating to the calculation of Operating Expenses or Additional Rent under this Paragraph 3 if any claim or dispute is not asserted in writing to Landlord within one hundred eighty (180) days after delivery to Tenant of the original billing statement with respect thereto. Notwithstanding the foregoing, Tenant shall maintain strict confidentiality of all of Landlord's accounting records and shall not disclose the same to any other person or entity except for Tenant's professional advisory representatives (such as Tenant's employees, accountants, advisors, attorneys and consultants) with a need to know such accounting information, who agree to similarly maintain the confidentiality of such financial information, or to comply with applicable law. Notwithstanding the foregoing, Landlord acknowledges that Tenant is a "reporting company" under applicable Law and required to publicly file with, and report to, the Securities and Exchange Commission (the "**SEC**") with respect to certain information that may include information regarding this Lease. Landlord agrees that Tenant's disclosure of any information regarding this Lease pursuant to the requirements of the SEC, including the filing of this Lease with the SEC, or otherwise as required under applicable Law is expressly permitted under the terms of this Lease ("Permitted Regulatory Reporting")

(j) Subject to the provisions of subparagraph (i) above, even though the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Proportionate Share of excess Operating Expenses for the year in which this Lease terminates, Tenant shall promptly pay any increase due over the estimated Operating Expenses paid, and conversely, any overpayment made by Tenant shall be promptly refunded to Tenant by Landlord.

(k) Notwithstanding anything to the contrary contained herein, Tenant's Proportionate Share of "controllable expenses" shall not increase by an average of more than five percent (5%) of such controllable expenses per calendar year on a cumulative, compounded basis. As used herein, the term "controllable expenses" means all Operating Expenses other than (i) utilities costs, (ii) Taxes, (iii) insurance costs, (iv) union wages, (v) costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations or interpretations thereof first in effect after the Commencement Date promulgated by, any federal, state, regional, municipal or local governmental authority in connection with the use or occupancy of the Building or the Project or the parking facility serving the Building or the Project, (v) Operating Expenses which are not incurred in the Base Year because the Project is newly constructed or because such costs are not annual recurring costs, but are thereafter incurred in the ordinary course of managing the Project such as, for example, slurry coat and parking lot striping, pest control expenses and other periodic but non-annual maintenance and repair items, (vi) permitted amortization of capital items as provided in the Lease, and (vii) costs incurred due to any Force Majeure event. Controllable expenses for the Base Year shall be "grossed up" to the extent of costs covered by warranty which would otherwise be ordinary Operating Expenses in subsequent years after the applicable warranty period expires. Landlord will not collect or be entitled to collect Operating Expenses from all of its tenants in an amount which is in excess of one hundred percent (100%) of the Operating Expenses actually paid by Landlord in connection with the operation of the Building and Project.

(l) The Base Rent, Additional Rent, late fees, and other amounts required to be paid by Tenant to Landlord hereunder (including the excess Operating Expenses) are sometimes collectively referred to as, and shall constitute, "Rent".

4. IMPROVEMENTS AND ALTERATIONS

(a) Subject to Landlord's obligations under Paragraph 5 below or as otherwise provided in this Lease, Landlord shall deliver the Premises to Tenant, and Tenant agrees to accept the Premises from Landlord in its existing "AS-IS", "WHERE-IS" and "WITH ALL FAULTS" condition, and Landlord shall have no obligation to refurbish or otherwise improve the Premises throughout the Lease Term; provided, however, and notwithstanding the foregoing to the contrary, Landlord's sole construction obligation under this Lease is set forth in the Work Letter attached hereto as *Exhibit B*.

(b) Any alterations, additions, or improvements made by or on behalf of Tenant to the Premises ("Alterations") shall be subject to Landlord's prior written consent. Landlord's consent shall not be unreasonably withheld with respect to proposed Alterations that (i) comply with all applicable laws, ordinances, rules and regulations; (ii) are compatible with the Building and its mechanical, electrical, HVAC and life safety systems;
(iii) will not interfere with the use and occupancy of any other portion of the Building by any other tenant or their invitees; (iv) do not affect the structural portions of the Building; and, (v) do not and will not, whether alone or taken together with other improvements, require the construction of any other improvements or alterations within the Building. Tenant shall cause, at its sole cost and expense, all Alterations to comply with insurance requirements and with Laws and shall construct, at its sole cost and expense, any alteration or modification required by Laws as a result of any Alterations, other than to cure pre-existing violations of applicable Laws. All Alterations shall be constructed at Tenant's sole cost and expense, in a first class and good and workmanlike manner by contractors reasonably acceptable to Landlord and only good grades of materials shall be used. All plans and specifications for any Alterations shall be submitted to Landlord for its approval. Landlord may monitor construction of the Alterations. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to see that such plans and specifications or construction comply with applicable laws, codes, rules and regulations. Without limiting the other grounds upon which Landlord may refuse to approve any contractor or subcontractor, Landlord may take into account the desirability of maintaining harmonious labor relations at the Project. Landlord may also require that all life safety related work and all mechanical, electrical, plumbing and roof related work be performed by contractors designated by Landlord. Landlord shall have the right, in its sole discretion, to instruct Tenant to remove those improvements or Alterations from the Premises which (i) were not approved in advance by Landlord, (ii) were not built in conformance with the plans and specifications approved by Landlord, or (iii) Landlord specified during its review of plans and specifications for Alterations would need to be removed by Tenant upon the expiration of this Lease. Except as set forth in the preceding sentence, Tenant shall not be obligated to remove such Alterations at the expiration of this Lease. Landlord shall not unreasonably withhold or delay its approval with respect to what improvements or

Alterations Landlord may require Tenant to remove at the expiration of the Lease. If upon the termination of this Lease Landlord requires Tenant to remove any or all of such Alterations from the Premises, then Tenant, at Tenant's sole cost and expense, shall promptly remove such Alterations and improvements and Tenant shall repair and restore the Premises to its original condition as of the Commencement Date, reasonable wear and tear and casualty excepted. Any Alterations to the Premises which remain in place following the expiration of the Lease Term or following the surrender of the Premises from Tenant to Landlord, shall become the property of Landlord and Landlord shall be entitled to retain or remove such Alterations in Landlord's discretion unless Landlord notifies Tenant otherwise. Tenant shall provide Landlord with the identities and mailing addresses of all persons performing work or supplying materials, prior to beginning such construction, and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall assure payment for the completion of all work free and clear of liens and shall provide certificates of insurance for worker's compensation and other customary coverage in customary amounts and from an insurance company reasonably satisfactory to Landlord protecting Landlord against liability for bodily injury or property damage during construction. Upon completion of any Alterations and upon Landlord's reasonable request, Tenant shall deliver to Landlord sworn statements setting forth the names of all contractors and subcontractors who did work on the Alterations and final lien waivers from all such contractors and subcontractors. Additionally, upon completion of any Alteration requiring permits from applicable governmental authorities, Tenant shall provide Landlord, at Tenant's expense, with a complete set of plans in reproducible form and specifications reflecting the actual conditions of the Alterations, together with a copy of such plans on diskette in the AutoCAD format or such other format as may then be in common use for computer assisted design purposes. Other than with respect to any cosmetic or decorative interior non-structural changes made to the Premises (such as, for example, painting and carpeting work) which do not require the issuance of a building permit or other governmental approval, Tenant shall pay to Landlord, as additional rent, the reasonable costs of Landlord's engineers and other consultants (but not Landlord's on-site management personnel) for review of all plans, specifications and working drawings for the Alterations and for the incorporation of such Alterations in the Landlord's master Building drawings, within ten (10) business days after Tenant's receipt of invoices either from Landlord or such consultants together with (in any event) an administrative charge of five percent (5%) of the actual costs of such work. In addition to such costs, Tenant shall pay to Landlord, within ten (10) business days after completion of any Alterations, the actual, reasonable costs incurred by Landlord for services rendered by Landlord's management personnel and engineers to coordinate and/or supervise any of the Alterations to the extent such services are provided in excess of or after the normal on-site hours of such engineers and management personnel if and to the extent such coordination or supervision is required as to such Alteration hereunder and Tenant requires the same be performed outside of normal hours due to Tenant's scheduling requirements.

(c) Tenant shall keep the Premises, the Building and the Project free from any and all liens arising out of any Alterations, work performed, materials furnished, or obligations incurred by or for Tenant. In the event that Tenant shall not, within ten (10) business days following the imposition of any such lien, cause the same to be released of record by payment or posting of a bond in a form and issued by a surety acceptable to Landlord, Landlord shall have the right, but not the obligation, to cause such lien to be released by such means as it shall deem proper (including payment of or defense against the claim giving rise to such lien); in such case, Tenant shall reimburse Landlord for all amounts so paid by Landlord in connection therewith, together with all of Landlord's actual and reasonable costs and expenses, reasonably incurred, with interest thereon at the Default Rate (defined below) and Tenant shall indemnify and defend each and all of the Landlord Indemnitees (defined below) against any damages actually incurred by Landlord Indemnitees by and to the extent arising out of any such claim. Tenant's indemnification of Landlord contained in this Paragraph shall survive the expiration or earlier termination of this Lease. Such rights of Landlord shall be in addition to all other remedies provided herein or by law.

(d) NOTICE IS HEREBY GIVEN THAT, OTHER THAN WITH RESPECT TO THE TENANT IMPROVEMENTS TO BE COMPLETED BY LANDLORD UNDER THIS LEASE, LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT, OR TO ANYONE HOLDING THE PREMISES THROUGH OR UNDER TENANT, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN THE PREMISES.

5. REPAIRS

(a) Landlord's obligation with respect to repair as part of Basic Services shall be limited to at Landlord's sole cost and expense, (i) the structural portions of the Building, including the structural walls, foundations, concrete subflooring, structural elements of the roof, and underground utilities servicing the Building and the Project, and (ii) as part of Operating Expenses, (A) the exterior walls of the Building, including, without limitation, glass and glazing, (B) the non-structural elements of the roof, (C) mechanical, electrical, plumbing and life safety systems except for any lavatory, shower, toilet, wash basin and kitchen facilities that serve Tenant exclusively, and any supplemental heating and air conditioning systems (including all plumbing connected to said facilities or systems), and (D) Common Areas. Landlord shall not be deemed to have breached any obligation with respect to the condition of any part of the Project unless Tenant has given to Landlord written notice of any required repair and Landlord has not made such repair within a reasonable time following the receipt by Landlord of such notice. The foregoing notwithstanding: (i) Landlord shall not be required to repair damage to any of the foregoing to the extent caused by the acts or omissions of Tenant or it agents, employees or contractors, except to the extent covered by insurance carried by Landlord; and (ii) the obligations of Landlord pertaining to damage or destruction by casualty shall be governed by the provisions of Paragraph 9. Landlord shall have the right but not the obligation to undertake work of repair that Tenant is required to perform under this Lease and that Tenant fails or refuses to perform in a timely and efficient manner. All costs incurred by Landlord in performing any such repair for the account of Tenant shall be repaid by Tenant to Landlord upon demand, together with an administration fee equal to ten percent (10%) of such costs. Except as expressly provided in Paragraph 9 of this Lease, there shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Premises, the Building or the Project. Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect (including the provisions of California Civil Code Section 1942 and any successive sections or statutes of a similar nature).

(b) Landlord shall deliver the Premises to Tenant as of the Commencement Date in broom-clean condition and free of debris, with the existing Building-standard plumbing, lighting, roof, electrical, fire sprinkler, life and safety, and HVAC systems serving and within the Premises (collectively, the "Operating Systems") in good operating condition and recently serviced, including balancing the HVAC. In addition, to the best of Landlord's knowledge, the Premises, Building, Project, and restrooms (including the parking areas) were all in a condition that met current codes and conditions at time of construction of such items and will meet such codes and conditions on the Commencement Date, subject to grandfathered rights, if and to the extent required by applicable governmental authorities. If a non-compliance with such warranty exists as of the Commencement Date or if one of such Operating Systems or elements should malfunction or fail within the warranty period below, as Tenant's sole remedy for Landlord's breach of this warranty, Landlord shall, as Landlord's sole obligation, promptly after receipt of written notice from Tenant setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, repair same at Landlord's expense; provided, however, Landlord shall have no liability hereunder for repairs or replacements to the extent necessitated by the acts or omissions of Tenant and/or any of Tenant's agents. The warranty period shall be nine (9) months after delivery of the Premises to Tenant, including the Early Access Period. Except as provided in the foregoing, Tenant, at its expense, (i) shall keep the Premises and all fixtures contained therein in a safe, clean and neat condition, and (ii) shall bear the cost of maintenance and repair, by contractors selected by Landlord, of all facilities which are not expressly required to be maintained or repaired by Landlord and which are located in the Premises, including, without limitation, lavatory, shower, toilet, wash basin and kitchen facilities, and supplemental heating and air conditioning systems (including all plumbing connected to said facilities or systems). Tenant shall make all repairs to the Premises not required to be made by Landlord under subparagraph (a) above with replacements of any materials to be made by use of materials of equal or better quality. Tenant shall do all decorating, remodeling, alteration and painting required by Tenant during the Lease Term. Tenant shall pay for the cost of any repairs to the Premises, the Building or the Project made necessary by any negligence or willful misconduct of Tenant or any of its assignees, subtenants, employees or their respective agents, representatives, contractors, or other persons permitted in or invited to the Premises or the Project by Tenant and not covered by insurance included as part of the Operating Expenses. If Tenant fails to make such repairs or replacements within thirty (30) days after written notice from Landlord, Landlord may at its option make such repairs or replacements, and Tenant shall upon demand pay Landlord for the cost thereof, together with an administration fee equal to ten percent (10%) of such costs.

(c) Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in a in broom-clean condition and free of debris, normal wear and tear and casualty excepted. Except as otherwise set forth in Paragraph 4(b) of this Lease, Tenant shall remove from the Premises all trade fixtures, furnishings and other personal property of Tenant and all computer and phone cabling and wiring installed by or on behalf of Tenant, shall repair all damage caused by such removal, and shall restore the Premises to its original condition, reasonable wear and tear and casualty excepted. In addition to all other rights Landlord may have, in the event Tenant does not so remove any such fixtures, furnishings or personal property within ten (10) business days of written notice from Landlord, Tenant shall be deemed to have abandoned the same, in which case Landlord may store or dispose of the same at Tenant's expense, appropriate the same for itself, and/or sell the same in its discretion.

6. USE OF PREMISES

(a) Tenant shall use the Premises only for general office uses and shall not use the Premises or permit the Premises to be used for any other purpose. Landlord shall have the right to deny its consent to any change in the permitted use of the Premises in its sole and absolute discretion.

(b) Tenant shall not at any time use or occupy the Premises, or permit any act or omission in or about the Premises in violation of any law, statute, ordinance or any governmental rule, regulation or order (collectively, "Law" or "Laws") and Tenant shall, upon written notice from Landlord, discontinue any use of the Premises which is declared by any governmental authority to be a violation of Law. If any Law shall, by reason of the nature of Tenant's use or occupancy of the Premises for other than the permitted use hereunder, impose any duty upon Tenant or Landlord with respect to (i) modification or other maintenance of the Premises, the Building or the Project, or (ii) the use, Alteration or occupancy thereof, Tenant shall, after notice and a right to contest the same, comply with such Law at Tenant's sole cost and expense. This Lease shall be subject to and Tenant shall comply with all financing documents encumbering the Building or the Project for the benefit of parties who have entered into a Non- Disturbance Agreement (as defined below) with Tenant as contemplated under Paragraph 16 hereof, and all covenants, conditions and restrictions of record against title and affecting the Premises, the Building or the Project.

(c) [Intentionally Omitted].

(d) Tenant shall not do or permit to be done anything which may invalidate or increase the cost of any fire, All Risk, Causes of Loss - Special Form or other insurance policy covering the Building, the Project and/or property located therein and shall comply with all rules, orders, regulations and requirements of the appropriate fire codes and ordinances or any other organization performing a similar function. In addition to all other remedies of Landlord, Landlord may require Tenant, promptly upon demand, to reimburse Landlord for the full amount of any additional premiums charged for such policy or policies by reason of Tenant's failure to comply with the provisions of this Paragraph 6.

(e) Tenant shall not in any way interfere with the rights or quiet enjoyment of other tenants or occupants of the Premises, the Building or the Project. Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain, or permit any nuisance in, on or about the Premises, the Building or the Project due to the actions of Tenant, its employees, or its invitees. Tenant shall not place weight upon any portion of the Premises exceeding the structural floor load (per square foot of area) which such area was designated (and is permitted by Law) to carry or otherwise use any Building system in excess of its capacity or in any other manner which may damage such system or the Building. Tenant shall not create within the Premises a working environment with a density of greater than the lesser of (i) five (5) persons per 1,000 square feet of Rentable Area, or (ii) the maximum density permitted by Law. Business machines and mechanical equipment shall be placed and maintained by Tenant, at Tenant's expense, in locations and in settings sufficient in Landlord's reasonable judgment to absorb and prevent vibration, noise and annoyance. Tenant shall not commit or suffer to be committed any waste in, on, upon or about the Premises, the Building or the Project. Without limiting the foregoing, Tenant agrees that the Premises shall not be used for the use, growing, producing, processing, storing (short or long term), distributing, transporting, or selling of marijuana, cannabis, cannabis derivatives, or any cannabis containing substances ("Cannabis"), or any office uses related to the same, nor shall Tenant knowingly permit, allow or suffer, any of Tenant's officers, employees, agents, servants, licensees, subtenants, concessionaires, contractors and invitees to bring onto the Premises, any Cannabis. Without limiting the foregoing, the prohibitions in this paragraph shall apply to all Cannabis, whether such Cannabis is legal for any purpose whatsoever under state or federal law or both. Notwithstanding anything to the contrary, any failure by Tenant to comply with each of the terms, covenants, conditions and provisions of this paragraph applicable to Cannabis shall automatically and without the requirement of any notice be a Default that is not subject to cure, and Tenant agrees that upon the occurrence of any such Default, Landlord may elect, in its sole discretion, to exercise all of its rights and remedies under this Lease, at law or in equity with respect to such Default. Furthermore Tenant is prohibited from engaging or permitting others to engage in any activity which would be a violation of any state and/or federal laws relating to the use, sale, possession, cultivation and/or distribution of any controlled substances (whether for commercial or personal purposes) regulated under any applicable law or other applicable law relating to the medicinal use and/or distribution of Cannabis.

(f) Tenant shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week except and to the extent the same may be affected by Force Majeure and de minimus interruptions due to the exercise of Landlord's rights and obligations under this Lease. Tenant shall take all reasonable steps necessary to adequately secure the Premises from unlawful intrusion, theft, fire and other hazards, and shall keep and maintain any and all security devices in or on the Premises in good working order, including, but not limited to, exterior door locks for the Premises and smoke detectors and burglar alarms located within the Premises and shall cooperate with Landlord and other tenants in the Project with respect to access control and other safety matters. Access control to the Building during other than normal Business Hours shall be provided by way of a card key system or similar system reasonably acceptable to Tenant and Landlord. Landlord hereby consents to the installation by Tenant of its standard key card security system for access to the Premises, including in the Building stairwells and elevators serving the Premises, utilizing Tenant's security installation vendor, California Commercial Security, 9560 Ridgehaven Court, San Diego, CA 92123, for such installation, provided, that, installation thereof in the Building elevators shall be under the direct supervision of Landlord in conjunction with its construction of the Tenant Improvements pursuant the Work Letter attached hereto as ***Exhibit B***. Such security system shall permit Tenant to restrict access from the Building elevator(s) to Tenant's Premises and shall include internal security equipment such as cameras, motion sensors, and similar technology. Landlord agrees to reasonably cooperate with Tenant and Tenant's vendor in connection with such installation, including providing any cut sheets on the Building security systems available to Landlord to aid Tenant and its vendor in installing Tenant's security system and equipment. Landlord shall also permit Tenant and its vendor to tie into the Building's lobby access card entry system, such that Tenant's employees will be able to use one access card to enter the Building lobby and to access Tenant's Premises on an after-hours basis. All costs of such installation, and the removal thereof upon Tenant's vacation of the Premises, shall be Tenant's responsibility. Tenant shall cooperate fully in Landlord's efforts to maintain access control to the Building and shall follow all regulations promulgated by Landlord with respect thereto. Subject to the foregoing as to Tenant's security system requirements for the Premises, Landlord shall be the sole determinant of the type and amount of any access control or courtesy guard services to be provided to the Project, if any. Landlord shall not be responsible or liable in any manner for failure of any access personnel, services, procedures or equipment to prevent, control, or apprehend anyone suspected of theft or causing personal injury or damage in, on or around the Project. IN ALL EVENTS, EXCEPT TO THE EXTENT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD, LANDLORD SHALL NOT BE LIABLE TO TENANT, AND TENANT HEREBY WAIVES ANY CLAIM AGAINST LANDLORD, FOR (I) ANY UNAUTHORIZED OR CRIMINAL ENTRY OF THIRD PARTIES INTO THE PREMISES, THE BUILDING OR THE PROJECT, (II) ANY INJURY OR DEATH TO PERSONS RESULTING FROM ANY UNAUTHORIZED OR CRIMINAL ACTS OF THIRD PARTIES, OR (III) ANY LOSS OF PROPERTY IN AND ABOUT THE PREMISES, THE BUILDING OR THE PROJECT, BY OR FROM ANY UNAUTHORIZED OR CRIMINAL ACTS OF THIRD PARTIES, REGARDLESS OF ANY ACTION, INACTION, FAILURE, BREAKDOWN, MALFUNCTION AND/OR INSUFFICIENCY OF THE ACCESS CONTROL OR COURTESY GUARD SERVICES PROVIDED BY LANDLORD, IF ANY. LANDLORD SHALL NOT BE RESPONSIBLE OR LIABLE IN ANY MANNER FOR FAILURE OF ANY ACCESS PERSONNEL, SERVICES, PROCEDURES OR EQUIPMENT TO PREVENT, CONTROL, OR APPREHEND ANYONE SUSPECTED OF CAUSING PERSONAL INJURY OR DAMAGE IN, ON OR AROUND THE PROJECT. Tenant shall have the right to provide such supplemental security services and equipment, and to install within the Premises such supplemental security equipment and systems, and institute such security procedures, as it may deem to be reasonably be required for the protection of its employees and invitees, provided that Tenant shall coordinate such services and equipment with any security provided by Landlord. The determination of the extent to which such supplemental security equipment, systems and procedures are reasonably required shall be made in the sole judgment, and shall be the sole responsibility, of Tenant. Tenant acknowledges that it has neither received nor relied upon any representation or warranty made by or on behalf of Landlord with respect to the safety or security of the Premises or the Project or any part thereof or the extent or effectiveness of any security measures or procedures now or hereafter provided by Landlord, and further acknowledges that Tenant has made its own independent determinations with respect to all such matters.

(g) As used herein, the term "Hazardous Material" means any (a) oil or any other petroleum-based substance, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (i) pose a hazard to the Project or to persons on or about the Project or (ii) cause the Project to be in violation of any Laws; (b) asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (c) chemical, material or substance defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste", or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, *et seq*.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, *et seq*.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, *et seq*.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, *et seq*.; the Safe Drinking Water Act, as amended, 42 U.S.C. §300, *et seq*.; the Toxic Substances Control Act, as amended, 15 U.S.C. §2601, *et seq*.; the Federal Hazardous Substances Control Act, as amended, 15 U.S.C. §1261, *et seq*.; and the Occupational Safety and Health Act, as amended, 29 U.S.C. §651, *et seq*.; Sections 25115, 25117, 25122.7, 25140, 25249.8, 25281, 25316, 25501, and 25316 of the California Health and Safety Code; (d) other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the Project or the owners and/or occupants of property adjacent to or surrounding the Project, or any other Person coming upon the Project or adjacent property; and (e) other chemicals, materials or substances which may or could pose a hazard to the environment. The term "Permitted Hazardous Materials" shall mean Hazardous Materials which are contained in ordinary office supplies of a type and in quantities typically used in the ordinary course of business within executive offices of similar size in the comparable office buildings, but only if and to the extent that such supplies are transported, stored and used in full compliance with all applicable laws, ordinances, orders, rules and regulations and otherwise in a safe and prudent manner. Hazardous Materials which are contained in ordinary office supplies but which are transported, stored and used in a manner which is not in full compliance with all applicable laws, ordinances, orders, rules and regulations or which is not in any respect safe and prudent shall not be deemed to be "Permitted Hazardous Materials" for the purposes of this Lease.

(i) Tenant, its assignees, subtenants, and their respective agents, servants, employees, representatives and contractors (collectively referred to herein as "Tenant Affiliates") shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Tenant or by Tenant Affiliates without the prior written consent of Landlord (which may be granted, conditioned or withheld in the sole discretion of Landlord), save and except only for Permitted Hazardous Materials, which Tenant or Tenant Affiliates may bring, store and use in reasonable quantities for their intended use in the Premises, but only in full compliance with all applicable laws, ordinances, orders, rules and regulations. On or before the expiration or earlier termination of this Lease, Tenant shall remove from the Premises all Hazardous Materials (including, without limitation, Permitted Hazardous Materials), regardless of whether such Hazardous Materials are present in concentrations which require removal under applicable laws, except to the extent that such Hazardous Materials were present in the Premises as of the Commencement Date and were not brought onto the Premises by Tenant or Tenant Affiliates.

(ii) Tenant agrees to indemnify, defend and hold Landlord and its Affiliates (defined below) harmless for, from and against any and all claims, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities, interest or losses, including reasonable attorneys' fees and expenses, court costs, consultant fees, and expert fees, together with all other costs and expenses of any kind or nature that arise during or after the Lease Term directly or indirectly from or in connection with the presence, suspected presence, or release of any Hazardous Material in or into the air, soil, surface water or groundwater at, on, about, under or within the Premises, or any portion thereof caused by Tenant or Tenant Affiliates.

(iii) Landlord agrees to indemnify, defend and hold Tenant and its Affiliates (defined below) harmless for, from and against any and all claims, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities, interest or losses, including reasonable attorneys' fees and expenses, court costs, consultant fees, and expert fees, together with all other costs and expenses of any kind or nature that arise during or after the Lease Term directly or indirectly from or in connection with the presence, suspected presence, or release of any Hazardous Material in or into the air, soil, surface water or groundwater at, on, about, under or within the Premises, or any portion thereof that was present at the Premises, Building or Project prior to Tenant taking possession of the Premises, unless and to the extent caused by Tenant or Tenant Affiliates.

(iv) In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively, the "Remedial Work") is required under any applicable federal, state or local Law, by any judicial order, or by any governmental entity as the result of operations or activities upon, or any use or occupancy of any portion of the Premises by Tenant or Tenant Affiliates, Landlord shall perform or cause to be performed the Remedial Work in compliance with such Law or order at Tenant's sole cost and expense. All Remedial Work shall be performed by one or more contractors, selected and approved by Landlord, and under the supervision of a consulting engineer, selected by Tenant and approved in advance in writing by Landlord. All costs and expenses of such Remedial Work shall be paid by Tenant, including, without limitation, the charges of such contractor(s), the consulting engineer, and Landlord's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work.

(v) Each of the covenants and agreements of Tenant set forth in this Paragraph 6(g) shall survive the expiration or earlier termination of this Lease.

7. UTILITIES, SERVICES AND SIGNS

(a) Landlord shall furnish, or cause to be furnished to the Premises, the utilities and services described in this Paragraph 7(a) (collectively the "Basic Services"):

(i) Tepid water at those points of supply provided for general use of other tenants in the Building;

(ii) Central heat and air conditioning in season, during Business Hours and on Saturdays (during Business Hours) at such temperatures and in such amounts as are considered by Landlord to be standard with reference to Comparable Buildings (defined below) or as may be permitted or controlled by applicable laws, ordinances, rules and regulations;

(iii) Routine maintenance, repairs, structural and exterior maintenance (including, without limitation, exterior glass and glazing), painting and electric lighting service for all Common Areas of the Project in the manner and to the extent deemed by Landlord to be standard with reference to Comparable Buildings, subject to the limitation contained in Paragraph 5(a) above;

(iv) Janitorial service on a five (5) day week basis, excluding Holidays;

(v) An electrical system to convey power delivered by public utility providers selected by Landlord in amounts sufficient for normal office operations as provided in similar office buildings as reasonably determined by Landlord (which includes an allowance for lighting of the Premises at the maximum wattage per square foot of Rentable Area permitted under applicable laws, ordinances, orders, rules and regulations). Tenant shall pay directly to the utility company pursuant to the utility company's separate meters, the cost of all electricity provided to and/or consumed in the Premises (including normal and excess or after Business Hours consumption); provided, however, the cost of separate meters for the Premises to the extent not in place to meter electrical consumption at the Premises shall be borne by Landlord at Landlord's sole cost and expense; and

(vi) Public elevator service and a freight elevator serving the floors on which the Premises are situated.

(b) Landlord shall provide to Tenant at Tenant's sole cost and expense (and subject to the limitations hereinafter set forth) the following extra services (collectively the "Extra Services"):

(i) Such extra cleaning and janitorial services requested by Tenant, and agreed to by Landlord, for special improvements or Alterations;

(ii) Subject to Paragraph 7(d) below, additional air conditioning and ventilating capacity required by reason of any electrical, data processing or other equipment or facilities or services required to support the same, in excess of that typically provided by the Building;

(iii) Maintaining and replacing lamps, starters and ballasts for non-Building standard lighting fixtures within the Premises and light bulbs for all light fixtures and lamps in the Premises;

(iv) Heating, ventilation and air conditioning service provided by Landlord to Tenant (i) during hours other than Business Hours, (ii) on Saturdays (after Business Hours), Sundays, or Holidays, said heating, ventilation and air conditioning service to be furnished solely upon the prior written request of Tenant given with such advance notice as Landlord may reasonably require and Tenant shall pay to Landlord Landlord's standard charge for overtime HVAC on an hourly basis (1 hour minimum Mondays through Saturdays, and 4 hour minimum on Sundays), which standard charge is currently $45.00 per hour per floor, and shall not exceed $55.00 per hour per floor during the Initial Term; and

(v) Any Basic Service in amounts reasonably determined by Landlord to exceed the amounts required to be provided above, but only if Landlord elects to provide such additional or excess service. Tenant shall pay Landlord the cost of providing such additional services (or an amount equal to Landlord's reasonable estimate of such cost, if the actual cost is not readily ascertainable) together with an administration fee equal to three percent (3%) of such cost, within ten (10) business days following presentation of an invoice therefore by Landlord to Tenant. The cost chargeable to Tenant for all extra services shall constitute Additional Rent.

(c) Tenant agrees to cooperate fully at all times with Landlord and to comply with all regulations and requirements which Landlord may from time to time prescribe for the use of the utilities and Basic Services described herein. Landlord shall not be liable to Tenant for the failure of any other tenant, or its assignees, subtenants, employees, or their respective invitees, licensees, agents or other representatives to comply with such regulations and requirements but shall enforce such regulations and requirements in a uniform manner with respect to the Building and the Project. The term "Business Hours" shall be deemed to be Monday through Friday from 7:00 A.M. to 6:00 P.M. and Saturday from 9:00 A.M. to 1:00 P.M., excepting Holidays. The term "Holidays" shall be deemed to mean and include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and, at Landlord's discretion, other nationally recognized holidays.

(d) If Tenant requires utilities or services in quantities greater than or at times other than that generally furnished by Landlord as set forth above, Tenant shall pay to Landlord, upon receipt of a written statement therefor, Landlord's actual cost for such use. In the event that Tenant shall require additional electric current, water or gas for use in the Premises and if, in Landlord's judgment, such excess requirements cannot be furnished unless additional risers, conduits, feeders, switchboards and/or appurtenances are installed in the Building, subject to the conditions stated below, Landlord shall proceed to install the same at the sole cost of Tenant, payable upon demand in advance. The installation of such facilities shall be conditioned upon Landlord's consent, and a determination that the installation and use thereof (i) shall be permitted by applicable Law and insurance regulations, (ii) shall not cause permanent damage or injury to the Building or adversely affect the value of the Building or the Project, and (iii) shall not cause or create a dangerous or hazardous condition or interfere with or disturb other tenants in the Building. Subject to the foregoing, Landlord shall, upon reasonable prior notice by Tenant, furnish to the Premises additional elevator, heating, air conditioning and/or cleaning services upon such reasonable terms and conditions as shall be reasonably determined by Landlord, including payment of Landlord's actual cost therefor. In the case of any additional utilities or services to be provided hereunder, Landlord may, if Tenant still requires the same following notice and an estimate of the cost thereof to Tenant, require a switch and metering system to be installed so as to measure the amount of such additional utilities or services. The cost of installation, maintenance and repair thereof shall be paid by Tenant upon demand. Notwithstanding the foregoing, Landlord shall have the right to contract with any utility provider it deems appropriate to provide utilities to the Project.

(e) Landlord shall not be liable for, and Tenant shall not be entitled to, any damages, abatement or reduction of Rent, or other liability by reason of any failure to furnish any services or utilities described herein for any reason (other than Landlord's sole negligence or willful misconduct), including, without limitation, when caused by accident, breakage, water leakage, flooding, repairs, Alterations or other improvements to the Project, strikes, lockouts or other labor disturbances or labor disputes of any character, governmental regulation, moratorium or other governmental action, inability to obtain electricity, water or fuel, or any other cause beyond Landlord's control. Landlord shall be entitled to cooperate with the energy conservation efforts of governmental agencies or utility suppliers. No such failure, stoppage or interruption of any such utility or service shall be construed as an eviction of Tenant, nor shall the same relieve Tenant from any obligation to perform any covenant or agreement under this Lease. In the event of any failure, stoppage or interruption thereof, Landlord shall use reasonable efforts to attempt to restore all services promptly. No representation is made by Landlord with respect to the adequacy or fitness of the Building's ventilating, air conditioning or other systems to maintain temperatures as may be required for the operation of any computer, data processing or other special equipment of Tenant. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future law, ordinance or governmental regulation permitting the termination of this Lease due to an interruption, failure or inability to provide any services.

(f) Landlord reserves the right from time to time to make reasonable and nondiscriminatory modifications to the above standards for Basic Services and Extra Services, provided the same do not result in any Tenant Impact. For purposes of this Lease, "Tenant Impact" shall mean and refer to any action of Landlord or its employees or contractors which causes any material diminution of Tenant's rights, or any material increase of Tenant's obligations, under this Lease or with respect to the Tenant Improvements, or materially and adversely affects Tenant's use, occupancy, access or security arrangements with respect to, the Premises, the Building (including any Common Areas) or the Project.

(g) Tenant shall have the right to have placed by Landlord, at Landlord's expense, Tenant's name on a Building standard suite/unit door sign, and one line on the Building directory to display Tenant's name and location in the Building, subject to the provisions of this Subparagraph (g). Subsequent changes to Tenant's sign and/or any additional signs, to the extent permitted by Landlord herein, shall be made or installed by Landlord at Tenant's sole cost and expense. All aspects of any such signs shall be subject to the prior written consent of Landlord (which shall not be unreasonably withheld), and shall be per Landlord's standard specifications and materials, as revised by Landlord from time to time. Tenant shall have no right to install or maintain any other signs, banners, advertising, notices, displays, stickers, decals or any other logo or identification of any person, product or service whatsoever, in any location on or in the Project except as (i) shall have been expressly approved by Landlord in writing prior to the installation thereof (which approval may be granted or withheld in Landlord's sole and absolute discretion), (ii) shall not violate any signage restrictions or exclusive sign rights contained in any then existing leases with other tenants of the Project, if any, and (iii) are consistent and compatible with all applicable Laws, and the design, signage and graphics program from time to time implemented by Landlord with respect to the Project, if any. Landlord shall have the right to remove any signs or signage material installed by Tenant without Landlord's permission, without being liable to Tenant by reason of such removal, and to charge the cost of removal to Tenant as Additional Rent hereunder, payable within ten (10) business days after written demand by Landlord with substantiation of such costs.

(h) In addition, subject to Landlord's prior reasonable approval; the sign criteria for the Project; all covenants, conditions, and restrictions affecting the Project; all applicable laws, rules, regulations, and local ordinances; and Tenant obtaining all necessary permits and approvals from the City of San Diego, Tenant shall also have the non-exclusive right, at Tenant's sole cost and expense, to have its name placed (1) in one location at the top level of the Building ("Building Sign") facing West, but not affixed to the Building glass, in a manner mutually agreed upon by Landlord and Tenant; (2) on one (1) panel on the monument sign ("Monument Sign") at the main drive entrance to the right of the 10935 address; and (3) in the second floor Building lobby. Notwithstanding the foregoing, Tenant shall have no right to the Building Sign unless and until Tenant expands into the third floor of the Building and occupies at least the entire second and third floors of the Building. The location of Tenant's panel on the Monument Sign will be reasonably determined by Landlord. Tenant shall be solely responsible for payment of all costs and expenses arising from the Building Sign and Tenant's panel on the Monument Sign (which signage may be lighted if permitted by Laws), including, without limitation, all design, fabrication and permitting costs, license fees, installation, maintenance, repair, and removal costs. Landlord represents to Tenant that there are no superior rights to the Building Sign in effect as of the date of the Lease. Tenant shall maintain and repair all of Tenant's signs at Tenant's expense. Upon the expiration or earlier termination of this Lease, Tenant shall, at Tenant's sole cost and expense (except as otherwise set forth hereinabove), (i) cause all of Tenant's signs to be removed from the exterior and interior of the Building and the Common Areas, (ii) repair any damage caused by the removal of Tenant's signs, and (iii) restore the underlying surfaces to the condition existing prior to the installation of Tenant's signs. The sign rights granted herein are personal to the original Tenant executing this Lease and may not be assigned, voluntarily or involuntarily, to any person or entity. The rights granted to the original Tenant hereunder are not assignable separate and apart from the Lease, nor may any right granted herein be separated from the Lease in any manner, either by reservation or otherwise.

8. NON-LIABILITY AND INDEMNIFICATION OF LANDLORD; INSURANCE

(a) To the greatest extent permitted by Law, and except to the extent caused by Landlord's negligence or willful misconduct, Landlord shall not be liable for any injury, loss or damage suffered by Tenant or to any person or property occurring or incurred in or about the Premises, the Building or the Project from any cause. Without limiting the foregoing, neither Landlord nor any of its partners, officers, trustees, affiliates, directors, employees, contractors, agents or representatives (collectively, "Affiliates") shall be liable for and there shall be no abatement of Rent (except in the event of a casualty loss or a condemnation as set forth in Paragraph 9 and Paragraph 10 of this Lease) for (i) any damage to Tenant's property stored with or entrusted to Affiliates of Landlord, (ii) loss of or damage to any property by theft or any other wrongful or illegal act, or (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Building or the Project or from the pipes, appliances, appurtenances or plumbing works therein or from the roof, street or sub-surface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Building or the Project or from any other cause whatsoever, (iv) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Building, whether within or outside of the Project, or (v) any latent or other defect in the Premises, the Building or the Project. Tenant shall give prompt notice to Landlord in the event of (i) the occurrence of a fire or accident in the Premises or in the Building, or (ii) the discovery of a defect therein or in the fixtures or equipment thereof. This Paragraph 8(a) shall survive the expiration or earlier termination of this Lease.

(b) To the greatest extent permitted by Law, Tenant hereby agrees to indemnify, protect, defend and hold harmless Landlord and its designated property management company, and their respective partners, members, affiliates and subsidiaries, and all of their respective officers, trustees, directors, shareholders, employees, servants, partners, representatives, insurers and agents (collectively, "Landlord Indemnitees") for, from and against all liabilities, claims, fines, penalties, costs, damages or injuries to persons, damages to property, losses, liens, causes of action, suits, judgments and expenses (including court costs, attorneys' fees, expert witness fees and costs of investigation), of any nature, kind or description of any person or entity, for personal injury and property damage, directly or indirectly arising out of, caused by, or resulting from (in whole or part) (1) Tenant's construction of, or use, occupancy or enjoyment of, the Premises, (2) any activity, work or other things done, permitted or suffered by Tenant and its agents and employees in or about the Premises, (3) any breach or default in the performance of any of Tenant's obligations under this Lease, (4) any act, omission, negligence or willful misconduct of Tenant or any of its agents, contractors, employees, business invitees or licensees, or (5) any damage to Tenant's property, or the property of Tenant's agents, employees, contractors, business invitees or licensees, located in or about the Premises, except to the extent caused by Landlord's or Landlord Indemnitees' negligence or willful misconduct (collectively, "Liabilities"). Landlord shall indemnify, defend, protect, and hold harmless Tenant, its officers, agents, servants, employees, and independent contractors (collectively, "Tenant Indemnitees") from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) arising from the negligence or willful misconduct of Landlord or the Landlord Indemnities in, on or about the Premises, the Building and the Project either prior to or during the Lease Term, and/or as a result of Landlord's breach of this Lease, except to the extent caused by the negligence or willful misconduct of Tenant or the Tenant Parties. This Paragraph 8(b) shall survive the expiration or earlier termination of this Lease.

(c) Tenant shall promptly advise Landlord in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Tenant, at Tenant's expense, shall assume on behalf of each and every Landlord Indemnitee and conduct with due diligence and in good faith the defense thereof with counsel reasonably satisfactory to Landlord; provided, however, that any Landlord Indemnitee shall have the right, at its option, to be represented therein by advisory counsel of its own selection and at its own expense. In the event of failure by Tenant to fully perform in accordance with this Paragraph, Landlord, at its option, and without relieving Tenant of its obligations hereunder, may so perform, but all costs and expenses so incurred by Landlord in that event shall be reimbursed by Tenant to Landlord, together with interest on the same from the date any such expense was paid by Landlord until reimbursed by Tenant, at the rate of interest provided to be paid on judgments, by the law of the jurisdiction to which the interpretation of this Lease is subject. The indemnification provided in Paragraph 8(b) shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employees' benefit acts.

(d) Insurance.

(i) Tenant at all times during the Lease Term shall, at its own expense, keep in full force and effect (A) commercial general liability insurance providing coverage against bodily injury and disease, including death resulting therefrom and property damage to a combined single limit of One Million Dollars ($1,000,000) to one or more than one person as the result of any one accident or occurrence, which shall include provision for contractual liability coverage insuring Tenant for the performance of its indemnity obligations set forth in this Paragraph 8 and in Paragraph 6(g)(ii) of this Lease, with an Excess Limits (Umbrella) Policy in the amount of Five Million Dollars ($5,000,000), (B) worker's compensation insurance to the statutory limit, if any, and employer's liability insurance to the limit of Five Hundred Thousand Dollars ($500,000) per occurrence, and (C) All Risk or Causes of Loss - Special Form property insurance, including fire and extended coverage, sprinkler leakage (including earthquake sprinkler leakage), vandalism, malicious mischief, wind and/or hurricane coverage, covering full replacement value of all of Tenant's personal property, trade fixtures and improvements in the Premises. Landlord and its designated property management firm shall be named an additional insured on each of said policies (excluding the worker's compensation policy) and said policies shall be issued by an insurance company or companies authorized to do business in the State and which have policyholder ratings not lower than "A-" and financial ratings not lower than "VII" in Best's Insurance Guide (latest edition in effect as of the Effective Date and subsequently in effect as of the date of renewal of the required policies). EACH OF SAID POLICIES SHALL ALSO INCLUDE A WAIVER OF SUBROGATION PROVISION OR ENDORSEMENT IN FAVOR OF LANDLORD, AND AN ENDORSEMENT PROVIDING THAT LANDLORD SHALL RECEIVE THIRTY (30) DAYS PRIOR WRITTEN NOTICE OF ANY CANCELLATION OF, NONRENEWAL OF, REDUCTION OF COVERAGE OR MATERIAL CHANGE IN COVERAGE ON SAID POLICIES. Tenant hereby waives its right of recovery against any Landlord Indemnitee of any amounts paid by Tenant or on Tenant's behalf to satisfy applicable worker's compensation laws. The policies or duly executed certificates showing the material terms for the same, together with satisfactory evidence of the payment of the premiums therefor, shall be deposited with Landlord on the date Tenant first occupies the Premises and upon renewals of such policies not less than fifteen (15) days prior to the expiration of the term of such coverage. If certificates are supplied rather than the policies themselves, Tenant shall allow Landlord, at all reasonable times, to inspect the policies of insurance required herein.

(ii) It is expressly understood and agreed that the coverages required represent Landlord's minimum requirements and such are not to be construed to void or limit Tenant's obligations contained in this Lease, including without limitation Tenant's indemnity obligations hereunder. Neither shall (A) the insolvency, bankruptcy or failure of any insurance company carrying Tenant, (B) the failure of any insurance company to pay claims occurring nor (C) any exclusion from or insufficiency of coverage be held to affect, negate or waive any of Tenant's indemnity obligations under this Paragraph 8 and Paragraph 6(g)(ii) or any other provision of this Lease. With respect to insurance coverages, except worker's compensation, maintained hereunder by Tenant and insurance coverages separately obtained by Landlord, all insurance coverages afforded by policies of insurance maintained by Tenant shall be primary insurance as such coverages apply to Landlord, and such insurance coverages separately maintained by Landlord shall be excess, and Tenant shall have its insurance policies so endorsed. The amount of liability insurance under insurance policies maintained by Tenant shall not be reduced by the existence of insurance coverage under policies separately maintained by Landlord. Tenant shall be solely responsible for any premiums, assessments, penalties, deductible assumptions, retentions, audits, retrospective adjustments or any other kind of payment due under its policies. Tenant shall increase the amounts of insurance or the insurance coverages as Landlord may reasonably request from time to time, but not in excess of the requirements of prudent landlords or lenders for similar tenants occupying similar premises in the Del Mar Heights/Torrey Hills submarket of San Diego, California ("Comparable Buildings").

(iii) Tenant's occupancy of the Premises without delivering the certificates of insurance shall not constitute a waiver of Tenant's obligations to provide the required coverages. If Tenant provides to Landlord a certificate that does not evidence the coverages required herein, or that is faulty in any respect, such shall not constitute a waiver of Tenant's obligations to provide the proper insurance

(iv) Throughout the Lease Term, Landlord agrees to maintain (i) fire and extended coverage insurance, and, at Landlord's option, earthquake damage coverage, terrorism coverage, wind and hurricane coverage, and such additional property insurance coverage as Landlord deems appropriate, on the insurable portions of Building and the remainder of the Project in an amount not less than the fair replacement value thereof, subject to reasonable deductibles (ii) boiler and machinery insurance amounts and with deductibles that would be considered standard for similar class office building in the metropolitan area in which the Premises is located, and (iii) commercial general liability insurance with a combined single limit coverage of at least One Million Dollars ($1,000,000.00) per occurrence. All such insurance shall be obtained from insurers Landlord reasonably believes to be financially responsible in light of the risks being insured. The premiums for any such insurance shall be a part of Operating Expenses.

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

(f) Business Interruption. Landlord shall not be responsible for, and Tenant releases and discharges Landlord from, and Tenant further waives any right of recovery from Landlord for, any loss for or from business interruption or loss of use of the Premises suffered by Tenant in connection with Tenant's use or occupancy of the Premises, UNLESS AND TO THE EXTENT SUCH LOSS IS CAUSED SOLELY OR IN PART BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD.

(g) Adjustment of Claims. Tenant shall cooperate with Landlord and Landlord's insurers in the adjustment of any insurance claim pertaining to the Building or the Project or Landlord's use thereof.

(h) Increase in Landlord's Insurance Costs. Tenant agrees to pay to Landlord any increase in premiums for Landlord's insurance policies resulting solely from Tenant's use or occupancy of the Premises for any use other than general office use that results in any such increase.

(i) Failure to Maintain Insurance. Any failure of Tenant to obtain and maintain the insurance policies and coverages required hereunder or failure by Tenant to meet any of the insurance requirements of this Lease shall constitute an event of default hereunder, and if such failure is not remedied within ten (10) days following notice to Tenant, it shall entitle Landlord to pursue, exercise or obtain any of the remedies provided for in Paragraph 12(b), and Tenant shall be solely responsible for any loss suffered by Landlord as a result of such failure. In the event of failure by Tenant to maintain the insurance policies and coverages required by this Lease or to meet any of the insurance requirements of this Lease, Landlord, at its option, and without relieving Tenant of its obligations hereunder, may obtain said insurance policies and coverages or perform any other insurance obligation of Tenant, but all costs and expenses incurred by Landlord in obtaining such insurance or performing Tenant's insurance obligations shall be reimbursed by Tenant to Landlord, together with interest on same from the date any such cost or expense was paid by Landlord until reimbursed by Tenant, at the rate of interest provided to be paid on judgments, by the law of the jurisdiction to which the interpretation of this Lease is subject.

9. FIRE OR CASUALTY

(a) Subject to the provisions of this Paragraph 9, in the event the Premises, or access thereto, is wholly or partially destroyed by fire or other casualty, Landlord shall (to the extent permitted by Law and covenants, conditions and restrictions then applicable to the Project) rebuild, repair or restore the Premises and access thereto, including parking facilities, to substantially the same condition as existing immediately prior to such destruction (excluding Tenant's Alterations, trade fixtures, equipment and personal property, which Tenant shall be required to restore) and this Lease shall continue in full force and effect. Notwithstanding the foregoing, (i) Landlord's obligation to rebuild, repair or restore the Premises shall not apply to any personal property, above-standard tenant improvements or other items installed or contained in the Premises, and (ii) Landlord shall have no obligation whatsoever to rebuild, repair or restore the Premises with respect to any damage or destruction occurring during the last twelve (12) months of the term of this Lease or the last twelve (12) months of any extension of the term if such damage or destruction will require more than thirty (30) days to restore.

(b) Landlord may elect to terminate this Lease in any of the following cases of damage or destruction to the Premises, the Building or the Project: (i) where the cost of rebuilding, repairing and restoring (collectively, "Restoration") of the Building or the Project, would, regardless of the lack of damage to the Premises or access thereto, in the reasonable opinion of Landlord, exceed twenty percent (20%) of the then replacement cost of the Building; (ii) where, in the case of any damage or destruction to any portion of the Building or the Project by uninsured casualty, the cost of Restoration of the Building or the Project, in the reasonable opinion of Landlord, exceeds $500,000; or (iii) where, in the case of any damage or destruction to the Premises or access thereto by uninsured casualty, the cost of Restoration of the Premises or access thereto, in the reasonable opinion of Landlord, exceeds twenty percent (20%) of the replacement cost of the Premises; or (iv) if Landlord has not obtained appropriate zoning approvals for reconstruction of the Project, Building or Premises. Any such termination shall be made by thirty (30) days' prior written notice to Tenant given within one hundred twenty (120) days of the date of such damage or destruction. Landlord shall deliver written notice to Tenant within sixty (60) days following the date of such damage or destruction notifying Tenant of the estimated time to complete such rebuilding, repairing and restoration, as estimated by Landlord's contractor (the "Restoration Notice"). If the Restoration Notice states that it will take longer than twelve (12) months to complete such rebuilding, repair and restoration from the date of such damage or destruction, then Tenant shall have the right to terminate this Lease by delivering written notice of such termination to Landlord within thirty (30) days following receipt of the Restoration Notice; provided that if two (2) years or less of the Lease Term remain at the time the Restoration Notice is received by Tenant, then Tenant shall have the right to terminate this Lease upon written notice thereof delivered to Landlord within thirty (30) days of its receipt of the Restoration Notice regardless of the proposed restoration period. If this Lease is not terminated by Landlord or Tenant, and as the result of any damage or destruction, the Premises, or a portion thereof, are rendered untenantable (including parking or other Tenant Impact), Rent shall abate reasonably during the period of Restoration (based upon the extent to which such damage and Restoration interfere with Tenant's occupancy and use of the Premises). This Lease shall be considered an express agreement governing any case of damage to or destruction of the Premises, the Building or the Project. This Lease sets forth the terms and conditions upon which this Lease may terminate in the event of any damage or destruction. Accordingly, the parties hereby waive the provisions of California Civil Code Section 1932, Subsection 2, and Section 1933, Subsection 4 (and any successor statutes thereof permitting the parties to terminate this Lease as a result of any damage or destruction).

10. EMINENT DOMAIN

In the event the whole of the Premises, the Building or the Project shall be taken under the power of eminent domain, or sold to prevent the exercise thereof (collectively, a "Taking"), this Lease shall automatically terminate as of the date of such Taking. In the event a Taking of a portion of the Project, the Building or the Premises shall, in the reasonable opinion of (i) Landlord, substantially interfere with Landlord's operation thereof, or (ii) Tenant, result in a Tenant Impact, either party may terminate this Lease upon thirty (30) days' written notice to the other party given at any time within sixty (60) days following the date of such Taking. For purposes of this Lease, the date of Taking shall be the earlier of the date of transfer of title resulting from such Taking or the date of transfer of possession resulting from such Taking. In the event that a portion of the Premises is so taken and this Lease is not terminated, Landlord shall, to the extent of proceeds paid to Landlord as a result of the Taking, with reasonable diligence, use commercially reasonable efforts to proceed to restore (to the extent permitted by Law and covenants, conditions and restrictions then applicable to the Project) the Premises (other than Tenant's personal property and fixtures, and above-standard tenant improvements) to a complete, functioning unit. In such case, the Base Rent shall be reduced proportionately based on the portion of the Premises so taken. If all or any portion of the Premises is the subject of a temporary Taking, this Lease shall remain in full force and effect and Tenant shall continue to perform each of its obligations under this Lease; in such case, Tenant shall be entitled to receive the entire award allocable to the temporary Taking of the Premises. Except as provided herein, Tenant shall not assert any claim against Landlord or the condemning authority for, and hereby assigns to Landlord, any compensation in connection with any such Taking, and Landlord shall be entitled to receive the entire amount of any award therefor, without deduction for any estate or interest of Tenant. Nothing contained in this Paragraph 10 shall be deemed to give Landlord any interest in, or prevent Tenant from seeking any award against the condemning authority for the Taking of personal property, fixtures, above standard tenant improvements of Tenant or for relocation or moving expenses recoverable by Tenant from the condemning authority. This Paragraph 10 shall be Tenant's sole and exclusive remedy in the event of a Taking. This Lease sets forth the terms and conditions upon which this Lease may terminate in the event of a Taking. Accordingly, the parties waive the provisions of the California Code of Civil Procedure Section 1265.130 and any successor or similar statutes permitting the parties to terminate this Lease as a result of a Taking.

11. ASSIGNMENT AND SUBLETTING

(a) Tenant shall not directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, assign, sublet, mortgage or otherwise encumber all or any portion of its interest in this Lease or in the Premises or grant any license for any person other than Tenant or its employees to use or occupy the Premises or any part thereof without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Any such attempted assignment, subletting, license, mortgage, other encumbrance or other use or occupancy without the consent of Landlord shall, at Landlord's option, be null and void and of no effect. Any mortgage, or encumbrance of all or any portion of Tenant's interest in this Lease or in the Premises and any grant of a license for any person other than Tenant or its employees to use or occupy the Premises or any part thereof shall be deemed to be an "assignment" of this Lease. In addition, as used in this Paragraph 11, the term "Tenant" shall also mean any entity that has guaranteed Tenant's obligations under this Lease, and the restrictions applicable to Tenant contained herein shall also be applicable to such guarantor.

(b) No assignment or subletting shall relieve Tenant of its obligation to pay the Rent and to perform all of the other obligations to be performed by Tenant hereunder. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any subletting or assignment. Consent by Landlord to one subletting or assignment shall not be deemed to constitute a consent to any other or subsequent attempted subletting or assignment. If Tenant desires at any time to assign this Lease or to sublet the Premises or any portion thereof, it shall first notify Landlord of its desire to do so and shall submit in writing to Landlord all pertinent information reasonably relating to the proposed assignee or sublessee, all pertinent information reasonably relating to the proposed assignment or sublease, and all such financial information as Landlord may reasonably request concerning the Tenant and proposed assignee or subtenant. Landlord shall notify Tenant of Landlord's consent or reasonable disapproval of any such assignment or sublease within ten (10) business days after Landlord's receipt of Tenant's notice and all other information required to be delivered by Tenant to Landlord in connection with such proposed such assignment or sublease as set forth in herein. In the event that Landlord fails to notify Tenant in writing of such approval or disapproval within such 10-business day period, and such failure continues for an additional five (5) business days after Tenant notifies Landlord in writing of such failure, then Landlord shall be deemed to have approved such assignment or sublease. Any assignment or sublease shall be expressly subject to the terms and conditions of this Lease.

(c) Intentionally omitted.

(d) Tenant acknowledges that it shall be reasonable for Landlord to withhold its consent to a proposed assignment or sublease in any of the following instances:

(i) The assignee or sublessee (or any affiliate of the assignee or sublessee) is not, in Landlord's reasonable opinion, sufficiently creditworthy to perform the obligations such assignee or sublessee will have under this Lease;

(ii) The intended use of the Premises by the assignee or sublessee is not for general office use;

(iii) The intended use of the Premises by the assignee or sublessee would materially increase the pedestrian or vehicular traffic to the Premises or the Building;

(iv) Occupancy of the Premises by the assignee or sublessee would, in the good faith judgment of Landlord, violate any agreement binding upon Landlord, the Building or the Project with regard to the identity of tenants, usage in the Building, or similar matters;

(v) The assignee or sublessee (or any affiliate of the assignee or sublessee) is then negotiating with Landlord or has negotiated with Landlord within the previous six (6) months, or is a current tenant or subtenant within the Building or Project;

(vi) The identity or business reputation of the assignee or sublessee will, in the good faith judgment of Landlord, tend to damage the goodwill or reputation of the Building or Project and Landlord has not itself leased to a similar tenant;

(vii) The proposed sublease would result in more than two subleases of portions of the Premises being in effect at any one time during the Lease Term; or

(viii) In the case of a sublease, the subtenant has not acknowledged that the Lease controls over any inconsistent provision in the sublease.

The foregoing criteria shall not exclude any other reasonable basis for Landlord to refuse its consent to such assignment or sublease. Notwithstanding any contrary provision of this Lease, if Tenant or any proposed assignee or sublessee claims that Landlord has unreasonably withheld its consent to a proposed assignment or sublease or otherwise has breached its obligations under this Paragraph 11, their sole remedy shall be to seek a declaratory judgment and/or injunctive relief without any monetary damages, and, with respect thereto, Tenant, on behalf of itself and, to the extent permitted by law, such proposed assignee/sublessee, hereby waives all other remedies against Landlord, including, without limitation, the right to seek monetary damages or to terminate this Lease other than pursuant to Paragraph 19(a).

(e) If any Tenant is a corporation, partnership or other entity that is not publicly traded on a recognized national stock exchange, any transaction or series of related or unrelated transactions (including, without limitation, any dissolution, merger, consolidation or other reorganization, any withdrawal or admission of a partner or change in a partner's interest, or any issuance, sale, gift, transfer or redemption of any capital stock of or ownership interest in such entity, whether voluntary, involuntary or by operation of law, or any combination of any of the foregoing transactions) resulting in the transfer of control of such Tenant, shall be deemed to be an assignment of this Lease subject to the provisions of this Paragraph 11. The term "control" as used in this Paragraph 11(e) means the power to directly or indirectly direct or cause the direction of the management or policies of Tenant. Any transfer of control of a subtenant that is not publicly traded on a recognized national stock exchange corporation or other entity shall be deemed an assignment of any sublease. Notwithstanding anything to the contrary in this Article 11, no change or series of changes in ownership of stock or other ownership interests which would result in direct or indirect change in ownership of the outstanding stock of or other ownership interests in the originally named Tenant (or in any subsequent Tenant under a Permitted Transfer (as defined below)), nor any sale of all or substantially all of the assets of any such entity, shall be considered an assignment or transfer requiring the consent of Landlord under this Lease.

(f) Notwithstanding any assignment or subletting, Tenant and any guarantor or surety of Tenant's obligations under this Lease shall at all times during the Initial Term and any subsequent renewals or extensions remain fully responsible and liable for the payment of the rent and for compliance with all of Tenant's other obligations under this Lease. Other than with respect to any Permitted Transfer, in the event that the Rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment, plus any bonus or other consideration therefor or incident thereto) exceeds the Rent payable under this Lease after deduction for all leasing costs, commissions, inducements, fees, expenses, and other costs and expenses incurred by Tenant in connection therewith, then Tenant shall be bound and obligated to pay Landlord, as additional rent hereunder, one-half (1/2) of all such excess Rent and other excess consideration within ten (10) business days following receipt thereof by Tenant.

(g) If this Lease is assigned or if the Premises is subleased (whether in whole or in part), or in the event of the mortgage or pledge of Tenant's leasehold interest, or grant of any concession or license within the Premises, or if the Premises are occupied in whole or in part by anyone other than Tenant, then upon a default by Tenant hereunder Landlord may collect Rent from the assignee, sublessee, mortgagee, pledgee, concessionee or licensee or other occupant and, except to the extent set forth in the preceding paragraph, apply the amount collected to the next Rent payable hereunder; and all such Rent collected by Tenant shall be held in deposit for Landlord and immediately forwarded to Landlord. No such transaction or collection of Rent or application thereof by Landlord, however, shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties, or obligations hereunder.

(h) If Tenant effects an assignment or sublease or requests the consent of Landlord to any proposed assignment or sublease, then Tenant shall, upon demand, pay Landlord a non-refundable administrative fee of Five Hundred Dollars ($500.00), plus any reasonable attorneys' and paralegal fees and costs incurred by Landlord in connection with such assignment or sublease or request for consent (not to exceed Three Thousand Five Hundred Dollars ($3,500.00)). Acceptance of the Five Hundred Dollar ($500.00) administrative fee and/or reimbursement of Landlord's attorneys' and paralegal fees shall in no event obligate Landlord to consent to any proposed assignment or sublease.

(i) Notwithstanding any provision of this Lease to the contrary, in the event this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute the property of Tenant or Tenant's estate within the meaning of the Bankruptcy Code. All such money and other consideration not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and shall be promptly paid or delivered to Landlord.

(j) The joint and several liability of the Tenant named herein and any immediate and remote successor-in-interest of Tenant (by assignment or otherwise), and the due performance of the obligations of this Lease on Tenant's part to be performed or observed, shall not in any way be discharged, released or impaired by any
(a) agreement that modifies any of the rights or obligations of the parties under this Lease, (b) stipulation that extends the time within which an obligation under this Lease is to be performed, (c) waiver of the performance of an obligation required under this Lease, or (d) failure to enforce any of the obligations set forth in this Lease.

(k) If Tenant is any form of partnership, a withdrawal or change, voluntary or involuntary or by operation of law of any partner, or the dissolution of the partnership, shall be deemed a voluntary assignment. If Tenant consists of more than one (1) person, a purported assignment, voluntary or involuntary or by operation of law from one (1) person to the other shall be deemed a voluntary assignment. If Tenant is not publicly traded on a recognized national stock exchange a non-public corporation or limited liability entity, any dissolution, merger, consolidation or other reorganization of Tenant, or sale or other transfer of a controlling percentage of the ownership interest of Tenant, or the sale of at least twenty-five percent (25%) of the value of the assets of Tenant shall be deemed a voluntary assignment. Notwithstanding the foregoing, the provisions of this Paragraph 11(k) shall not apply to the originally named Tenant (or any subsequent Tenant under a Permitted Transfer (as defined below).

(l) Notwithstanding anything above to the contrary, provided that Tenant is not then in default, Tenant may assign this Lease or sublet the Premises or any portion thereof (herein, a "Permitted Transfer"), without Landlord's consent to any entity that controls, is controlled by or is under common control with Tenant, or to any entity resulting from a merger or consolidation with Tenant, or to any person or entity which acquires all the assets of Tenant's business as a going concern (each, a "Permitted Transferee"), provided that: (i) at least thirty (30) days prior to such assignment or sublease, Tenant delivers to Landlord a reasonably detailed description of the proposed Transfer and the financial statements and other financial and background information of the assignee or sublessee in accordance with Paragraph 11(b) above; (ii) in the case of an assignment, the assignee assumes, in full, the obligations of Tenant under this Lease pursuant to an assignment and assumption agreement reasonably acceptable to Landlord, a fully executed copy of which is delivered to Landlord within thirty (30) days following the effective date of such assignment or subletting; (iii) each guarantor of this Lease, if any, executes a reaffirmation of its guaranty in form satisfactory to Landlord; (iv) the tangible net worth of the assignee or sublessee equals or exceeds that of Tenant as of (1) the date of execution of this Lease, or (2) the date immediately preceding the proposed Transfer, whichever is greater; (v) Tenant remains fully liable under this Lease; (vi) the use of the Premises is only for general office; (vii) such transaction is not entered into as a subterfuge to avoid the restrictions and provisions of this Paragraph 11 and will not violate any exclusive use covenant to which Landlord is bound; and (viii) with respect to a subletting only, Tenant and such Permitted Transferee execute Landlord's standard consent to sublease form.

12. DEFAULT

(a) Events of Default. The occurrence of any one or more of the following events shall constitute an "event of default" or "default" (herein so called) under this Lease by Tenant (all such references in this Lease to event of default or default being deemed to include the giving of applicable notice and the passage of applicable cure periods): (i) Tenant shall fail to pay Rent or any other rental or sums payable by Tenant hereunder within five (5) business days after Landlord notifies Tenant of such nonpayment; provided, however, Landlord shall only be obligated to provide such written notice to Tenant one (1) time within any calendar year and in the event Tenant fails to timely pay Rent or any other sums for a second time during any calendar year, then Tenant shall be in default for such late payment and Landlord shall have no obligation or duty to provide notice of such non-payment to Tenant prior to declaring an event of default under this Lease; or (ii) the failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than monetary failures as specified in Paragraph 12(a)(i) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said 30-day period and thereafter diligently prosecute such cure to completion, which completion shall occur not later than ninety (90) days from the date of such notice from Landlord.

Any notice sent by Landlord to Tenant pursuant to this Paragraph 12(a) shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161.

(b) Landlord's Remedies; Termination. In the event of any event of default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder and Landlord shall have all the rights and remedies of a Landlord provided by Section 1951.2 of the California Civil Code. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

(i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

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

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

(iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom including, but not limited to: unamortized Tenant Improvement costs; attorneys' fees; brokers' commissions; the costs of refurbishment, alterations, renovation and repair of the Premises; and removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures, Tenant Improvements, Alterations, and any other items which Tenant is required under this Lease to remove but does not remove.

As used in subparagraph (i) and subparagraph (ii) of Paragraph 12(b) above, the "worth at the time of award" is computed by allowing interest at the Default Rate (as defined below). As used in subparagraph (iii) of Paragraph 12(b) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(c) Landlord's Remedies; Re-Entry Rights. In the event of any event of default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed, stored and/or disposed of pursuant to Paragraph 5(c) of this Lease or any other procedures permitted by applicable law. No re-entry or taking possession of the Premises by Landlord pursuant to this Paragraph 12(c), and no acceptance of surrender of the Premises or other action on Landlord's part, shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

(d) Continuation of Lease. Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any event of default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all Rent as it becomes due.

(e) Landlord's Right to Perform. Except as specifically provided otherwise in this Lease, all covenants and agreements by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement or offset of Rent. If Tenant shall fail to pay any sum of money (other than Base Rent) or perform any other act on its part to be paid or performed hereunder and such failure shall continue for three (3) days with respect to monetary obligations (or ten (10) days with respect to non-monetary obligations, except in case of emergencies, in which such case, such shorter period of time as is reasonable under the circumstances) after Tenant's receipt of written notice thereof from Landlord, Landlord may, without waiving or releasing Tenant from any of Tenant's obligations, make such payment or perform such other act on behalf of Tenant. All sums so paid by Landlord and all necessary incidental costs incurred by Landlord in performing such other acts shall be payable by Tenant to Landlord within five (5) days after demand therefor as Additional Rent.

(f) Interest. If any monthly installment of Rent or Operating Expenses, or any other amount payable by Tenant hereunder is not received by Landlord by the date when due, it shall bear interest at the Default Rate from the date due until paid. All interest, and any late charges imposed pursuant to Paragraph 12(g) below, shall be considered Additional Rent due from Tenant to Landlord under the terms of this Lease. The term "Default Rate" as used in this Lease shall mean the lesser of (A) the rate announced from time to time by Wells Fargo Bank or, if Wells Fargo bank ceases to exist or ceases to publish such rate, then the rate announced from time to time by the largest (as measured by deposits) chartered bank operating in the State, as its "prime rate" or "reference rate", plus four percent (4%), or (B) the maximum rate of interest permitted by Law.

(g) Late Charges. Tenant acknowledges that, in addition to interest costs, the late payments by Tenant to Landlord of any monthly installment of Base Rent, Additional Rent or other sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such other costs include, without limitation, processing, administrative and accounting charges and late charges that may be imposed on Landlord by the terms of any mortgage, deed to secure debt, deed of trust or related loan documents encumbering the Premises, the Building or the Project. Accordingly, if any monthly installment of Base Rent, Additional Rent or any other amount payable by Tenant hereunder is not received by Landlord by the due date thereof, Tenant shall pay to Landlord an additional sum of five percent (5%) of the overdue amount as a late charge, but in no event more than the maximum late charge allowed by law. The parties agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any late payment as hereinabove referred to by Tenant, and the payment of late charges and interest are distinct and separate in that the payment of interest is to compensate Landlord for the use of Landlord's money by Tenant, while the payment of late charges is to compensate Landlord for Landlord's processing, administrative and other costs incurred by Landlord as a result of Tenant's delinquent payments. Acceptance of a late charge or interest shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease or at law or in equity now or hereafter in effect.

(h) Rights and Remedies Cumulative. All rights, options and remedies of Landlord contained in this Paragraph 12 and elsewhere in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Nothing in this Paragraph 12 shall be deemed to limit or otherwise affect Tenant's indemnification of Landlord pursuant to any provision of this Lease.

(i) Tenant's Waiver of Redemption. Tenant hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, (i) any right and privilege which it or any of them may have under any present or future law to redeem any of the Premises or to have a continuance of this Lease after termination of this Lease or of Tenant's right of occupancy or possession pursuant to any court order or any provision hereof, and
(ii) the benefits of any present or future law which exempts property from liability for debt or for distress for Rent.

(j) [Intentionally Omitted].

13. ACCESS; CONSTRUCTION

Landlord reserves from the leasehold estate hereunder, in addition to all other rights reserved by Landlord under this Lease, the right to use the roof and exterior walls of the Premises and the area beneath, adjacent to and above the Premises. Landlord also reserves the right to install, use, maintain, repair, replace and relocate equipment, machinery, meters, pipes, ducts, plumbing, conduits and wiring through the Premises, which serve other portions of the Building or the Project in a manner and in locations which do not unreasonably interfere with Tenant's use or occupancy of the Premises or otherwise create a Tenant Impact. In addition, Landlord shall have free access to any and all mechanical installations of Landlord or Tenant, including, without limitation, machine rooms, telephone rooms and electrical closets. Tenant agrees that there shall be no construction of partitions or other obstructions which materially interfere with or which threaten to materially interfere with Landlord's free access thereto, or materially interfere with the moving of Landlord's equipment to or from the enclosures containing said installations. Landlord shall at all reasonable times, during normal business hours and after reasonable written or oral notice, have the right to enter the Premises to inspect the same, to supply janitorial service and any other service to be provided by Landlord to Tenant hereunder, to exhibit the Premises to prospective purchasers, lenders or tenants (during the final twelve (12) months of the Lease Term only), to post notices of non-responsibility, to alter, improve, restore, rebuild or repair the Premises or any other portion of the Building, or to do any other act permitted or contemplated to be done by Landlord hereunder, all without being deemed guilty of an eviction of Tenant and without liability for abatement of Rent or otherwise. For such purposes, Landlord may also erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed. Landlord shall conduct all such inspections and/or improvements, alterations and repairs so as to minimize, to the extent reasonably practical and without material additional expense to Landlord, any interruption of or interference with the business of Tenant, provided that in no event shall such actions by Landlord result in a Tenant Impact. Subject to the foregoing, Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of such purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises (excluding Tenant's vaults and safes, access to which shall be provided by Tenant upon Landlord's reasonable request). Landlord shall have the right to use any and all means which Landlord may deem proper in an emergency in order to obtain entry to the Premises or any portion thereof, and Landlord shall have the right, at any time during the Lease Term, to provide whatever access control measures it deems reasonably necessary to the Project, without any interruption or abatement in the payment of Rent by Tenant; provided however, (i) Landlord shall provide not less than twenty-four (24) hours' prior notice to Tenant of any entry onto the Premises (other than in the case of emergency, when whatever notice that is reasonable under the circumstances shall be required), (ii) Tenant may require that an employee of Tenant accompany or otherwise be present during any such entry by Landlord onto the Premises; and (iii) Tenant may designate certain secure areas, not to exceed ten percent (10%) of the rentable area of the Premises, that Landlord shall not be permitted to access without further justification for the need for such entry and Landlord's compliance with Tenant's reasonable security requirements in connection with such entry. Any entry into the Premises obtained by Landlord by any of such means shall not under any circumstances be construed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Tenant from the Premises or any portion thereof. No provision of this Lease shall be construed as obligating Landlord to perform any repairs, Alterations or decorations to the Premises or the Project except as otherwise expressly agreed to be performed by Landlord pursuant to the provisions of this Lease.

14. <u>BANKRUPTCY</u>

(a) If at any time on or before the Commencement Date there shall be filed by or against Tenant in any court, tribunal, administrative agency or any other forum having jurisdiction, pursuant to any applicable law, either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver, trustee or conservator of all or a portion of Tenant's property, or if Tenant makes an assignment for the benefit of creditors, this Lease shall ipso facto be canceled and terminated and in such event neither Tenant nor any person claiming through or under Tenant or by virtue of any applicable law or by an order of any court, tribunal, administrative agency or any other forum having jurisdiction, shall be entitled to possession of the Premises and Landlord, in addition to the other rights and remedies given by <u>Paragraph 12</u> hereof or by virtue of any other provision contained in this Lease or by virtue of any applicable law, may retain as damages any Rent, Security Deposit or moneys received by it from Tenant or others on behalf of Tenant.

(b) If, after the Commencement Date, or if at any time during the term of this Lease, there shall be filed against Tenant in any court, tribunal, administrative agency or any other forum having jurisdiction, pursuant to any applicable law, either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver, trustee or conservator of all or a portion of Tenant's property, and the same is not dismissed after ninety (90) calendar days, or if Tenant makes an assignment for the benefit of creditors, this Lease, at the option of Landlord exercised within a reasonable time after notice of the happening of any one or more of such events, may be canceled and terminated and in such event neither Tenant nor any person claiming through or under Tenant or by virtue of any statute or of an order of any court shall be entitled to possession or to remain in possession of the Premises, but shall forthwith quit and surrender the Premises, and Landlord, in addition to the other rights and remedies granted by <u>Paragraph 12</u> hereof or by virtue of any other provision contained in this Lease or by virtue of any applicable law, may retain as damages any Rent, Security Deposit or moneys received by it from Tenant or others on behalf of Tenant.

15. <u>SUBSTITUTION OF PREMISES</u>

Intentionally Omitted.

16. <u>SUBORDINATION; ATTORNMENT; ESTOPPEL CERTIFICATES</u>

(a) Tenant agrees that this Lease and the rights of Tenant hereunder shall be subject and subordinate to any and all deeds to secure debt, deeds of trust, security interests, mortgages, master leases, ground leases or other security documents and any and all modifications, renewals, extensions, consolidations and replacements thereof (collectively, "<u>Security Documents</u>") which now or hereafter constitute a lien upon or affect the Project, the Building or the Premises. Such subordination shall be effective without the necessity of the execution by Tenant of any additional document for the purpose of evidencing or effecting such subordination. Notwithstanding the foregoing, such obligation of Tenant, and any subordination of this Lease to any Security Document shall be conditioned on Tenant's concurrent receipt, from the holder or beneficiary of such Security Document, of a non- disturbance agreement in a form reasonably acceptable to Tenant confirming, among other things, that so long as Tenant is not in default hereunder, Tenant's rights hereunder shall not be disturbed by such person or entity, any continuing defaults of Landlord shall be cured (to the extent the same are capable of being cured and without liability for defaults of Landlord occurring prior to acquisition by such person of Landlord's interest in the Premises) ("Non-Disturbance Agreement"). Landlord represents and warrants that no Securing Documents exist as of the Effective Date. Landlord will obtain a Non-Disturbance Agreement from any future mortgagee within sixty (60) days following the closing of any future financing on the Building as a condition to Tenant's subordination and attornment obligations under this Lease. Subject to the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any such Security Documents to this Lease and in such case, in the event of the termination or transfer of Landlord's estate or interest in the Project by reason of any termination or foreclosure of any such Security Documents, Tenant shall, notwithstanding such subordination, attorn to and become the Tenant of the successor-in-interest to Landlord at the option of such successor-in-interest. Furthermore, Tenant shall within fifteen (15) days of demand therefor execute any instruments or other documents which may be required by Landlord or the holder of any Security Document and specifically shall execute, acknowledge and deliver within fifteen (15) days of demand therefor a subordination of lease or subordination of deed of trust or mortgage, in the form required by the holder of the Security Document requesting the document, provided no such instrument increases the obligations of, nor decreases the benefits to, Tenant under this Lease; the failure to do so by Tenant within such time period shall be a default hereunder; provided, however, the new landlord or the holder of any Security Document shall agree that Tenant's quiet enjoyment of the Premises shall not be disturbed as long as Tenant is not in default under this Lease.

(b) If any proceeding is brought for default under any ground or master lease to which this Lease is subject or in the event of foreclosure or the exercise of the power of sale under any mortgage, deed of trust or other Security Document made by Landlord covering the Premises, Tenant shall not be named in such proceeding unless required by applicable Law, and at the election of such ground lessor, master lessor or purchaser at foreclosure, Tenant shall attorn to and recognize the same as Landlord under this Lease, provided such successor expressly agrees in writing to be bound to all future obligations by the terms of this Lease, and if so requested, Tenant shall enter into a new lease with that successor on the same terms and conditions as are contained in this Lease (for the unexpired term of this Lease then remaining). Tenant hereby waives its rights under any current or future law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such foreclosure proceeding or sale.

(c) [Intentionally Omitted].

(d) Tenant shall, upon not less than ten (10) business days' prior notice by Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying to those facts for which certification has been reasonably requested by Landlord or any current or prospective purchaser, holder of any Security Document, ground lessor or master lessor, including, but without limitation, that (i) this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) the dates to which the Base Rent, Additional Rent and other charges hereunder have been paid, if any, and (iii) whether or not to the best knowledge of Tenant, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Tenant may have knowledge. The form of the statement attached hereto as *Exhibit D* is hereby approved by Tenant for use pursuant to this subparagraph (d). Tenant's failure to execute and deliver such statement within such time, and such failure continues for an additional five (5) business days following a second (2nd) notice thereof from Landlord, shall, at the option of Landlord, constitute a material default under this Lease and, in any event, shall be conclusive upon Tenant that this Lease is in full force and effect without modification except as may be represented by Landlord in any such certificate prepared by Landlord and delivered to Tenant for execution. Any statement delivered pursuant to this Paragraph 16 may be relied upon by any prospective purchaser of the fee of the Building or the Project or any mortgagee, ground lessor or other like encumbrances thereof or any assignee of any such encumbrance upon the Building or the Project.

17. SALE BY LANDLORD; TENANT'S REMEDIES; NONRECOURSE LIABILITY

(a) In the event of a sale or conveyance by Landlord of the Building or the Project, Landlord shall be released from any and all liability under this Lease for periods from and after such sale or conveyance. If the Security Deposit has been deposited by Tenant to Landlord prior to such sale or conveyance, Landlord shall transfer the Security Deposit to the purchaser, and upon delivery to Tenant of notice thereof, Landlord shall be discharged from any further liability in reference thereto.

(b) Landlord shall not be in default of any obligation of Landlord hereunder unless Landlord fails to perform any of its obligations under this Lease within thirty (30) days after receipt of written notice of such failure from Tenant; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, Landlord shall not be in default if Landlord commences to cure such default within the thirty (30) day period and thereafter diligently prosecutes the same to completion. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Project and not thereafter. All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder.

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

(d) As a condition to the effectiveness of any notice of default given by Tenant to Landlord, Tenant shall also concurrently give such notice under the provisions of Paragraph 17(b) to each beneficiary under a Security Document encumbering the Project of whom Tenant has received written notice (such notice to specify the address of the beneficiary). In the event Landlord shall fail to cure any breach or default within the time period specified in subparagraph (b), then prior to the pursuit of any remedy therefor by Tenant, each such beneficiary shall have an additional thirty (30) days within which to cure such default, or if such default cannot reasonably be cured within such period, then each such beneficiary shall have such additional time as shall be necessary to cure such default, provided that within such thirty (30) day period, such beneficiary has commenced and is diligently pursuing the remedies available to it which are necessary to cure such default (including, without limitation, as appropriate, commencement of foreclosure proceedings).

18. PARKING; COMMON AREAS

(a) Tenant shall have the right to the nonexclusive use of the number of parking spaces located in the parking areas of the Project specified in *Item 13* of the Basic Lease Provisions for the parking of operational motor vehicles used by Tenant, its officers and employees only. Subject to the locations specified in *Item 13* of the Basic Lease Provisions for Tenant's parking spaces, Landlord reserves the right, at any time upon written notice to Tenant, to designate the location of Tenant's parking spaces as determined by Landlord in its reasonable discretion provided such designation does not result in a Tenant Impact. The use of such spaces shall be subject to the reasonable rules and regulations adopted by Landlord from time to time for the use of the parking areas. Landlord further reserves the right to make such changes to the parking system as Landlord may deem necessary or reasonable from time to time; *i.e.*, Landlord may provide for one or a combination of parking systems, including, without limitation, self- parking, single or double stall parking spaces, and valet assisted parking. Except as otherwise expressly agreed to in this Lease, Tenant agrees that Tenant, its officers and employees shall not be entitled to park in any reserved or specially assigned areas designated by Landlord from time to time in the Project's parking areas. Landlord may require execution of an agreement with respect to the use of such parking areas by Tenant and/or its officers and employees in form reasonably satisfactory to Landlord as a condition of any such use by Tenant, its officers and employees. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's officers, employees, suppliers, shippers, customers or invitees to be loaded, unloaded or parked in areas other than those designated by Landlord for such activities. If Tenant permits or allows any of the prohibited activities described in this Paragraph, then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord. Parking passes, cards or any other device or form of identification supplied by Landlord (or its operator), if any, shall remain the property of Landlord (or its operator). Such parking identification device, if any, must be displayed as requested and may not be mutilated in any manner. The serial number of the parking identification device may not be obliterated. Devices are not transferable or assignable and any device in the possession of an unauthorized holder will be void.

(b) Subject to subparagraph (c) below and the remaining provisions of this Lease, Tenant shall have the nonexclusive right, in common with others, to the use of such entrances, lobbies, fire vestibules, restrooms (excluding restrooms on any full floors leased by a tenant), mechanical areas, ground floor lobby of the Building and certain service areas located on the ground floor of the Building (such as telephone closets, corridors etc., but excluding the ground floor fitness center), elevators and elevator foyers, electrical and janitorial closets, telephone and equipment rooms, loading and unloading areas, the Project's plaza areas, if any, ramps, drives, stairs, and similar access ways and service ways and other common areas and facilities in and adjacent to the Building and the Project as are designated from time to time by Landlord for the general nonexclusive use of Landlord, Tenant and the other tenants of the Project and their respective employees, agents, representatives, licensees and invitees ("Common Areas"). The use of such Common Areas shall be subject to the rules and regulations contained herein and the provisions of any covenants, conditions and restrictions of record against title to and affecting the Building or the Project. Tenant shall keep all of the Common Areas free and clear of any obstructions created or permitted by Tenant or resulting from Tenant's operations, and shall use the Common Areas only for normal activities, parking and ingress and egress by Tenant and its employees, agents, representatives, licensees and invitees to and from the Premises, the Building or the Project. If, in the reasonable opinion of Landlord, unauthorized persons are using the Common Areas by reason of the presence of Tenant in the Premises, Tenant, upon demand of Landlord, shall correct such situation by appropriate action or proceedings against all such unauthorized persons. Nothing herein shall affect the rights of Landlord at any time to remove any such unauthorized persons from said areas or to prevent the use of any of said areas by unauthorized persons. Landlord reserves the right to make such changes, alterations, additions, deletions, improvements, repairs or replacements in or to the Building, the Project (including the Premises) and the Common Areas as Landlord may reasonably deem necessary or desirable, including, without limitation, constructing new buildings and making changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading areas, landscaped areas and walkways; provided, however, that (i) there shall be no unreasonable obstruction of access to or use of the Premises resulting therefrom, and (ii) Landlord shall use commercially reasonable efforts to minimize any interruption with Tenant's use of the Premises. Notwithstanding any provision of this Lease to the contrary, the Common Areas shall not in any event be deemed to be a portion of or included within the Premises leased to Tenant and the Premises shall not be deemed to be a portion of the Common Areas. Subject to the provisions of Paragraph 16 as to Security Documents, this Lease is granted subject to the terms hereof, the rights and interests of third parties under existing liens, ground leases, easements and encumbrances of record against title and affecting such property, all zoning regulations, rules, ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction over the Project or any part thereof.

(c) Notwithstanding any provision of this Lease to the contrary, Landlord specifically reserves the right to redefine the term "Project" for purposes of allocating and calculating Operating Expenses so as to include or exclude areas as Landlord shall from time to time determine or specify (and any such determination or specification shall be without prejudice to Landlord's right to revise thereafter such determination or specification provided the same does not result in a Tenant Impact). In addition, Landlord shall have the right to contract or otherwise arrange for amenities, services or utilities (the cost of which is included within Operating Expenses) to be on a common or shared basis to both the Project (*i.e.*, the area with respect to which Operating Expenses are determined) and adjacent areas not included within the Project, so long as the basis on which the cost of such amenities, services or utilities is allocated to the Project is reasonably determined on an arms-length basis or some other basis reasonably determined by Landlord. In the case where the definition of the Project is revised for purposes of the allocation or determination of Operating Expenses, Tenant's Proportionate Share shall be appropriately revised to equal the percentage share of all Rentable Area contained within the Project (as then defined) represented by the Premises. The Rentable Area of the Project is subject to adjustment by Landlord from time to time to reflect any remeasurement thereof by Landlord's architect, at Landlord's request, and/or as a result of any additions or deletions to any of the buildings in the Project as designated by Landlord. Landlord shall have the sole right to determine which portions of the Project and other areas, if any, shall be served by common management, operation, maintenance and repair. Landlord shall also have the right, in its sole discretion, to allocate and prorate any portion or portions of the Operating Expenses on a building-by-building basis, on an aggregate basis of all buildings in the Project, or any other reasonable manner, and if allocated on a building-by-building basis, then Tenant's Proportionate Share shall, as to the portion of the Operating Expenses so allocated, be based on the ratio of the Rentable Area of the Premises to the Rentable Area of the Building. Landlord shall have the exclusive rights to the airspace above and around, and the subsurface below, the Premises and other portions of the Building and Project. Notwithstanding the foregoing, no actions by Landlord pursuant to the rights reserved to Landlord under this subparagraph (c) shall result in any Tenant Impact.

(d) So long as there is no default by Tenant under this Lease (beyond the expiration of all applicable notice and cure periods), Landlord acknowledges and agrees that Tenant's employees employed at the Premises shall have the right to utilize the Building's fitness center ("Fitness Center") for so long as Landlord determines that such Fitness Center will be in operation at the Building. Tenant, for itself and its employees and any other guest or invitee of Tenant utilizing the Fitness Center, hereby acknowledges that any use of the Fitness Center by Tenant or any employees or other parties is voluntary and at the user's own risk, and may involve strenuous physical exertion, and that a medical checkup is advisable before participating in any fitness programs or activities. Tenant further agrees to indemnify, defend, protect and hold harmless Landlord and all Landlord Indemnitees (as defined in Paragraph 8(b) above) from and against, any and all claims, demands, losses, liabilities, damages, costs (including attorneys' fees and court costs) causes of action and suits of any kind or nature (including without limitation, strict liability), directly or indirectly arising out of, resulting from or incident to the use or occupancy of, or participation in, the Fitness Center, any of its equipment, facilities, programs, activities or events, if any, by Tenant or any employee or other guest or invitee of Tenant, excluding, however, any claims, demands, losses, liabilities, damages, costs, causes of action and suits to the extent the same arise out of the wrongful acts or omissions, or negligence, of Landlord or any Landlord Indemnitees (collectively, "Released Liabilities"). The Released Liabilities specifically include, without limitation, any and all claims for personal injury, property damage or wrongful death. In connection with the operation of the Fitness Center, Landlord reserves the right to promulgate commercially reasonable rules and regulations applicable to all users of the Fitness Center, which rules and regulations may include, as a condition to any person's use of the Fitness Center, of such person's execution and delivery to Landlord of a release agreement in a form specified by Landlord, releasing Landlord from any liability arising out of or in connection with such person's use of the Fitness Center (and upon such person's compliance with such rules and regulations which Landlord may specify for the use of the Fitness Center). Landlord shall have the right, from time to time, to relocate or eliminate the Fitness Center and use such space as leasable space.

19. MISCELLANEOUS

(a) Attorneys' Fees. In the event of any legal action or proceeding brought by either party against the other arising out of this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs (including, without limitation, court costs and expert witness fees) incurred in such action. Such amounts shall be included in any judgment rendered in any such action or proceeding.

(b) Waiver. No waiver by Landlord of any provision of this Lease or of any breach by Tenant hereunder shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach by Tenant. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval under this Lease shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act of Tenant. No act or thing done by Landlord or Landlord's agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, unless in writing signed by Landlord. The delivery of the keys to any employee or agent of Landlord shall not operate as a termination of the Lease or a surrender of the Premises. The acceptance of any Rent by Landlord following a breach of this Lease by Tenant shall not constitute a waiver by Landlord of such breach or any other breach unless such waiver is expressly stated in a writing signed by Landlord.

(c) Notices. Any notice, demand, request, consent, approval, disapproval or certificate ("Notice") required or desired to be given under this Lease shall be in writing and given by certified mail, return receipt requested, by personal delivery or by a nationally recognized overnight delivery service (such as Federal Express or UPS) providing a receipt for delivery. Notices may not be given by facsimile. The date of giving any Notice shall be deemed to be the date upon which delivery is actually made by one of the methods described in this Paragraph 19(c) (or attempted if said delivery is refused or rejected). If a Notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day. All notices, demands, requests, consents, approvals, disapprovals, or certificates shall be addressed at the address specified in *Item 14* of the Basic Lease Provisions or to such other addresses as may be specified by written notice from Landlord to Tenant and if to Tenant, at the Premises. Either party may change its address by giving reasonable advance written Notice of its new address in accordance with the methods described in this Paragraph; provided, however, no notice of either party's change of address shall be effective until fifteen (15) days after the addressee's actual receipt thereof. For the purpose of this Lease, Landlord's counsel may provide Notices to Tenant on behalf of Landlord and such notices shall be binding on Tenant as if such notices have been provided directly by Landlord.

(d) Storage. Any storage space at any time leased to Tenant hereunder shall be used exclusively for storage. Notwithstanding any other provision of this Lease to the contrary, (i) Landlord shall have no obligation to provide heating, cleaning, water or air conditioning therefor, and (ii) Landlord shall be obligated to provide to such storage space only such electricity as will, in Landlord's judgment, be adequate to light said space as storage space.

(e) Holding Over. If Tenant retains possession of the Premises after the termination or expiration of the Lease Term, then Tenant shall, at Landlord's election become a tenant at sufferance (and not a tenant at will), such possession shall be subject to immediate termination by Landlord at any time, and all of the other terms and provisions of this Lease (excluding any expansion or renewal option or other similar right or option) shall be applicable during such holdover period, except that Tenant shall pay Landlord from time to time, upon demand, as Base Rent for the holdover period, an amount equal to one hundred twenty-five percent (125%) of the Base Rent in effect on the termination date, computed on a monthly basis for each month or part thereof during the first month of such holding over, and one hundred fifty percent (150%) of the Base Rent in effect on the termination date, computed on a monthly basis for each month or part thereof during such holding over. All other payments (including payment of Additional Rent) shall continue under the terms of this Lease. In addition, Tenant shall be liable for all damages incurred by Landlord as a result of such holding over. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Paragraph shall not be construed as consent for Tenant to retain possession of the Premises.

(f) Condition of Premises. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS LEASE, LANDLORD HEREBY DISCLAIMS ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED PURPOSE OR USE, WHICH DISCLAIMER IS HEREBY ACKNOWLEDGED BY TENANT.

Pursuant to Section 1938 of the California Civil Code, Landlord hereby advises Tenant that as of the date of this Lease neither the Premises, the Building nor the Project have undergone inspection by a Certified Access Specialist. Further, pursuant to Section 1938 of the California Civil Code, Landlord notifies Tenant of the following: "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." Therefore and notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant agree that (a) Tenant may, at its option and at its sole cost, cause a CASp to inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under California law, (b) the parties shall mutually coordinate and reasonably approve of the timing of any such CASp inspection so that Landlord may, at its option, have a representative present during such inspection, and (c) if Tenant requires the CASp inspection under this Paragraph, Tenant shall be solely responsible for the cost of any repairs necessary to correct violations of construction-related accessibility standards within the Premises, revealed solely as a result of such inspection, any and all such alterations and repairs to be performed in accordance with Article 4 of this Lease; provided Tenant shall have no obligation to remove any repairs or alterations made pursuant to a CASp inspection under this Paragraph.

(g) Quiet Possession. Upon Tenant's paying the Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the term hereof without hindrance or ejection by any person lawfully claiming under Landlord, subject to the provisions of this Lease and to the provisions of any (i) covenants, conditions and restrictions, (ii) master lease, or (iii) Security Documents to which this Lease is subordinate or may be subordinated.

(h) Matters of Record. Except as otherwise provided herein, this Lease and Tenant's rights hereunder are subject and subordinate to all matters affecting Landlord's title to the Project recorded in the Official Records of the County in which the Project is located, prior to and subsequent to the date hereof, including, without limitation, all recorded covenants, conditions and restrictions. Tenant agrees for itself and all persons in possession or holding under it that, in its use and occupancy of the Premises, it will comply with and not violate any such covenants, conditions and restrictions or other matters of record. Landlord reserves the right, from time to time, to grant such easements, rights and dedications as Landlord deems necessary or desirable, and to cause the recordation of parcel maps and covenants, conditions and restrictions affecting the Premises, the Building or the Project, as long as such easements, rights, dedications, maps, and covenants, conditions and restrictions do not interfere with the use or occupancy of the Premises by Tenant in any material respect or otherwise result in any Tenant Impact. At Landlord's request, Tenant shall join in the execution of any of the aforementioned documents provided the same do not result in any expense or liability to Tenant.

(i) Successors and Assigns. Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns. Tenant shall attorn to each purchaser, successor or assignee of Landlord in accordance with the terms of this Lease.

(j) Brokers. Tenant warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, excepting only the brokers named in *Item 12* of the Basic Lease Provisions and that it knows of no other real estate broker or agent acting on behalf of Tenant who is or might be thereby entitled to a commission in connection with this Lease. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent other than the brokers listed in *Item 12* of the Basic Lease Provisions. Landlord shall pay any brokerage commissions payable to such listed brokers in connection with the execution of this Lease pursuant to a separate agreement between Landlord and such brokers. Nothing set forth herein or otherwise under this Lease shall be deemed to require that Tenant retain any specific broker to act on Tenant's behalf or for its benefit, including any broker named in *Item 12* of the Basic Lease Provisions, in connection with any further or future negotiations with Landlord under this Lease, including as to any renewals or extensions of the Lease Term, or expansions of the Premises, and Tenant hereby disclaims any such retention or relationship absent further notice by Tenant thereof to Landlord in each such instance.

(k) Project or Building Name and Signage. Landlord shall have the right at any time to install, affix and maintain any and all signs on the exterior and on the interior of the Project or Building as Landlord may, in Landlord's sole discretion, desire. Tenant shall not use the name of the Project or Building or use pictures or illustrations of the Project or Building in advertising or other publicity or for any purpose other than as the address of the business to be conducted by Tenant in the Premises, without the prior written consent of Landlord. Additionally, Landlord shall have the exclusive right at all times during the Lease Term to change, modify, add to or otherwise alter the name, number, or designation of the Building and/or the Project, and Landlord shall not be liable for claims or damages of any kind which may be attributed thereto or result therefrom.

(l) Examination of Lease. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution by and delivery to both Landlord and Tenant.

(m) Time. Time is of the essence of this Lease and each and all of its provisions.

(n) Defined Terms and Marginal Headings. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular and for purposes of Articles 5, 7, 13 and 18, the term Landlord shall include Landlord, its employees, contractors and agents. The marginal headings and titles to the articles of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

(o) Conflict of Laws; Prior Agreements; Separability. This Lease shall be governed by and construed pursuant to the laws of the State of California. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease. No prior agreement, understanding or representation pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The illegality, invalidity or unenforceability of any provision of this Lease shall in no way impair or invalidate any other provision of this Lease, and such remaining provisions shall remain in full force and effect.

(p) Authority. Each party warrants to the other that the person signing this Lease on its behalf is fully authorized to do so and, by so doing, to bind such party. This Lease shall not be construed to create a partnership, joint venture or similar relationship or arrangement between Landlord and Tenant hereunder.

(q) [Intentionally Omitted].

(r) Rental Allocation. For purposes of Section 467 of the Internal Revenue Code of 1986, as amended from time to time, Landlord and Tenant hereby agree to allocate all Rent to the period in which payment is due, or if later, the period in which Rent is paid.

(s) Rules and Regulations. Tenant agrees to comply with all rules and regulations of the Building and the Project imposed by Landlord as set forth on *Exhibit C* attached hereto, as the same may be changed from time to time upon reasonable notice to Tenant. Landlord shall not be liable to Tenant for the failure of any other tenant or any of its assignees, subtenants, or their respective agents, employees, representatives, invitees or licensees to conform to such rules and regulations.

(t) Joint Product. This Agreement is the result of arms-length negotiations between Landlord and Tenant and their respective attorneys. Accordingly, neither party shall be deemed to be the author of this Lease and this Lease shall not be construed against either party.

(u) Financial Statements. Upon Landlord's written request, Tenant shall promptly furnish Landlord, from time to time (but not more frequently than two (2) times per calendar year), with the most current audited financial statements prepared in accordance with generally accepted accounting principles, certified by Tenant and an independent auditor to be true and correct, reflecting Tenant's then current financial condition. Notwithstanding the foregoing, in the event that (i) stock in the entity which constitutes Tenant under this Lease is publicly traded on a national stock exchange, (ii) Tenant has its own, separate and distinct 10K and 10Q filing requirements (as opposed to joint filings with an entity that controls Tenant or is under common control with Tenant), and (iii) Tenant's financial statements are readily available to the public, then Tenant's obligation to its most recent current financial statement shall be deemed satisfied.

(v) Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorism, terrorist activities, inability to obtain services, labor, or materials or reasonable substitutes therefore, governmental actions, civil commotions, fire, flood, earthquake or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease and except as to Tenant's obligations under Paragraph 6 and Paragraph 8 of this Lease and Paragraph 19(f) of this Lease (collectively, a "Force Majeure"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

(w) Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

(x) Waiver of Right to Jury Trial. TO THE EXTENT ALLOWED BY APPLICABLE LAW, LANDLORD AND TENANT WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY OF ANY CONTRACT OR TORT CLAIM, COUNTERCLAIM, CROSS-COMPLAINT, OR CAUSE OF ACTION IN ANY ACTION, PROCEEDING, OR HEARING BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE OR OCCUPANCY OF THE LEASED PREMISES, INCLUDING WITHOUT LIMITATION ANY CLAIM OF INJURY OR DAMAGE OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY CURRENT OR FUTURE LAW, STATUTE, REGULATION, CODE, OR ORDINANCE. Landlord and Tenant agree that this paragraph constitutes a written consent to waiver of trial by jury within the meaning of California Code of Civil Procedure Section 631(a)(2), and Tenant does hereby authorize and empower Landlord to file this paragraph and/or this Lease, as required, with the clerk or judge of any court of competent jurisdiction as a written consent to waiver of jury trial.

(y) ARBITRATION OF DISPUTES. IN THE EVENT THAT THE JURY WAIVER PROVISIONS OF PARAGRAPH 19(x) ABOVE ARE NOT ENFORCEABLE UNDER CALIFORNIA LAW, THEN THE FOLLOWING PROVISIONS OF THIS PARAGRAPH 19(y) SHALL APPLY. IT IS THE DESIRE AND INTENTION OF THE PARTIES TO AGREE UPON A MECHANISM AND PROCEDURE UNDER WHICH CONTROVERSIES AND DISPUTES ARISING OUT OF THIS LEASE OR RELATED TO THE PREMISES WILL BE RESOLVED IN A PROMPT AND EXPEDITIOUS MANNER. ACCORDINGLY, EXCEPT WITH RESPECT TO ACTIONS FOR UNLAWFUL OR FORCIBLE DETAINER OR WITH RESPECT TO THE PREJUDGMENT REMEDY OF ATTACHMENT, ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER (AND/OR AGAINST ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUBSIDIARY OR AFFILIATED ENTITIES) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES AND/OR ANY CLAIM OF INJURY OR DAMAGE, SHALL BE HEARD AND RESOLVED BY A REFEREE UNDER THE PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE, SECTIONS 638 — 645.1, INCLUSIVE (AS SAME MAY BE AMENDED, OR ANY SUCCESSOR STATUTE(S) THERETO) (THE "REFEREE SECTIONS"). ANY FEE TO INITIATE THE JUDICIAL REFERENCE PROCEEDINGS SHALL BE PAID BY THE PARTY INITIATING SUCH PROCEDURE; PROVIDED HOWEVER, THAT THE COSTS AND FEES, INCLUDING ANY INITIATION FEE, OF SUCH PROCEEDING SHALL ULTIMATELY BE BORNE IN ACCORDANCE WITH PARAGRAPH 19(a) ABOVE. THE VENUE OF THE PROCEEDINGS SHALL BE IN THE COUNTY IN WHICH THE PREMISES ARE LOCATED. WITHIN TEN (10) DAYS OF RECEIPT BY ANY PARTY OF A WRITTEN REQUEST TO RESOLVE ANY DISPUTE OR CONTROVERSY PURSUANT TO THIS PARAGRAPH 19(y), THE PARTIES SHALL AGREE UPON A SINGLE REFEREE WHO SHALL TRY ALL ISSUES, WHETHER OF FACT OR LAW, AND REPORT A FINDING AND JUDGMENT ON SUCH ISSUES AS REQUIRED BY THE REFEREE SECTIONS. IF THE PARTIES ARE UNABLE TO AGREE UPON A REFEREE WITHIN SUCH TEN (10) DAY PERIOD, THEN ANY PARTY MAY THEREAFTER FILE A LAWSUIT IN THE COUNTY IN WHICH THE PREMISES ARE LOCATED FOR THE PURPOSE OF APPOINTMENT OF A REFEREE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 AND 640, AS SAME MAY BE AMENDED OF ANY SUCCESSOR STATUTE(S) THERETO. IF THE REFEREE IS APPOINTED BY THE COURT, THE REFEREE SHALL BE A NEUTRAL AND IMPARTIAL RETIRED JUDGE WITH SUBSTANTIAL EXPERIENCE IN THE RELEVANT MATTERS TO BE DETERMINED, FROM JAMS/ENDISPUTE, INC., THE AMERICAN ARBITRATION ASSOCIATION OR SIMILAR MEDIATION/ARBITRATION ENTITY. THE PROPOSED REFEREE MAY BE CHALLENGED BY

ANY PARTY FOR ANY OF THE GROUNDS LISTED IN SECTION 641 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE, AS SAME MAY BE AMENDED OR ANY SUCCESSOR STATUTE(S) THERETO. THE REFEREE SHALL HAVE THE POWER TO DECIDE ALL ISSUES OF FACT AND LAW AND REPORT HIS OR HER DECISION ON SUCH ISSUES, AND TO ISSUE ALL RECOGNIZED REMEDIES AVAILABLE AT LAW OR IN EQUITY FOR ANY CAUSE OF ACTION THAT IS BEFORE THE REFEREE, INCLUDING AN AWARD OF ATTORNEYS' FEES AND COSTS IN ACCORDANCE WITH CALIFORNIA LAW. THE REFEREE SHALL NOT, HOWEVER, HAVE THE POWER TO AWARD PUNITIVE DAMAGES, NOR ANY OTHER DAMAGES WHICH ARE NOT PERMITTED BY THE EXPRESS PROVISIONS OF THIS LEASE, AND THE PARTIES HEREBY WAIVE ANY RIGHT TO RECOVER ANY SUCH DAMAGES. THE PARTIES SHALL BE ENTITLED TO CONDUCT ALL DISCOVERY AS PROVIDED IN THE CALIFORNIA CODE OF CIVIL PROCEDURE, AND THE REFEREE SHALL OVERSEE DISCOVERY AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE, WITH RIGHTS TO REGULATE DISCOVERY AND TO ISSUE AND ENFORCE SUBPOENAS, PROTECTIVE ORDERS AND OTHER LIMITATIONS ON DISCOVERY AVAILABLE UNDER CALIFORNIA LAW. THE REFERENCE PROCEEDING SHALL BE CONDUCTED IN ACCORDANCE WITH CALIFORNIA LAW (INCLUDING THE RULES OF EVIDENCE), AND IN ALL REGARDS, THE REFEREE SHALL FOLLOW CALIFORNIA LAW APPLICABLE AT THE TIME OF THE REFERENCE PROCEEDING. IN ACCORDANCE WITH SECTION 644 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE, THE DECISION OF THE REFEREE UPON THE WHOLE ISSUE MUST STAND AS THE DECISION OF THE COURT, AND UPON THE FILING OF THE STATEMENT OF DECISION WITH THE CLERK OF THE COURT, OR WITH THE JUDGE IF THERE IS NO CLERK, JUDGMENT MAY BE ENTERED THEREON IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE PARTIES SHALL PROMPTLY AND DILIGENTLY COOPERATE WITH ONE ANOTHER AND THE REFEREE, AND SHALL PERFORM SUCH ACTS AS MAY BE NECESSARY TO OBTAIN A PROMPT AND EXPEDITIOUS RESOLUTION OF THE DISPUTE OR CONTROVERSY IN ACCORDANCE WITH THE TERMS OF THIS PARAGRAPH 19(y). TO THE EXTENT THAT NO PENDING LAWSUIT HAS BEEN FILED TO OBTAIN THE APPOINTMENT OF A REFEREE, ANY PARTY, AFTER THE ISSUANCE OF THE DECISION OF THE REFEREE, MAY APPLY TO THE COURT OF THE COUNTY IN WHICH THE PREMISES ARE LOCATED FOR CONFIRMATION BY THE COURT OF THE DECISION OF THE REFEREE IN THE SAME MANNER AS A PETITION FOR CONFIRMATION OF AN ARBITRATION AWARD PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1285 *ET SEQ*. (AS SAME MAY BE AMENDED OR ANY SUCCESSOR STATUTE(S) THERETO).

(z) <u>Office and Communications Services</u>. Landlord has advised Tenant that certain office and communications services may be offered to tenants of the Building by a concessionaire under contract to Landlord ("<u>Provider</u>"). Tenant shall be permitted to contract with Provider for the provision of any or all of such services on such terms and conditions as Tenant and Provider may agree. Tenant acknowledges and agrees that: (i) Landlord has made no warranty or representation to Tenant with respect to the availability of any such services, or the quality, reliability or suitability thereof; (ii) the Provider is not acting as the agent or representative of Landlord in the provision of such services, and Landlord shall have no liability or responsibility for any failure or inadequacy of such services, or any equipment or facilities used in the furnishing thereof, or any act or omission of Provider, or its agents, employees, representatives, officers or contractors; (iii) Landlord shall have no responsibility or liability for the installation, alteration, repair, maintenance, furnishing, operation, adjustment or removal of any such services, equipment or facilities; and (iv) any contract or other agreement between Tenant and Provider shall be independent of this Lease, the obligations of Tenant hereunder, and the rights of Landlord hereunder, and, without limiting the foregoing, no default or failure of Provider with respect to any such services, equipment or facilities, or under any contract or agreement relating thereto, shall have any effect on this Lease or give to Tenant any offset or defense to the full and timely performance of its obligations hereunder, or entitle Tenant to any abatement of rent or additional rent or any other payment required to be made by Tenant hereunder, or constitute any accrual or constructive eviction of Tenant, or otherwise give rise to any other claim of any nature against Landlord.

(aa) OFAC Compliance.

(i) Certification. Tenant and Landlord each certifies, represents, warrants and covenants that:

(A) It 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 National 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; and

(B) It is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation.

(ii) Indemnity. Each party hereby agrees to defend (with counsel reasonably acceptable to the other party), indemnify and hold harmless the other party from and against any and all Claims arising from or related to any such breach of the foregoing certifications, representations, warranties and covenants.

(bb) No Easement For Light, Air And View. This Lease conveys to Tenant no rights for any light, air or view. No diminution of light, air or view, or any impairment of the visibility of the Premises from inside or outside the Building, by any structure or other object that may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction of Rent under this Lease, constitute an actual or constructive eviction of Tenant, result in any liability of Landlord to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder.

(cc) Nondisclosure of Lease Terms. Tenant and Landlord agree that the terms of this Lease are confidential and constitute proprietary information of the parties, including all Lease information (such as the existence of the Lease, length of the Lease Term, total consideration, rental rate, names of the parties, etc.), and shall not be reported to any listing/reporting services, such as CoStar or CompStack, nor shall such information be reported to any kind of publication, such as the San Diego Business Journal, or any other newspaper or news site, business or trade journal, etc. In addition, Landlord shall not disclose such information to any internal or external database. The foregoing nondisclosure terms shall not apply to disclosures to a party's accountants in connection with the preparation of financial statements or tax returns, to an assignee of this Lease or subtenant of the Premises, or to an entity or person to whom disclosure is require by applicable law or in connection with any action brought to enforce this Lease, or as otherwise may be required to comply with applicable Law or governmental reporting obligations, including any Permitted Regulatory Reporting as described under Paragraph 3(i) of this Lease. This provision shall survive the termination or expiration of this Lease for a period of one (1) year.

(dd) [Intentionally Omitted].

(ee) ERISA. Tenant is not an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), which is subject to Title I of ERISA, or a "plan" as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, which is subject to Section 4975 of the Internal Revenue Code of 1986; and (b) the assets of Tenant do not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code of 1986; and (c) Tenant is not a "governmental plan" within the meaning of Section 3(32) of ERISA, and assets of Tenant do not constitute plan assets of one or more such plans; or (d) transactions by or with Tenant are not in violation of state statutes applicable to Tenant regulating investments of and fiduciary obligations with respect to governmental plans.

(ff) Separate Account. Notwithstanding anything contained in this Lease or in any other document executed in connection with the transaction contemplated hereby to the contrary and without limitation of Paragraph 17(c) hereof, any liability of Landlord shall be satisfied solely from the assets and properties of the Teachers Insurance and Annuity Association of America's Real Estate Account established as a separate investment account of TIAA under New York law on February 22, 1995, and under the regulation of the State of New York

Insurance Department (the "Separate Account") (including all assets and properties allocated to or held for the account of the Separate Account), and in no event shall any recourse be had to any assets or properties held by TIAA in its general investment account or in any other of its existing or future separate accounts other than the Separate Account. The provisions of this Paragraph 19(ff) will survive the expiration or earlier termination of this Lease.

(gg) Rooftop Communications Equipment. Subject to the terms and conditions of this Paragraph 19(gg), Landlord's approval of Tenant's plans, and all applicable governmental laws and regulations, Tenant shall have the non-exclusive right to install, maintain and operate, at Tenant's sole cost and expense, up to a maximum of one antenna or satellite dish, including base site cabinet and appurtenant conduits and cabinets ("Antennae Equipment") on the roof of the Building in a location approved by Landlord. Use of the roof top space shall be at no charge to Tenant and shall be for Tenant's internal purposes only. Tenant's rights herein are subject to the rights of any existing occupants of the Building or the Building roof, and in no event shall Tenant's Antennae Equipment interfere with the equipment of Landlord or other tenants or occupants of the Building or Building roof. Tenant reserves the right to run cabling, conduit or wiring across the roof of the portion of the Building which is above Tenant's Premises to the appropriate conduit riser that will terminate within the Premises as set forth in plans and specifications, which shall be subject to Landlord's approval including, without limitation, as to scope of work, timing for construction, plans and installation and restoration of improvements.

[SIGNATURE PAGE TO FOLLOW]

SIGNATURE PAGE TO OFFICE LEASE
BY AND BETWEEN TREA PACIFIC PLAZA, LLC, AS LANDLORD,
AND TANDEM DIABETES CARE, INC., AS TENANT

IN WITNESS WHEREOF, the parties have executed this Lease to be effective as of the Date of this Lease.

"LANDLORD":

TREA PACIFIC PLAZA, LLC,
a Delaware limited liability company

By:Teachers Insurance and Annuity Association of America, a New York corporation, for the benefit of its Real Estate Account, its sole member

By:/s/ Erik Sobek
Name: Erik Sobek
Title: Senior Director

"TENANT":

TANDEM DIABETES CARE, INC.,
a Delaware corporation

By:/s/ David B. Berger
Name: David B. Berger
Title: Executive Vice President, General Counsel & Secretary

By:/s/ Leigh Vosseller
Name: Leigh Vosseller
Title: Executive Vice President, Chief Financial Officer & Treasurer

*NOTE:

If Tenant is a California corporation, then one of the following alternative requirements must be satisfied:

(i) This Lease must be signed by two (2) officers of such corporation: one being the chairman of the board, the president or a vice president, and the other being the secretary, an assistant secretary, the chief financial officer or an assistant treasurer. If one (1) individual is signing in two (2) of the foregoing capacities, that individual must sign twice; once as one officer and again as the other officer.

(ii) If there is only one (1) individual signing in two (2) capacities, or if the two (2) signatories do not satisfy the requirements of (A) above, then Tenant shall deliver to Landlord a certified copy of a corporate resolution in a form reasonably acceptable to Landlord authorizing the signatory(ies) to execute this Lease.

If Tenant is a corporation incorporated in a state other than California, then Tenant shall deliver to Landlord a certified copy of a corporate resolution in a form reasonably acceptable to Landlord authorizing the signatory(ies) to execute this Lease.

EXHIBIT A

FLOOR PLAN OF THE PREMISES

EXHIBIT B

WORK LETTER

1. **TENANT IMPROVEMENTS**. Landlord shall construct and, except as provided below to the contrary, pay for the entire cost of constructing the following tenant improvements in the Premises (collectively, the "Tenant Improvements"):

- remove seven (7) offices (See *Exhibit A*);
- patch and repair of ceiling by way of replacement. Ceiling grid in the area of the demolition will be replaced and repaired using new materials consisting of equal quality, structure, color, texture and appearance (to the extent such materials are still available) to ensure a consistent "matched' appearance throughout the Premises;
- new carpet and base throughout the Premises (utilizing a mutually agreed upon Building-Standard carpet and base that is in stock);
- cap any remaining floor cores unused by Tenant's furniture and cover with the new carpet; and
- touch-up paint as needed throughout the Premises.

Tenant may request changes to the Tenant Improvements provided that (a) the changes shall not be of a lesser quality than Landlord's standard specifications for tenant improvements for the Building, as the same exists on the Effective Date (the "Standards"); (b) the changes conform to applicable governmental regulations and necessary governmental permits and approvals can be secured; (c) the changes do not require building service beyond the levels normally provided to other tenants in the Building; (d) the changes do not have any adverse effect on the structural integrity or systems of the Building; (e) the changes will not, in Landlord's opinion, unreasonably delay construction of the Tenant Improvements; and (f) Landlord has determined in its sole but reasonable discretion that the changes are of a nature and quality consistent with the overall objectives of Landlord for the Building. If Landlord approves a change requested by Tenant, then, as a condition to the effectiveness of Landlord's approval, Tenant shall pay to Landlord upon demand by Landlord the increased actual cost attributable to such change, as reasonably determined by Landlord. To the extent any such change results in a delay of completion of construction of the Tenant Improvements, then such delay shall constitute a delay caused by Tenant as described below.

Concurrently with construction of the Tenant Improvements, but not as a part thereof, Landlord shall allow the installation of Tenant's security system for access to the Premises in the Building elevators serving the Premises by Tenant, utilizing Tenant's security installation vendor(s), provided such installation shall be under the supervision of Landlord. All costs of such installation, and the removal thereof upon Tenant's vacation of the Premises, shall be Tenant's responsibility.

2. **CONSTRUCTION OF TENANT IMPROVEMENTS**. Upon Tenant's payment to Landlord of the total amount of the cost of any changes to the Tenant Improvements, if any, Landlord's contractor shall commence and diligently proceed with the construction of the Tenant Improvements, subject to Tenant Delays (as described in Section 4 below) and Force Majeure Delays (as described in Section 5 below). Promptly upon the commencement of the Tenant Improvements, Landlord shall furnish Tenant with a construction schedule letter setting forth the projected completion dates therefor and showing the deadlines for any actions required to be taken by Tenant during such construction, and Landlord may from time to time during construction of the Tenant Improvements modify such schedule. The Tenant Improvements shall be constructed and completed in accordance with all applicable Laws including ADA and Title 24 and any compliance-related obligations triggered by the Tenant Improvements (including statutory obligations, building code requirements, ADA requirements, and Title 24 obligations) shall be remedied at Landlord's sole cost, unless and to the extent such compliance-related obligations are required in connection with Tenant's particular use of the Premises that is other than typical office use. Landlord shall be solely responsible for all claims, damages, or costs and expenses arising from the negligence or intentional misconduct of

Landlord's contractors and agents in connection with the construction and completion of the Tenant Improvements, unless and to the extent such claims are caused by the negligence or willful misconduct of Tenant or any Tenant Indemnitees. Tenant shall have no duty to see that the Tenant Improvements, including the design or construction thereof, comply with applicable Laws, including all applicable codes, rules and regulations.

3. **COMMENCEMENT DATE AND SUBSTANTIAL COMPLETION**.

(a) **Commencement Date**. The Term of the Lease shall commence on the date (the "Commencement Date") which is the later of: (i) the Estimated Commencement Date; or (ii) the date the Tenant Improvements have been "Substantially Completed" (as defined below); provided, however, that if Substantial Completion of the Tenant Improvements is delayed as a result of any Tenant Delays described in Section 4 below, then the Commencement Date as would otherwise have been established pursuant to this Section 3(a)(ii) shall be accelerated by the number of days of such Tenant Delays.

(b) **Substantial Completion; Punch-List**. For purposes of Section 3(a)(ii) above, the Tenant Improvements shall be deemed to be "Substantially Completed" when Landlord: (i) the substantial completion of construction of the Tenant Improvements required for Tenant to reasonably occupy and conduct its business in the Premises, with the exception of any Punch List Items (defined below), which Punch List Items shall be diligently completed by Landlord not later than thirty (30) days thereafter; provided, however, that Tenant shall be responsible, at Tenant's sole cost and expense, for the remediation of any Punch-List Items caused by Tenant's negligent or wrongful acts or omissions; (ii) all of the Building Operating Systems are fully operational in accordance with the Lease; (iii) if required, a temporary certificate of occupancy (or jurisdictional equivalent) for the Building and the Tenant Improvements has been issued by the applicable governmental authority; (iv) Landlord is able to provide parking for Tenant sufficient to satisfy the parking requirements under the Lease; (v) Landlord is able to provide Tenant reasonable and continuous ingress and egress to and from the parking areas, the Premises, the Building and the Project, and (vi) continuous and uninterrupted power is available to the Premises. The term "Punch List Items" shall mean minor items of completion, correction or repair with respect to the Tenant Improvements, which by their nature will not interfere with, or impair in any material respect, Tenant's use or occupancy of the Premises for the purposes contemplated under the Lease, and which can reasonably be expected to be completed within thirty (30) days other than delayed delivery items which can reasonably be expected to be delivered and installed within ninety (90) days. Landlord and Tenant shall conduct a final walk-through of the Premises not earlier than ten (10) days earlier than the expected date(s) the Tenant Improvements are to be Substantially Completed as specified by written notice from Landlord to Tenant.

(c) **Delivery of Possession**. Landlord agrees to deliver possession of the Premises to Tenant when the Tenant Improvements have been Substantially Completed in accordance with Section 3(b) above. Tenant agrees that if Landlord is unable to deliver possession of the Premises within one hundred fifty (150) days of the Effective Date (the "Outside Date"), which Outside Date shall be extended for each day of Tenant Delays and Force Majeure Delays, the Lease will not be void or voidable, but Rent shall abate for one (1) day for each day after the Outside Date until and including the date Landlord delivers possession of the Premises to Tenant with the Tenant Improvements Substantially Completed. Notwithstanding the foregoing, if Landlord has not received a building permit for the Tenant Improvements from the City of San Diego within ninety (90) days of the Effective Date, Tenant may, at Tenant's option, by written notice to Landlord delivered within ten (10) days following the expiration of such 90-day period, terminate this Lease (the "Termination Option"). Such notice must be delivered within one hundred (100) days of the Effective Date, after which date the Termination Option shall be null and void. If Tenant properly and timely exercises the Termination Option, the parties shall be discharged from all obligations hereunder, except that Landlord shall return any money previously deposited with or paid to Landlord by Tenant.

4. **TENANT DELAYS**. For purposes of this Work Letter, "Tenant Delays" shall mean any delay in the completion of the Tenant Improvements resulting from any or all of the following: (a) Tenant's failure to timely perform any of its obligations pursuant to this Work Letter, including any failure to complete, on or before the due date therefor, any action item which is Tenant's responsibility pursuant to the Work Schedule or any schedule delivered by Landlord to Tenant pursuant to this Work Letter to the extent such failure is not caused by any Force Majeure delays encountered by Tenant with respect thereto; (b) Tenant's changes to the Tenant Improvements; (c) Tenant's request for materials, finishes, or installations which are not readily available or which are incompatible with the Standards; (d) any delay of Tenant in making payment to Landlord for Tenant's share of any costs in excess

of the cost of the initially-described Tenant Improvements; or (e) any other act or failure to act by Tenant, Tenant's employees, agents, architects, independent contractors, consultants and/or any other person performing or required to perform services on behalf of Tenant. In the event of any Tenant Delay claimed by Landlord, Landlord shall, within seven (7) business days following Landlord first obtaining actual knowledge that the occurrence of an event is reasonably likely to cause the claimed Tenant Delay, notify in writing Tenant of the claimed Tenant Delay, the impact on the Landlord's performance of its obligations under this Work Letter, to the extent then known, and to what it is attributable (the "Delay Notice"). If a Delay Notice is not given within such 7-business day period to Tenant, the extent of such Tenant Delay shall be reduced by the period of time of such Tenant Delay as to which Tenant can reasonably establish could have been avoided had a Delay Notice thereof been given to Tenant by Landlord within such 7-business day period. Landlord shall use commercially reasonable efforts to mitigate the effects of any claimed Tenant Delay, and shall provide reasonable information and alternatives to Tenant to assist in such mitigation efforts; provided, however, Landlord shall not be required to incur any material cost or incur any material liability in seeking to mitigate any Tenant Delay. No Tenant Delay shall be deemed to have occurred with respect to any contended delay by Landlord if Tenant cures the event which would otherwise constitute such Tenant Delay within one (1) business day after receipt the applicable Delay Notice from Landlord specifying such contended Tenant Delay. The existence of a Tenant Delay shall be used only for the determination of any acceleration of the Commencement Date, and except as otherwise expressly provided in this Work Letter, Tenant shall not incur any other liability to Landlord by virtue of the mere existence of any such Tenant Delay

5. **FORCE MAJEURE DELAYS**. For purposes of this Work Letter, "Force Majeure Delays" shall mean any actual delay beyond the reasonable control of Landlord in the construction of the Tenant Improvements, which is not a Tenant Delay and which is caused by any of the causes described in Section 19(v) of the Lease.

6. **MOVING ALLOWANCE**. Landlord hereby agrees to provide to Tenant a moving allowance in the amount of $1.76 per rentable square foot of the Premises, i.e., forty-four thousand five hundred eighty-four and 32/100 dollars ($44,584.32) (the "Moving Allowance") which, in Tenant's discretion, may be applied to Tenant's moving and relocation costs or applied as a credit to Rent. The Moving Allowance shall either be paid by Landlord to Tenant or credited against Rent following written notice of such election delivered by Tenant to Landlord not later than ninety (90) days following the Commencement Date.

7. **WARRANTY**. Landlord shall obtain and enforce for the benefit of Tenant one (1) year contractor warranties for the Tenant Improvements ("Contractor's Warranties"). Tenant shall be entitled to enforce for the benefit of Tenant all warranties, guaranties and indemnities in favor of Landlord with respect to the design, construction, and completion of the Tenant Improvements.

EXHIBIT C

BUILDING RULES AND REGULATIONS

1. The sidewalks, entrances, passages, courts, elevators, vestibules, stairways and corridors of halls shall not be obstructed or used for any purpose other than ingress and egress. The halls, passages, entrances, elevators, stairways, balconies and roof are not for the use of the general public, and the Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence, in the judgment of the Landlord, shall be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom the Tenant normally deals only for the purpose of conducting its business in the Premises (such as clients, customers, office suppliers and equipment vendors, and the like) unless such persons are engaged in illegal activities. No tenant and no employees of any tenant shall go upon the roof of the Building without the written consent of Landlord.

2. No awnings or other projections shall be attached to the outside walls of the Building. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises other than Landlord standard window coverings. All electrical ceiling fixtures hung in offices or spaces along the perimeter of the Building must be fluorescent, of a quality, type, design and bulb color approved by Landlord. Neither the interior nor the exterior of any windows shall be coated or otherwise sunscreened without the written consent of Landlord.

3. No sign, advertisement, notice or handbill shall be exhibited, distributed, painted or affixed by any tenant on, about or from any part of the Premises, the Building or the Project without the prior written consent of the Landlord. If the Landlord shall have given such consent at the time, whether before or after the execution of this Lease, such consent shall in no way operate as a waiver or release of any of the provisions hereof or of this Lease, and shall be deemed to relate only to the particular sign, advertisement or notice so consented to by the Landlord and shall not be construed as dispensing with the necessity of obtaining the specific written consent of the Landlord with respect to each and every such sign, advertisement or notice other than the particular sign, advertisement or notice, as the case may be, so consented to by the Landlord. In the event of the violation of the foregoing by any tenant, Landlord may remove or stop same without any liability, and may charge the expense incurred in such removal or stopping to such tenant. Interior signs on doors and the directory tablet shall be inscribed, painted or affixed for each tenant by the Landlord at the expense of such tenant, and shall be of a size, color and style acceptable to the Landlord. The directory tablet will be provided exclusively for the display of the name and location of tenants only and Landlord reserves the right to exclude any other names therefrom. Nothing may be placed on the exterior of corridor walls or corridor doors other than Landlord's standard lettering.

4. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into halls, passageways or other public places in the Building shall not be covered or obstructed by any tenant, nor shall any bottles, parcels or other articles be placed on the window sills. Tenant shall see that the windows, transoms and doors of the Premises are closed and securely locked before leaving the Building and must observe strict care not to leave windows open when it rains. Tenant shall exercise extraordinary care and caution that all water faucets or water apparatus located in the Premises are entirely shut off before Tenant or Tenant's employees leave the Building, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage. Tenant shall cooperate with Landlord in obtaining maximum effectiveness of the cooling system by closing window coverings when the sun's rays fall directly on the windows of the Premises. Tenant shall not tamper with or change the setting of any thermostats or temperature control valves.

5. The toilet rooms, water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were considered, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose subtenants, assignees or any of their servants, employees, agents, visitors or licensees shall have caused thesame.

6. No tenant shall mark, paint, drill into, or in any way deface any part of the Premises, the Building or the Project. No boring, cutting or stringing of wires or laying of linoleum or other similar floor coverings shall be permitted, except with the prior written consent of the Landlord and as the Landlord may direct.

7. No bicycles, vehicles, birds or animals of any kind shall be brought into or kept in or about the Premises, and no cooking shall be done or permitted by any tenant on the Premises, except that the preparation of coffee, tea, hot chocolate and similar items (including those suitable for microwave heating) for tenants and their employees shall be permitted, provided that the power required therefor shall not exceed that amount which can be provided by a 30 amp circuit. No tenant shall cause or permit any unusual or objectionable odors to be produced or permeate the Premises. Smoking or carrying lighted cigars, cigarettes or pipes in the Building is prohibited.

8. The Premises shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the permitted use of the Premises. No tenant shall occupy or permit any portion of the Premises to be occupied as an office for a public stenographer or typist, or for the manufacture or sale of liquor, narcotics, or tobacco (except by a cigarette vending machine for use by Tenant's employees) in any form, or as a medical office, or as a barber or manicure shop, or as an employment bureau, without the express written consent of Landlord. No tenant shall engage or pay any employees on the Premises except those actually working for such tenant on the Premises nor advertise for laborers giving an address at the Premises. The Premises shall not be used for lodging or sleeping or for any immoral or illegal purposes.

9. No tenant shall make, or permit to be made any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises or those having business with them, whether by the use of any musical instrument, radio, phonograph, unusual noise, or in any other way. No tenant shall throw anything out of doors, windows or skylights or down the passageways.

10. No tenant, subtenant or assignee nor any of their servants, employees, agents, visitors or licensees shall at any time bring or keep upon the Premises any inflammable, combustible or explosive fluid, chemical or substance.

11. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any tenant, nor shall any changes be made in existing locks or the mechanisms thereof. Each tenant must, upon the termination of his tenancy, restore to Landlord all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, such tenant and in the event of the loss of keys so furnished, such tenant shall pay to Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such changes.

12. All removals, or the carrying in or out of any safes, freight, furniture, or bulky matter of any description must take place during the hours which Landlord shall determine from time to time, without the express written consent of Landlord. The moving of safes or other fixtures or bulky matter of any kind must be done upon previous notice to the Project Management Office and under its supervision, and the persons employed by any tenant for such work must be acceptable to the Landlord. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Building and to exclude from the Building all safes, freight or other bulky articles which violate any of these Rules and Regulations or the Lease of which these Rules and Regulations are a part. Landlord reserves the right to prescribe the weight and position of all safes, which must be placed upon supports approved by Landlord to distribute the weight.

13. No tenant shall purchase spring water, ice, towel, janitorial maintenance or other similar services from any person or persons not approved by Landlord.

14. Landlord shall have the right to prohibit any advertising by any tenant which, in Landlord's opinion, tends to impair the reputation of the Building or the Project or its desirability as an office location, and upon written notice from Landlord, any tenant shall refrain from or discontinue such advertising.

15. Landlord reserves the right to exclude from the Building between the hours of 6:00 P.M. and 7:00 A.M. and at all hours on Saturday, Sunday and legal holidays all persons who do not present a pass or card key to the Building approved by the Landlord. Each tenant shall be responsible for all persons who enter the Building with or at the invitation of such tenant and shall be liable to Landlord for all acts of such persons. Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of an invasion, mob riot, public excitement or other circumstances rendering such action advisable in Landlord's opinion, Landlord reserves the right, without abatement of Rent, to require all persons to vacate the

Building and to prevent access to the Building during the continuance of the same for the safety of the tenants, the protection of the Building, and the property in the Building.

16. Any persons employed by any tenant to do janitorial work shall, while in the Building and outside of the Premises, be subject to and under the control and direction of the Project Management Office (but not as an agent or servant of said Office or of the Landlord), and such tenant shall be responsible for all acts of such persons.

17. All doors opening onto public corridors shall be kept closed, except when in use for ingress and egress.

18. The requirements of Tenant will be attended to only upon application to the Project Management Office.

19. Canvassing, soliciting and peddling in the Building are prohibited and each tenant shall report and otherwise cooperate to prevent the same.

20. All office equipment of any electrical or mechanical nature shall be placed by Tenant in the Premises in settings approved by Landlord, to absorb or prevent any vibration, noise or annoyance.

21. No air conditioning unit or other similar apparatus shall be installed or used by any tenant without the written consent of Landlord.

22. There shall not be used in any space, or in the public halls of the Building, either by any tenant or others, any hand trucks, except those equipped with rubber tires and rubber side guards.

23. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises without the written consent of Landlord.

24. The scheduling of tenant move-ins shall be subject to the reasonable discretion of Landlord.

25. If the Tenant desires telephone or telegraph connections, the Landlord will direct electricians as to where and how the wires are to be introduced. No boring or cutting for wires or otherwise shall be made without direction from the Landlord.

26. The term "personal goods or services vendors" as used herein means persons who periodically enter the Building of which the Premises are a part for the purpose of selling goods or services to a tenant, other than goods or services which are used by the Tenant only for the purpose of conducting its business in the Premises. "Personal goods or services" include, but are not limited to, drinking water and other beverages, food, barbering services and shoeshining services. Landlord reserves the right to prohibit personal goods and services vendors from access to the Building except upon Landlord's prior written consent and upon such reasonable terms and conditions, including, but not limited to, the payment of a reasonable fee and provision for insurance coverage, as are related to the safety, care and cleanliness of the Building, the preservation of good order thereon, and the relief of any financial or other burden on Landlord or other tenants occasioned by the presence of such vendors or the sale by them of personal goods or services to the Tenant or its employees. If necessary for the accomplishment of these purposes, Landlord may exclude a particular vendor entirely or limit the number of vendors who may be present at any one time in the Building.

27. The Building is a non-smoking building. Smoking is prohibited at all times within the entire Building, including all leased premises, as well as all public/common areas and parking areas for the Building, including any attached parking garage structure. This prohibition applies during business and non-business hours to restrooms, elevators, elevator lobbies, first floor lobby, stairwells, common hallways, the lunch room and any other public/common area, as well as to all areas within the Leased Premises by Tenants. Smoking is only permitted in the designated smoking area outside the Building and away from the entrances to the Building.

28. The Building and Project is a weapons free environment. No tenant, owner of a tenant, officer or employee of a tenant, visitor of tenant, contractor or subcontractor of tenant, or any other party shall carry weapons (concealed or not) of any kind in the building, or parking areas. This prohibition applies to all public areas, including without limitation, restrooms, elevators, elevator lobbies, first floor lobby, stairwells, common hallways, all areas within the leased premises of tenants, all surface parking areas and the surrounding land related to the building.

29. Tenant hereby acknowledges that Landlord shall have no obligation to provide guard service or other security measures for the benefit of the Premises, the Building or the Project. Tenant hereby assumes all responsibility for the protection of Tenant and its agents, employees, contractors, invitees and guests, and the property thereof, from acts of third parties, including keeping doors locked and other means of entry to the Premises closed, whether or not Landlord, at its option, elects to provide security protection for the Project or any portion thereof. Tenant further assumes the risk that any safety and security devices, services and programs which Landlord elects, in its sole discretion, to provide may not be effective, or may malfunction or be circumvented by an unauthorized third party, and Tenant shall, in addition to its other insurance obligations under this Lease, obtain its own insurance coverage to the extent Tenant desires protection against losses related to such occurrences. Tenant shall cooperate in any reasonable safety or security program developed by Landlord or required by law.

EXHIBIT D

FORM TENANT ESTOPPEL CERTIFICATE

TO: _ ("Landlord")

and:

("Third Party")

Re: Property Address:
Lease Date:
Between_ , Landlord and
, Tenant
Square Footage Leased:
Suite No.
Floor:

The undersigned tenant ("Tenant") hereby certifies to Third Party and Landlord as follows:

1. The above-described Lease has not been canceled, modified, assigned, extended or amended except_.

2. Base Rent has been paid to the first day of the current month and all additional rent has been paid and collected in a current manner. There is no prepaid rent except $_, and the amount of the security deposit is $_.

3. Base Rent is currently payable in the amount of $_monthly exclusive of Tenant's Proportionate Share of Operating Expenses.

4. The Lease terminates on_, 20 subject to any renewal option(s) set forth in the Lease.

5. All work to be performed for Tenant under the Lease has been performed as required and has been accepted by Tenant, except .

6. The Lease is: (a) in full force and effect; (b) to Tenant's actual knowledge, free from default; and (c) to Tenant's actual knowledge, Tenant has no claims against the Landlord or offsets against rent.

7. The Base Year for Operating Expenses, as defined in the said Lease, is_.

8. The undersigned has no right or option pursuant to the said Lease or otherwise to purchase all or any part of the Premises or the Building of which the Premises are a part.

9. There are no other agreements written or oral between the undersigned and the Landlord with respect to the Lease and/or the Premises and Building.

10. The statements contained herein may be relied upon by the Landlord and by any prospective purchaser of the property of which the Premises is a part and its mortgage lender.

If a blank in this document is not filled in, the blank will be deemed to read "none".

If Tenant is a corporation, the undersigned signatory is a duly appointed Officer of the corporation.

Dated this day of , 20_.

Tenant:

By: Name: Title:

EXHIBIT E

TENANT'S COMMENCEMENT LETTER

To: _ ("Landlord")

Date:

Tenant's Commencement Letter

The undersigned, as the Tenant under that certain Office Lease (the "Lease") dated_ , made and entered into between_ , a_ as Landlord, and the undersigned, as Tenant, hereby certifies that:

1. The undersigned has accepted possession and entered into occupancy of the Premises described in the Lease.

2. The Commencement Date of the Lease was_.

3. The expiration date of the Lease is_.

4. The Lease is in full force and effect and has not been modified or amended.

5. Landlord has Substantially Completed the Tenant Improvements to the Premises for occupancy by the undersigned.

All capitalized terms not defined in this Tenant's Commencement Letter shall have the same meaning as set forth in the Lease.

Very truly yours,

, a

By: Name: Title:

RIDER NO. 1

EXTENSION OPTION

This Rider No. 1 is made and entered into by and between TREA PACIFIC PLAZA, LLC, a Delaware limited liability company ("Landlord"), and TANDEM DIABETES CARE, INC., a Delaware corporation ("Tenant"), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the "Lease" shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. Landlord hereby grants to Tenant (which for all purposes under this Rider No. 1 shall include any Permitted Transferee) one option (the "Extension Option") to extend the Term of the Lease for one (1) additional period of five (5) years (the "Option Term"), on the same terms, covenants and conditions as provided for in the Lease during the initial Term, except for the Base Rent, which shall initially be equal to the "fair market rental rate" for the Premises for the Option Term as defined and determined in accordance with the provisions of the Fair Market Rental Rate Rider attached to the Lease as Rider No. 2, including any fair market annual rent adjustments forming a part of the fair market rental rate during the Option Term.

2. The Extension Option must be exercised, if at all, by written notice ("Extension Notice") delivered by Tenant to Landlord no sooner than that date which is fifteen (15) months and no later than that date which is twelve (12) months prior to the expiration of the then-current Term of the Lease. The Extension Option shall, at Landlord's sole option, not be deemed to be properly exercised if, at the time the Extension Option is exercised or on the scheduled commencement date for the Option Term, Tenant has (a) committed an uncured material monetary event of default whose cure period has expired (or remains uncured following the giving of notice and expiration of applicable cure periods, as applicable), (b) assigned all or any portion of the Lease or its interest therein other than pursuant to a Permitted Transfer, or (c) sublet all or any portion of the Premises other than pursuant to a Permitted Transfer. Provided Tenant has properly and timely exercised the Extension Option, the then-current Term of the Lease shall be extended by the Option Term, and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect, except that the Base Rent shall be as set forth above, and except that there shall be no remaining Extension Option.

RIDER NO. 2

FAIR MARKET RENTAL RATE

This Rider No. 2 is made and entered into by and between TREA PACIFIC PLAZA, LLC, a Delaware limited liability company ("Landlord"), and TANDEM DIABETES CARE, INC., a Delaware corporation ("Tenant"), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the "Lease" shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. The term "fair market rental rate" as used in the Lease and any Rider attached to the Lease shall mean the annual amount per square foot, projected during the Option Term (including annual adjustments), that a willing, non-equity renewal tenant (excluding sublease and assignment transactions) would pay, and a willing, institutional landlord of a comparable quality office building located in the Torrey Hills area would accept, in an arm's length transaction (what Landlord is accepting in then-current transactions for the Building may be included for purposes of projecting rent for Option Term), for space of comparable size, quality and floor height as the Premises, taking into account the age, quality and layout of the existing improvements in the Premises, and taking into account items that professional real estate brokers or professional real estate appraisers customarily consider, including, but not limited to, rental rates, space availability, tenant size, tenant improvement allowances, parking charges and any other lease considerations, if any, then being charged or granted by Landlord or the lessors of such similar office buildings. All economic terms other than Base Rent, such as tenant improvement allowance amounts, if any, operating expenses, parking charges, etc., will be established by Landlord and will be factored into the determination of the fair market rental rate for the Option Term. Accordingly, the fair market rental rate will be an effective rate, not specifically including, but accounting for, the appropriate economic considerations described above.

2. In the event where a determination of fair market rental rate is required under the Lease, Landlord shall provide written notice of Landlord's determination of the fair market rental rate not later than ninety (90) days after the last day upon which Tenant may timely exercise the right giving rise to the necessity for such fair market rental rate determination. Tenant shall have ten (10) business days ("Tenant's Review Period") after receipt of Landlord's notice of the fair market rental rate within which to accept such fair market rental rate or to reasonably object thereto in writing. Failure of Tenant to so object to the fair market rental rate submitted by Landlord in writing within Tenant's Review Period shall conclusively be deemed Tenant's approval and acceptance thereof. If within Tenant's Review Period Tenant reasonably objects to or is deemed to have disapproved the fair market rental rate submitted by Landlord, Landlord and Tenant will meet together with their respective legal counsel to present and discuss their individual determinations of the fair market rental rate for the Premises under the parameters set forth in Paragraph 1 above and shall diligently and in good faith attempt to negotiate a rental rate on the basis of such individual determinations. Such meeting shall occur no later than ten (10) days after the expiration of Tenant's Review Period. The parties shall each provide the other with such supporting information and documentation as they deem appropriate. At such meeting if Landlord and Tenant are unable to agree upon the fair market rental rate, they shall each submit to the other their respective best and final offer as to the fair market rental rate. If Landlord and Tenant fail to reach agreement on such fair market rental rate within five (5) business days following such a meeting (the "Outside Agreement Date"), Tenant's Extension Option will be deemed null and void unless Tenant demands appraisal, in which event each party's determination shall be submitted to appraisal in accordance with the provisions of Section 3 below.

3. (a) Landlord and Tenant shall each appoint one (1) independent appraiser who shall by profession be an M.A.I. certified real estate appraiser who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of commercial (including office) properties in the Torrey Hills area. The determination of the appraisers shall be limited solely to the issue of whether Landlord's or Tenant's last proposed (as of the Outside Agreement Date) best and final fair market rental rate for the Premises is the closest to the actual fair market rental rate for the Premises as determined by the appraisers, taking into account the requirements

specified in Section 1 above. Each such appraiser shall be appointed within fifteen (15) days after the Outside Agreement Date.

(b) The two (2) appraisers so appointed shall within fifteen (15) days of the date of the appointment of the last appointed appraiser agree upon and appoint a third appraiser who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two (2) appraisers.

(c) The three (3) appraisers shall within thirty (30) days of the appointment of the third appraiser reach a decision as to whether the parties shall use Landlord's or Tenant's submitted best and final fair market rental rate, and shall notify Landlord and Tenant thereof. During such thirty (30) day period, Landlord and Tenant may submit to the appraisers such information and documentation to support their respective positions as they shall deem reasonably relevant and Landlord and Tenant may each appear before the appraisers jointly to question and respond to questions from the appraisers.

(d) The decision of the majority of the three (3) appraisers shall be binding upon Landlord and Tenant and neither party shall have the right to reject the decision or to undo the exercise of the Extension Option. If either Landlord or Tenant fails to appoint an appraiser within the time period specified in Section 3(a) hereinabove, the appraiser appointed by one of them shall within thirty (30) days following the date on which the party failing to appoint an appraiser could have last appointed such appraiser reach a decision based upon the same procedures as set forth above (i.e., by selecting either Landlord's or Tenant's submitted best and final fair market rental rate), and shall notify Landlord and Tenant thereof, and such appraiser's decision shall be binding upon Landlord and Tenant and neither party shall have the right to reject the decision or to undo the exercise of the Extension Option.

(e) If the two (2) appraisers fail to agree upon and appoint a third appraiser, either party, upon ten (10) days written notice to the other party, can apply to the Presiding Judge of the Superior Court of San Diego County to appoint a third appraiser meeting the qualifications set forth herein. The third appraiser, however, selected shall be a person who has not previously acted in any capacity for ether party.

(f) The cost of each party's appraiser shall be the responsibility of the party selecting such appraiser, and the cost of the third appraiser (or arbitration, if necessary) shall be shared equally by Landlord and Tenant.

(g) If the process described hereinabove has not resulted in a selection of either Landlord's or Tenant's submitted best and final fair market rental rate by the commencement of the applicable lease term, then the fair market rental rate estimated by Landlord will be used until the appraiser(s) reach a decision, with an appropriate rental credit and other adjustments for any overpayments of Base Rent or other amounts if the appraisers select Tenant's submitted best and final estimate of the fair market rental rate. The parties shall enter into an amendment to this Lease confirming the terms of the decision.

RIDER NO. 3

RIGHT OF FIRST REFUSAL

This Rider No. 3 is made and entered into by and between TREA PACIFIC PLAZA, LLC, a Delaware limited liability company ("Landlord"), and TANDEM DIABETES CARE, INC., a Delaware corporation ("Tenant"), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the "Lease" shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. If at any time during the Term, Landlord receives and desires to accept a third-party offer to lease the third floor of the Building (the "ROFR Space"), then Tenant (which for all purposes under this Rider No. 3 shall include any Permitted Transferee) shall have five (5) business days following receipt from Landlord of a copy of such third-party offer in writing, including all material terms relating to such third-party offer (the "Term Sheet") in which to agree in writing to lease the ROFR Space on the terms set forth on the Term Sheet and the noneconomic terms set forth in the Lease (the "Right of First Refusal"). The Right of First Refusal is a one-time right during the Term. If for any reason Tenant fails to appropriately respond to the Term Sheet within such five (5) business day period of time, or if for any reason (including, without limitation, the parties' failure to agree on the form of the Lease amendment or any of the terms contained therein after their good faith efforts to do so), Tenant does not execute and deliver to Landlord, within the next five (5) business day period of time, a Lease amendment acceptable to Landlord containing the terms set forth in the Term Sheet, then in either such event Tenant will be deemed to have elected not to lease the ROFR Space on the terms contained in the Term Sheet.

2. The term for the ROFR Space shall commence upon the commencement date stated in the Term Sheet and thereupon such ROFR Space shall be considered a part of the Premises, provided that all of the terms stated in the Term Sheet shall govern Tenant's leasing of the ROFR Space and only to the extent that they do not conflict with the Term Sheet, the terms and conditions of this Lease shall apply to the ROFR Space.

3. The ROFR Space (including improvements and personalty, if any) shall be accepted by Tenant in its condition and as-built configuration existing on the earlier of the date Tenant takes possession of the ROFR Space or as of the date the term for such ROFR Space commences, unless the Term Sheet specifies any work to be performed by Landlord in the ROFR Space, in which case Landlord shall perform such work in the ROFR Space. If Landlord is delayed delivering possession of the ROFR Space due to the holdover or unlawful possession of such space by any party, Landlord shall use reasonable efforts to obtain possession of the space, and the commencement of the term for the ROFR Space shall be postponed until the date Landlord delivers possession of the ROFR Space to Tenant free from occupancy by any party.

4. Should Tenant not elect to exercise its Right of First Refusal and Landlord intends to lease the ROFR Space to a third party and the total effective rent of the lease term as proposed in the third party offer is equal to or greater than ten percent (10%) lower compared to the total effective rent previously offered to Tenant, then Landlord shall deliver a second Term Sheet to Tenant with revised terms matching the offer containing the lesser total effective rent, granting Tenant another opportunity to exercise its ROFR at such revised terms using the same time periods and delivery methods as contained above.

5. Notwithstanding anything herein to the contrary, Tenant's Right of First Refusal is subject and subordinate to (i) the renewal or extension rights of any tenant leasing all or any portion of the ROFR Space, and (ii) the expansion rights (whether such rights are designated as a right of first offer, right of first refusal, expansion option or otherwise) of any tenant of the Building existing on the Effective Date.

6. Tenant's Right of First Refusal shall terminate on the earlier to occur of: (a) Tenant's failure to exercise its Right of First Refusal within the five (5) business day period provided in Section 1 above; and (b) the date Landlord would have provided Tenant a Term Sheet if Tenant had not then been in default of the Lease.

TABLE OF CONTENTS

LIST OF EXHIBITS

Rider No. 1	Extension Option
Rider No. 2	Fair Market Rental
Rate Rider No. 3	Right of First Refusal

Exhibit 10.2

INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE – GROSS MODIFIED DATED FEBRUARY 19, 2019 BY AND BETWEEN TANDEM DIABETES CARE, INC., A DELAWARE CORPORATION AND R. E. HAZARD CONTRACTING COMPANY, A CALIFORNIA CORPORATION

TABLE OF CONTENTS

**INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE –
GROSS MODIFIED**

1. BASIC PROVISIONS

1.1 Parties

This Lease (“Lease”), dated for reference purposes only February 19, 2019, is made by and between R. E. Hazard Contracting Company, a California corporation (“Lessor”) and Tandem Diabetes Care, Inc., a Delaware corporation (“Lessee”), (collectively the “Parties”, or individually a “Party”).

1.2 Premises and Parking

1.2.1 That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 6495 Marindustry Place, San Diego, CA, located in the County of San Diego, State of California, as outlined on Exhibit A attached hereto (“Premises”), and which is comprised of an agreed upon 40,490 rentable square feet.

1.2.2 In addition to Lessee’s rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Section 2.7 below), but shall not have any rights to the roof, or exterior walls of any buildings in the Project. The Premises, the Common Areas, the land upon which they are located, along with all buildings and improvements thereon, are herein collectively referred to as the “Project,” which is comprised of an agreed upon 96,150 rentable square feet (See also Section 2.)

1.2.3 Except as expressly provided herein, surface parking is provided free of charge with unassigned parking spaces, on first come first served basis. No vehicle maintenance shall be performed in the Project. (See also Section 2.6.)

1.3 Term

The term of the lease shall be eighty-four (84) months (“Original Term”) commencing May 1, 2019 (“Commencement Date”) and ending April 30, 2026 (“Expiration Date”). (See also Section 3.)

1.4 Early Possession

Lessor shall deliver possession of the Premises to Lessee commencing thirty (30) days following the full execution of this Lease, or upon the vacancy of the Premises by the current lessee, whichever occurs later, for the installation of Lessee’s furniture, fixtures, and equipment, and to perform any tasks related to electrical and plumbing within the Premises with no obligation to pay Base Rent or Common Area Operating Expenses (“Early Possession Date”). (See also Sections 3.2 and 3.3.)

1.5 Base Rent

Lessee shall pay Lessor $46,563.50 per month (“Base Rent”), payable on the first day of each month commencing May 1, 2019. Base Rent shall be adjusted during the Original Term as follows:

Months 1 – 12 (May 1, 2019 – April 30, 2020)	$46,563.50
Months 13 – 24 (May 1, 2020 – April 30, 2021)	$47,960.41
Months 25 – 36 (May 1, 2021 – April 30, 2022)	$49,399.22
Months 37 – 48(May 1, 2022 – April 30, 2023)	$50,881.20
Months 49 – 60 (May 1, 2023 – April 30, 2024)	$52,407.64
Months 61 – 72 (May 1, 2024 – April 30, 2025)	$53,979.87
Months 73 – 84 (May 1, 2025 – April 30, 2026)	$55,599.27

Base Rent shall be payable as set forth in Section 4.

1.6 Lessee's Share of Common Area Operating Expenses

"Lessee's Share" of Common Area Operating Expenses pertaining to the Project shall be the percentage that the rentable square footage of the Premises is of the total rentable square footage of the Project as set forth in Section 1.2.2 (currently 42.111%).

1.7 Lessee's Base Year

"Lessee's Base Year" shall be 2019.

1.8 Base Rent and Other Monies Payable Upon Execution

a. Base Rent: $46,563.50 for the period of May 2019.

b. Security Deposit: $55,599.25 ("Security Deposit"). (See also Section 5)

c. Total Due Upon Full Execution of this Lease: $102,162.75.

1.9 Agreed Use

General office, warehouse, light industrial, machine shop and other related uses permitted within the Project's zoning. (See also Section 6)

1.10 Insuring Party

Lessor is the "Insuring Party." (See also Section 9)

1.11 Guarantor

[Not applicable – intentionally omitted.]

1.12 Options

Lessor hereby grants Lessee the Option to extend the term of this Lease for one (1) term for a period of no less than three (3) years and no more than five (5) years, provided that Lessee is not in Breach of this Lease either at the time it elects to exercise an Option, or at the commencement date of the extension period as applicable. See also Section 19 for additional Option terms.

1.13 Attachments

Attached hereto are the following, all of which constitute a part of this Lease:

Exhibit A – “Site Plan of the Premises”

Exhibit B – “Tenant Improvements” - [Not applicable – intentionally omitted.]

Exhibit C – “Guaranty”- [Not applicable – intentionally omitted.]

Exhibit D – “Estoppel Certificate”

Schedule 1 – “Lessee’s List of Permitted Hazardous Substances”

2. PREMISES

2.1 Letting

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. The parties agree that the square footage of the Premises is as set forth in Section 1.2.1 and will remain fixed as such throughout the Original Term and any extension thereof. From and after the Commencement Date through the Expiration Date, Tenant shall have access to the Premises 24 hours a day, 7 days a week, 365 days per year, subject to the terms of this Lease.

2.2 Condition

Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Early Possession Date, and, so long as the required service contracts described in Section 8.1.2 below are obtained by Lessee and in effect within thirty days following the Early Possession Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems (“HVAC”), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Premises shall be free of material defects, and that the Premises does not contain hazardous levels of any substances, including mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Early Possession Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall at Lessor’s sole cost and expense, as Lessor’s sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor’s expense. The warranty periods shall be as follows: (i) twelve (12) months as to the HVAC systems, and (ii) three (3) months as to the remaining systems and other elements of the Premises. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be governed by Section 8 of this Lease.

2.3 Compliance

Lessor warrants that the improvements on the Premises comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances in effect on the Commencement Date ("Applicable Requirements"). Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar zoning or other laws as a result of Lessee's use (see Section 20.27), or to any Alterations or Utility Installations (as defined in Section 8.3.1) made or to be made by Lessee. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance rectify the same at Lessor's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as set forth in this section.

NOTE: Lessee is responsible for determining whether or not the Applicable Requirements and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.

2.3.1 Subject to Section 2.3.3 below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof.

2.3.2 If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to the Lessee's Share of the costs multiplied by a fraction, the numerator of which shall be one (1) and the denominator of which shall be the number of months over which the capital expenditure may be depreciated by the Lessor for income tax purposes, provided that the number of months over which the item is depreciated shall be consistent with the depreciation period utilized for similar capital expenditures incurred for other properties owned by Lessor.

2.3.3 Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense and Lessee shall not have any right to terminate this Lease as a result thereof.

2.4 Acknowledgements

Lessee acknowledges that: (a) it has been advised by Lessor to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable

Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (b) it is not relying on any representation as to the size of the Premises made by Lessor, and (c) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease.

2.5 Lessee as Prior Owner/Occupant

[Not applicable – intentionally omitted.]

2.6 Vehicle Parking

Lessee shall be entitled to use its pro-rata share of unreserved Parking Spaces in the Common Areas designated from time to time by Lessor for parking, which will be a minimum of 100 spaces during the Original Term and any extension thereof. Lessor agrees to monitor and enforce the Parking Spaces in the Common Area to ensure that Lessee has adequate parking per its parking ratio. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles, pick-up trucks, or commercial transport vehicles used by Lessee for the Agreed Use, herein called "Permitted Size Vehicles." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Section 2.9, but will not do so in a manner that is discriminatory against Lessee when compared with other tenants in the Project. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

2.6.1 Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

2.6.2 Lessee shall not service or store any vehicles in the Common Areas.

2.6.3 If Lessee permits or allows any of the prohibited activities described in this Section 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 Common Areas – Definition

The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas, as indicated on Exhibit A attached hereto.

2.8 Common Areas - Lessee's Rights

Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease and any extension thereof, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor. Lessee acknowledges that all driveways, parking and loading areas (not including loading docks) in the Project are to be used in common with other tenants in the Project, and their guests, customers, and suppliers, and that none of said areas are for the exclusive use of Lessee.

2.9 Common Areas - Rules and Regulations

Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 Common Areas – Changes

Lessor shall have the right, in Lessor's sole but commercially reasonable discretion, from time to time, provided it does not interfere with Lessee's use or occupancy of the Premises in any material respect:

2.10.1 To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

2.10.2 To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

2.10.3 To designate other land outside the boundaries of the Project to be a part of the Common Areas;

2.10.4 To add additional buildings and improvements to the Common Areas;

2.10.5 To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

2.10.6 To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of reasonable business judgment, deem to be appropriate.

3. TERM

3.1 Term

The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Section 1.3.

3.2 Early Possession

Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent, Common Area Operating Expenses, Real Property Taxes and insurance premiums shall be abated for the period of such Early Possession. Any such Early Possession shall not affect the Expiration Date. Lessee shall be obligated to maintain the Premises during any period of Early Possession.

3.3 Delay In Possession

Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises (including parking and access) to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver such possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession (including parking and access) and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 Lessee Compliance

Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Section 9.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Commencement Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance.

4. RENT

4.1 Rent Defined

All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 Common Area Operating Expenses

Subject to the provisions of Section 4.3 below, Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Section 1.6) of the increase in the total of all Common Area Operating Expenses, as hereinafter defined, over and above the total Common Area Operating Expenses paid by Lessor during Lessee's Base Year, during each calendar year of the term of this Lease, in accordance with the following:

4.2.1 The following costs relating to the ownership and operation of the Project are defined as "Common Area Operating Expenses":

(a) Costs directly relating to and reasonably applied to the operation, repair and maintenance, in neat, clean, good order and condition of the following:

(1) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(2) Exterior signs and any tenant directories.

(3) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant provided the same constitute Common Areas.

(b) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(c) The cost of trash disposal, pest control services, property management, security services, owners' association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

(d) Reserves set aside for maintenance and repair of Common Areas and Common Area equipment.

(e) Any increase above the Base Real Property Taxes (as defined in Section 11).

(f) Any "Insurance Cost Increase" (as defined in Section 9.1.1).

(g) Any deductible portion of an insured loss concerning the Project or the Common Areas.

(h) Reasonable auditors', accountants' and attorneys' fees and costs directly related to the operation, maintenance, repair and replacement of the Project.

(i) The cost of any capital improvement to the Project not covered under the provisions of Section 2.3, provided however, that the monthly amount payable during the remainder of the term of this Lease or any extension thereof shall be limited to Lessee's Share of such capital expenditure, multiplied by a fraction, the numerator of which shall be one (1) and the denominator of which shall be the number of months over which the capital expenditure may be depreciated by the Lessor for income tax purposes.

(j) The cost of janitorial services for non-leasable areas.

(k) The costs of professional management, if any, including costs for Lessor's management, accounting, bookkeeping, payment of Common Area Operating Expenses, collection of reimbursements and related services, which shall not cumulatively exceed four percent (4%) of total Common Area Operating Expenses on an annual basis.

4.2.2 Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Premises, or to any building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Premises or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to any building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project. Lessee's Share for any given year shall be computed as though the Project had been 100% occupied on average during such year.

4.2.3 The inclusion of the improvements, facilities and services set forth in Section 4.2.1 shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

4.2.4 Lessee's Share of Common Area Operating Expenses exceeding Common Area Operating Expenses incurred and included in Lessee's Base Year is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after the end of each calendar year during the term of this Lease, Lessor shall deliver to Lessee a reasonably detailed statement (i.e. line item description for all Common Area Operating Expenses) showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year (the "Reconciliation"). If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 business days after delivery by Lessor to Lessee of the statement. In the event of any dispute as to any Lessee's Share of Common Area Operating Expenses due under this Section 4.2.4, Lessee, an officer of Lessee or Lessee's certified public accountant who shall have the right after reasonable notice and at reasonable times to inspect Lessor's accounting records at Lessor's accounting office (which shall be located in Southern California). If, after such inspection, Lessee still disputes such Lessee's Share of Common Area Operating Expenses, upon Lessee's written request therefor, a certification as to the proper amount of Lessee's Share of Common Area Operating Expenses and the amount due to or payable by Lessee shall be made by an independent (i.e. not utilized by either party within the past three (3) years) certified public accountant mutually agreed to by Lessor and Lessee. If Lessor and Lessee cannot mutually agree to an independent certified public accountant, then each party shall select an independent certified public accountant, who then shall jointly select a third independent certified public accountant (failing which agreement either party may seek a judicial determination of such independent certified public accountant). Each of the three (3) independent certified public accountants shall, within forty-five (45) days after selection make a good faith determination of Lessee's Share of Common Area Operating Expenses then due and shall notify Lessor, Lessee, and each other independent certified public accountant of such determinations. If all independent certified public accountants do not agree on Lessee's Share of Common Area Operating Expenses for the period in dispute, the common decision of two (2) of them shall be determinative. If two (2) of the three (3) independent certified public accountant are unable to so agree, the Lessee's Share of Common Area Operating Expenses that is neither the highest nor lowest of the three (3) determinations shall be the Lessee's Share of Common Area Operating Expenses for period in dispute. Such certification shall be final and conclusive as to all parties. If the certification reflects that Lessee has overpaid Lessee's Share of Common Area Operating Expenses for the period in question, then Lessor shall credit such excess to Lessee's next payment of Operating Expenses or, at the request of Lessee, promptly refund such excess to Lessee and conversely, if Lessee has underpaid Lessee's Share of Common Area Operating Expenses, Lessee shall promptly pay such additional Operating Expenses to Lessor. Each party shall be responsible for the cost of its independent certified public accountant and the parties shall share in the costs of any jointly appointed independent certified public accountant.

4.2.5 Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds. The following shall also constitute exclusions from Common Area Operating Expenses:

A. leasing commissions, attorneys' fees, costs and disbursements and other expenses incurred in connection with leasing, renovating or improving vacant space in the Project for tenants or prospective tenants of the Project;

B. costs (including permit, license and inspection fees) incurred in renovating or otherwise improving or decorating, painting or redecorating space for tenants or vacant space;

C. Lessor's costs of any services sold to tenants for which Lessor is entitled to be reimbursed by such tenants as an additional charge or rental over and above the Base Rent and Common Area Operating Expenses payable under the lease with such tenant or other occupant;

D. any depreciation or amortization of the Project except as expressly permitted herein;

E. costs incurred due to a violation of Rules and Regulations by Lessor relating to the Project;

F. interest on debt or amortization payments on any mortgages or deeds of trust or any other debt for borrowed money;

G. repairs or other work occasioned by fire, windstorm or other work paid for through insurance or condemnation proceeds (excluding any deductible);

H. legal expenses incurred for (i) negotiating lease terms for prospective tenants, (ii) negotiating termination or extension of leases with existing tenants, (iii) proceedings against any other specific tenant relating solely to the collection of rent or other sums due to Lessor from such tenant, or (iv) the development and/or construction of the Project;

I. repairs resulting from any defect in the original design or construction of the Project or the Premises;

J. costs of items considered capital improvements, capital repairs or capital expenditures under GAAP, except as expressly otherwise provided in Section 2.3 of this Lease;

K. costs and expenses incurred with respect to the removal of Hazardous Substances (defined below) not attributable to Lessee's, or Lessee's representative's, contractor's, or other persons' permitted in or invited to the Premises or the Project by Lessee, acts or omissions;

L. costs and expenses (including penalties) incurred with respect to compliance with applicable laws and other legal requirements in effect prior to the Commencement Date;

M. costs to the extent arising from the gross negligence or willful misconduct of Lessor or its agents, employees, vendors, contractors, or providers of materials or services (including Lessor's failure to maintain the insurance it is required to maintain under this Lease);

N. costs related to the operation of the business of the entity which constitutes Lessor as the same are distinguished from the costs of operating the Premises and the Project;

O. any excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes applied or measured by Lessor's general or net income (as opposed to rents, receipts, or income directly attributable to operation of the Project); and

P. any costs expressly excluded from Common Area Operating Expenses elsewhere in this Lease.

4.3 Credit to Base Rent

Lessor shall grant a one-time credit to the Lessee for Lessee's Share of any Common Area Operating Expenses included in Lessee's Reconciliation for Year 2020, that were incurred during the period beginning on January 1, 2020, and ending on the one-year anniversary of the Commencement Date of the Lease. Such credit shall be applied towards Base Rent in the month immediately following the month in whcih the Reconcilation is provided to Lessee.

4.4 Payment

Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. In the event that any statement or invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. SECURITY DEPOSIT

Lessee shall deposit with Lessor upon execution hereof the Security Deposit ("**Security Deposit**") as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Breaches this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof which application shall cure the subject Default to the extent of such application. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 20 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within forty-five (45) days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. USE

6.1 Use

Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal, therapy and Seeing Eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles.

6.2 Hazardous Substances

6.2.1 The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit. Lessor shall promptly inform Lessee of any Reportable Use of which it becomes aware arising from the acts or omissions of Lessor or any other tenant of the Project. Lessor hereby consents to Lessee's use of the Hazardous Substances set forth on the attached Schedule 1.

6.2.2 If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to or otherwise known by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

6.2.3 Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

6.2.4 Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee subject to Section 6.2.5 hereof). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

6.2.5 Except as otherwise provided in Section 9.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

6.2.6 Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in Section 8.3.1 below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

6.2.7 If a Hazardous Substance Condition (see Section 10.1.5) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Section 6.2.4 and Section 14 and Lessee's rights under Section 6.2.5 hereof), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Lessee, within 60 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 business days thereafter, give written notice to Lessor of Lessee's commitment to pay the cost of the remediation of such Hazardous Substance Condition. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 Lessee's Compliance with Applicable Requirements

Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to such Requirements, without regard to whether said Requirements are now in effect or become effective after the Commencement Date. Lessee shall, within 10 business days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the

Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 Inspection; Compliance

Lessor and Lessor's "Lender" (as defined in Section 18.1) and consultants shall have the right to enter into Premises at any time, in the case of an emergency (i.e. imminent threat to life or property) upon such notice as is reasonable under the circumstances, and otherwise upon not less than forty-eight (48) hours prior written notice to Lessee, at reasonable times and in compliance with Lessee's reasonable workplace safety and security requirements, for the purpose of inspecting the condition of the Premises. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Section 10.1), is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 business days of the receipt of written request therefor.

7. TENANT IMPROVEMENTS

[Not applicable – intentionally omitted.]

8. MAINTENANCE; REPAIRS; UTILITY INSTALLATIONS; TRADE FIXTURES AND ALTERATIONS

8.1 Lessee's Obligations

8.1.1 Subject to the provisions of Section 2.2 (Condition), 2.3 (Compliance), Section 2.5 (Lessee as Prior Owner/Occupant) 6.3 (Lessee's Compliance with Applicable Requirements), 8.2 (Lessor's Obligations), 10 (Damage or Destruction), and 15 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in substantially the same good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises) as received by Lessee on the Commencement Date, including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Section 8.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform maintenance practices consistent with maintenance practices typical for buildings similar to the Premises, specifically including the procurement and maintenance of the service contracts required by Section 8.1.2 below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee's obligations of repair and maintenance shall not extend to ordinary wear and tear and events of casualty or condemnation.

8.1.2 Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on and solely serving the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. Following a Breach in Lessee's obligations under this Section 8.1.2, Lessor shall have the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

8.1.3 If Lessee fails to perform Lessee's obligations under this Section 8.1, Lessor may enter upon the Premises after 10 business days' prior written notice to Lessee (except in the case of an emergency (i.e. imminent threat to life or property), in which case such notice as is reasonable under the circumstances shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 105% of the actual cost thereof.

8.1.4 Subject to Lessee's indemnification of Lessor as set forth in Section 9.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform maintenance practices consistent with maintenance practices typical for buildings similar to the Premises, if an item described in Section 8.1.2 cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties as a Capital Expenditure pursuant to Section 2.3.

8.2 Lessor's Obligations

Subject to the provisions of Sections 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 8.1 (Lessee's Obligations), 10 (Damage or Destruction) and 15 (Condemnation), Lessor, subject to reimbursement pursuant to Section 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Section 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

8.3 Utility Installations; Trade Fixtures; Alterations

8.3.1 The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Section 8.4.1.

8.3.2 Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. Notwithstanding the foregoing, Lessor hereby consents (subject to Lessor's review of Lessee's construction plans and scope of work) to, and will not require the removal at the end of the Original Term or any extension thereof of, Lessee's initial Alterations to the Premises to generally consist of installing HVAC throughout the Premises, demising the Premises, removal of a portion of the existing office areas, and installation of an emergency generator.

8.3.3 Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days' notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 125% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

8.4 <u>Ownership; Removal; Surrender; and Restoration</u>

8.4.1 Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per Section 8.4.2 hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

8.4.2 Lessor, unless otherwise agreed in writing, may require at the time Lessor grants its consent for such Alterations or Utility Installations, or upon notice to Lessor of an Alteration that does not require Lessor's consent that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent or, if no consent of Lessor is required, upon receipt of a notice from Lessee requesting Lessor's determination of whether such Alteration or Utility Installation will be required to be removed.

8.4.3 Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear, casualty and condemnation excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by maintenance practice consistent with maintenance practices typical for buildings similar to the Premises. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Commencement Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises and subject to Section 6.2.5 hereof) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date and is not thereafter removed following thirty (30) days' notice to Lessee thereof, shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Section 8.4.3 without the express written consent of Lessor shall constitute a holdover under the provisions of Section 20.9 below.

9. INSURANCE; INDEMNITY

9.1 Payment of Premium Increases

9.1.1 As used herein, the term "Insurance Cost Increase" is defined as any increase in the actual cost of the insurance applicable to the Project and required to be carried by Lessor, pursuant to Sections 9.2.2, 9.3.1 and 9.3.2, over and above the Base Premium, as hereinafter defined, calculated on an annual basis. Insurance Cost Increase shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises and/or Project, increased valuation of the Premises and/or Project, and/or a general premium rate increase. The term Insurance Cost Increase shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Project. The "Base Premium" shall be the annual premium applicable to the Lessee's Base Year. If, however, the Project was not insured for the entirety of such 12-month period, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the Commencement Date, assuming the most nominal use possible of the Project.

9.1.2 Lessee shall pay any Insurance Cost Increase to Lessor pursuant to Section 4.2. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Commencement Date or Expiration Date.

9.2 Liability Insurance

9.2.1 Carried by Lessee. Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor, as an additional insured, against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto.

Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $2,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor and Cypress View Properties, Inc. as additional insureds by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) that provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

9.2.2 Carried by Lessor. Lessor shall maintain liability insurance as described in Section 9.2.1, in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

9.2.3 Carried by Lessee's Contractors. Unless otherwise agreed to in writing by Lessor, if Lessee, with Lessor's written approval, engages a contractor ("Contractor") to perform work on the Premises, whether such work is a Tenant Improvement, Trade Fixture, Alteration or otherwise, the Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to the Premises which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors. Such insurance shall include Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. The Lessor shall be named as Loss Payee for the Builder's Risk insurance.

9.3 Property Insurance - Building, Improvements and Rental Value

9.3.1 Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. If the coverage is available and commercially appropriate, such policy or policies shall insure against all types of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor unless the item in question has become the property of Lessor under the terms of this Lease.

9.3.2 Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year ("Rental Value Insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12-month period.

9.3.3 Lessee shall pay for any increase in the premiums for the property insurance of the Unit, and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

9.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance

9.4.1 Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $5,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

9.4.2 Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

9.4.3 Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by Section 9.5.

9.4.4 Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

9.5 Insurance Policies

Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Early Possession Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

9.6 Waiver of Subrogation

Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

9.7 Indemnity

Except for Lessor's gross negligence or willful misconduct, or Lessor's breach of this Lease, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

9.8 Exemption of Lessor and its Agents from Liability

Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Project, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of Section 9 or the insurance of Lessor included in Common Area Operating Expenses.

9.9 Failure to Provide Insurance

Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will constitute a Default, subject to applicable notice and cure periods.

10. DAMAGE OR DESTRUCTION

10.1 Definitions

10.1.1 "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in six months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to six month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

10.1.2 "Premises Total Destruction" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in six months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to one year's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

10.1.3 "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Section 9.3.1, irrespective of any deductible amounts or coverage limits involved.

10.1.4 "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

10.1.5 "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

10.2 Partial Damage - Insured Loss

If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessee's election, make the repair of any damage or destruction the total cost to repair of which is $10,000 or less, and, in such event, Lessor shall make all applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to affect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 business days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 business day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 business days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter unless Lessee agrees to waive restoration of such unique portions of the Premises. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Section 10.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

10.3 Partial Damage - Uninsured Loss

If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee’s expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor’s expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee’s commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

10.4 Total Destruction

Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor’s damages from Lessee, except as provided in Section 9.6.

10.5 Damage Near End of Term

If at any time during the last six months of this Lease there is damage for which the cost to repair exceeds one month’s Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option in which the provisions of Sections 10.2 and 10.3, as applicable, shall apply.

10.6 Abatement of Rent; Lessee’s Remedies

10.6.1 In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee’s use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value Insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

10.6.2 If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 30 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

10.7 Termination; Advance Payments

Upon termination of this Lease pursuant to Section 6.2.7 or Section 10, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor in accordance with Section 5 of this Lease.

11. REAL PROPERTY TAXES

11.1 Definitions

11.1.1 "Real Property Taxes." As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment constituting personal property provided by Lessor to Lessee at Lessee's request pursuant to this Lease. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real property tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

11.1.2 "Base Real Property Taxes." As used herein, the term "Base Real Property Taxes" shall be the amount of Real Property Taxes, which are paid on the Premises, Project or Common Areas in the Lessee's Base Year.

11.2 Payment of Taxes

Except as otherwise provided in Section 11.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Section 4.2.

11.3 Additional Improvements

Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Section 11.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Section 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

11.4 Joint Assessment

If the Premises is not separately assessed, Real Property Taxes allocated to the Premises shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

11.5 Personal Property Taxes

Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 business days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

12. UTILITIES AND SERVICES

Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied directly to the Premises, together with any taxes thereon. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions. Notwithstanding anything to the contrary set forth herein, (i) if a stoppage of an Essential Service (as defined below) to the Premises shall occur, and such stoppage is due to the negligence or willful misconduct of Lessor and not due to any act or omission on the part of Lessee (any such stoppage of an Essential Service being hereinafter referred to as a "Service Interruption"), and (ii) such Service Interruption continues for more than five (5) consecutive days after Lessor shall have received written notice thereof from Lessee, and (iii) as a result of such Service Interruption, the conduct of Lessee's normal operations in the Premises are adversely affected in any material respect, then, there shall be an abatement of one day's Base Rent for each day during which such Service Interruption continues after such five (5) day period; provided, however, that if any part of the Premises is reasonably useable for Lessee's normal business operations or if Lessee conducts all or any part of its operations in any portion of the Premises notwithstanding such Service Interruption, then the amount of each daily abatement of Base Rent shall only be proportionate to the nature and extent of the interruption of Lessee's normal operations or ability to use the Premises. For purposes hereof, the term "Essential Services" shall mean the following services: HVAC service, water, sewer and electricity and access to the Premises, but in each case only to the extent that Lessor has an obligation to provide same to Lessee under this lease.

13. ASSIGNMENT AND SUBLETTING

13.1 Lessor's Consent Required

13.1.1 Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent (which will not be unreasonably withheld, conditioned or delayed), unless such assignment is to a related entity, subsidiary, parent company or affiliate of Lessee, or to an acquiring entity with a Net Worth of Lessee (as defined below) equal to or greater than Lessee's as of the date of this Lease (collectively, "Permitted Transfer") provided, however, that in the event of such an assignment, the provisions of Section 13.2 shall still be applicable. Notwithstanding the foregoing, Lessor hereby consents to the occupancy of a portion of the Premises by Lessee's third-party logistics provider.

13.1.2 Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose. The foregoing shall not apply to Permitted Transfers.

13.1.3 Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, the involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles. The foregoing shall not apply to Permitted Transfers.

13.1.4 An assignment or subletting without consent (where such consent is required hereunder) shall, at Lessor's option, be a Default curable after notice per Section 14.4.

13.1.5 Lessee's remedy for any breach of Section 13.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

13.1.6 Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Breach at the time consent is requested.

13.1.7 Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e., 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

13.2 Terms and Conditions Applicable to Assignment and Subletting

13.2.1 Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

13.2.2 Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

13.2.3 Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

13.2.4 In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

13.2.5 Each request for consent to an assignment or subletting shall be in writing, and in the case of assignment whereby Lessee is to be released from further liability under this Lease, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Section 20.18)

13.2.6 Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing (where such consent is required hereunder).

13.2.7 Other than Permitted Transfers, Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Section 19.1.)

13.2.8 If Lessee assigns and/or sublets any portion(s) of its interest in this Lease or in the Premises with Lessor's consent (where such consent is required hereunder), any consideration received by Lessee for said assignment and/or subletting, after deducting any real estate broker's commissions, reasonable marketing costs, and rental concessions, incurred solely for the purpose of and in connection with the assignment or subletting, shall be divided equally with Lessor to the extent it exceeds the consideration due Lessor from Lessee under this Lease ("Net Rent Premium"). The amount due Lessor shall be paid to Lessor within thirty (30) days after its receipt by Lessee. Lessee shall act as Lessor's agent in collecting such amounts from any such assignee or sublessee.

13.3 Additional Terms and Conditions Applicable to Subletting

The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

13.3.1 Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

13.3.2 In the event of a Breach by Lessee and the exercise of Lessor's remedy of termination of this Lease, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

13.3.3 Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor if Lessee is otherwise required to obtain the consent of Lessor hereunder to such matter.

13.3.4 No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

13.3.5 Lessor shall deliver a copy of any notice of Breach by Lessee to the sublessee, who shall have the right to cure the Breach of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Breaches cured by the sublessee.

14. DEFAULT; BREACH; REMEDIES

14.1 Default; Breach

A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

14.1.1 The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Section 9.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

14.1.2 Lessee's failure to pay Rent or any Security Deposit required to be made by Lessee hereunder, or any other rental or sums payable by Lessee hereunder within five (5) business days after Lessor notifies Lessee of such nonpayment; provided, however, Lessor shall only be obligated to provide such written notice to Lessee one (1) time within any calendar year and in the event Lessee fails to timely pay Rent or such other sums for a second time during any calendar year, then Lessee shall be in Breach for such late payment and Lessor shall have no obligation or duty to provide notice of such non-payment to Lessee prior to declaring a Breach under this Lease; or.

14.1.3 The failure by Lessee to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Lessee, other than monetary failures as specified in Paragraph 14.1.2 above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's Default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in Breach if Lessee shall commence such cure within said 30-day period and thereafter diligently prosecute such cure to completion, which completion shall occur not later than ninety (90) days from the date of such notice from Lessor.

THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

Any notice sent by Lessor to Lessee pursuant to this Paragraph 14.1 shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161.

14.2 Remedies

If Lessee fails to perform any of its affirmative duties or obligations, within 10 business days after written notice (or in case of an emergency, i.e. imminent threat to life or property, upon such notice as is reasonable under the circumstances, Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 105% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

14.2.1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Section 14.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Section 14.1. In such case, the applicable grace period required by Section 14.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

14.2.2 Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

14.2.3 Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

14.3 Inducement Recapture

[Intentionally Omitted]

14.4 Late Charges

Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor 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 and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within five days after such amount shall be due, then without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 6% of each such overdue amount or $100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

14.5 Interest

Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor when due shall bear interest from the 31st day after it was due. The interest (“Interest”) charged shall be computed at the rate of the lesser of (A) the rate announced from time to time by Wells Fargo Bank or, if Wells Fargo bank ceases to exist or ceases to publish such rate, then the rate announced from time to time by the largest (as measured by deposits) chartered bank operating in the State, as its “prime rate” or “reference rate”, plus two percent (2%), or (B) the maximum rate of interest permitted by law but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Section 14.4.

14.6 Breach by Lessor

14.6.1 Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Section, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor’s obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

14.6.2 In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee’s expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month’s Base Rent or the Security Deposit, reserving Lessee’s right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

15. CONDEMNATION

15.1 Effect on Lease

If all of the Premises, is taken under the power of eminent domain or sold under the threat of the exercise of said power (“Condemnation”), this Lease shall terminate as of the date the condemning authority takes title or possession, whichever first occurs. If title to a portion of the Premises or the land on which the Premises are located is taken by Condemnation, and the remainder will not, in Lessee’s reasonable judgment, be suitable for Lessee’s continued use for the purposes permitted by this Lease, this Lease shall terminate as of the date the condemning authority takes title or possession, whichever first occurs, provided that Lessee gives written notice of such termination to Lessor no later than thirty (30) days after the date of such taking. If title to a portion of the Premises or the land on which the Premises are located is taken by Condemnation, and the remainder will, in Lessee’s reasonable judgment, be suitable for Lessee’s continued use for the purposes permitted by this Lease, then Lessor shall repair the damage caused by the partial taking, if any, and this Lease shall not terminate and shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent payable hereunder shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Lessee acknowledges and agrees that a change in access to the land on which the Premises are located or minor adjustments to parking which do not adversely affect Tenant’s use or occupancy of the Premises in any material respect, shall not constitute a taking and shall not entitle Lessee to any reduction in Base Rent.

15.2 Allocation of Condemnation Award

No award for any partial or total taking shall be apportioned. Lessee hereby assigns to Lessor its interest, if any, in any award which may be made as a result of any Condemnation, without regard to whether this Lease is terminated, except for any separate award made to Lessee for Lessee's moving costs or loss of Lessee's business goodwill. Any condemnation award(s) and/or payment(s) for the taking or damaging of all or any portion of the Premises under the power of eminent domain, or any payment made under threat of the exercise of such power, shall be the sole and exclusive property of Lessor, whether such award shall be made as compensation for the taking of all or any portion of the Premises or any portion of the land on which the Premises are located, diminution in value of the leasehold (including without limitation any "bonus value" of the Lease), the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to compensation separately awarded to it, if any, for Lessee's relocation expenses and/or loss of business goodwill. All "improvements pertaining to the realty" as defined in the Eminent Domain Law (Code of Civil Procedure sections 1230.10 et seq.), which Lessee specifically acknowledges and agrees shall include without limitation Alterations and Utility Installations made to the Premises by Lessee, and all fixtures that cannot be removed without doing material damage to the Premises, shall, for purposes of Condemnation, be considered the property of the Lessor and Lessor shall be entitled to any and all compensation which is payable therefor; provided that in no event shall any Trade Fixtures or other personal property of Lessee be deemed the property of Lessor for any purpose under this Lease.

16. CONFIDENTIAL INFORMATION, INDEMNITIES OF RELATIONSHIPS

16.1 Confidential Information

Lessor and Lessee acknowledge that this Lease, and all material information exchanged during the negotiations related to this Lease, is confidential information, consisting of: the content of this Lease, the Lessee's financial statements, the identity of the brokers, and all written, printed, graphic, or electronic information furnished by any party and not otherwise public without violation of this Section 16.1 (collectively, "Confidential Information"). Except to the extent disclosure is required by law, the parties shall keep all Confidential Information in strict confidence, and shall not disclose any Confidential Information to any third party other than Lessee's or Lessor's independent auditors, financial and legal advisors, employees, contractors, those selected to review Common Area Operating Expenses and taxes, and legal and space-planning consultants or to enforce this Lease; provided, however, that Lessee may disclose the terms to prospective subtenants or assignees. No Confidential Information or other information regarding this Lease shall be reported or otherwise released. This provision shall survive the termination or expiration of this Lease, for a period of one year. Notwithstanding the foregoing, Lessor acknowledges that Lessee is a "reporting company" under applicable Law and required to publicly file with, and report to, the Securities and Exchange Commission (the "SEC") with respect to certain information that may include information regarding this Lease. Lessor agrees that Lessee's disclosure of any information regarding this Lease pursuant to the requirements of the SEC, including the filing of this Lease with the SEC, or otherwise as required under applicable Law is expressly permitted under the terms of this Lease. In no event shall either party be liable for monetary damages in the event of a violation of the Section 16.1 and injunctive relief shall be the only remedy available for a breach hereof ("Permitted Regulatory Reporting").

16.2 Indemnities

Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any broker (other than those hired by the Parties to this Lease to represent them in such Lease negotiations), finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

17. ESTOPPEL CERTIFICATES AND FINANCIAL STATEMENTS

17.1 Obligation to Provide Estoppel Certificate

Each Party (as "Responding Party") shall within 10 business days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the "Estoppel Certificate" form attached hereto as Exhibit D, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

17.2 Remedies for Failure to Provide Estoppel Certificate.

If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 business day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

17.3 Additional Provisions Regarding Lessor Finance, Refinance or Sale of Premises

If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 business days after written notice from Lessor (but not more frequently than two (2) times per calendar year), deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past three years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth. Notwithstanding the foregoing, in the event that (i) stock in the entity which constitutes Lessee under this Lease is publicly traded on a national stock exchange, (ii) Lessee has its own, separate and distinct 10K and 10Q filing requirements (as opposed to joint filings with an entity that controls Lessee or is under common control with Lessee), and (iii) Lessee's financial statements are readily available to the public, then Lessee's obligation to its most recent current financial statement shall be deemed satisfied.

18. SUBORDINATION; ATTORNMENT; NON-DISTURBANCE

18.1 Subordination

Subject to Lessee's receipt of a Non-Disturbance Agreement (defined below), this Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that, except as otherwise set forth in a Non-Disturbance Agreement, the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Subject to Lessee's receipt of a Non-Disturbance Agreement, any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

18.2 Attornment

In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Devise to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Section 18.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder for the period from and after such transfer and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner, and Lessor shall remain liable to Lessee for performance of all such obligations.

18.3 Non-Disturbance

With respect to Security Devices entered into by Lessor, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides, among other things, that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises.

18.4 Self-Executing

The agreements contained in this Section 18 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein and which do not decrease the benefits to Lessee, or increase the obligations of Lessee, under this Lease.

19. OPTIONS

19.1 General Provisions Applicable to Options

19.1.1 "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of

Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

19.1.2 Any Option granted to Lessee in this Lease is personal to the original Lessee and transferees under Permitted Transfers, unless otherwise agreed to by the parties, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

19.1.3 In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

19.2 Effect of Default on Options

19.2.1 Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Base Rent that is then due is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given three or more notices of separate Default which remain uncured during the 12 month period immediately preceding the exercise of the Option.

19.2.2 The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Section 19.2.1.

19.3 Option Exercise Procedures

19.3.1 If Lessee elects to exercise an Option, it shall do so by delivery of written notice of such election to Lessor not less than nine (9) and no more than the twelve (12) months prior to the expiration date of the Original Term or extension period, as applicable.

19.3.2 The Base Rent and method of annual increases thereto for the extension period shall be the then fair market rental rate and method for annual increases for comparable space in the area.

19.3.3 The fair market rental and method for annual increases shall be mutually agreed upon by Lessor and Lessee within thirty (30) days after Lessor's receipt of Lessee's written notice of the exercise of the Option (the "Agreement Period").

19.3.4 If Lessor and Lessee are unable to so agree within the Agreement Period, each shall select an appraiser and, within fifteen (15) days after the expiration of the Agreement Period, shall notify the other of the name, business address and telephone number of the appraiser so selected. Said two (2) appraisers shall, within thirty (30) days after the expiration of the Agreement Period, jointly select a third appraiser and shall notify Lessor and Lessee of the name, business address and telephone number of said appraiser. Each of the three (3) appraisers shall, within forty-five (45) days after expiration of the Agreement Period, make a good faith determination of the then fair market rental rate of the Premises and the method for annual increases in said rate and shall notify Lessor, Lessee, and each other appraiser of such determinations. If all appraisers do not agree on the fair market rental rate and method for annual increases, the common decision of two (2) of them shall be determinative. If two (2) of the three (3) appraisers are unable to so agree, the fair market rental rate that is neither the highest nor lowest of the three (3) determinations shall be the Base Rent and the method for annual increases shall be the method specified by the appraiser who's determination of fair market rental is used.

19.3.5 Lessor and Lessee shall each cooperate with all reasonable requests by any of the appraisers in order to assist the appraisers in the timely performance of their duties hereunder. To be eligible to serve as an appraiser, one must be a licensed real estate broker in California with a minimum of five (5) years continuous experience in the leasing of similar space in the area, and must be actively engaged in such activity at the time of his or her selection.

19.3.6 Lessor and Lessee shall each pay the fees and expenses of its own appraiser and one-half (1/2) of the fees and expenses of the third appraiser.

20. MISCELLANEOUS PROVISIONS

20.1 Definition of Lessor

The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor (subject to Section 18.2 hereof). Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

20.2 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 hereof.

20.3 Days

Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20.4 Limitation on Liability

The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

20.5 Time of Essence

Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

20.6 No Prior or Other Agreements

This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the other that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises.

20.7 Notices

20.7.1 All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Section 20.7. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

20.7.2 Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

20.8 Waivers

20.8.1 No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

20.8.2 The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, and such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

20.8.3 THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE

PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

20.9 No Right To Holdover

Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be equal to one hundred twenty-five percent (125%) of the Base Rent in effect on the termination date, computed on a monthly basis for each month or part thereof during the first month of such holding over, and thereafter one hundred fifty percent (150%) of the Base Rent in effect on the termination date, computed on a monthly basis for each month or part thereof during such holding over. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

20.10 Cumulative Remedies

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

20.11 Covenants and Conditions; Construction of Agreement

All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

20.12 Binding Effect; Choice of Law

This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

20.13 Attorneys' Fees

If any Party brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all reasonable attorneys' fees reasonably incurred. Subject to Lessee's contest in court as to any Default, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of a Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

20.14 Lessor's Access; Showing Premises; Repairs

Lessor and Lessor's agents shall have the right to enter the Premises, in the case of an emergency i.e. imminent threat to life or property) upon such notice as is reasonable under the circumstances, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or, during the last six (6) months of the term of this Lease, tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as the foregoing actions by Lessor are permitted under other applicable provisions of this Lease and there is no adverse effect on Lessee's use or occupancy of the Premises in any material respsect. All such activities shall be without abatement of rent or liability to Lessee provided the same are conducted in compliance with Lessee's reasonable workplace safety and security requirements,

20.15 Auctions

Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

20.16 Signs

Lessor may place on the exterior of the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last six months of the term hereof. Lessee shall not place any sign upon the Project without Lessor's prior written consent, which will not be unreasonably withheld, conditioned, or delayed; provided that Lessee shall have the right to install logo and/or name door signage, signage on the Project monument and on the exterior of the Premises. All signs must comply with all applicable government and zoning requirements. Any permits necessitated by Lessee's signage shall be obtained by Lessee at Lessee's sole expense.

20.17 Termination; Merger

Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

20.18 Consents

Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then-existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

20.19 Quiet Possession

Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease in all material respects, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

20.20 Security Measures

Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. Provided however, that Lessor is responsible for providing the security of the Common Areas.

20.21 Reservations

Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use or occupancy of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights provided the same do not decrease the benefits to Lessee, or increase the obligations of Lessee, under this Lease.

20.22 Performance Under Protest

If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

20.23 Authority; Multiple Parties; Execution

20.23.1 If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

20.23.2 If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

20.23.3 This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

20.24 Offer

Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

20.25 Amendments

This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not decrease the benefits to Lessee, or increase the obligations of Lessee, under this Lease as a result thereof, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises provided Lessee has received a Non-Disturbance Agreement from such Lender.

20.26 Waiver of Trial By Jury

THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

20.27 Accessibility; Americans with Disabilities Act

20.27.1 The Premises have not undergone an inspection by a Certified Access Specialist (CASp). 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.

20.27.2 Since some aspects of compliance with the Americans with Disabilities Act (ADA) are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation applicable to Lessee's specific use of the Premises. In the event that Lessee requests a CASp inspection and/or Lessee's specific use of the Premises (rather than as generally required for any tenant of the Project) requires modifications or additions to the Premises in order to be in ADA compliance (or other construction-related accessibility standards, if applicable), Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense, provided that the foregoing shall not relieve Lessor of any obligations it otherwise has under this Lease regarding the condition of the Premises or its compliance with law.

20.27.3 LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

(SIGNATURES CONTINUED ON NEXT PAGE)

LESSOR: R. E. Hazard Contracting Company,
a California corporation

/s/ T. B. Hazard
By:Thomas B. Hazard
Its: President

Lessor's Address for Notices: c/o Cypress View Properties, Inc.
Attn: Larry Figueroa
401 B Street, Suite 2400
San Diego, CA 92101
619-795-8578
larry@cypressview.com

LESSEE: Tandem Diabetes Care, Inc.,
a Delaware corporation

/s/ David B. Berger
By: David B. Berger
Its: Executive Vice President and General Counsel

Lessee's Address for Notices: 11075 Roselle Street
San Diego, CA 92121
Attn: David Berger, Executive Vice President and General Counsel

EXHIBIT A – “Site Plan of the Premises”

EXHIBIT B – “Tenant Improvements” - [Not applicable – intentionally omitted.]

EXHIBIT C – “Guaranty” - [Not applicable – intentionally omitted.]

EXHIBIT D – “Estoppel Certificate”

STANDARD ESTOPPEL CERTIFICATE - BY LESSEE

To Whom It May Concern:

Re: Industrial/Commercial Multi-Tenant Lease – Gross Modified Dated February 19, 2019 ("Lease") By And Between Tandem Diabetes Care, Inc., a Delaware corporation (“Lessee”) and R. E. Hazard Contracting Company, a California corporation (“Lessor”), concerning the real property commonly known as 6495 Marindustry Place, San Diego, CA (the “Premises”)

Lessee hereby certifies to its actual (and not constructive) knowledge, without duty of investigation, as of the date hereof, as follows:

1. A true copy of the Lease, including all amendments thereto, if any, is attached as Exhibit A. Other than the document included in Exhibit A there are no oral or written agreements or understandings between the Lessor and Lessee with respect to the Premises.

2. The Lease term commenced on May 1, 2019, and will continue for eighty-four (84) months, until April 30, 2026.

3. The current monthly rent and Lessor’s Share of Operating Expenses (as defined in the Lease), if any, are as follows:

	Amount	**Day of Month Due**	**Amount Paid YTD**
Rent			
Operating Expenses			

No rents or Operating Expenses have been prepaid except as reflected in the Lease.

4. The current amount of security deposit held by Lessor is $_____________.

5. The improvements and space required to be provided by Lessor have been furnished and completed in all respects to the satisfaction of Lessee, and all promises of an inducement by Lessor have been fulfilled.

6. Lessee has no knowledge of any uncured defaults by Lessor under the Lease and has received no notice of default under the Lease that is continuing.

7. There are no disputes between Lessor and Lessee concerning the Lease, the Premises or the improvements therein or thereon.

8. Lessee is in full and complete possession of the Premises and has not assigned or sublet any portion of the Premises.

9. Lessee has made no alterations or additions to the Premises not contemplated in the Lease and such alterations and additions, if any, comply with the terms of the Lease.

10. Lessee is not currently the subject of a bankruptcy proceeding.

11. Lessee is informed by Lessor that buyers, lenders and others will rely upon the statements made in this Estoppel Certificate, and has therefore adjusted the language hereof as necessary to make it an accurate statement of the current facts set forth in this Estoppel Certificate concerning the Lease. No individual signing this Estoppel Certificate shall have any personal liability hereunder.

LESSEE:	Tandem Diabetes Care, Inc., a Delaware corporation
Dated:	By: _________________________ Name:_________________________ Title: _________________________

SCHEDULE 1 – Lessee’s List of Permitted Hazardous Substances

Tandem Diabetes Care, Inc.
2019 Sr. Management Cash Bonus Plan

The Tandem Diabetes Care, Inc. 2019 Sr. Management Cash Bonus Plan (the "***Bonus Plan***") has been designed to align plan participants with the business goals and strategies of Tandem Diabetes Care, Inc. ("***Tandem***" or the "***Company***") and to further the objectives of the Company's executive compensation program. This Bonus Plan is an important part of the Company's commitment to recognizing key employees who contribute to the achievement of important Company performance goals. Specifically, the objectives of the Bonus Plan are as follows:

- Attract, retain and reward highly skilled individuals, including executive officers, with the background and experience required for the Company's future growth and success by providing meaningful cash incentive payments to plan participants who are in a position to contribute significantly to Company success.
- Align the interests of plan participants with those of the Company's stockholders by tying a meaningful portion of their total compensation opportunity to the achievement of specific Company performance objectives, such as an annual revenue target.
- Together with base salary, long-term equity incentives and other components of compensation, create an appropriate balance of cash versus non-cash, and guaranteed versus at risk compensation opportunities.

Performance Period

The Bonus Plan is primarily intended to reward plan participants for their individual contributions to the Company's achievement with respect to Company performance objectives for the 2019 fiscal year. However, the Company's Board of Directors or the Compensation Committee of the Board of Directors (the "***Compensation Committee***") also has the discretion to consider individual or Company performance after December 31, 2019 and until the date of any actual bonus determination under the Bonus Plan in measuring performance and determining the amount of an award, if any, under the Bonus Plan.

Eligibility

Employees of the Company eligible for an award under this Bonus Plan will be limited to individuals serving as a Vice President or more senior management role within the Company, as determined by the Board of Directors or the Compensation Committee. If, following January 1, 2019, an individual is promoted or hired and becomes an eligible participant under the Bonus Plan at any time during the 2019 calendar year, then the individual will be eligible to participate under the Bonus Plan on a pro-rata basis, calculated in the reasonable discretion of the Compensation Committee, unless otherwise specifically provided by the Board of Directors or the Compensation Committee.

Bonus Opportunity

A target cash incentive amount (a "***Target Bonus Amount***") for each eligible plan participant will be set as a percentage of the participant's base salary. Cash incentives may be earned under the Bonus Plan based on the achievement of both financial performance objectives and product development objectives. The financial performance objectives are comprised of two parts and will collectively represent 80% of the overall Target Bonus Amount and the product development objectives will collectively represent 20% of the overall Target Bonus Amount.

Financial Performance Objectives

The portion of the cash bonuses that relate to the Company financial objectives may be earned based on the Company's actual revenue for fiscal year 2019 as compared to a pre-established 2019 revenue target (the "***Revenue Target***"), provided that the Company also achieves at least a minimum adjusted EBITDA (and further excluding non-cash stock based compensation expense and any payment pursuant to the 2019 Cash Bonus Plan) margin percentage (the "**Minimum Operating Percentage Target**"). Subject to the foregoing, the Company financial objective portion of the cash bonuses may be earned under the Bonus Plan as follows:

- A minimum percentage growth rate over the Company's actual 2018 revenue, which places the Company's revenue for 2019 at 75% of the Revenue Target (the ***"Minimum Revenue Target"***), must be achieved for any bonus to be earned under the financial performance objectives portion of the 2019 Cash Bonus Plan.

- If the Company's actual revenues are between this Minimum Revenue Target and the Revenue Target, the goal achievement for the financial performance objectives will be calculated proportionately in a straight-line from 0% to 100%. If the Company's actual revenues exceed the Revenue Target, the goal achievement for the financial performance objectives will be calculated proportionately as a percentage of the Revenue Target.

Potential Incremental Bonus

If the Company's actual revenues are above 105% of the Revenue Target, and the Minimum Operating Percentage Target is achieved, then the 2019 Cash Bonus Plan has two levels of potential incremental overall goal achievement:

- If the Company's actual revenues are above 105% of the Revenue Target and up to 115% of the Revenue Target, the percentage of overall goal achievement with respect to the Company financial objectives under the Bonus Plan will first be calculated as described above, and then the overall goal achievement under the 2019 Cash Bonus Plan will be multiplied by an amount equal to 100% plus one times each percent of revenue achievement above 105% of the Revenue Target and up to 115% of the Revenue Target, and the cash bonus will be calculated based on this modified level of goal achievement; or

- If the Company's actual revenues are above 115% of the Revenue Target, the percentage of overall goal achievement with respect to the Company financial objectives under the Bonus Plan will first be calculated as described above, and then the overall goal achievement under the 2019 Cash Bonus Plan will be multiplied by an amount equal to 100% plus two times each percent of revenue achievement above 105% of the Revenue Target, and the cash bonus will be calculated based on this modified level of goal achievement.

Company Product Development Milestones

The portion of the cash bonuses that relates to the Company's product development milestones generally requires that the Company obtain regulatory clearance and commercially launch certain products under development, or relates to the internal launch of specific customer and business system enhancements. Subject to the Compensation Committee's final discretion, an individual product development milestone must be achieved within a required time period for the applicable portion of the 2019 Cash Bonus Plan to be achieved. Overall goal achievement of our product development milestones will be based on the portion of the product development milestones that the Company actually achieves during 2019.

Award Determination

Bonus payments under the Bonus Plan, if any, will be made at the discretion of the Board or the Committee. The financial performance components and product development components of the Bonus Plan may be earned independent of one another. If the Company does not achieve any portion of any of the financial performance components or the product development components of the Bonus Plan, no payouts will be made unless the Board or the Committee, in their sole discretion, determines that there are other factors that merit consideration in the determination of bonus awards, which may be determined on an individual basis. All determinations and decisions made by the Compensation Committee and the Board of Directors pursuant to the provisions of the Bonus Plan shall be final, conclusive and binding on all persons, and shall be given the maximum deference permitted by law.

Payout and Administration

Payment of bonuses will be made as soon as practical after the end of the plan year, but not later than March 15, 2020. Participants must be actively employed at the time of payout to be eligible for any bonus payment. Only the Board of Directors may approve a payment under this Bonus Plan to the Company's Chief Executive Officer. The Board of Directors or the Compensation Committee may approve payments to any other eligible plan participant. The Board of Directors or the Compensation Committee can modify the Bonus Plan, including timing and form of payments, at any time in their sole discretion. Amounts payable under the Bonus Plan are intended to comply with the "short-term deferral" rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations and thus be exempt from the provisions of Section 409A of the Internal Revenue Code of 1986, as amended. The Board of Directors and the Compensation Committee intend to administer the Bonus Plan in a manner consistent with this rule. Any amounts paid hereunder shall be subject to recoupment in accordance with The Dodd-Frank Wall Street Reform and Consumer Protection Act and any implementing regulations thereunder, any clawback policy adopted by the Company or as is otherwise required by applicable law.

Exhibit 10.4

FIRST AMENDMENT TO
AMENDED AND RESTATED EMPLOYMENT SEVERANCE AGREEMENT

This First Amendment (the "First Amendment") to Amended and Restated Employment Severance Agreement, dated November 4, 2013 (the "Agreement"), is made and entered into effective as of February 25, 2019 (the "Effective Date"), by and between John F. Sheridan (the "Employee") and Tandem Diabetes Care, Inc. (the "Company").

WHEREAS, Company and Employee wish to amend the Agreement as set forth below.

NOW, THEREFORE, the Parties hereby mutually agree as follows:

1. Section 2(a)(i) of the Agreement is hereby amended by extending the term of the severance benefits from eighteen (18) to twenty-four (24) months.

2. Except as specifically amended by this First Amendment, the terms and conditions of the Agreement will remain in full force and effect.

3. This First Amendment may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall be considered one and the same agreement, it being understood that all parties need not sign the same counterpart. The exchange of copies of this First Amendment and of signature pages by facsimile transmission or by email transmission in portable document format, or similar format, shall constitute effective execution and delivery of such instrument(s) as to the parties and may be used in lieu of the original First Amendment for all purposes.

4. This First Amendment and the Agreement, including all documents referred to therein and attached thereto, constitute the entire agreement of the parties on the subject matter hereof and supersedes all prior representations, understandings and agreements between the parties with respect to such subject matter.

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IN WITNESS WHEREOF, the parties have executed this First Amendment as of the Effective Date written above.

TANDEM DIABETES CARE, INC.

By: Kim Blickenstaff

Name: Kim Blickenstaff

Title:President & Chief Executive Officer

JOHN F. SHERIDAN

By: /s/ John F. Sheridan

Name: John F. Sheridan

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, John F. Sheridan, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Tandem Diabetes Care, 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.

Tandem Diabetes Care, Inc.

By: /s/ John F. Sheridan
John F. Sheridan
President, Chief Executive Officer

Dated: April 30, 2019

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Leigh A. Vosseller, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Tandem Diabetes Care, 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.

Tandem Diabetes Care, Inc.

By: /s/ Leigh A. Vosseller
Leigh A. Vosseller
Executive Vice President, Chief Financial Officer and Treasurer

Dated: April 30, 2019

Exhibit 32.1

CERTIFICATION
PURSUANT TO U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Tandem Diabetes Care, Inc. (the “Company”) for the period ended March 31, 2019, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, John F. Sheridan, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 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 as of the dates and for the periods presented.

Date: April 30, 2019

/s/ John F. Sheridan
John F. Sheridan
President and Chief Executive Officer

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Exchange Act, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Exhibit 32.2

CERTIFICATION
PURSUANT TO U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Tandem Diabetes Care, Inc. (the “Company”) for the period ended March 31, 2019, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Leigh A. Vosseller, Executive Vice President, Chief Financial Officer and Treasurer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 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 as of the dates and for the periods presented.

Date: April 30, 2019

/s/ Leigh A. Vosseller
Leigh A. Vosseller
Executive Vice President, Chief Financial Officer and Treasurer

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Exchange Act, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.