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

Form 10-Q

(Mark One)

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

For the quarterly period ended September 30, 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: 001-34207

Dynavax Technologies Corporation

(Exact name of registrant as specified in its charter)

Delaware	**33-0728374**
(State or other jurisdiction of incorporation or organization)	**(IRS Employer Identification No.)**

2100 Powell Street, Suite 900
Emeryville, CA 94608
(510) 848-5100
(Address, including Zip Code, and telephone number, including area code, of the registrant's principal executive offices)

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

Title of each class:	**Trading symbol(s):**	**Name of each exchange on which registered:**
Common Stock, $0.001 par value	DVAX	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 registration was required to submit such files). Yes ☒ No ☐

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

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

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

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

As of November 1, 2019, the registrant had outstanding 83,865,119 shares of common stock.

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DYNAVAX TECHNOLOGIES CORPORATION

FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which are subject to a number of risks and uncertainties. All statements that are not historical facts are forward-looking statements, including statements about our ability to successfully commercialize HEPLISAV-B®, our anticipated market opportunity and level of sales of HEPLISAV-B, our ability to successfully pursue strategic alternatives for our early stage compounds, our business, collaboration and regulatory strategy, and whether or not we may incur other material charges not currently contemplated due to events that may occur as a result of, or associated with our restructuring, our ability to manufacture commercial supply and meet regulatory requirements, uncertainty regarding our capital needs and future operating results and profitability, anticipated sources of funds, liquidity and cash needs, as well as our plans, objectives, strategies, expectations and intentions. These statements appear throughout this Quarterly Report on Form 10-Q and can be identified by the use of forward-looking language such as "may," "will," "should," "expect," "plan," "anticipate," "believe," "estimate," "predict," "future," or "intend," or the negative of these terms or other variations or comparable terminology.

Actual results may vary materially from those in our forward-looking statements as a result of various factors that are identified in "Item 1A—Risk Factors" and "Item 2—Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere in this document. No assurance can be given that the risk factors described in this Quarterly Report on Form 10-Q are all of the factors that could cause actual results to vary materially from the forward-looking statements. All forward-looking statements speak only as of the date of this Quarterly Report on Form 10-Q. Readers should not place undue reliance on these forward-looking statements and are cautioned that any such forward-looking statements are not guarantees of future performance. We assume no obligation to update any forward-looking statements.

This Quarterly Report on Form 10-Q includes trademarks and registered trademarks of Dynavax Technologies Corporation. Products or service names of other companies mentioned in this Quarterly Report on Form 10-Q may be trademarks or registered trademarks of their respective owners. References herein to "we," "our," "us," "Dynavax" or the "Company" refer to Dynavax Technologies Corporation and, where appropriate, its subsidiary Dynavax GmbH.

ITEM 1. FINANCIAL STATEMENTS

Dynavax Technologies Corporation
Condensed Consolidated Balance Sheets
(In thousands, except per share amounts)

	September 30, 2019 (unaudited)	December 31, 2018 (Note 1)
Assets		
Current assets:		
Cash and cash equivalents	$ 37,297	$ 49,348
Marketable securities available-for-sale	137,649	96,188
Accounts and other receivables, net	8,822	3,704
Inventories, net	39,356	19,022
Prepaid expenses and other current assets	5,711	6,102
Total current assets	228,835	174,364
Property and equipment, net	31,461	17,064
Intangible assets, net	4,823	11,717
Operating lease right-of-use assets	29,723	-
Goodwill	2,045	2,144
Restricted cash	619	619
Other assets	3,509	4,976
Total assets	$ 301,015	$ 210,884
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	$ 7,660	$ 5,278
Accrued research and development	4,242	9,714
Accrued liabilities	17,003	16,041
Warrant liability	7,594	-
Other current liabilities	9,849	7,000
Total current liabilities	46,348	38,033
Long-term debt, net	177,615	100,871
Long-term portion of lease liabilities	36,964	-
Other long-term liabilities	932	8,915
Total liabilities	261,859	147,819
Commitments and contingencies (Note 6)		
Stockholders' equity:		
Preferred stock: $0.001 par value		
Authorized: 5,000 shares; Issued and outstanding:	-	-
Series B Convertible Preferred stock— 5 shares at September 30, 2019 and no shares at December 31, 2018	-	-
Common stock: $0.001 par value; 139,000 shares authorized at September 30, 2019 and December 31, 2018; 83,865 and 62,862 shares issued and outstanding at September 30, 2019 and December 31, 2018, respectively	84	63
Additional paid-in capital	1,224,228	1,131,241
Accumulated other comprehensive loss	(3,088)	(2,015)
Accumulated deficit	(1,182,068)	(1,066,224)
Total stockholders' equity	39,156	63,065
Total liabilities and stockholders' equity	$ 301,015	$ 210,884

See accompanying notes.

Dynavax Technologies Corporation
Condensed Consolidated Statements of Operations
(In thousands, except per share amounts)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Revenues:				
Product revenue, net	$ 10,158	$ 1,461	$ 24,086	$ 2,880
Other revenue	417	-	563	-
Total revenues	10,575	1,461	24,649	2,880
Operating expenses:				
Cost of sales - product	3,824	3,927	7,765	9,309
Cost of sales - amortization of intangible assets	2,324	3,823	6,894	8,538
Research and development	12,660	16,820	50,062	52,059
Selling, general and administrative	18,459	15,788	54,668	48,332
Restructuring	3,937	-	12,714	-
Total operating expenses	41,204	40,358	132,103	118,238
Loss from operations	(30,629)	(38,897)	(107,454)	(115,358)
Other income (expense):				
Interest income	890	1,047	2,604	2,940
Interest expense	(4,779)	(2,735)	(12,111)	(6,587)
Sublease income	891	-	891	-
Other income, net	168	57	226	75
Net loss	(33,459)	(40,528)	(115,844)	(118,930)
Preferred stock deemed dividend	(3,267)	-	(3,267)	-
Net loss allocable to common stockholders	$ (36,726)	$ (40,528)	$ (119,111)	$ (118,930)
Net loss per share allocable to common stockholders - basic and diluted	$ (0.49)	$ (0.65)	$ (1.75)	$ (1.91)
Weighted average shares used to compute basic and diluted net loss per share allocable to common stockholders	75,106	62,650	68,032	62,250

Condensed Consolidated Statements of Comprehensive Loss
(In thousands)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Net loss	$ (33,459)	$ (40,528)	$ (115,844)	$ (118,930)
Other comprehensive income (loss), net of tax:				
Unrealized (loss) gain on marketable securities available-for-sale	(71)	(10)	105	(15)
Foreign currency translation adjustments	(1,034)	(167)	(1,178)	(791)
Total other comprehensive loss	(1,105)	(177)	(1,073)	(806)
Total comprehensive loss	$ (34,564)	$ (40,705)	$ (116,917)	$ (119,736)

See accompanying notes.

Dynavax Technologies Corporation
Condensed Consolidated Statements of Stockholders' Equity
(In thousands)
(Unaudited)

	Common Stock		Preferred Stock					
Three Months Ended September 30, 2019	**Shares**	**Par Amount**	**Shares**	**Par Amount**	**Additional Paid-In Capital**	**Accumulated Other Comprehensive (Loss) Income**	**Accumulated Deficit**	**Total Stockholders' Equity**
Balances at June 30, 2019	65,155	$ 65	-	$ -	$ 1,161,115	$ (1,983)	$ (1,148,609)	10,588
Issuance of common stock upon exercise of stock options and restricted stock awards, net	138	-	-	-		-	-	-
Issuance of common stock under Employee Stock Purchase Plan	47	-	-	-	158	-	-	158
Issuance of common stock, net of issuance costs	18,525	19	-	-	46,146	-	-	46,165
Issuance of Series B convertible preferred stock, net of issuance costs	-	-	5	-	12,061	-	-	12,061
Stock compensation expense	-	-	-	-	4,748	-	-	4,748
Total other comprehensive loss	-	-	-	-	-	(1,105)	-	(1,105)
Net loss	-	-	-	-	-	-	(33,459)	(33,459)
Balances at September 30, 2019	83,865	$ 84	5	$ -	$ 1,224,228	$ (3,088)	$ (1,182,068)	$ 39,156
Nine Months Ended September 30, 2019								
Balances at December 31, 2018	62,862	$ 63	-	$ -	$ 1,131,241	$ (2,015)	$ (1,066,224)	$ 63,065
Issuance of common stock upon exercise of stock options and restricted stock awards, net	969	1	-	-	1	-	-	2
Issuance of common stock under Employee Stock Purchase Plan	122	-	-	-	565	-	-	565
Issuance of common stock, net of issuance costs	19,912	20	-	-	60,093	-	-	60,113
Issuance of Series B convertible preferred stock, net of issuance costs	-	-	5	-	12,061	-	-	12,061
Stock compensation expense	-	-	-	-	20,267	-	-	20,267
Total other comprehensive loss	-	-	-	-	-	(1,073)	-	(1,073)
Net loss	-	-	-	-	-	-	(115,844)	(115,844)
Balances at September 30, 2019	83,865	$ 84	5	$ -	$ 1,224,228	$ (3,088)	$ (1,182,068)	$ 39,156

	Common Stock		Preferred Stock					
Three Months Ended September 30, 2018	**Shares**	**Par Amount**	**Shares**	**Par Amount**	**Additional Paid-In Capital**	**Accumulated Other Comprehensive (Loss) Income**	**Accumulated Deficit**	**Total Stockholders' Equity**
Balances at June 30, 2018	62,608	$ 63	-	$ -	$ 1,118,487	$ (1,510)	$ (985,727)	$ 131,313
Issuance (withholding) of common stock upon exercise of stock options and restricted stock awards, net	16	-	-	-	20	-	-	20
Issuance of common stock under Employee Stock Purchase Plan	67	-	-	-	339	-	-	339
Stock compensation expense	-	-	-	-	6,046	-	-	6,046
Total other comprehensive loss	-	-	-	-	-	(177)	-	(177)
Net loss	-	-	-	-	-	-	(40,528)	(40,528)
Balances at September 30, 2018	62,691	$ 63	-	$ -	$ 1,124,892	$ (1,687)	$ (1,026,255)	$ 97,013
Nine Months Ended September 30, 2018								
Balances at December 31, 2017	61,533	$ 62	-	$ -	$ 1,107,693	$ (881)	$ (907,325)	$ 199,549
Issuance (withholding) of common stock upon exercise of stock options and restricted stock awards, net	1,033	1	-	-	(530)	-	-	(529)
Issuance of common stock under Employee Stock Purchase Plan	125	-	-	-	594	-	-	594
Stock compensation expense	-	-	-	-	17,135	-	-	17,135
Total other comprehensive loss	-	-	-	-	-	(806)	-	(806)
Net loss	-	-	-	-	-	-	(118,930)	(118,930)
Balances at September 30, 2018	62,691	$ 63	-	$ -	$ 1,124,892	$ (1,687)	$ (1,026,255)	$ 97,013

See accompanying notes.

Dynavax Technologies Corporation
Condensed Consolidated Statements of Cash Flows
(In thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2019	**2018**
Operating activities		
Net loss	$ (115,844)	$ (118,930)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	7,838	2,511
Amortization of right-of-use assets	2,742	-
Accretion of discounts on marketable securities	(1,293)	(1,146)
Revaluation of warrant liability	234	-
Stock compensation expense	20,267	17,135
Cost of sales - amortization of intangible assets	6,894	8,538
Non-cash interest expense	3,533	1,944
Tenant improvements provided by the landlord	6,639	-
Changes in operating assets and liabilities:		
Accounts and other receivables, net	(5,118)	(653)
Inventories, net	(20,334)	(12,140)
Prepaid expenses and other current assets	391	(907)
Other assets	1,467	(2,564)
Accounts payable	3,035	2,377
Lease liabilities	(1,340)	-
Accrued liabilities and other liabilities	(7,351)	6,164
Net cash used in operating activities	(98,240)	(97,671)
Investing activities		
Acquisition of technology licenses	(7,000)	(11,000)
Purchases of marketable securities	(181,148)	(187,808)
Proceeds from maturities of marketable securities	141,085	212,700
Purchases of property and equipment, net	(20,570)	(2,838)
Net cash (used in) provided by investing activities	(67,633)	11,054
Financing activities		
Proceeds from long-term debt, net	74,250	99,000
Proceeds from issuance of common stock, net	65,948	-
Proceeds from issuance of preferred stock, net	13,586	-
Proceeds (tax withholding) from exercise of stock options and restricted stock awards, net	2	(529)
Proceeds from Employee Stock Purchase Plan	565	594
Net cash provided by financing activities	154,351	99,065
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(529)	(327)
Net (decrease) increase in cash, cash equivalents and restricted cash	(12,051)	12,121
Cash, cash equivalents and restricted cash at beginning of period	49,967	27,213
Cash, cash equivalents and restricted cash at end of period	$ 37,916	$ 39,334
Supplemental disclosure of cash flow information		
Cash paid during the period for interest	$ 8,715	$ 4,643
Non-cash investing and financing activities:		
Disposal of fully depreciated property and equipment	$ 9,418	$ 199
Non-cash acquisition of technology license	$ -	$ 12,773
Purchases of property and equipment, not yet paid	$ 3,135	$ 759
Proceeds allocated to warrant liability at issuance	$ 7,360	$ -
Right-of-use assets obtained in exchange for operating lease liabilities	$ 39,104	$ -

See accompanying notes.

1. Organization and Summary of Significant Accounting Policies

Dynavax Technologies Corporation ("we," "our," "us," "Dynavax" or the "Company"), is a commercial stage biopharmaceutical company developing and commercializing novel vaccines. We launched our first product, HEPLISAV-B® [Hepatitis B Vaccine (Recombinant), Adjuvanted], in February 2018, following United States Food and Drug Administration ("FDA") approval for prevention of infection caused by all known subtypes of hepatitis B virus in adults age 18 years and older. We were incorporated in California in August 1996 under the name Double Helix Corporation, and we changed our name to Dynavax Technologies Corporation in September 1996. We reincorporated in Delaware in 2000.

On May 23, 2019, we implemented a strategic organizational restructuring, principally to align our operations around our vaccine business and significantly curtail further investment in our immuno-oncology business. In connection with the restructuring, we reduced our workforce by approximately 80 positions, or approximately 36%, of U.S.-based personnel. We expect the restructuring to be substantially complete and the related costs incurred and paid by December 31, 2019. We are exploring strategic alternatives for our immuno-oncology business.

Basis of Presentation

Our accompanying unaudited condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") for interim financial information and pursuant to the instructions to Form 10-Q and Article 10 of Regulation S-X. In our opinion, these unaudited condensed consolidated financial statements include all adjustments, consisting of normal recurring adjustments, which we consider necessary to present fairly our financial position and the results of our operations and cash flows. As permitted under those rules, certain footnotes or other financial information that are normally required by GAAP have been condensed or omitted. Interim-period results are not necessarily indicative of results of operations or cash flows to be expected for a full-year period or any other interim-period. The condensed consolidated balance sheet at December 31, 2018 has been derived from audited financial statements at that date, but excludes disclosures required by GAAP for complete financial statements.

The unaudited condensed consolidated financial statements and these notes should be read in conjunction with our Annual Report on Form 10-K for the year ended December 31, 2018, as filed with the Securities and Exchange Commission (the "SEC").

The unaudited condensed consolidated financial statements include the accounts of Dynavax and our wholly-owned subsidiary, Dynavax GmbH. All significant intercompany accounts and transactions among these entities have been eliminated from the condensed consolidated financial statements. We operate in one business segment: discovery, development and commercialization of novel vaccines.

Liquidity and Financial Condition

As of September 30, 2019, we had cash, cash equivalents and marketable securities of $174.9 million. As of September 30, 2019, the principal amount of our term loan was $179.1 million, including paid-in-kind interest. The term loan has a maturity date of December 31, 2023, unless earlier prepaid.

The Company has incurred losses and negative cash flows from operations since its inception and expects to incur operating losses for the foreseeable future as we continue to invest in commercialization of HEPLISAV-B. If we cannot generate a sufficient amount of revenue from product sales, we will need to finance our operations through strategic alliance and licensing arrangements and/or future public or private debt and equity financings. Adequate financing may not be available to us on acceptable terms, or at all.

As of June 30, 2019, there was substantial doubt about the Company's ability to continue as a going concern since it did not have sufficient financial resources available to fund its operations beyond the first quarter of 2020. In August 2019, the Company completed an underwritten public offering of common stock, non-voting preferred stock and warrants to purchase common stock resulting in net proceeds of $65.6 million. We currently anticipate that our cash, cash equivalents and short-term marketable securities as of September 30, 2019, and anticipated revenues from HEPLISAV-B will be sufficient to fund our operations for at least the next 12 months from the date of this filing.

Our ability to raise additional capital in the equity and debt markets, should we choose to do so, is dependent on a number of factors, including, but not limited to, the market demand for our common stock, which itself is subject to a number of development and business risks and uncertainties, our creditworthiness and the uncertainty that we would be able to raise such additional capital at a price or on terms that are favorable to us. Raising additional funds through the issuance of equity or debt securities could result in dilution to our existing stockholders, increased fixed payment obligations, or both. In addition, these securities may have rights senior to those of our common stock and could include covenants that would restrict our operations.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make informed estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements and accompanying notes. Management's estimates are based on historical information available as of the date of the condensed consolidated financial statements and various other assumptions we believe are reasonable under the circumstances. Actual results could differ materially from these estimates.

Summary of Significant Accounting Policies

Revenue Recognition

We recognize revenue when the customer obtains control of promised goods or services, in an amount that reflects the consideration which we expect to receive in exchange for those goods or services. To determine revenue recognition for arrangements that we determine are within the scope of Accounting Standards Codification ("ASC") 606, we perform the following five steps: (i) identify the contract(s) with a customer; (ii) identify the performance obligations in the contract; (iii) determine the transaction price; (iv) allocate the transaction price to the performance obligations in the contract; and (v) recognize revenue when (or as) we satisfy a performance obligation. We only apply the five-step model to contracts when it is probable that we will collect the consideration we are entitled to in exchange for the goods or services we transfer to the customer. At contract inception, once the contract is determined to be within the scope of ASC 606, we assess the goods or services promised within each contract and determine those that are performance obligations, and assess whether each promised good or service is distinct. We then recognize as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied.

Product Revenue, Net

We sell our product to a limited number of wholesalers and specialty distributors in the U.S. (collectively, our "Customers"). Revenues from product sales are recognized when we have satisfied our performance obligation, which is the transfer of control of our product upon delivery to the Customer. The timing between the recognition of revenue for product sales and the receipt of payment is not significant. Because our standard credit terms are short-term and we expect to receive payment in less than one-year, there is no financing component on the related receivables. Taxes collected from Customers relating to product sales and remitted to governmental authorities are excluded from revenues.

Overall, product revenue, net, reflects our best estimates of the amount of consideration to which we are entitled based on the terms of the contract. The amount of variable consideration is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. If our estimates differ significantly from actuals, we will record adjustments that would affect product revenue, net in the period of adjustment.

Reserves for Variable Consideration

Revenues from product sales are recorded at the net sales price, which includes estimates of variable consideration such as product returns, chargebacks, discounts, rebates and other fees that are offered within contracts between us and our Customers, healthcare providers, pharmacies and others relating to our product sales. We estimate variable consideration using either the most likely amount method or the expected value method, depending on the type of variable consideration and what method better predicts the amount of consideration we expect to receive. We take into consideration relevant factors such as industry data, current contractual terms, available information about Customers' inventory, resale and chargeback data and forecasted customer buying and payment patterns, in estimating each variable consideration. The variable consideration is recorded at the time product sales is recognized, resulting in a reduction in product revenue and a reduction in accounts receivable (if the Customer offsets the amount against its accounts receivable) or as an accrued liability (if we pay the amount through our accounts payable process). Variable consideration requires significant estimates, judgment and information obtained from external sources. The amount of variable consideration is included in the net sales price only to the extent that it is probable that a significant reversal in the amount of the cumulative revenue recognized will not occur in a future period. If our estimates differ significantly from actuals, we will record adjustments that would affect product revenue, net in the period of adjustment. If we were to change any of these judgments or estimates, it could cause a material increase or decrease in the amount of revenue that we report in a particular period. There have been no material adjustments to these estimates for the nine months ended September 30, 2019.

Product Returns: Consistent with industry practice, we offer our Customers a limited right of return based on the product's expiration date for product that has been purchased from us. We estimate the amount of our product sales that may be returned by our Customers and record this estimate as a reduction of revenue in the period the related product revenue is recognized. We consider several factors in the estimation of potential product returns including expiration dates of the product shipped, the limited product return rights, available information about Customers' inventory, shelf life of the product and other relevant factors.

Chargebacks: Our Customers subsequently resell our product to healthcare providers, pharmacies and others. In addition to distribution agreements with Customers, we enter into arrangements with qualified healthcare providers that provide for chargebacks and discounts with respect to the purchase of our product. Chargebacks represent the estimated obligations resulting from contractual commitments to sell product to qualified healthcare providers at prices lower than the list prices charged to Customers who directly purchase the product from us. Customers charge us for the difference between what they pay for the product and the ultimate selling price to the qualified healthcare providers. These reserves are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue and accounts receivable. Chargeback amounts are determined at the time of resale to the qualified healthcare providers by Customers, and we issue credits for such amounts generally within a few weeks of the Customer's notification to us of the resale. Reserves for chargebacks consists of credits that we expect to issue for units that remain in the distribution channel inventories at each reporting period end that we expect will be sold to the qualified healthcare providers, and chargebacks for units that our Customers have sold to the qualified healthcare providers, but for which credits have not been issued.

Trade Discounts and Allowances: We provide our Customers with discounts which include early payment incentives that are explicitly stated in our contracts, and are recorded as a reduction of revenue in the period the related product revenue is recognized.

Distribution Fees: Distribution fees include fees paid to certain Customers for sales order management, data and distribution services. Distribution fees are recorded as a reduction of revenue in the period the related product revenue is recognized.

Rebates: Under certain contracts, customers may obtain rebates for purchasing minimum volumes of our product. We estimate these rebates based upon the expected purchases and the contractual rebate rate and record this estimate as a reduction in revenue in the period the related revenue is recognized.

Collaboration and Manufacturing Service Revenue

We have entered into collaborative arrangements and arrangements to provide manufacturing services to other companies. Such arrangements may include promises to customers which, if capable of being distinct, are accounted for as separate performance obligations. For agreements with multiple performance obligations, we allocate estimated revenue to each performance obligation at contract inception based on the estimated transaction price of each performance obligation. Revenue allocated to each performance obligation is then recognized when we satisfy the performance obligation by transferring control of the promised good or service to the customer. Collaboration and manufacturing service revenue are recorded in other revenue in the condensed consolidated statements of operations.

Leases

On January 1, 2019, we adopted ASC 842, Leases, using the modified retrospective approach. Prior period amounts continue to be reported in accordance with our historic accounting under previous lease guidance, ASC 840, Leases. We elected the package of practical expedients which, among other things, allowed us to carry forward the historical lease classification of leases in place as of January 1, 2019. We have also elected the practical expedient to not separate lease components from non-lease components. As a result of adopting ASC 842, we recognized right-of-use asset and lease liabilities for operating leases of $34.8 million and $37.1 million, respectively on January 1, 2019. There was no adjustment to the opening balance of accumulated deficit as a result of the adoption of ASC 842.

We determine if an arrangement includes a lease at inception. Operating leases are included in operating lease right-of-use assets, other current liabilities and long-term portion of lease liabilities in our condensed consolidated balance sheets. Right-of-use assets represent our right to use an underlying asset during the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. Operating lease right-of-use assets and liabilities are recognized at the lease commencement date based on the present value of lease payments over the lease term. In determining the net present value of lease payments, we use our incremental borrowing rate which represents an estimated rate of interest that we would have to pay to borrow equivalent funds on a collateralized basis at the lease commencement date.

The operating lease right-of-use assets also include any lease payments made and exclude any lease incentives. Our leases may include options to extend or terminate the lease which are included in the lease term when it is reasonably certain that we will exercise any such options. Lease expense is recognized on a straight-line basis over the expected lease term. We have elected not to apply the recognition requirements of ASC 842 for short-term leases.

As lessors, we determine if an arrangement includes a lease at inception. We elected the practical expedient to not separate lease components from non-lease components. Rent revenue is recognized on a straight-line basis over the expected lease term and is included in other income (expense) in our condensed consolidated statements of operations.

Inventories

Inventory is stated at the lower of cost or estimated net realizable value, on a first-in, first-out, or FIFO, basis. We primarily use actual costs to determine our cost basis for inventories. Our assessment of market value requires the use of estimates regarding the net realizable value of our inventory balances, including an assessment of excess or obsolete inventory. We determine excess or obsolete inventory based on multiple factors, including an estimate of the future demand for our products, product expiration dates and current sales levels. Our assumptions of future demand for our products are inherently uncertain and if we were to change any of these judgments or estimates, it could cause a material increase or decrease in the amount of inventory reserves that we report in a particular period. For the nine months ended September 30, 2019, there was no inventory reserve recognized.

We consider regulatory approval of product candidates to be uncertain and product manufactured prior to regulatory approval may not be sold unless regulatory approval is obtained. As such, the manufacturing costs for product candidates incurred prior to regulatory approval are not capitalized as inventory but are expensed as research and development costs. We begin capitalization of these inventory related costs once regulatory approval is obtained.

HEPLISAV-B was approved by the FDA on November 9, 2017, at which time we began to capitalize inventory costs associated with the vial presentation of HEPLISAV-B. In March 2018, we received regulatory approval of the pre-filled syringe ("PFS") presentation of HEPLISAV-B. Prior to FDA approval of HEPLISAV-B, all costs related to the manufacturing of HEPLISAV-B that could potentially be available to support the commercial launch of our products, were charged to research and development expense in the period incurred as there was no alternative future use. Prior to regulatory approval of PFS, costs associated with resuming operating activities at the Düsseldorf manufacturing facility were also included in research and development expense. Subsequent to regulatory approval of PFS, costs associated with resuming manufacturing activities at the Düsseldorf facility were included in cost of sales – product, until commercial production resumed in mid-2018 at which time these costs were recorded as raw materials inventory.

Research and Development Expenses and Accruals

Research and development expenses include personnel and facility-related expenses, outside contracted services including clinical trial costs, manufacturing and process development costs, research costs and other consulting services and non-cash stock-based compensation. Research and development costs are expensed as incurred. Amounts due under contracts with third parties may be either fixed fee or fee for service, and may include upfront payments, monthly payments and payments upon the completion of milestones or receipt of deliverables. Non-refundable advance payments under agreements are capitalized and expensed as the related goods are delivered or services are performed.

We contract with third parties to perform various clinical trial activities in the on-going development of potential products. The financial terms of these agreements are subject to negotiation, vary from contract to contract and may result in uneven payment flows to our vendors. Payments under the contracts depend on factors such as the achievement of certain events, successful enrollment of patients, and completion of portions of the clinical trial or similar conditions. Our accrual for clinical trials is based on estimates of the services received and efforts expended pursuant to contracts with clinical trial centers and clinical research organizations. We may terminate these contracts upon written notice and we are generally only liable for actual effort expended by the organizations to the date of termination, although in certain instances we may be further responsible for termination fees and penalties. We estimate research and development expenses and the related accrual as of each balance sheet date based on the facts and circumstances known to us at that time. There have been no material adjustments to the prior period accrued estimates for clinical trial activities for the nine months ended September 30, 2019.

Restructuring

Restructuring costs are comprised of severance, other termination benefit costs, stock-based compensation expense for stock award and stock option modifications related to workforce reductions and accelerated depreciation. We recognize restructuring charges when the liability is probable and the amount is estimable. Employee termination benefits are accrued at the date management has committed to a plan of termination and affected employees have been notified of their termination date and expected severance benefits.

Recent Accounting Pronouncements

Accounting Standards Update 2016-13

In June 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses of Financial Instruments. The standard changes the methodology for measuring credit losses on financial instruments and the timing of when such losses are recorded. In April 2019, the FASB issued targeted clarification to ASU No. 2016-13 within ASU No. 2019-04. In May 2019, the FASB issued targeted transition relief to ASU No. 2016-13 within ASU No. 2019-05. These ASUs are effective for annual periods beginning after December 15, 2019 with early adoption permitted. We are currently evaluating the impact this standard will have on our condensed consolidated financial statements.

Accounting Standards Update 2017-04

In January 2017, the FASB issued ASU No. 2017-04, Intangibles – Goodwill and Other (Topic 350), which simplifies the test for goodwill impairment by eliminating a previous requirement to calculate the implied fair value of goodwill to measure a goodwill impairment charge. The ASU is effective for annual periods beginning after December 15, 2019 with early adoption permitted. The adoption is not expected to have a material impact on our condensed consolidated financial statements.

Accounting Standards Update 2018-13

In August 2018, the FASB issued ASU No. 2018-13, Fair Value Measurement (Topic 820), that eliminates, adds and modifies certain disclosure requirements of fair value measurements. 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, but public companies will be required to disclose the range and weighted average used to develop significant unobservable inputs for Level 3 fair value measurements. The ASU is effective for annual periods beginning after December 15, 2019 with early adoption permitted. The adoption of this standard is not expected to have a material impact on our condensed consolidated financial statements.

Accounting Standards Update 2018-15

In August 2018, the FASB issued ASU No. 2018-15, Intangibles – Goodwill and Other –Internal-Use Software (Subtopic 350-40). This ASU requires a customer in a cloud computing arrangement (i.e. hosting arrangement) that is a service contract to follow the internal-use software guidance in ASC 350-40 to determine which implementation costs to capitalize as assets or expense as incurred. ASC 350-40 requires that certain costs incurred during the application development stage be capitalized and other costs incurred during the preliminary project and post-implementation stages be expensed as incurred. The ASU is effective for annual periods beginning after December 15, 2019 with early adoption permitted. The adoption of this standard is not expected to have a material impact on our condensed consolidated financial statements.

2. Fair Value Measurements

We measure fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The accounting standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value which are the following:

- Level 1—Observable inputs, such as quoted prices in active markets for identical assets or liabilities;
- Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities; and
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities; therefore, requiring an entity to develop its own valuation techniques and assumptions.

Assets and liabilities are classified based on the lowest level of input that is significant to the fair value measurements. We review the fair value hierarchy classification on a quarterly basis. Changes in the ability to observe valuation inputs may result in a reclassification of levels for certain assets or liabilities within the fair value hierarchy.

The carrying amounts of cash equivalents, accounts and other receivables, accounts payable and accrued liabilities are considered reasonable estimates of their respective fair value because of their short-term nature.

Recurring Fair Value Measurements

The following table represents the fair value hierarchy for our financial assets (cash equivalents and marketable securities) and liabilities measured at fair value on a recurring basis (in thousands):

	Level 1	Level 2	Level 3	Total
September 30, 2019				
Assets				
Money market funds	$ 33,732	$ -	$ -	$ 33,732
U.S. treasuries	-	1,497	-	1,497
U.S. government agency securities	-	58,719	-	58,719
Corporate debt securities	-	77,433	-	77,433
Total assets	$ 33,732	$ 137,649	$ -	$ 171,381
Liabilities				
Warrant liability	$ -	$ -	$ 7,594	$ 7,594
Sublicense liability	-	-	6,791	6,791
Total liabilities	$ -	$ -	$ 14,385	$ 14,385

	Level 1	Level 2	Level 3	Total
December 31, 2018				
Assets				
Money market funds	$ 44,002	$ -	$ -	$ 44,002
U.S. treasuries	-	14,724	-	14,724
U.S. government agency securities	-	42,372	-	42,372
Corporate debt securities	-	41,291	-	41,291
Total assets	$ 44,002	$ 98,387	$ -	$ 142,389
Liabilities				
Sublicense liability	$ -	$ -	$ 6,320	$ 6,320

Money market funds are highly liquid investments and are actively traded. The pricing information on these investment instruments is readily available and can be independently validated as of the measurement date. This approach results in the classification of these securities as Level 1 of the fair value hierarchy.

U.S. treasuries, U.S. government agency securities and corporate debt securities are measured at fair value using Level 2 inputs. We review trading activity and pricing for these investments as of each measurement date. When sufficient quoted pricing for identical securities is not available, we use market pricing and other observable market inputs for similar securities obtained from various third-party data providers. These inputs represent quoted prices for similar assets in active markets or these inputs have been derived from observable market data. This approach results in the classification of these securities as Level 2 of the fair value hierarchy.

There were no transfers between Level 1 and Level 2 during the nine months ended September 30, 2019.

Warrants were issued in connection with the underwritten public offering in August 2019 and are accounted for as a derivative liability at fair value. See Note 11. The fair value of the warrant liability is estimated using the Black-Scholes model which requires assumptions such as expected term, expected volatility and risk-free interest rate. These assumptions are subjective and require judgement to develop. Expected term is estimated using the full remaining contractual term of the warrants. We determine expected volatility based on our historical common stock price volatility. The warrant liability is classified as a Level 3 instrument as its value is based on unobservable inputs that are supported by little or no market activity.

As of September 30, 2019, we used the following key assumptions to estimate the fair value of warrant liability:

Number of shares	5,841,250
Expected term	2.4 years
Expected volatility	0.7
Risk-free interest rate	1.6%
Dividend yield	0%

The following table provides a summary of changes in the fair value warrant liability for nine month ended September 30, 2019 (in thousands):

Balance at December 31, 2018	$ -
Fair value of warrant liability at issuance date	7,360
Increase in estimated fair value of warrant liability upon revaluation	234
Balance at September 30, 2019	$ 7,594

As of September 30, 2019, we measured the fair value of our $7.0 million payment to Merck Sharpe & Dohme Corp., which is due in the first quarter of 2020, based on Level 3 inputs due to the use of unobservable inputs that cannot be corroborated by observable market data. We estimated the fair value of the liability using a discounted cash flow technique using the effective interest rate on our term loan. The liability had a fair value of $6.8 million as of September 30, 2019.

3. Cash, Cash Equivalents, Restricted Cash and Marketable Securities

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within the condensed consolidated balance sheet that sum to the total of the same amounts shown in the condensed consolidated statements of cash flows (in thousands):

	September 30, 2019	December 31, 2018	September 30, 2018	December 31, 2017
Cash and cash equivalents	$ 37,297	$ 49,348	$ 38,712	$ 26,584
Restricted cash	619	619	622	629
Total cash, cash equivalents and restricted cash shown in the condensed consolidated statements of cash flows	$ 37,916	$ 49,967	$ 39,334	$ 27,213

Restricted cash balances relate to certificates of deposit issued as collateral to certain letters of credit issued as security to our facility leases. See Note 6.

Cash, cash equivalents and marketable securities consist of the following (in thousands):

	Amortized Cost	Unrealized Gains	Unrealized Losses	Estimated Fair Value
September 30, 2019				
Cash and cash equivalents:				
Cash	$ 3,565	$ -	$ -	$ 3,565
Money market funds	33,732	-	-	33,732
Total cash and cash equivalents	37,297	-	-	37,297
Marketable securities available-for-sale:				
U.S. treasuries	1,495	2	-	1,497
U.S. government agency securities	58,718	23	(22)	58,719
Corporate debt securities	77,399	42	(8)	77,433
Total marketable securities available-for-sale	137,612	67	(30)	137,649
Total cash, cash equivalents and marketable securities	$ 174,909	$ 67	$ (30)	$ 174,946
December 31, 2018				
Cash and cash equivalents:				
Cash	$ 3,147	$ -	$ -	$ 3,147
Money market funds	44,002	-	-	44,002
Corporate debt securities	2,199	-	-	2,199
Total cash and cash equivalents	49,348	-	-	49,348
Marketable securities available-for-sale:				
U.S. treasuries	14,732	-	(8)	14,724
U.S. government agency securities	42,416	-	(44)	42,372
Corporate debt securities	39,108	-	(16)	39,092
Total marketable securities available-for-sale	96,256	-	(68)	96,188
Total cash, cash equivalents and marketable securities	$ 145,604	$ -	$ (68)	$ 145,536

The maturities of our marketable securities available-for-sale are as follows (in thousands):

	September 30, 2019	
	Amortized Cost	Estimated Fair Value
Mature in one year or less	$ 117,130	$ 117,178
Mature after one year through two years	20,482	20,471
	$ 137,612	$ 137,649

There were no realized gains or losses from the sale of marketable securities during the nine months ended September 30, 2019 and 2018.

We have classified our entire investment portfolio as available-for-sale and available for use in current operations and accordingly have classified all investments as short-term. Available-for-sale securities are carried at fair value based on inputs that are observable, either directly or indirectly, such as quoted market prices for similar securities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the securities, with unrealized gains and losses included in accumulated other comprehensive loss in stockholders' equity. Realized gains and losses and declines in value, if any, judged to be other than temporary on available-for-sale securities are included in interest income or expense. The cost of securities sold is based on the specific identification method. Management assesses whether declines in the fair value of investment securities are other than temporary. In determining whether a decline is other than temporary, management considers the following factors:

- whether the investment has been in a continuous realized loss position for over 12 months;
- the duration to maturity of our investments;
- our intention and ability to hold the investment to maturity and if it is not more likely than not that we will be required to sell the investment before recovery of the amortized cost bases;
- the credit rating, financial condition and near-term prospects of the issuer; and
- the type of investments made.

To date, there have been no declines in fair value that have been identified as other than temporary.

4. Inventories, net

The following table presents inventories (in thousands):

	September 30, 2019	December 31, 2018
Raw materials	$ 20,461	$ 12,111
Work-in-process	17,409	6,562
Finished goods	1,486	349
Total	$ 39,356	$ 19,022

5. Intangible Assets, net

Intangible assets are related to certain capitalized milestone and sublicense payments. The following table presents intangible assets (in thousands):

	September 30, 2019	December 31, 2018
Intangible assets	$ 19,773	$ 19,773
Less accumulated amortization	(14,950)	(8,056)
Total	$ 4,823	$ 11,717

We recorded $2.3 million and $3.8 million of cost of sales - amortization of intangible assets for the three months ended September 30, 2019 and 2018, respectively. We recorded $6.9 million and $8.5 million as cost of sales - amortization of intangible assets for the nine months ended September 30, 2019 and 2018, respectively. See Note 7.

6. Commitments and Contingencies

Leases

As described in Note 1, we adopted ASC 842 as of January 1, 2019. We evaluated our contracts and have determined that, effective upon the adoption of ASC 842, our operating leases included equipment, office/laboratory and manufacturing facility leases.

We lease our facilities in Emeryville, California and Düsseldorf, Germany.

In July 2019, we entered into a sublease for office space located at 2100 Powell Street, Emeryville, California (the "Powell Street Sublease") and the lease for our former corporate headquarters at 2929 Seventh Street, Berkeley, California was terminated effective August 31, 2019. Under the terms of the Powell Street Sublease, we are leasing 23,976 square feet at the rate of $3.90 per square foot, paid on a monthly basis. Rent is subject to scheduled annual increases and we are responsible for certain operating expenses and taxes throughout the life of the Powell Street Sublease. The Powell Street Sublease will continue until June 30, 2022. There is no option to extend the sublease term.

On September 17, 2018, we entered into a lease ("Horton Street Master Lease") for office and laboratory space located at 5959 Horton Street, Emeryville, California ("Horton Street Premises"). Under the terms of the Horton Street Master Lease, we are leasing 75,662 square feet at Horton Street Premises at the rate of $4.75 per square foot, paid on a monthly basis, starting on April 1, 2019 ("Commencement Date"). Rent is subject to scheduled annual increases, and we are also responsible for certain operating expenses and taxes throughout the life of Horton Street Master Lease. In connection with the Horton Street Master Lease, we are entitled to a tenant improvement allowance of up to $8.3 million. The Horton Street Master Lease has an initial term of 12 years, following the Commencement Date with an option to extend the lease for two successive five-year terms. The optional periods were not included in the lease term used in determining the right-of-use asset or the lease liability as we did not consider it reasonably certain that we would exercise the options. The operating lease right-of-use assets and liabilities on our September 30, 2019 condensed consolidated balance sheets primarily relate to the Horton Street Master Lease.

In July 2019, we entered into an agreement to sublease the Horton Street Premises to another company ("Horton Street Sublease"). We had previously intended to use the Horton Street Premises as our new corporate headquarters. In connection with the organizational restructuring (see Note 13), we do not intend to occupy any of the Horton Street Premises. Under the terms of the Horton Street Sublease, we are subleasing the entire 75,662 rentable square feet at the rate of $5.50 per square foot, paid on a monthly basis. Rent is subject to scheduled annual increases and the subtenant ("Subtenant") is responsible for certain operating expenses and taxes throughout the life of the Horton Street Sublease. The Horton Street Sublease will continue until March 31, 2031, unless earlier terminated, concurrent with the term of our Horton Street Master Lease. The Subtenant has no option to extend the sublease term. For the three and nine months ended September 30, 2019, we recognized $0.9 million of sublease income included in other income (expense) in our condensed consolidated statements of operations.

Under the terms of the Horton Street Master Lease, rent received from the Subtenant in excess of rent paid to the landlord shall be shared by paying the landlord 50% of the excess rent. The excess rent is considered a variable lease payment and the total estimated payments are being recognized as additional rent expense on a straight-line basis.

Our lease expense comprises of the following (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Operating lease expense	$ 1,789	$ 821	$ 5,274	$ 2,212

Cash paid for amounts included in the measurement of lease liabilities for the nine months ended September 30, 2019 was $3.8 million and was included in operating cash flows in our condensed consolidated statement of cash flows.

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

	September 30, 2019	December 31, 2018
Operating lease liabilities:		
Current portion of lease liabilities (included in other current liabilities)	$ 3,058	$ -
Long-term portion of lease liabilities	36,964	-
Total operating lease liabilities	$ 40,022	$ -

At September 30, 2019, the maturities of our sublease income and operating lease liabilities were as follows (in thousands):

Years ending December 31,	Sublease Income	Operating Lease Liabilities
2019 (remaining)	$ -	$ 1,723
2020	4,446	7,007
2021	5,202	6,935
2022	5,358	6,185
2023	5,519	4,946
Thereafter	45,285	39,523
Total	$ 65,810	66,319
Less:		
Present value adjustment		(26,297)
Total		$ 40,022

As of September 30, 2019, the weighted average remaining lease term is 9.8 years and the weighted average discount rate used to determine the operating lease liability was 10.1%.

Commitments

In February 2018, we entered into a $175.0 million term loan agreement. Borrowings under the term loan agreement in the amount of $179.1 million, which includes paid-in-kind interest, are payable at maturity on December 31, 2023, unless earlier prepaid. See Note 8.

In February 2018, we entered into a sublicense agreement with Merck Sharpe & Dohme Corp (“Merck”). Under the agreement, we are required to make a payment of $7.0 million in the first quarter of 2020. See Note 7.

As of September 30, 2019, our material non-cancelable purchase and other commitments, for the supply of HEPLISAV-B and for clinical research, totaled $13.0 million.

Contingencies

From time to time, we may be involved in claims, suits, and proceedings arising from the ordinary course of our business, including actions with respect to intellectual property claims, commercial claims, and other matters. Such claims, suits, and proceedings are inherently uncertain and their results cannot be predicted with certainty. Regardless of the outcome, such legal proceedings can have an adverse impact on us because of legal costs, diversion of management resources, and other factors. In addition, it is possible that a resolution of one or more such proceedings could result in substantial damages, fines, penalties or orders requiring a change in our business practices, which could in the future materially and adversely affect our financial position, results of operations, or cash flows in a particular period.

In conjunction with a financing arrangement with Symphony Dynamo, Inc. and Symphony Dynamo Holdings LLC (“Holdings”) in November 2009, we agreed to make contingent cash payments to Holdings equal to 50% of the first $50 million from any upfront, pre-commercialization milestone or similar payments received by us from any agreement with any third-party with respect to the development and/or commercialization of cancer and hepatitis C therapies originally licensed to Symphony Dynamo, Inc., including SD-101. We have made no payments and have not recorded a liability as of September 30, 2019.

7. Collaborative Research, Development and License Agreements

Serum Institute of India Pvt. Ltd.

In June 2017, we entered into an agreement to provide Serum Institute of India Pvt. Ltd. (“SIIPL”) with technical support. In consideration, SIIPL agreed to pay us at an agreed-upon hourly rate for services and reimburse certain out-of-pocket expenses. In addition, we have rights to commercialization of certain potential products manufactured at the SIIPL facility. For the nine months ended September 30, 2019, we recognized collaboration revenue of $0.1 million. No collaborative revenue was recognized for the comparative prior period.

Merck, Sharp & Dohme Corp.

In February 2018, we entered into a Sublicense Agreement (the "Sublicense Agreement") with Merck. The Sublicense Agreement grants us, under certain non-exclusive U.S. patent rights controlled by Merck which relate to recombinant production of hepatitis B surface antigen, the right to manufacture, use, offer for sale, sell and import HEPLISAV-B in the United States and includes the right to grant further sublicenses. Under the terms of the Sublicense Agreement, we are obligated to pay $21.0 million in three installments. The first and second installment of $7.0 million each was paid in February 2018 and February 2019, respectively and the remaining payment of $7.0 million is due in the first quarter of 2020. The payment in 2020 is classified on the condensed consolidated balance sheets as other current liabilities. At September 30, 2019 and December 31, 2018, the intangible asset, net balance was $4.8 million and $11.7 million, respectively. See Note 5. The Sublicense Agreement continues to be in effect through April 2020, at which time the license becomes perpetual, irrevocable, fully paid-up and royalty free.

8. Long-Term Debt

On February 20, 2018, we entered into a $175.0 million term loan agreement ("Loan Agreement") with CRG Servicing LLC. We borrowed $100.0 million (the "Initial Term Loan") under the Loan Agreement at closing and the remaining $75.0 million (the "Second Tranche Term Loan") in March 2019 (collectively, "Term Loans"). Net proceeds from the Initial Term Loan and Second Tranche Term Loan were $99.0 million and $74.3 million, respectively. The Term Loans under the Loan Agreement bear interest at a rate equal to 9.5% per annum. At September 30, 2019, the effective interest rate was 10.3%. At our option, until September 30, 2023, a portion of the interest payments may be paid in kind, and thereby added to the principal. Through September 30, 2019, a portion of our interest was paid in kind, which increased the principal amount of the Term Loans to $179.1 million. The Term Loans have a maturity date of December 31, 2023, unless earlier prepaid. The Term Loans and paid-in-kind interest will be entirely payable at maturity.

In August 2019, we entered into a second amendment to the Loan Agreement (the "Second Amendment"). The Second Amendment amended the annual net sales threshold for sales of HEPLISAV-B, revising the twelve-month measurement periods from beginning on January 1 of each year to beginning on July 1 of each year (including 2019), and removing this requirement for the period subsequent to July 1, 2022. The Second Amendment also revised the fee payable upon partial prepayment or at maturity of the Term Loans from 3% to 4% of the aggregate principal amounts.

The obligations under the Loan Agreement are secured, subject to customary permitted liens and other agreed upon exceptions, by a perfected security interest in (i) all tangible and intangible assets of the Company and any future subsidiary guarantors, except for certain customary excluded property, and (ii) all of the capital stock owned by the Company and such future subsidiary guarantors (limited, in the case of the stock of certain non-U.S. subsidiaries of the Company and certain U.S. subsidiaries substantially all of whose assets consist of equity interests in non-U.S. subsidiaries, to 65% of the capital stock of such subsidiaries, subject to certain exceptions). The obligations under the Loan Agreement will be guaranteed by each of the Company's future direct and indirect subsidiaries (other than certain non-U.S. subsidiaries of the Company and certain U.S. subsidiaries substantially all of whose assets consist of equity interests in non-U.S. subsidiaries, subject to certain exceptions). The Loan Agreement contains customary covenants and requires us to comply with a $15.0 million daily minimum combined cash and investment balance covenant and a twelve-month period revenue requirement starting on July 1, 2019 for sales of HEPLISAV-B.

The Term Loans may be prepaid by us at any time. If the Term Loans are prepaid prior to the second anniversary of the initial borrowing date, we are subject to a repayment premium of up to 7.0% of the principal amount prepaid, depending on the date of prepayment.

We recorded $4.7 million and $2.6 million of interest expense related to the Term Loans during the three months ended September 30, 2019 and 2018, respectively. We recorded $11.8 million and $6.2 million of interest expense related to the Term Loans during the nine months ended September 30, 2019 and 2018, respectively.

9. Revenue Recognition

All of our product revenue consisted of sales of HEPLISAV-B in the U.S. For the nine months ended September 30, 2019 and 2018, our three largest Customers collectively represented approximately 63% and 68% of our product revenue, respectively. The following table summarizes balances and activity in each of the product revenue allowance and reserve categories for the nine months ended September 30, 2019 (in thousands):

	Chargebacks, distribution fees, discounts and other fees	Returns	Total
Balance at December 31, 2018	$ 1,736	$ 569	$ 2,305
Provision related to current period sales	10,937	1,724	12,661
Credit or payments made during the period	(8,689)	(408)	(9,097)
Balance at September 30, 2019	$ 3,984	$ 1,885	$ 5,869

Reserves for chargebacks and discounts totaling $2.7 million were recorded as reductions of accounts receivable at September 30, 2019. The remaining reserves balances totaling $3.2 million were recorded as accrued liabilities at September 30, 2019.

10. Net Loss Per Share

Basic net loss per share allocable to common stockholders is calculated by dividing the net loss allocable to common stockholders by the weighted-average number of common shares outstanding during the period. Diluted net loss per share allocable to common stockholders is computed by dividing the net loss allocable to common stockholders by the weighted-average number of common shares outstanding during the period and giving effect to all potentially dilutive common shares using the treasury-stock method. For purposes of this calculation, outstanding options, stock awards, warrants and Series B Convertible Preferred Stock are considered to be potentially dilutive common shares and are only included in the calculation of diluted net loss per share allocable to common stockholders when their effect is dilutive.

As of September 30, 2019, stock options and stock awards, Series B Convertible Preferred Stock (on an as converted to common stock basis) and warrants (as exercisable into common stock), totaling approximately 10,065,000, 4,840,000 and 5,841,250 shares of common stock, respectively were excluded from the calculation of diluted net loss per share for the three and nine months ended September 30, 2019, because the effect of their inclusion would have been anti-dilutive. As of September 30, 2018, stock options and stock awards, totaling approximately 12,892,000 shares of common stock were excluded from the calculation of diluted net loss per share for the three and nine months ended September 30, 2018, because the effect of their inclusion would have been anti-dilutive. For periods in which we have a net loss and no instruments are determined to be dilutive, such as the three and nine months ended September 30, 2019 and 2018, basic and diluted net loss per share are the same.

11. Common Stock, Preferred Stock and Warrants

Common Stock Outstanding

As of September 30, 2019, there were 83,865,119 shares of our common stock outstanding.

In August 2019, we sold (i) 18,525,000 shares of our common stock, par value $0.001 per share, (ii) 4,840 shares of our Series B Preferred Stock, par value $0.001 per share ("Series B Preferred Stock") and (iii) warrants to purchase up to an aggregate of 5,841,250 shares of our common stock in an underwritten public offering (the "Offering"). Each share of common stock was sold together with a warrant to purchase 0.25 shares of common stock, at a combined price of $3.00 per share of common stock and the accompanying warrant. Each share of Series B Preferred Stock was sold together with a warrant to purchase 250 shares of common stock, at a combined price of $3,000 per share and the accompanying warrant. Proceeds from the Offering were approximately $65.6 million, net of issuance costs of $4.5 million.

On November 3, 2017, we entered into an At Market Sales Agreement ("2017 ATM Agreement") with Cowen and Company, LLC ("Cowen") under which we may offer and sell from time to time at our sole discretion, shares of our common stock having an aggregate offering price up to $150 million through Cowen as our sales agent. We pay Cowen a commission of up to 3% of the gross sales proceeds of any common stock sold through Cowen under the 2017 ATM Agreement. For the nine months ended September 30, 2019, we received net cash proceeds of $13.9 million resulting from sales of 1,386,906 shares of our common stock. As of September 30, 2019, we have $118.6 million remaining under the 2017 ATM Agreement.

Preferred Stock Outstanding

As of September 30, 2019, there were 4,840 shares of Series B Preferred Stock outstanding.

Each share of Series B Preferred Stock is convertible into 1,000 shares of common stock at any time at the holder's option. However, the holder is prohibited from converting the Series B Preferred Stock into shares of common stock if, as a result of such conversion, the holder and its affiliates would own more than 4.99% of the total number of shares of common stock then issued and outstanding, which percentage may be changed at the holders' election to a higher or lower percentage (not to exceed 19.99%) upon 61 days' notice to the Company. In the event of liquidation, dissolution, or winding up, the holder of Series B Preferred Stock will receive payment on shares of Series B Preferred Stock (determined on an as-converted to common stock basis) equal to the amount that would be paid on our common stock. Shares of Series B Preferred Stock generally have no voting rights, except as required by law and except that the consent of holders of a majority of the outstanding Series B Preferred Stock is required to amend the terms of the Series B Preferred Stock. Holders of Series B Preferred Stock are not entitled to receive any dividends, unless and until specifically declared by our board of directors. The Series B Preferred Stock ranks on parity with our common stock as to distributions of assets upon liquidation, dissolution or winding up. The Series B Preferred Stock may rank senior to, on parity with or junior to any class or series of capital stock created in the future depending upon the specific terms of such future stock issuance.

The fair value of the common stock into which the Series B Preferred Stock is convertible exceeded the allocated purchase price of the Series B Preferred Stock by $3.3 million on the date of issuance, for which we recorded a deemed dividend. We recognized a deemed dividend equal to the number of common stock into which the Series B Preferred Stock is convertible multiplied by the difference between the value of the common stock and the Series B Preferred Stock conversion price per share on the date of issuance, which is the date the stock first became convertible. The dividend was reflected as a one-time, non-cash, deemed dividend to the holders of Series B Preferred Stock on the date of issuance.

Warrants

As of September 30, 2019, the following common stock warrants were outstanding:

Warrants Issuance Date	Shares Issuable (in thousands)	Expiration Date	Exercise Price per Share	Outstanding as of September 30, 2019 (in thousands)
August 12, 2019	5,841	February 12, 2022	$ 4.50	5,841

Warrants were exercisable upon issuance. The holder is prohibited from exercising these warrants if, as a result of such exercise, the holder and its affiliates, would own more than 4.99% of the total number of shares of common stock then issued and outstanding, which percentage may be changed at the holders' election to a higher or lower percentage (not to exceed 19.99%) upon 61 days' notice to the Company.

The warrants contain provisions that may obligate us to repurchase them for an amount that does not represent fair value in the event of a change of control. Due to this provision, the warrants do not meet the criteria to be considered indexed to our own stock. Accordingly, we recorded the warrants as a derivative liability at fair value of $7.4 million on the issuance date, which was estimated using the Black-Scholes model.

The warrants will be revalued at each reporting period using the Black-Scholes model and the change in the fair value of the warrants will recognized as other income (expense) in the condensed consolidated statements of operations. At September 30, 2019, the estimated fair value of warrant liability was $7.6 million. For the three and nine months ended September 30, 2019, we recognized the $0.2 million increase in the estimated fair value as a loss on warrant liability in other income, net in our condensed consolidated statements of operations.

12. Equity Plans and Stock-Based Compensation

Our 2018 Equity Incentive Plan (the "2018 EIP") is intended to be the successor to and continuation of the Dynavax Technologies Corporation 2011 Equity Incentive Plan (the "2011 EIP"). The aggregate number of shares of our common stock that may be issued under the 2018 EIP (subject to adjustment for certain changes in capitalization) is comprised of the sum of (i) 5,000,000 newly reserved shares of common stock, (ii) 140,250 unallocated shares of common stock remaining available for grant under the 2011 EIP as of May 31, 2018, and (iii) 7,477,619 shares subject to outstanding stock awards granted under the 2011 EIP and the Dynavax Technologies Corporation 2017 Inducement Award Plan that may become available from time to time as set forth in the 2018 EIP. The 2018 EIP provides for the issuance of up to 12,617,869 shares of our common stock to our employees and directors.

On May 30, 2019, our stockholders approved an amendment to 2018 Equity Incentive Plan (the "Amended 2018 EIP") to, among other things, increase the aggregate number of shares of common stock authorized for issuance by 2,300,000. Under the Amended 2018 EIP, the aggregate number of shares of our common stock that may be issued to employees and directors (subject to adjustment for certain changes in capitalization) is 14,917,869.

Option activity under our stock-based compensation plans during the nine months ended September 30, 2019 was as follows (in thousands except per share amounts):

	Shares Underlying Outstanding Options	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Balance at December 31, 2018	5,750	$ 18.20		
Options granted	3,025	6.94		
Options exercised	(10)	5.75		
Options cancelled:				
Options forfeited (unvested)	(632)	12.53		
Options expired (vested)	(136)	16.77		
Balance at September 30, 2019	7,997	$ 14.43	4.57	$ 6
Vested and expected to vest at September 30, 2019	7,692	$ 14.70	4.51	$ 5
Exercisable at September 30, 2019	4,485	$ 18.40	3.57	$ -

Restricted stock unit activity under our stock-based compensation plans during the nine months ended September 30, 2019 was as follows (in thousands except per share amounts):

	Number of Shares	Weighted-Average Grant-Date Fair Value Per Share
Non-vested as of December 31, 2018	1,594	$ 8.82
Granted	1,823	8.80
Vested	(964)	6.72
Forfeited	(385)	11.24
Non-vested as of September 30, 2019	2,068	$ 9.33

The aggregate intrinsic value of the restricted stock units outstanding as of September 30, 2019, based on our stock price on that date was $7.4 million. Fair value of restricted stock units is determined at the date of grant using our closing stock price.

As of September 30, 2019, approximately 155,000 shares underlying stock options and approximately 111,000 restricted stock unit awards with performance-based vesting criteria were outstanding.

Under our stock-based compensation plans, option awards generally vest over a three or four-year period contingent upon continuous service, and expire seven to ten years from the date of grant (or earlier upon termination of continuous service). The fair value-based measurement of each option is estimated on the date of grant using the Black-Scholes option valuation model.

The fair value-based measurements and weighted-average assumptions used in the calculations of these measurements are as follows:

	Stock Options Three Months Ended September 30,		Stock Options Nine Months Ended September 30,		Employee Stock Purchase Plan Nine Months Ended September 30,	
	2019	2018	2019	2018	2019	2018
Weighted-average fair value per share	$ 2.74	$ 9.36	$ 4.61	$ 10.91	$ 2.72	$ 8.30
Risk-free interest rate	1.6%	2.8%	2.2%	2.6%	1.9%	2.4%
Expected life (in years)	4.5	4.5	4.5	4.5	1.3	1.3
Volatility	0.9	0.9	0.9	0.9	0.7	1.1

The components of stock-based compensation expense were (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Research and development	$ 1,661	$ 2,332	$ 5,817	$ 7,194
Selling, general and administrative	2,278	2,976	7,828	8,561
Restructuring	-	-	4,122	-
Cost of sales - product	189	443	819	1,085
Inventory	620	295	1,681	295
Total	$ 4,748	$ 6,046	$ 20,267	$ 17,135

Compensation expense is based on awards ultimately expected to vest and reflects estimated forfeitures. Stock-based compensation cost for the nine months ended September 30, 2019 include incremental cost of $4.1 million for accelerated vesting of stock awards and extension of exercise period of stock options for the retirement of our Chief Executive Officer. See Note 13.

As of September 30, 2019, the total unrecognized compensation cost related to non-vested equity awards including all awards with time-based vesting amounted to $30.5 million, which is expected to be recognized over the remaining weighted-average vesting period of 1.6 years. Additionally, as of September 30, 2019, the total unrecognized compensation cost related to equity awards with performance-based vesting criteria amounted to $0.4 million.

Employee Stock Purchase Plan

The Amended and Restated 2014 Employee Stock Purchase Plan (the "Purchase Plan") provides for the purchase of common stock by eligible employees and became effective on May 28, 2014. On May 31, 2018, our stockholders approved an amendment to the Purchase Plan to increase the aggregate number of shares of common stock authorized for issuance by 600,000 shares. The purchase price per share is the lesser of (i) 85% of the fair market value of the common stock on the commencement of the offer period (generally, the sixteenth day in February or August) or (ii) 85% of the fair market value of the common stock on the exercise date, which is the last day of a purchase period (generally, the fifteenth day in February or August). For the nine months ended September 30, 2019, employees have acquired 122,117 shares of our common stock under the Purchase Plan and 450,917 shares of our common stock remained available for future purchases under the Purchase Plan.

13. Restructuring

On May 23, 2019, we implemented a strategic organizational restructuring, principally to align our operations around our vaccine business and significantly curtail further investment in our immuno-oncology business. In connection with the restructuring, we reduced our workforce by approximately 80 positions, or approximately 36%, of U.S.-based personnel. Also, in connection with the restructuring, our Chief Executive Officer, also a member of the Board of Directors (the "Board"), submitted notice of his retirement from the Company and the Board, effective August 1, 2019. We expect the restructuring to be substantially complete and the costs incurred and paid by December 31, 2019. We are exploring strategic alternatives for our immuno-oncology business.

During the three months ended September 30, 2019, we identified certain long-lived assets installed at the Horton Street Premises that were or will be disposed of by the Subtenant. We recorded accelerated depreciation charges of $3.0 million on these assets.

The major components of our restructuring costs are summarized as follows (in thousands). The remaining $0.8 million is expected to be recognized by the end of 2019.

Components of Restructuring Costs	Total Restructuring Costs Expected to be Incurred	Restructuring Costs Incurred for the Nine Months Ended September 30, 2019	Remaining to be Incurred
Severance and other termination benefits	$ 6,389	$ 5,635	$ 754
Stock-based compensation expense (a)	4,122	4,122	-
Accelerated depreciation	2,957	2,957	-
Total restructuring cost	$ 13,468	$ 12,714	$ 754

(a) As a result of accelerated vesting of stock awards and the extension of exercise period of stock options

The outstanding restructuring liabilities are included in accrued liabilities on the condensed consolidated balance sheets. As of September 30, 2019, the components of the restructuring liabilities were as follows (in thousands):

	Severance and Other Termination Benefits
Balance at December 31, 2018	$ -
Severance and other termination benefits	5,635
Cash payments or settlements	(2,289)
Balance at September 30, 2019	$ 3,346

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following Management's Discussion and Analysis of Financial Condition and Results of Operations contains forward-looking statements that involve a number of risks and uncertainties. Our actual results could differ materially from those indicated by forward-looking statements as a result of various factors, including but not limited to, the period for which we estimate our cash resources are sufficient, the availability of additional funds, as well as those set forth under "Risk Factors" and those that may be identified from time to time in our reports and registration statements filed with the Securities and Exchange Commission.

The following discussion and analysis is intended to provide an investor with a narrative of our financial results and an evaluation of our financial condition and results of operations. This discussion should be read in conjunction with the unaudited Condensed Consolidated Financial Statements and related Notes included in Item 1 of this Quarterly Report on Form 10-Q and the Consolidated Financial Statements and related Notes and Management's Discussion and Analysis of Financial Condition and Results of Operations contained in our Annual Report on Form 10-K for the year ended December 31, 2018.

Overview

We are a commercial stage biopharmaceutical company developing and commercializing novel vaccines. We launched our first product, HEPLISAV-B® [Hepatitis B Vaccine (Recombinant), Adjuvanted], in February 2018, following United States Food and Drug Administration ("FDA") approval for prevention of infection caused by all known subtypes of hepatitis B virus in adults age 18 years and older.

We have worldwide commercial rights to HEPLISAV-B. There are three other vaccines approved for the prevention of hepatitis B in the U.S.: Engerix-B and Twinrix® from GlaxoSmithKline plc ("GSK") and Recombivax-HB® from Merck & Co. ("Merck").

We commenced shipments of HEPLISAV-B in January 2018. Currently, total U.S. gross sales for adult hepatitis B vaccines is over $300 million annually, but we believe the market opportunity for HEPLISAV-B in the United States may be up to approximately $500 million in gross sales annually. Our field sales force of approximately 60 people across 10 regions is sized to cover approximately 25% of the total vaccine outlets, which we believe represent approximately 70% of hepatitis B vaccine sales in the U.S. We converted our contracted field sales team into full-time Dynavax employees in the second quarter of 2019.

In late 2012 the CDC's Advisory Committee on Immunization Practices expanded its recommendation for adults who should be vaccinated against hepatitis B to include people with diabetes mellitus (type 1 and type 2). According to the CDC there are 20 million adults diagnosed with diabetes and another 1.5 million new cases diagnosed each year. This population represents a significant increase in the number of adults recommended for vaccination against hepatitis B in the U.S.

On May 23, 2019, we implemented a strategic organizational restructuring, principally to align our operations around our vaccine business and significantly curtail further investment in our immuno-oncology business. In connection with the restructuring, we reduced our workforce by approximately 80 positions, or approximately 36%, of U.S.-based personnel. Also, in connection with the restructuring, our Chief Executive Officer, also a member of the Board of Directors (the "Board"), submitted notice of his retirement from the Company and the Board, effective August 1, 2019. We expect the restructuring to be substantially complete and the costs incurred and paid by December 31, 2019. We are exploring strategic alternatives for our immuno-oncology business.

In August 2019, we sold 18,525,000 shares of common stock, 4,840 shares of Series B Convertible Preferred Stock and warrants to purchase an aggregate of 5,841,250 shares of common stock in an underwritten public offering. Total net proceeds from the offering were approximately $65.6 million.

Critical Accounting Policies and the Use of Estimates

The accompanying discussion and analysis of our financial condition and results of operations are based upon our condensed consolidated financial statements and the related disclosures, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires us to make estimates, assumptions and judgments that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the balance sheet dates and the reported amounts of revenues and expenses for the periods presented. On an ongoing basis, we evaluate our estimates, assumptions and judgments described below that have the greatest potential impact on our condensed consolidated financial statements, including those related to leases. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Accounting assumptions and estimates are inherently uncertain and actual results may differ materially from these estimates under different assumptions or conditions.

While our significant accounting policies are more fully described in Note 1 to the condensed consolidated financial statements, we believe the following accounting policies reflect the new and the more critical and significant judgments and estimates used in the preparation of our condensed consolidated financial statements, that have been adopted since our latest Annual Report on Form 10-K for the year ended December 31, 2018.

Leases

On January 1, 2019, we adopted ASC 842, Leases, using the modified retrospective approach. Prior period amounts continue to be reported in accordance with our historic accounting under previous lease guidance, ASC 840, Leases. We elected the package of practical expedients which, among other things, allowed us to carry forward the historical lease classification of leases in place as of January 1, 2019. We have also elected the practical expedient to not separate lease components from non-lease components. As a result of adopting ASC 842, we recognized right-of-use asset and lease liabilities for operating leases of $34.8 million and $37.1 million, respectively on January 1, 2019. There was no adjustment to the opening balance of accumulated deficit as a result of the adoption of ASC 842.

We determine if an arrangement includes a lease at inception. Operating leases are included in operating lease right-of-use assets, other current liabilities and long-term portion of lease liabilities in our condensed consolidated balance sheets. Right-of-use assets represent our right to use an underlying asset during the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. Operating lease right-of-use assets and liabilities are recognized at the lease commencement date based on the present value of lease payments over the lease term. In determining the net present value of lease payments, we use our incremental borrowing rate which represents an estimated rate of interest that we would have to pay to borrow equivalent funds on a collateralized basis at the lease commencement date.

The operating lease right-of-use assets also include any lease payments made and exclude any lease incentives. Our leases may include options to extend or terminate the lease which are included in the lease term when it is reasonably certain that we will exercise any such options. Lease expense is recognized on a straight-line basis over the expected lease term. We have elected not to apply the recognition requirements of ASC 842 for short-term leases.

As lessors, we determine if an arrangement includes a lease at inception. We elected the practical expedient to not separate lease components from non-lease components. Rent revenue is recognized on a straight-line basis over the expected lease term and is included in other income (expense) in our condensed consolidated statements of operations.

Restructuring

Restructuring costs are comprised of severance, other termination benefit costs, stock-based compensation expense for stock award and stock option modifications related to workforce reductions and accelerated depreciation. We recognize restructuring charges when the liability is probable and the amount is estimable. Employee termination benefits are accrued at the date management has committed to a plan of termination and affected employees have been notified of their termination date and expected severance benefits.

Results of Operations

Revenues

Revenues consisted of amounts earned from product sales, manufacturing service and collaboration revenue. The following is a summary of our revenues (in thousands, except for percentages):

	Three Months Ended September 30,		Increase (Decrease) from 2018 to 2019		Nine Months Ended September 30,		Increase (Decrease) from 2018 to 2019	
Revenues:	**2019**	**2018**	**$**	**%**	**2019**	**2018**	**$**	**%**
Product revenue, net	$ 10,158	$ 1,461	$ 8,697	595%	$ 24,086	$ 2,880	$ 21,206	736%
Other revenue	417	-	417	NM	563	-	563	NM
Total revenues	$ 10,575	$ 1,461	$ 9,114	624%	$ 24,649	$ 2,880	$ 21,769	756%

NM=Not Meaningful

We commenced commercial shipments of HEPLISAV-B in January 2018 and deployed our field sales force in February 2018. For the three and nine months ended September 30, 2019, product revenue, net increased due to higher volume as additional healthcare providers completed operational activities required to switch to HEPLISAV-B and existing customers placed repeat orders. Sales efforts continue to focus on advancing HEPLISAV-B through the complex and protracted approval and procurement processes in large institutional accounts across the country.

Revenue from product sales is recorded at the net sales price which includes estimates of product returns, chargebacks, discounts, rebates and other fees. Overall, product revenue, net, reflects our best estimates of the amount of consideration to which we are entitled based on the terms of the contract. Actual amounts of consideration ultimately received may differ from our estimates. If actual results in the future vary from our estimates, we will adjust these estimates, which would affect net product revenue and earnings in the period such variances become known.

During the three months ended September 30, 2019, we recognized $0.4 million of manufacturing services revenue.

Cost of Sales – Product

	Three Months Ended September 30,		Increase (Decrease) from 2018 to 2019		Nine Months Ended September 30,		Increase (Decrease) from 2018 to 2019	
	2019	2018	$	%	2019	2018	$	%
Cost of sales - product	$ 3,824	$ 3,927	$ (103)	(3)%	$ 7,765	$ 9,309	$ (1,544)	(17)%

Cost of sales - product for the three and nine months ended September 30, 2019 primarily includes certain fill, finish and overhead costs for pre-filled syringes (“PFS”) of HEPLISAV-B. The quarter ended September 30, 2019 also includes costs related to a terminated batch. Our HEPLISAV-B PFS finished goods inventory includes components for which a portion of the manufacturing costs were previously expensed to research and development prior to the PFS presentation FDA approval in March 2018. We expect to use this HEPLISAV-B PFS inventory over approximately the next six to nine months. We expect our cost of sales of HEPLISAV-B PFS to increase, excluding the one-time costs in the third quarter, as we produce and then sell inventory that reflects the full cost of manufacturing the product.

Cost of sales – product for the three and nine months ended September 30, 2018 includes certain finish and overhead costs for HEPLISAV-B vials incurred after FDA approval in November 2017. The quarter ended September 30, 2018 includes costs relating to excess capacity at our manufacturing facility in Düsseldorf which were previously included in research and development expense. The excess capacity charge is a result of costs associated with resuming operating activities at our manufacturing facility in Düsseldorf after receiving regulatory approval of the PFS presentation of HEPLISAV-B in late March 2018. Prior to FDA approval of HEPLISAV-B vials, costs to manufacture HEPLISAV-B were expensed to research and development as there was no alternative future use.

At September 30, 2019 and December 31, 2018, inventories, net increased to $39.4 million from $19.0 million, respectively to support increased projected sales.

Cost of Sales - Amortization of Intangible Assets

	Three Months Ended September 30,		Increase (Decrease) from 2018 to 2019		Nine Months Ended September 30,		Increase (Decrease) from 2018 to 2019	
	2019	2018	$	%	2019	2018	$	%
Cost of sales - amortization of intangible assets	$ 2,324	$ 3,823	$ (1,499)	(39)%	$ 6,894	$ 8,538	$ (1,644)	(19)%

Cost of sales - amortization of intangible assets consists of amortization of the intangible asset recorded as a result of a regulatory milestone and sublicense fees to Coley Pharmaceutical Group, Inc. (“Coley”), Merck, Sharpe & Dohme Corp. (“Merck”) and GlaxoSmithKline Biologicals SA (“GSK”), upon or after FDA approval of HEPLISAV-B in November 2017. The intangible assets related to Coley and GSK have been fully-amortized in January 2018 and July 2018, respectively. At September 30, 2019, the intangible asset related to Merck of $4.8 million has an estimated remaining useful life through the patent expiration date in April 2020.

Research and Development Expense

Research and development expense consists, primarily, of compensation and related personnel costs (which include benefits, recruitment, travel and supply costs), outside services, allocated facility costs and non-cash stock-based compensation. Outside services consist of costs associated with clinical development, preclinical discovery and development, regulatory filings and research, including fees and expenses incurred by contract research organizations, clinical study sites, and other service providers and costs of manufacturing product candidates prior to approval.

In May, 2019 we announced a strategic organizational restructuring to align our operations around our vaccine business and significantly curtail further investment in immuno-oncology research and development.

The following is a summary of our research and development expense (in thousands, except for percentages):

	Three Months Ended September 30,		Increase (Decrease) from 2018 to 2019		Nine Months Ended September 30,		Increase (Decrease) from 2018 to 2019	
Research and Development:	**2019**	**2018**	**$**	**%**	**2019**	**2018**	**$**	**%**
Compensation and related personnel costs	$ 4,026	$ 7,025	$ (2,999)	(43)%	$ 17,980	$ 23,136	$ (5,156)	(22)%
Outside services	5,123	6,435	(1,312)	(20)%	20,019	17,103	2,916	17%
Facility costs	1,850	1,028	822	80%	6,246	4,626	1,620	35%
Non-cash stock-based compensation	1,661	2,332	(671)	(29)%	5,817	7,194	(1,377)	(19)%
Total research and development	$ 12,660	$ 16,820	$ (4,160)	(25)%	$ 50,062	$ 52,059	$ (1,997)	(4)%

Compensation and related personnel costs and non-cash stock-based compensation decreased in the 2019 periods compared to the 2018 periods due to lower research and development headcount as a result of our restructuring in May 2019. Outside services for the nine months ended September 30, 2019 increased over the comparable period in 2018 due to an overall increase in costs to support the development of SD-101 and earlier stage immuno-oncology programs prior to the restructuring. The decrease in outside services for the three months ended September 30, 2019 compared to the comparable period in 2018 is the result of winding down of immuno-oncology programs following the restructuring. Facility costs, which include an overhead allocation of occupancy and related expenses, increased primarily due to higher lease expense.

Selling, General and Administrative Expense

Selling, general and administrative expense consists primarily of compensation and related costs for our commercial support personnel, medical education professionals and personnel in executive and other administrative functions, including legal, finance and information technology; costs for outside services such as costs for sales and marketing, post-marketing studies of HEPLISAV-B, accounting, commercial development, consulting, business development, investor relations and insurance; legal costs that include corporate and patent-related expenses; allocated facility costs and non-cash stock-based compensation.

The following is a summary of our selling, general and administrative expense (in thousands, except for percentages):

	Three Months Ended September 30,		Increase (Decrease) from 2018 to 2019		Nine Months Ended September 30,		Increase (Decrease) from 2018 to 2019	
Selling, General and Administrative:	**2019**	**2018**	**$**	**%**	**2019**	**2018**	**$**	**%**
Compensation and related personnel costs	$ 7,717	$ 4,132	$ 3,585	87%	$ 21,184	$ 11,695	$ 9,489	81%
Outside services	5,817	7,539	(1,722)	(23)%	18,949	24,071	(5,122)	(21)%
Legal costs	521	458	63	14%	1,724	2,336	(612)	(26)%
Facility costs	2,126	683	1,443	211%	4,983	1,669	3,314	199%
Non-cash stock-based compensation	2,278	2,976	(698)	(23)%	7,828	8,561	(733)	(9)%
Total selling, general and administrative	$ 18,459	$ 15,788	$ 2,671	17%	$ 54,668	$ 48,332	$ 6,336	13%

For both the three and nine months ended September 30, 2019 compared to 2018, the increase in compensation and related personnel costs and its related decrease in outside services was due to the conversion of the external sales force to our employees effective April 1, 2019. In addition, the third quarter of 2019 includes payments for completion of certain milestones in the HEPLISAV-B post marketing study and costs for increased sales and marketing activities compared to the third quarter of 2018. For the nine months ended September 30, 2019 compared to 2018, legal costs decreased primarily due to outside counsel costs incurred in the first quarter of 2018 in connection with the loan financing. Facility costs, which includes an overhead allocation, primarily comprised of occupancy and related expenses, increased due to higher lease expense and higher overhead allocation to selling, general and administrative functions. Non-cash stock-based compensation decreased for both the three and nine months ended September 30, 2019 compared to the prior periods due to the timing of vesting of certain stock awards granted in 2017.

Restructuring

On May 23, 2019, we implemented a strategic organizational restructuring, principally to align our operations around our vaccine business and significantly curtail further investment in our immuno-oncology business. In connection with the restructuring, we reduced our workforce by approximately 80 positions, or approximately 36%, of U.S.-based personnel. Also in connection with the restructuring, our Chief Executive Officer, also a member of the Board of Directors (the "Board"), submitted notice of his retirement from the Company and the Board, effective August 1, 2019. We expect the restructuring to be substantially complete and the costs incurred and paid by December 31, 2019. We are exploring strategic alternatives for our immuno-oncology business.

The total restructuring cost is estimated to be $13.5 million, of which $6.4 million is related to severance, other termination benefits and outplacement services, $4.1 million is related to stock-based compensation expense as a result of accelerated vesting of stock awards and extension of exercise period of stock options and $3.0 million is related to accelerated depreciation. During the three and nine months ended September 30, 2019, we recognized restructuring charges of $3.9 million and $12.7 million, respectively. The remaining $0.8 million in restructuring charges are expected to be recognized by the end of 2019.

Other Income (Expense)

Interest income is reported net of amortization of premiums and discounts on marketable securities. Interest expense includes the stated interest and accretion of discount and end of term fee related to our long-term debt agreement entered into in February 2018. Sublease income is recognized in connection with our sublease of office and laboratory space. Other income, net includes gains and losses on foreign currency transactions and disposal of property and equipment.

The following is a summary of our interest income, interest expense and other income, net (in thousands, except for percentages):

	Three Months Ended September 30,		Increase (Decrease) from 2018 to 2019		Nine Months Ended September 30,		Increase (Decrease) from 2018 to 2019	
	2019	2018	$	%	2019	2018	$	%
Interest income	$ 890	$ 1,047	$ (157)	(15)%	$ 2,604	$ 2,940	$ (336)	(11)%
Interest expense	$ (4,779)	$ (2,735)	$ 2,044	75%	$ (12,111)	$ (6,587)	$ 5,524	84%
Sublease income	$ 891	$ -	$ 891	NM	$ 891	$ -	$ 891	NM
Other income, net	$ 168	$ 57	$ 111	195%	$ 226	$ 75	$ 151	201%

NM=Not Meaningful

Interest expense increased due to the borrowing of the remaining $75.0 million term loan in March 2019 under the term loan agreement with CRG Servicing LLC ("Loan Agreement"). During the three months ended September 30, 2019, we recognized sublease income of $0.9 million in connection with our sublease of office and laboratory space located at 5959 Horton Street, Emeryville, California to another company. The change in other income, net is primarily due to foreign currency transactions resulting from fluctuations in the value of the Euro compared to the U.S. dollar and changes in the estimated fair value of our warrant liability.

Liquidity and Capital Resources

As of September 30, 2019, we had $174.9 million in cash, cash equivalents and marketable securities. Since our inception, we have relied primarily on the proceeds from public and private sales of our equity securities, borrowings, government grants and revenues from product sales and collaboration agreements to fund our operations. Our funds are currently invested in money market funds, U.S. treasuries, U.S. government agency securities and corporate debt securities. We currently anticipate that our cash, cash equivalents and short-term marketable securities as of September 30, 2019, and anticipated revenues from HEPLISAV-B will be sufficient to fund our operations for at least the next 12 months from the date of this filing.

At September 30, 2019, $118.6 million of common stock remained available for sale under our At Market Sales Agreement with Cowen and Company, LLC ("2017 ATM Agreement").

During the nine months ended September 30, 2019, we used $98.2 million of cash for our operations primarily due to our net loss of $115.8 million, of which $40.2 million consisted of non-cash charges such as stock-based compensation, amortization of intangible assets, amortization of right-of-use assets, depreciation and amortization, non-cash interest expense and accretion and amortization on marketable securities. By comparison, during the nine months ended September 30, 2018, we used $97.7 million of cash for our operations primarily due to our net loss of $118.9 million, of which $29.0 million consisted of non-cash charges such as stock-based compensation, amortization of intangible assets, depreciation and amortization, non-cash interest expense and accretion and amortization on marketable securities. Cash used in our operations during the first nine months of 2019 increased by $0.6 million. For the nine months ended September 30, 2019, we received tenant improvement reimbursements from the landlord of 5959 Horton Street totaling $6.6 million. During the first nine months of 2019, we invested approximately $20.3 million in HEPLISAV-B inventory to support increased projected sales. Net cash used in operating activities is also impacted by changes in our operating assets and liabilities due to timing of cash receipts and expenditures.

During the nine months ended September 30, 2019, net cash used in investing activities was $67.6 million compared to $11.1 million of net cash provided by investing activities during the nine months ended September 30, 2018. Cash used in investing activities during the first nine months of 2019 included $40.1 million of net purchases of marketable securities compared to $24.9 million of net proceeds from maturities of marketable securities during the first nine months of 2018. During the first nine months of 2019, we paid $7.0 million of sublicense payment to Merck, compared to $11.0 million of milestone and sublicense payments to Coley, Merck and GSK during the first nine months of 2018. Cash used in net purchases of property plant and equipment increased by $17.7 million during the first nine months of 2019 compared to the same period in 2018. The increase is, primarily, due to the installation of facility improvements.

During the nine months ended September 30, 2019 and 2018, net cash provided by financing activities was $154.4 million and $99.1 million, respectively. Cash provided by financing activities in the first nine months of 2019 included net proceeds of $74.3 million from the second tranche of the Loan Agreement, net proceeds of $13.9 million from the issuance of common stock under our 2017 ATM Agreement and net proceeds of $65.6 million from our underwritten public offering in August 2019. Cash provided by financing activities in the first nine months of 2018 included net proceeds of $99.0 million from the Loan Agreement.

We expect to incur operating losses for the foreseeable future as we continue to invest in commercialization of HEPLISAV-B. If we cannot generate a sufficient amount of revenue from product sales, we will need to finance our operations through strategic alliance and licensing arrangements and/or future public or private debt and equity financings. Adequate financing may not be available to us on acceptable terms, or at all. If adequate funds are not available when needed, we may need to significantly reduce our operations while we seek strategic alternatives, which could have an adverse impact on our ability to achieve our intended business objectives.

Our ability to raise additional capital in the equity and debt markets, should we choose to do so, is dependent on a number of factors, including, but not limited to, the market demand for our common stock, which itself is subject to a number of development and business risks and uncertainties, our creditworthiness and the uncertainty that we would be able to raise such additional capital at a price or on terms that are favorable to us. Raising additional funds through the issuance of equity or debt securities could result in dilution to our existing stockholders, increased fixed payment obligations, or both. In addition, these securities may have rights senior to those of our common stock and could include covenants that would restrict our operations.

Contractual Obligations

On March 29, 2019, we borrowed the remaining $75.0 million (the "Second Tranche Term Loan") from the $175.0 million term loan agreement with CRG Servicing LLC. We initially borrowed $100.0 million (the "Initial Term Loan") at closing on February 20, 2018. The principal amounts of Initial Term Loan and Second Tranche Term Loan totaling $179.1 million, which includes paid-in-kind interest, have a maturity date of December 31, 2023, unless earlier prepaid.

As of September 30, 2019, our material non-cancelable purchase and other commitments, for the supply of HEPLISAV-B and for clinical research, totaled $13.0 million.

There were no other material changes to the contractual obligations previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2018.

Off-balance Sheet Arrangements

We do not have any off-balance sheet arrangements as defined by rules enacted by the Securities and Exchange Commission and, accordingly, no such arrangements are likely to have a current or future effect on our financial position.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

During the nine months ended September 30, 2019, there were no material changes to our market risk disclosures as set forth in Part II, Item 7A, "Quantitative and Qualitative Disclosures About Market Risk" in our Annual Report on Form 10-K for the year ended December 31, 2018.

ITEM 4. CONTROLS AND PROCEDURES

(a) 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 Exchange Act of 1934 (the "Exchange Act")) that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms and that such information is accumulated and communicated to our management, including our Co-Principal Executive Officers and Principal Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can only provide reasonable, not absolute, assurance of achieving the desired control objectives.

Based on their evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this report, our management, with participation of our Co-Principal Executive Officers and our Chief Financial Officer, concluded that our disclosure controls and procedures are effective and were operating at the reasonable assurance level to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms.

(b) Changes in internal controls

There have been no changes in our internal controls over financial reporting as defined in Rule 13a – 15(f) under the Exchange Act during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal controls over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

From time to time in the ordinary course of business, we receive claims or allegations regarding various matters, including employment, vendor and other similar situations in the conduct of our operations. We are not currently aware of any material legal proceedings involving the Company.

ITEM 1A. RISK FACTORS

Various statements in this Quarterly Report on Form 10-Q are forward-looking statements concerning our future efforts to obtain regulatory approval, achieve restructuring goals, commercialize approved products, expenses, revenues, liquidity and cash needs, as well as our plans and strategies. These forward-looking statements are based on current expectations and we assume no obligation to update this information. Numerous factors could cause our actual results to differ significantly from the results described in these forward-looking statements, including the following risk factors. We have marked with an asterisk (*) those risks described below that reflect material changes from, or additions to, the risks described under Part 1, Item 1A "Risk Factors" included in our Annual Report on Form 10-K for the year ended December 31, 2018 that was filed with the Securities and Exchange Commission on February 27, 2019.

Risks Related to our Business and Capital Requirements

HEPLISAV-B has been launched in the United States and there is significant competition in the marketplace. Since this is our first marketed product, the timing of uptake and distribution efforts are unpredictable and there is a risk that we may not achieve and sustain commercial success for HEPLISAV-B.

We have established sales, marketing and distribution capabilities and commercialized HEPLISAV-B in the U.S. Successful commercialization of HEPLISAV-B will require significant resources and time and, while Dynavax personnel are experienced with respect to marketing of healthcare products, because HEPLISAV-B is the company's first marketed product, the potential uptake of the product in distribution and the timing for growth in sales, if any, is unpredictable and we may not be successful in commercializing HEPLISAV-B. In particular, successful commercialization of HEPLISAV-B will require that we continue to negotiate and enter into contracts with wholesalers, distributors, group purchasing organizations, and other parties, and that we maintain those contractual relationships. There is a risk that we may not complete or maintain all of these important contracts on favorable terms or that in a potentially evolving reimbursement environment our efforts can overcome established competition at favorable pricing.

We converted our contracted field sales team into full-time Dynavax employees in the second quarter of 2019. The conversion of the field sales team to employees will require additional internal resources, both in the conversion process and for ongoing administrative and logistical support. We have not previously employed an in-house field sales team, and thus have limited experience in overseeing and managing an employed salesforce. In addition, retention of capable sales personnel may be more difficult with a single product offering and we must retain our salesforce in order for HEPLISAV-B to establish a commercial presence.

Moreover, we expect that significant resources will need to be invested in order to successfully market, sell and distribute HEPLISAV-B for use with diabetes patients, one of our targeted patient populations. Although the Centers for Disease Control and Prevention ("CDC") and the CDC's Advisory Committee on Immunization Practices ("ACIP") recommend that patients with diabetes receive hepatitis B vaccinations, we are unable to predict how many of those patients may receive HEPLISAV-B.

In addition to the risks with employing and maintaining our own commercial capabilities and with contracting, other factors that may inhibit our efforts to successfully commercialize HEPLISAV-B include:

- whether we are able to recruit and retain adequate numbers of effective sales and marketing personnel;
- whether we are able to access key health care providers to discuss HEPLISAV-B;
- whether we can compete successfully as a new entrant in established distribution channels for vaccine products; and
- whether we will maintain sufficient funding to cover the costs and expenses associated with creating and sustaining a capable sales and marketing organization and related commercial infrastructure.

If we are not successful, we may be required to collaborate or partner HEPLISAV-B with a third-party pharmaceutical or biotechnology company with existing products. To the extent we collaborate or partner, the financial value will be shared with another party and we will need to establish and maintain a successful collaboration arrangement, and we may not be able to enter into these arrangements on acceptable terms or in a timely manner in order to establish HEPLISAV-B in the market. To the extent that we enter into co-promotion or other arrangements, any revenues we receive will depend upon the efforts of third parties, which may not be successful and are only partially in our control. In that event, our product revenues may be lower than if we marketed and sold our products directly with the highest priority, and we may be required to reduce or eliminate much of our commercial infrastructure and personnel as a result of such collaboration or partnership.

If we, or our partners, if any, are not successful in setting our marketing, pricing and reimbursement strategies, recruiting and maintaining effective sales and marketing personnel or in building and maintaining the infrastructure to support commercial operations, we will have difficulty successfully commercializing HEPLISAV-B, which would adversely affect our business and financial condition.

We face uncertainty regarding coverage, pricing and reimbursement and the practices of third-party payors, which may make it difficult or impossible to sell our product or product candidates on commercially reasonable terms.*

In both domestic and foreign markets, our ability to achieve profitability will depend in part on the negotiation of a favorable price, as well as the availability of coverage and adequate reimbursement, from third-party payors, in particular for HEPLISAV-B, where existing products are already marketed. In the U.S., pricing for hepatitis B vaccines is currently stable and reimbursement is favorable as private and public payors recognize the value of prophylaxis in this setting given the high costs of potential morbidity and mortality, and we have achieved coverage with most third-party payors. However, there is a risk that some payors may limit coverage to specific products on an approved list, also known as a formulary, which might not include HEPLISAV-B. Thus, there can be no assurance that HEPLISAV-B will achieve and sustain stable pricing and favorable reimbursement. Our ability to successfully obtain and retain market share and achieve and sustain profitability will be significantly dependent on the market's acceptance of a price for HEPLSIAV-B sufficient to achieve profitability, and future acceptance of such pricing.

Third-party payors are increasingly challenging the price and cost-effectiveness of medical products and services, and pricing, as well as coverage and reimbursement decisions may not allow our future products to compete effectively with existing competitive products. Because we intend to offer products, if approved, that involve new technologies and new approaches to treating disease, the willingness of third-party payors to reimburse for our products is uncertain. We will have to charge a price for our products that is sufficient to enable us to recover our considerable investment in product development and our operating costs. Adequate third-party payor reimbursement may not be available to enable us to maintain price levels sufficient to achieve profitability, and such unavailability could harm our future prospects and reduce our stock price.

Also, there has been heightened governmental scrutiny recently in the U.S. over pharmaceutical pricing practices in light of the rising cost of prescription drugs and biologics. Such scrutiny has resulted in several recent Congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for products. At the federal level, the Trump administration's budget proposals for fiscal years 2019 and 2020 contain further drug price control measures that could be enacted during the budget process or in other future legislation, including, for example, measures to permit Medicare Part D plans to negotiate the price of certain drugs under Medicare Part B, to allow some states to negotiate drug prices under Medicaid, and to eliminate cost sharing for generic drugs for low-income patients. Additionally, the Trump administration released a "Blueprint" to lower drug prices and reduce out of pocket costs of drugs that contains additional proposals to increase manufacturer competition, increase the negotiating power of certain federal healthcare programs, incentivize manufacturers to lower the list price of their products and reduce the out of pocket costs of drug products paid by consumers. The U.S. Department of Health and Human Services, or HHS, has solicited feedback on some of these measures and, at the same, has implemented others under its existing authority. For example, in May 2019, CMS issued a final rule to allow Medicare Advantage Plans the option of using step therapy for Part B drugs beginning January 1, 2020. This final rule codified CMS's policy change that was effective January 1, 2019. While a number of these and other proposed measures will require additional authorization to become effective, Congress and the Trump administration have each indicated that it will continue to seek new legislative and/or administrative measures to control drug costs. At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, and restrictions on certain product access. In some cases, such legislation and regulations have been designed to encourage importation from other countries and bulk purchasing. There have been, and likely will continue to be, legislative and regulatory proposals at the foreign, federal and state levels directed at broadening the availability of healthcare and containing or lowering the cost of healthcare. We cannot predict the initiatives that may be adopted in the future or the effect any such initiatives may have on our business.

We have recently implemented a strategic restructuring to prioritize our vaccine business and explore strategic alternatives for our immuno-oncology portfolio, and we cannot assure you that we will be able to successfully execute on a strategic alternative for our immuno-oncology portfolio.*

In the second quarter of 2019, we implemented a strategic restructuring that would focus our efforts on HEPLISAV-B, which included a reduction in our workforce and operations to focus resources on HEPLISAV-B commercialization and sales execution as well as assess additional opportunities to leverage our 1018 adjuvant. Additionally, we are seeking strategic alternatives for our immuno-oncology portfolio, including our development stage products such as SD-101 and DV281. In connection with the restructuring, we made the determination to wind down ongoing immuno-oncology trials. Our ability to successfully execute on a strategic alternative for our immuno-oncology portfolio is dependent on a number of factors and we may not be able to execute upon a transaction or other strategic alternative for our immuno-oncology portfolio upon favorable terms within an advantageous timeframe and recognize significant value for these assets, if at all. Additionally, the negotiation and consummation of a transaction or other strategic alternative involving our immuno-oncology may be costly and time-consuming. Our strategic restructuring may not result in anticipated savings or other economic benefits, could result in total costs and expenses that are greater than expected, could make it more difficult to attract and retain qualified personnel and may disrupt our operations, each of which could have a material adverse effect on our business.

We are subject to ongoing FDA post-marketing obligations concerning HEPLISAV-B, which may result in significant additional expense, and we may be subject to penalties if we fail to comply with regulatory requirements or experience unanticipated problems with HEPLISAV-B.

Our HEPLISAV-B regulatory approval is subject to certain post-marketing obligations and commitments to the FDA. We must conduct an observational comparative study of HEPLISAV-B to another hepatitis B vaccine to assess occurrence of acute myocardial infarction; must conduct an observational surveillance study to evaluate the incidence of new onset immune-mediated diseases, herpes zoster and anaphylaxis; and must establish a pregnancy registry to provide information on outcomes following pregnancy exposure to HEPLISAV-B. These studies will require significant effort and resources, and failure to timely conduct these studies or complete these studies to the satisfaction of FDA could result in withdrawal of our BLA approval, which would have a material adverse effect on our business, results of operations, financial condition and prospects. The results of post-marketing studies may also result in additional warnings or precautions for the HEPLISAV-B label or expose additional safety concerns that may result in product liability and withdrawal of the product from the market, any of which may have a material adverse effect on our business, results of operations, financial condition and prospects.

In addition, the manufacturing processes, labelling, packaging, distribution, adverse event reporting, storage, advertising, promotion and recordkeeping for HEPLISAV-B are subject to extensive and ongoing regulatory requirements. These requirements include submissions of safety and other post-marketing information and reports, registration, as well as continued compliance with cGMPs, GCPs, ICH guidelines, and GLPs. If we are not able to meet and maintain regulatory compliance, we may lose marketing approval and be required to withdraw our product. As noted in the preceding paragraph, withdrawal would have a material adverse effect on our business.

If HEPLISAV-B or any products we develop are not accepted by the market or if regulatory agencies limit our labeling indications, require labeling content that diminishes market uptake of HEPLISAV-B or any other products we develop, or limits our marketing claims, we may be unable to generate significant revenues, if any.*

Even if we obtain regulatory approval for our product candidates, such as the FDA approval of HEPLISAV-B in November 2017, and are able to commercialize them as we have with HEPLISAV-B, our products may not gain market acceptance among physicians, patients, healthcare payors and the medical community.

The degree of market acceptance of HEPLISAV-B and any of our future approved products will depend upon a number of factors, including:

- the indication for which the product is approved and its approved labeling;
- the presence of other competing approved therapies;
- the potential advantages of the product over existing and future treatment methods;
- the relative convenience and ease of administration of the product;
- the strength of our sales, marketing and distribution support;
- the price and cost-effectiveness of the product; and
- third-party coverage and adequate reimbursement and the willingness of patients to pay out-of-pocket in the absence of sufficient reimbursement by third-party payors.

The FDA or other regulatory agencies could limit the labeling indication for which our product candidates may be marketed or could otherwise limit marketing efforts for our products. If we are unable to achieve approval or successfully market any of our product candidates, or marketing efforts are restricted by regulatory limits, our ability to generate revenues could be significantly impaired.

Many of our competitors have greater financial resources and expertise than we do. If we are unable to successfully compete with existing or potential competitors as a result of these disadvantages, we may be unable to generate revenues and our business will be harmed.*

We compete with pharmaceutical companies, biotechnology companies, academic institutions and research organizations, in developing and marketing therapies to prevent or treat cancer and infectious and inflammatory diseases. For example, HEPLISAV-B competes in the U.S. with established hepatitis B vaccines marketed by Merck and GlaxoSmithKline plc ("GSK") and if approved outside the U.S., with vaccines from those companies as well as several additional established pharmaceutical companies.

Existing and potential competitors may also compete with us for qualified commercial, scientific and management personnel, as well as for technology that would otherwise be advantageous to our business. Our success in developing marketable products and achieving a competitive position will depend, in part, on our ability to attract and retain qualified personnel in the near-term, particularly with respect to HEPLISAV-B commercialization. If we do not succeed in attracting new personnel and retaining and motivating existing personnel, our operations may suffer and we may be unable to obtain financing, enter into collaborative arrangements, sell our product candidates or generate revenues.

We have incurred net losses in each year since our inception and anticipate that we will continue to incur significant losses for the foreseeable future unless we can successfully commercialize HEPLISAV-B, and if we are unable to achieve and sustain profitability, the market value of our common stock will likely decline.*

We have generated limited revenue from the sale of products and have incurred losses in each year since we commenced operations in 1996. Our net losses for the nine months ended September 30, 2019 and 2018 were $115.8 million and $118.9 million, respectively. As of September 30, 2019, we had an accumulated deficit of $1.2 billion.

With our investment in the launch and commercialization of HEPLISAV-B in the U.S., we expect to continue incurring operating losses for the foreseeable future. Our expenses have increased substantially as we established and maintain our HEPLISAV-B commercial infrastructure, including investments in internal infrastructure to support our field sales force and investments in manufacturing and supply chain commitments to maintain commercial supply of HEPLISAV-B. The timing for uptake of our product in the U.S. has further increased losses related to commercialization, and the advancement of our oncology pipeline has historically increased our costs as we conducted more and larger studies to invest in clinical development. While we anticipate operating expenditures related to external oncology costs will decrease as a result of our strategic restructuring, due to the numerous risks and uncertainties associated with developing and commercializing vaccine and pharmaceutical products, we are unable to predict the extent of any future losses or when, if ever, we will become profitable.

Until we are able to generate significant revenues or achieve profitability through product sales, we will require substantial additional capital to finance our operations.*

As of September 30, 2019, we had $174.9 million in cash, cash equivalents and marketable securities. We expect to incur operating losses for the foreseeable future as we continue to invest in commercialization of HEPLISAV-B, including investment in HEPLISAV-B inventory, manufacturing and seek strategic alternatives for our immuno-oncology product candidates. Until we can generate a sufficient amount of revenue, we will need to finance our operations through strategic alliance and licensing arrangements and/or public or private debt and equity financings. Adequate financing may not be available to us on acceptable terms, or at all. If adequate funds are not available when needed, we may need to significantly reduce our operations while we seek additional strategic alternatives, which could have an adverse impact on our ability to achieve our business objectives.

Our ability to raise additional capital in the equity and debt markets, should we choose to do so, is dependent on a number of factors, including, but not limited to, the market demand for our common stock, which itself is subject to a number of development and business risks and uncertainties, our creditworthiness and the uncertainty that we would be able to raise such additional capital at a price or on terms that are favorable to us. Raising additional funds through the issuance of equity or debt securities could result in dilution to our existing stockholders, increased fixed payment obligations, or both. In addition, these securities may have rights senior to those of our common stock and could include covenants that would restrict our operations.

We may develop, seek regulatory approval for and market HEPLISAV-B or any other product candidates we may develop outside the U.S., requiring a significant commitment of resources. Failure to successfully manage our international operations could result in significant unanticipated costs and delays in regulatory approval or commercialization of our product candidates.*

We may seek to introduce HEPLISAV-B, or any other product candidates we may develop, in various markets outside the U.S. Developing, seeking regulatory approval for and marketing our product candidates outside the U.S. could impose substantial costs as well as burdens on our personnel resources in addition to potential diversion of management's attention from domestic operations. International operations are subject to risk, including:

- the difficulty of managing geographically distant operations, including recruiting and retaining qualified employees, locating adequate facilities and establishing useful business support relationships in the local community;
- compliance with varying international regulatory requirements, laws and treaties;
- securing international distribution, marketing and sales capabilities upon favorable terms;
- adequate protection of our intellectual property rights;
- obtaining regulatory and pricing approvals at a level sufficient to justify commercialization;
- legal uncertainties and potential timing delays associated with tariffs, export licenses and other trade barriers;
- diverse tax consequences;
- the fluctuation of conversion rates between foreign currencies and the U.S. dollar; and
- regional and geopolitical risks.

In the event that we determine to commercialize HEPLISAV-B outside the United States, such as in Europe, the product is not approved and our opportunity will depend upon our receiving regulatory approval, which can be costly and time consuming, and there is a risk that one or more regulatory bodies may require that we conduct additional clinical trials and/or take other measures which will take time and require that we incur significant additional expense. In addition, there is the risk that we may not receive approval in one or more jurisdictions. In March, 2019, we submitted, and the European Medical Agency ("EMA") accepted, our Marketing Authorization Application ("MAA") for HEPLISAV-B. We may not be able to provide sufficient data or respond to comments to our MAA sufficient to obtain regulatory approval in Europe in a reasonable time period or at all.

Any failure or delay in obtaining regulatory approval in one jurisdiction may have a negative effect on the regulatory approval process in other jurisdictions. If we are unable to successfully manage our international operations, we may incur significant unanticipated costs and delays in regulatory approval or commercialization of our product candidates, which would impair our ability to generate revenues.

Clinical trials for our commercial product and product candidates are expensive and time consuming, may involve combinations with other agents, may take longer than we expect or may not be completed at all, and their outcomes are uncertain.*

Clinical trials, including post-marketing studies, to generate sufficient data to meet FDA requirements are expensive and time consuming.

We are currently winding down existing clinical trials of SD-101 and DV281, including combination studies with other oncology agents, and seeking strategic alternatives for these product candidates. Most of our combination agent study partners, such as Merck & Co. ("Merck"), are significantly larger than we are and have conducted various other combination studies with other immuno-oncology agents and collaborators. We are not certain these clinical trials will be successful, or that even if successful we would be able to reach agreement to conduct larger, more extensive clinical trials required to achieve regulatory approval for a combination product candidate regimen. In addition, results from smaller, earlier stage clinical studies may not be representative of larger, controlled clinical trials that would be required in order to obtain regulatory approval of a product candidate or a combination of product candidates.

Each of our clinical trials requires the investment of substantial planning, expense and time and the timing of the commencement, continuation and completion of these clinical trials may be subject to significant delays relating to various causes, including scheduling conflicts with participating clinicians and clinical institutions, difficulties in identifying and enrolling participants who meet trial eligibility criteria, failure of participants to complete the clinical trial, delay or failure to obtain Institutional Review Board ("IRB") or regulatory approval to conduct a clinical trial at a prospective site, unexpected adverse events and shortages of available drug supply. Participant enrollment is a function of many factors, including the size of the relevant population, the proximity of participants to clinical sites, the eligibility criteria for the trial, the existence of competing clinical trials and the availability of alternative or new treatments.

As a biopharmaceutical company, we engage CROs to conduct clinical studies, and failure by us or our CROs to conduct a clinical study in accordance with GCP standards and other applicable regulatory requirements could result in disqualification of the applicable clinical trial from consideration in support of approval of a potential product.*

We are responsible for conducting our clinical trials consistent with GCP standards and for oversight of our vendors to ensure that they comply with such standards. We depend on medical institutions and CROs to conduct our clinical trials in compliance with GCP. To the extent that we or they fail to comply with GCP standards, fail to enroll participants for our clinical trials, or are delayed for a significant time in the execution of our trials, including achieving full enrollment, we may be affected by increased costs, program delays or both, which may harm our business.

Clinical trials must be conducted in accordance with FDA or other applicable foreign government guidelines and are subject to oversight by the FDA, other foreign governmental agencies and IRBs at the medical institutions where the clinical trials are conducted. In addition, clinical trials must be conducted with supplies of our product candidates produced under GMP and other requirements in foreign countries, and may require large numbers of participants.

In addition, we obtain guidance from regulatory authorities on certain aspects of our clinical development activities and seek to comply with written guidelines provided by the authorities. These discussions and written guidelines are not binding obligations on the part of the regulatory authorities and the regulatory authorities may require additional patient data or studies to be conducted. Regulatory authorities may revise or retract previous guidance during the course of a clinical trial or after completion of the trial. The authorities may also disqualify a clinical trial from consideration in support of approval of a potential product if they deem the guidelines have not been met. The FDA or foreign regulatory agencies may determine our clinical trials or other data regarding safety, efficacy or consistency of manufacture or compliance with GMP regulations are insufficient for regulatory approval.

The FDA or other foreign governmental agencies or we ourselves could delay, suspend or halt our clinical trials of a product candidate for numerous reasons, including with respect to our product candidates and those of our partners in combination agent studies:

- deficiencies in the trial design;
- deficiencies in the conduct of the clinical trial including failure to conduct the clinical trial in accordance with regulatory requirements or clinical protocols;
- deficiencies in the clinical trial operations or trial sites resulting in the imposition of a clinical hold;
- a product candidate may have unforeseen adverse side effects, including fatalities, or a determination may be made that a clinical trial presents unacceptable health risks;
- the time required to determine whether a product candidate is effective may be longer than expected;
- fatalities or other adverse events arising during a clinical trial that may not be related to clinical trial treatments;
- a product candidate or combination study may appear to be no more effective than current therapies;
- the quality or stability of a product candidate may fail to conform to acceptable standards;
- the inability to produce or obtain sufficient quantities of a product candidate to complete the trials;
- our inability to reach agreement on acceptable terms with prospective CROs and trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- our inability to obtain IRB approval to conduct a clinical trial at a prospective site;
- the inability to obtain regulatory approval to conduct a clinical trial;
- lack of adequate funding to continue a clinical trial, including the occurrence of unforeseen costs due to enrollment delays, requirements to conduct additional trials and studies and increased expenses associated with the services of our CROs and other third parties;
- the inability to recruit and enroll individuals to participate in clinical trials for reasons including competition from other clinical trial programs for the same or similar indications; or
- the inability to retain participants who have initiated a clinical trial but may withdraw due to side effects from the therapy, lack of efficacy or personal issues, or who are lost to further follow-up.

In addition, we may experience significant setbacks in advanced clinical trials, even after promising results in earlier trials, such as unexpected adverse events that occur when our product candidates are combined with other therapies and drugs or given to larger patient populations, which often occur in later-stage clinical trials, or less favorable clinical outcomes. Moreover, clinical results are frequently susceptible to varying interpretations that may delay, limit or prevent regulatory approvals.

Third-party organizations such as patient advocacy groups and parents of trial participants may demand additional clinical trials or continued access to drug even if our interpretation of clinical results received thus far leads us to determine that additional clinical trials or continued access are unwarranted. Any disagreement with patient advocacy groups or parents of trial participants may require management's time and attention and may result in legal proceedings being instituted against us, which could be expensive, time-consuming and distracting, and may result in delay of the program. Negative or inconclusive results or adverse medical events, including participant fatalities that may be attributable to our product candidates, during a clinical trial may necessitate that it be redesigned, repeated or terminated. Further, some of our clinical trials may be overseen by a Data Safety Monitoring Board ("DSMB"), and the DSMB may determine to delay or suspend one or more of these trials due to safety or futility findings based on events occurring during a clinical trial. Any such delay, suspension, termination or request to repeat or redesign a trial could increase our costs and prevent or significantly delay our ability to commercialize our product candidates.

The FDA may require more clinical trials for our product candidates than we currently expect or are conducting before granting regulatory approval, if regulatory approval is granted at all. Our clinical trials may be extended which may lead to substantial delays in the regulatory approval process for our product candidates and may impair our ability to generate revenues.

Our registration and commercial timelines depend on further discussions with the FDA and corresponding foreign regulatory agencies and requirements and requests they may make for additional data or completion of additional clinical trials. Any such requirements or requests could:

- adversely affect our ability to timely and successfully commercialize or market these product candidates;
- result in significant additional costs;
- potentially diminish any competitive advantages for those products;
- potentially limit the markets for those products;
- adversely affect our ability to enter into collaborations or receive milestone payments or royalties from potential collaborators;
- cause us to abandon the development of the affected product candidate; or
- limit our ability to obtain additional financing on acceptable terms, if at all.

HEPLISAV-B, SD-101 and most of our earlier stage programs rely on oligonucleotide TLR agonists. Serious adverse event data relating to TLR agonists may require us to reduce the scope of or discontinue our operations, or reevaluate the viability of strategic alternatives.*

Most of our programs, including HEPLISAV-B and SD-101, incorporate TLR9 agonist CpG oligonucleotides. If any of our product candidates in clinical trials or similar products from competitors produce serious adverse event data, we may be required to delay, discontinue or modify our clinical trials or our clinical trial strategy, or significantly reevaluate strategic alternatives. If a safety risk based on mechanism of action or the molecular structure were identified, it may hinder our ability to develop our product candidates or enter into potential collaboration or commercial arrangements. Rare diseases and a numerical imbalance in cardiac adverse events have been observed in patients in our clinical trials. If adverse event data are found to apply to our TLR agonist and/or inhibitor technology as a whole, we may be required to significantly reduce or discontinue our operations.

We rely on our facility in Düsseldorf, Germany and third parties to supply materials or perform processes necessary to manufacture HEPLISAV-B and our product candidates. We rely on a limited number of suppliers to produce the oligonucleotides we require for development and commercialization. Additionally, we have limited experience in manufacturing our product candidates in commercial quantities. With respect to HEPLISAV-B, we have switched to a pre-filled syringe presentation of the vaccine and our ability to meet future demand will depend on our ability to manufacture sufficient supply in this presentation.

We rely on our facility in Düsseldorf and third parties to perform the multiple processes involved in manufacturing HEPLISAV-B certain antigens, the combination of the oligonucleotide and the antigens, and formulation, fill and finish. The FDA approved our pre-filled presentation of HEPLISAV-B in 2018 and we expect such presentation will be the sole presentation for HEPLISAV-B going forward. We have limited experience in manufacturing and supplying this presentation, and there can be no assurance that we can successfully manufacture sufficient quantities of pre-filled syringes in compliance with GMP in order to meet market demand.

We have also relied on a limited number of suppliers to produce oligonucleotides for clinical trials and a single supplier to produce our 1018 for HEPLISAV-B. To date, we have manufactured only small quantities of oligonucleotides ourselves for development purposes. If we were unable to maintain our existing supplier for 1018, we would have to establish an alternate qualified manufacturing capability, which would result in significant additional operating costs and delays in developing and commercializing our product candidates, particularly HEPLISAV-B. We or other third parties may not be able to produce product at a cost, quantity and quality that are available from our current third-party suppliers or at all.

In countries outside of the U.S., we may not be able to comply with ongoing and comparable foreign regulations, and our manufacturing process may be subject to delays, disruptions or quality control/quality assurance problems. Noncompliance with these regulations or other problems with our manufacturing process may limit or disrupt the commercialization of HEPLISAV-B or our other product candidates and could result in significant expense.

HEPLISAV-B is subject to FDA obligations and continued regulatory review, and if we receive regulatory approval for our other product candidates, we will be subject to ongoing FDA and foreign regulatory obligations and continued regulatory review for such products.

With respect to HEPLISAV-B and our other product candidates in development, we and our third-party manufacturers and suppliers are required to comply with applicable GMP regulations and other international regulatory requirements. The regulations require that our product candidates be manufactured and records maintained in a prescribed manner with respect to manufacturing, testing and quality control/quality assurance activities. Manufacturers and suppliers of key components and materials must be named in a BLA submitted to the FDA for any product candidate for which we are seeking FDA approval. Additionally, third-party manufacturers and suppliers and any manufacturing facility must undergo a pre-approval inspection before we can obtain marketing authorization for any of our product candidates. Even after a manufacturer has been qualified by the FDA, the manufacturer must continue to expend time, money and effort in the area of production and quality control to ensure full compliance with GMP. Manufacturers are subject to regular, periodic inspections by the FDA following initial approval. Further, to the extent that we contract with third parties for the manufacture of our products, our ability to control third-party compliance with FDA requirements will be limited to contractual remedies and rights of inspection.

If, as a result of the FDA's inspections, it determines that the equipment, facilities, laboratories or processes do not comply with applicable FDA regulations and conditions of product approval, the FDA may not approve the product or may suspend the manufacturing operations. If the manufacturing operations of any of the suppliers for our product candidates are suspended, we may be unable to generate sufficient quantities of commercial or clinical supplies of product to meet market demand, which would harm our business. In addition, if delivery of material from our suppliers were interrupted for any reason, we might be unable to ship our approved product for commercial supply or to supply our products in development for clinical trials. Significant and costly delays can occur if the qualification of a new supplier is required.

Further, in March, 2019, we submitted, and the EMA accepted, our MAA for HEPLISAV-B. We may not be able to provide sufficient data or respond to comments to our MAA sufficient to obtain regulatory approval in Europe in a reasonable time period or at all. Any failure or delay in obtaining regulatory approval in one jurisdiction may have a negative effect on the regulatory approval process in other jurisdictions. If we are unable to successfully manage our international operations, we may incur significant unanticipated costs and delays in regulatory approval or commercialization of our product candidates, which would impair our ability to generate revenues.

Failure to comply with regulatory requirements could prevent or delay marketing approval or require the expenditure of money or other resources to correct. Failure to comply with applicable requirements may also result in warning letters, fines, injunctions, civil penalties, recall or seizure of products, total or partial suspension of production, refusal of the government to renew marketing applications and criminal prosecution, any of which could be harmful to our ability to generate revenues and our stock price.

Any regulatory approvals that we receive for our product candidates are likely to contain requirements for post-marketing follow-up studies, which may be costly. Product approvals, once granted, may be modified based on data from subsequent studies or commercial use. As a result, limitations on labeling indications or marketing claims, or withdrawal from the market may be required if problems occur after approval and commercialization.

A key part of our business strategy for products in development is to establish collaborative relationships to help fund development and commercialization of our product candidates and research programs. We may not succeed in establishing and maintaining collaborative relationships, which may significantly limit our ability to continue to develop and commercialize those products and programs, if at all.*

We may need to establish collaborative relationships to obtain domestic and/or international sales, marketing, research, development and distribution capabilities for our product candidates and our discovery research programs. Failure to obtain a collaborative relationship for those product candidates and programs or HEPLISAV-B in markets outside the U.S. requiring extensive sales efforts, may significantly impair the potential for those products and programs and we may be required to raise additional capital to continue them. The process of establishing and maintaining collaborative relationships is difficult and time-consuming, and even if we establish such relationships, they may involve significant uncertainty, including:

- our partners may seek to renegotiate or terminate their relationships with us due to unsatisfactory clinical results, manufacturing issues, a change in business strategy, a change of control or other reasons;
- our shortage of capital resources may impact the willingness of companies to collaborate with us;
- our contracts for collaborative arrangements are terminable at will on written notice and may otherwise expire or terminate and we may not have alternative funding available;
- our partners may choose to pursue alternative technologies, including those of our competitors;
- we may have disputes with a partner that could lead to litigation or arbitration;
- we have limited control over the decisions of our partners and they may change the priority of our programs in a manner that would result in termination of the agreement or add significant delay in the partnered program;
- our ability to generate future payments and royalties from our partners depends upon the abilities of our partners to establish the safety and efficacy of our drug candidates, obtain regulatory approvals and successfully manufacture and achieve market acceptance of products developed from our drug candidates;
- we or our partners may fail to properly initiate, maintain or defend our intellectual property rights, where applicable, or a party may use our proprietary information in such a way as to invite litigation that could jeopardize or potentially invalidate our proprietary information or expose us to potential liability;
- our partners may not devote sufficient capital or resources towards our product candidates; and
- our partners may not comply with applicable government regulatory requirements.

Supporting diligence activities conducted by potential collaborators and negotiating the financial and other terms of a collaboration agreement are long and complex processes with uncertain results. Even if we are successful in entering into one or more collaboration agreements, collaborations may involve greater uncertainty for us, as we may have less control over certain aspects of our collaborative programs than we do over our proprietary development and commercialization programs, and the financial terms upon which collaborators may be willing to enter into such an arrangement cannot be certain.

If any collaborator fails to fulfill its responsibilities in a timely manner, or at all, our research, clinical development, manufacturing or commercialization efforts pursuant to that collaboration could be delayed or terminated, or it may be necessary for us to assume responsibility for expenses or activities that would otherwise have been the responsibility of our collaborator. Despite our efforts, we may be unable to secure collaborative arrangements. If we are unable to establish and maintain collaborative relationships on acceptable terms or to successfully transition terminated collaborative agreements, we may have to delay or discontinue further development of one or more of our product candidates, undertake development and commercialization activities at our own expense or find alternative sources of capital.

The term loan agreement we entered into in February 2018 imposes significant operating and financial restrictions on us that may prevent us from pursuing certain business opportunities and restrict our ability to operate our business.

In February, 2018, we entered into a term loan agreement under which we have borrowed $179.1 million, which includes paid-in-kind interest. The agreement contains covenants that restrict our ability to take various actions, including, among other things, incur additional indebtedness, pay dividends or distributions or make certain investments, create or incur certain liens, transfer, sell, lease or dispose of assets, enter into transactions with affiliates, consummate a merger or sell or other dispose of assets. The agreement also requires us to comply with a daily minimum liquidity covenant and an annual revenue requirement based on the sales of HEPLISAV-B, which is $30 million for the period July 1, 2019 through June 30, 2020, the first period for which we are subject to such requirement. The agreement specifies a number of events of default, some of which are subject to applicable grace or cure periods, including, among other things, non-payment defaults, covenant defaults, cross-defaults to other material indebtedness, bankruptcy and insolvency defaults, and non-payment of material judgments.

Our ability to comply with these covenants will likely be affected by many factors, including events beyond our control, and we may not satisfy those requirements. Our failure to comply with our obligations could result in an event of default and the acceleration of our repayment obligation at a time when we may not have the cash to comply with that obligation, which could result in a seizure of most of our assets. The restrictions contained in the agreement could also limit our ability to meet capital needs or otherwise restrict our activities and adversely affect our ability to finance our operations, enter into acquisitions or to engage in other business activities that would be in our interest.

We rely on CROs and Clinical Sites and Investigators for our clinical trials. If these third parties do not fulfill their contractual obligations or meet expected deadlines, our planned clinical trials may be delayed and we may fail to obtain the regulatory approvals necessary to commercialize our product candidates.

We rely on CROs, Clinical Sites and Investigators for our clinical trials. If these third parties do not perform their obligations or meet expected deadlines our planned clinical trials may be extended, delayed, modified or terminated. While we maintain oversight over our clinical trials and conduct regular reviews of the data, we are dependent on the processes and quality control efforts of our third-party contractors to ensure that clinical trials are conducted properly and that detailed, quality records are maintained to support the results of the clinical trials that they are conducting on our behalf. Any extension, delay, modification or termination of our clinical trials or failure to ensure adequate documentation and the quality of the results in the clinical trials could delay or otherwise adversely affect our ability to commercialize our product candidates and could have a material adverse effect on our business and operations.

As we focus on commercialization of HEPLISAV-B, we may encounter difficulties in managing our commercial growth and expanding our operations successfully.*

As our commercial operations expand, we expect that we will also need to manage additional relationships with various third parties, including sole source suppliers, distributors, wholesalers and hospital customers. Future growth, including managing an in-house field sales team, will impose significant added responsibilities on our organization, in particular on management. Our future financial performance and our ability to successfully commercialize HEPLISAV-B and to compete effectively will depend, in part, on our ability to manage any future growth effectively. To that end, we may not be able to manage our growth efforts effectively, and hire, train and integrate additional management, administrative and sales and marketing personnel, and our failure to accomplish any of these activities could prevent us from successfully growing our company.

If we fail to comply with the extensive requirements applicable to biopharmaceutical manufacturers and marketers under the healthcare fraud and abuse, anticorruption, privacy, transparency and other laws of the jurisdictions in which we conduct our business, we may be subject to significant liability.

Our activities, and the activities of our agents, including some contracted third parties, are subject to extensive government regulation and oversight both in the U.S. and in foreign jurisdictions. Our interactions with physicians and others in a position to prescribe or purchase our products are subject to a legal regime designed to prevent healthcare fraud and abuse and off-label promotion. We also are subject to laws pertaining to transparency of transfers of value to healthcare providers; privacy and data protection; compliance with industry voluntary compliance guidelines; and prohibiting the payment of bribes. Relevant U.S. laws include:

- the federal Anti-Kickback Statute, which prohibits persons from, among other things, knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual for, or the purchase, order or recommendation of, any good or service for which payment may be made under federal health care programs, such as the Medicare and Medicaid programs;
- federal false claims laws, including the civil False Claims Act, and civil monetary penalty law, which prohibit individuals or entities from, among other things, knowingly presenting, or causing to be presented, claims for payment to the government or its agents that are false or fraudulent;
- the Federal Food, Drug and Cosmetic Act and governing regulations which, among other things, prohibit off-label promotion of prescription drugs;
- the federal Physician Payments Sunshine Act created under the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education and Reconciliation Act of 2010 (collectively, “PPACA”) which requires certain manufacturers of drugs, devices, biologics and medical supplies to report annually to the Centers for Medicare & Medicaid Services (“CMS”), information related to payments and other transfers of value to physicians, other healthcare providers, and teaching hospitals, and ownership and investment interests held by physicians and other healthcare providers and their immediate family members;
- the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), which created, among other things, new federal criminal statutes that prohibit executing a scheme to defraud any healthcare benefit program and making false statements relating to healthcare matters;

- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations, which imposes certain requirements relating to the privacy, security, and transmission of individually identifiable health information;
- the Foreign Corrupt Practices Act, which prohibits the payment of bribes to foreign government officials and requires that a company's books and records accurately reflect the company's transactions; and
- foreign and state law equivalents of each of the federal laws described above, such as anti-kickback and false claims laws which may apply to items or services reimbursed by state health insurance programs or any third-party payor, including commercial insurers; state laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government; state laws that require drug manufacturers to report information on the pricing of certain drugs; state and local laws that require the registration of pharmaceutical sales representatives; and state and foreign laws governing the privacy and security of health information, many of which differ from each other in significant ways and often are not preempted by HIPAA.

The Office of Inspector General for the Department of Health and Human Services, the Department of Justice, states' Attorneys General and other governmental authorities actively enforce the laws and regulations discussed above. These entities also coordinate extensively with the FDA, using legal theories that connect violations of the Federal Food, Drug and Cosmetic Act (such as off-label promotion) to the eventual submission of false claims to government healthcare programs. Prosecution of such promotion cases under the federal civil False Claims Act provides the potential for private parties (qui tam relators, or "whistleblowers") to initiate cases on behalf of the government and provides for significantly higher penalties upon conviction.

In the U.S., pharmaceutical and biotechnology companies have been the target of numerous government prosecutions and investigations alleging violations of law, including claims asserting impermissible off-label promotion of pharmaceutical products, payments intended to influence the referral of federal or state health care business, submission of false claims for government reimbursement, or submission of incorrect pricing information.

Violations of any of the laws described above or any other applicable governmental regulations and other similar foreign laws may subject us, our employees or our agents to criminal, civil and administrative penalties, including fines, civil monetary penalties, exclusion from participation in government health care programs (including Medicare and Medicaid), disgorgement, individual imprisonment, additional reporting requirements and oversight if we become subject to a corporate integrity agreement or similar agreement to resolve allegations of non-compliance with these laws and the restriction or restructuring of our operations, any of which could adversely affect our ability to operate our business and our financial results. Additionally, whether or not we have complied with the law, an investigation into alleged unlawful conduct may cause us to incur significant expense, cause reputational damage, divert management time and attention, and otherwise adversely affect our business. While we have developed and instituted a corporate compliance program, we cannot guarantee that we, our employees, our consultants, contractors, or other agents are or will be in compliance with all applicable U.S. or foreign laws.

We expect there will continue to be federal and state laws and/or regulations, proposed and implemented, that could impact our operations and business. For example, the PPACA, among other things, imposes a significant annual fee on companies that manufacture or import branded prescription drug products. It also contains substantial provisions intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, and impose additional health policy reforms, any or all of which may affect our business. Some of the provisions of PPACA have yet to be fully implemented, and there have been legal and political challenges to certain aspects of PPACA. Since January 2017, President Trump has signed two executive orders and other directives designed to delay, circumvent, or loosen certain requirements mandated by PPACA. Concurrently, Congress has considered legislation that would repeal or repeal and replace all or part of PPACA. While Congress has not passed comprehensive repeal legislation, two bills affecting the implementation of certain taxes under the PPACA have been signed into law. The Tax Cuts and Jobs Act of 2017, or Tax Act, includes a provision repealing, effective January 1, 2019, the tax-based shared responsibility payment imposed by PPACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year that is commonly referred to as the "individual mandate". On January 22, 2018, President Trump signed a continuing resolution on appropriations for fiscal year 2018 that delayed the implementation of certain PPACA-mandated fees, including the so-called "Cadillac" tax on certain high cost employer-sponsored insurance plans, the annual fee imposed on certain health insurance providers based on market share, and the medical device excise tax on non-exempt medical devices. The Bipartisan Budget Act of 2018, or the BBA, among other things, amends the PPACA, effective January 1, 2019, to increase from 50 percent to 70 percent the point-of-sale discount that is owed by pharmaceutical manufacturers who participate in Medicare Part D and close the coverage gap in most Medicare drug plans, commonly referred to as the "donut hole". In July 2018, CMS published a final rule permitting further collections and payments to and from certain PPACA qualified health plans and health insurance issuers under the PPACA risk adjustment program in response to the outcome of federal district court litigation regarding the method CMS uses to determine this risk adjustment. On December 14, 2018, a Texas U.S. District Court Judge ruled that the PPACA is unconstitutional in its entirety because the "individual mandate" was repealed by Congress as part of the Tax Act. While the Texas U.S. District Court Judge, as well as the Trump administration and CMS, have stated that the ruling will have no immediate effect pending appeal of the decision, it is unclear how this decision, subsequent appeals, and other efforts to repeal and replace the PPACA will impact the PPACA and on our business.

Other legislative changes have also been proposed and adopted since the PPACA was enacted. For example, the Budget Control Act of 2011 resulted in aggregate reductions in Medicare payments to providers of up to two percent per fiscal year, starting in 2013 and, due to subsequent legislative amendments to the statute, including the BBA, will remain in effect through 2027 unless additional Congressional action is taken. In addition, the American Taxpayer Relief Act of 2012, among other things, reduced Medicare payments to several types of providers and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. Such laws, and others that may affect our business that have been recently enacted or may in the future be enacted, may result in additional reductions in Medicare and other healthcare funding.

In the future, there will likely continue to be additional proposals relating to the reform of the U.S. healthcare system, some of which could further limit coverage and reimbursement of products, including our product candidates. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors. The implementation of cost containment measures or other healthcare reforms may prevent us from being able to generate revenue, attain profitability or commercialize our products.

The loss of key personnel could delay or prevent achieving our objectives. In addition, our continued growth to support commercialization may result in difficulties in managing our growth and expanding our operations successfully.*

We depend on our senior executive officers, as well as other key scientific personnel. Our commercial and business efforts could be adversely affected by the loss of one or more key members of our commercial or management staff, including our senior executive officers. We currently have no key person insurance on any of our employees.

As our operations expand, we expect that we will need to manage additional relationships with various vendors, partners, suppliers and other third parties. Future growth will impose significant added responsibilities on members of management. Our future financial performance and our ability to successfully commercialize HEPLISAV-B and to compete effectively will depend, in part, on our ability to manage any future growth effectively. To that end, we must be able to effectively manage our commercialization efforts, research efforts and clinical trials and hire, train and integrate additional regulatory, manufacturing, administrative, and sales and marketing personnel. We may not be able to accomplish these tasks, and our failure to accomplish any of them could prevent us from successfully growing our company and achieving profitability.

We face product liability exposure, which, if not covered by insurance, could result in significant financial liability.

While we have not experienced any product liability claims to date, the use of any of our product candidates in clinical trials and the sale of any approved products, including HEPLISAV-B, will subject us to potential product liability claims and may raise questions about a product's safety and efficacy. As a result, we could experience a delay in our ability to commercialize one or more of our product candidates or reduced sales of any approved product candidates. In addition, a product liability claim may exceed the limits of our insurance policies and exhaust our internal resources. We have obtained limited clinical trial liability and umbrella insurance coverage for our clinical trials. This coverage may not be adequate or may not continue to be available in sufficient amounts, at an acceptable cost or at all. While we have obtained product liability insurance coverage for HEPLISAV-B, there is a risk that this coverage may not be adequate or may not continue to be available in sufficient amounts, at an acceptable cost or at all. We also may not be able to obtain commercially reasonable product liability insurance for any product approved for marketing in the future. A product liability claim, product recalls or other claims, as well as any claims for uninsured liabilities or in excess of insured liabilities, would divert our management's attention from our business and could result in significant financial liability.

The comprehensive tax reform bill passed in 2017 could adversely affect our business and financial condition.

On December 22, 2017, President Trump signed into law legislation, known as the Tax Cuts and Jobs Act of 2017, that significantly revises the Internal Revenue Code of 1986, as amended. The newly enacted federal income tax law, among other things, contains significant changes to corporate taxation, including reduction of the corporate tax rate from a top marginal rate of 35% to a flat rate of 21%, limitation of the tax deduction for interest expense to 30% of adjusted earnings (except for certain small businesses), limitation of the deduction for net operating losses to 80% of current year taxable income and elimination of net operating loss carrybacks, one time taxation of offshore earnings at reduced rates regardless of whether they are repatriated, elimination of U.S. tax on foreign earnings (subject to certain important exceptions), immediate deductions for certain new investments instead of deductions for depreciation expense over time, and modifying or repealing many business deductions and credits. Notwithstanding the reduction in the corporate income tax rate, the overall impact of the new federal tax law is uncertain and our business and financial condition could be adversely affected.

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

Our research and product development activities involve the controlled storage, use and disposal of hazardous and radioactive materials and biological waste, and controlled substances. We are subject to federal, state and local laws and regulations governing the use, manufacture, storage, handling and disposal of these materials, substances, and certain waste products. We believe we are currently in compliance with all government permits that are required for the storage, use and disposal of these materials and controlled substances. However, we cannot eliminate the risk of accidental contamination or injury to persons or property from these materials, or that controlled substances will be accidentally stored or used in violation of relevant federal, state and local requirements. In the event of an accident related to hazardous materials or a violation of requirements pertaining to controlled substances, we could be held liable for damages, cleanup costs or penalized with fines, and this liability could exceed the limits of our insurance policies and exhaust our internal resources. We may have to incur significant costs to comply with future environmental laws and regulations, and laws and regulations pertaining to the storage and use of controlled substances.

Significant disruptions of information technology systems or breaches of data security could adversely affect our business.

Our business is increasingly dependent on critical, complex and interdependent information technology systems, including internet-based systems, to support business processes as well as internal and external communications. The size and complexity of our computer systems make them potentially vulnerable to breakdown, malicious intrusion and computer viruses that may result in the impairment of key business processes.

In addition, our systems are potentially vulnerable to data security breaches—whether by employees or others—that may expose sensitive data to unauthorized persons. Such data security breaches could lead to the loss of trade secrets or other intellectual property, or could lead to the public exposure of personally identifiable information (including sensitive personal information) of our employees, collaborators, clinical trial patients, and others. A data security breach or privacy violation that leads to disclosure or modification of or prevents access to patient information, including personally identifiable information or protected health information, could harm our reputation, compel us to comply with federal, state and/or international breach notification laws, subject us to mandatory corrective action, require us to verify the correctness of database contents and otherwise subject us to liability under laws and regulations that protect personal data, including but not limited to HIPAA, similar state data protection regulations, and the E.U. General Data Protection Regulation, or GDPR (EU) 2016/679, resulting in significant penalties, increased costs or loss of revenue.

On June 28, 2018, California adopted the California Consumer Privacy Act of 2018 (“CCPA”). The CCPA has been characterized as the first “GDPR-like” privacy statute to be enacted in the United States because it mirrors a number of the key provisions in the GDPR. The CCPA gives California residents expanded rights to access and delete their personal information, opt out of certain personal information sharing, and receive detailed information about how their personal information is used. The CCPA provides for civil penalties for violations, as well as a private right of action for data breaches that is expected to increase data breach litigation. The CCPA may increase our compliance costs and potential liability. The effective date of the CCPA is January 1, 2020, however, legislators have stated that they intend to propose amendments to the CCPA before it goes into effect. We are continuing to analyze the CCPA in order to determine its applicability and impact to our business.

If we are unable to prevent such data security breaches or privacy violations or implement satisfactory remedial measures, our operations could be disrupted, and we may suffer loss of reputation, financial loss and other regulatory penalties because of lost or misappropriated information, including sensitive patient data. In addition, these breaches and other inappropriate access can be difficult to detect, and any delay in identifying them may lead to increased harm of the type described above. Moreover, the prevalent use of mobile devices that access confidential information increases the risk of data security breaches, which could lead to the loss of confidential information, trade secrets or other intellectual property. While we have implemented security measures to protect our data security and information technology systems, such measures may not prevent such events.

Such disruptions and breaches of security could have a material adverse effect on our business, financial condition and results of operations.

Risks Related to our Intellectual Property

We rely on licenses to intellectual property from third parties. Impairment of these licenses or our inability to maintain them would severely harm our business.

Our current research and development efforts depend in part upon our license arrangements for intellectual property owned by third parties. Our dependence on these licenses subjects us to numerous risks, such as disputes regarding the use of the licensed intellectual property and the creation and ownership of new discoveries under such license agreements. In addition, these license arrangements require us to make timely payments to maintain our licenses and typically contain diligence or milestone-based termination provisions. Our failure to meet any obligations pursuant to these agreements could allow our licensors to terminate our agreements or undertake other remedies such as converting exclusive to non-exclusive licenses if we are unable to cure or obtain waivers for such failures or amend such agreements on terms acceptable to us. In addition, our license agreements may be terminated or may expire by their terms, and we may not be able to maintain the exclusivity of these licenses. If we cannot obtain and maintain licenses that are advantageous or necessary to the development or the commercialization of our product candidates, we may be required to expend significant time and resources to develop or license similar technology or to find other alternatives to maintaining the competitive position of our products. If such alternatives are not available to us in a timely manner or on acceptable terms, we may be unable to continue development or commercialize our product candidates. In the absence of a current license, we may be required to redesign our technology so it does not infringe a third-party's patents, which may not be possible or could require substantial funds and time.

If third parties successfully assert that we have infringed their patents and proprietary rights or challenge our patents and proprietary rights, we may become involved in intellectual property disputes and litigation that would be costly, time consuming and delay or prevent development or commercialization of our product candidates.

We may be exposed to future litigation by third parties based on claims that our product candidates or proprietary technologies infringe their intellectual property rights, or we may be required to enter into litigation to enforce patents issued or licensed to us or to determine the ownership, scope or validity of our or another party's proprietary rights, including a challenge as to the validity of our issued and pending claims. From time to time we are involved in various interference and other administrative proceedings related to our intellectual property which has caused us to incur certain legal expenses. If we become involved in any litigation and/or other significant interference proceedings related to our intellectual property or the intellectual property of others, we will incur substantial additional expenses and it will divert the efforts of our technical and management personnel.

If we or our collaborators are unsuccessful in defending or prosecuting our issued and pending claims or in defending potential claims against our products, for example, as may arise in connection with the commercialization of HEPLISAV-B or any similar product candidate, we or our collaborator could be required to pay substantial damages or be unable to commercialize our product candidates or use our proprietary technologies without a license from such third-party. A license may require the payment of substantial fees or royalties, require a grant of a cross-license to our technology or may not be available on acceptable terms, if at all. Any of these outcomes could require us to change our business strategy and could materially impact our business and operations.

If the combination of patents, trade secrets and contractual provisions that we rely on to protect our intellectual property is inadequate, the value of our product candidates will decrease.

Our success depends on our ability to:

- obtain and protect commercially valuable patents or the rights to patents both domestically and abroad;
- operate without infringing upon the proprietary rights of others; and
- prevent others from successfully challenging or infringing our proprietary rights.

We will be able to protect our proprietary rights from unauthorized use only to the extent that these rights are covered by valid and enforceable patents for a commercially sufficient term or are otherwise effectively maintained as trade secrets. We try to protect our proprietary rights by filing and prosecuting U.S. and foreign patent applications. However, in certain cases such protection may be limited, depending in part on existing patents held by third parties, which may only allow us to obtain relatively narrow patent protection. In the U.S., legal standards relating to the validity and scope of patent claims in the biopharmaceutical field can be highly uncertain, are still evolving and involve complex legal and factual questions for which important legal principles remain unresolved.

The biopharmaceutical patent environment outside the U.S. is even more uncertain. We may be particularly affected by this uncertainty since several of our product candidates may initially address market opportunities outside the U.S., where we may only be able to obtain limited patent protection.

The risks and uncertainties that we face with respect to our patents and other proprietary rights include the following:

- we may not receive an issued patent for any of our patent applications or for any patent applications that we have exclusively licensed;
- the pending patent applications we have filed or to which we have exclusive rights may take longer than we expect to result in issued patents;
- the claims of any patents that are issued may not provide meaningful protection or may not be valid or enforceable;
- we might not be able to develop additional proprietary technologies that are patentable;
- the patents licensed or issued to us or our collaborators may not provide a competitive advantage;
- patents issued to other parties may limit our intellectual property protection or harm our ability to do business;
- other parties may independently develop similar or alternative technologies or duplicate our technologies and commercialize discoveries that we attempt to patent; and
- other parties may design around technologies we have licensed, patented or developed.

We also rely on trade secret protection and confidentiality agreements to protect our interests in proprietary know-how that is not patentable and for processes for which patents are difficult to enforce. We cannot be certain that we will be able to protect our trade secrets adequately. Any disclosure of confidential data in the public domain or to third parties could allow our competitors to learn our trade secrets. If we are unable to adequately obtain or enforce proprietary rights, we may be unable to commercialize our products, enter into collaborations, generate revenues or maintain any advantage we may have with respect to existing or potential competitors.

Risks Related to an Investment in our Common Stock

Our stock price is subject to volatility, and your investment may suffer a decline in value.*

The market prices for securities of biopharmaceutical companies have in the past been, and are likely to continue in the future, to be, very volatile. The market price of our common stock is subject to substantial volatility depending upon many factors, many of which are beyond our control, including:

- progress or results of any of our clinical trials or regulatory or manufacturing efforts, in particular any announcements regarding the progress or results of our planned trials and BLA filing and communications, from the FDA or other regulatory agencies;
- our ability to receive timely regulatory approval for our product candidates;
- our ability to establish and maintain collaborations for the development and commercialization of our product candidates;
- our ability to raise additional capital to fund our operations;
- the success or failure of clinical trials involving our immuno-oncology product candidates and the product candidates of third-party collaborators in combination studies;
- technological innovations, new commercial products or drug discovery efforts and preclinical and clinical activities by us or our competitors;
- changes in our intellectual property portfolio or developments or disputes concerning the proprietary rights of our products or product candidates;
- our ability to obtain component materials and successfully enter into manufacturing relationships for our product candidates or establish manufacturing capacity on our own;
- our ability to establish and maintain licensing agreements for intellectual property necessary for the development of our product candidates;
- changes in government regulations, general economic conditions or industry announcements;
- changes in the structure of healthcare payment systems;
- issuance of new or changed securities analysts' reports or recommendations;
- actual or anticipated fluctuations in our quarterly financial and operating results; and
- the volume of trading in our common stock.

One or more of these factors could cause a substantial decline in the price of our common stock. In addition, securities class action and shareholder derivative litigation has often been brought against a company following a decline in the market price of its securities. We have in the past been, and we may in the future be, the target of such litigation. Securities and shareholder derivative litigation could result in substantial costs, and divert management's attention and resources, which could harm our business, operating results and financial condition.

We will continue to incur increased costs and demands upon management as a result of complying with the laws and regulations affecting public companies, which could affect our operating results.

As a public company, we will continue to incur legal, accounting and other expenses associated with reporting requirements and corporate governance requirements, including requirements under the Sarbanes-Oxley Act of 2002 as well as any new rules implemented by the Securities and Exchange Commission and the Nasdaq Stock Market LLC. We may need to continue to implement additional financial and accounting systems, procedures and controls to accommodate changes in our business and organization and to comply with new reporting requirements. There can be no assurance that we will be able to maintain a favorable assessment as to the adequacy of our internal control over financial reporting. If we are unable to reach an unqualified assessment, or our independent registered public accounting firm is unable to issue an unqualified attestation as to the effectiveness of our internal control over financial reporting as of the end of our fiscal year, investors could lose confidence in the reliability of our financial reporting which could harm our business and could impact the price of our common stock.

Future sales of our common stock or the perception that such sales may occur in the public market could cause our stock price to fall.

Sales of a substantial number of shares of our common stock in the public market, or the perception that these sales might occur, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. As of September 30, 2019 we had 83,865,119 shares of common stock outstanding, all of which shares were eligible for sale in the public market, subject in some cases to the volume limitations and manner of sale requirements under Rule 144 of the Securities Act of 1933, as amended.

Under our universal shelf registration statement filed by us in August 2017, we may sell any combination of common stock, preferred stock, debt securities and warrants in one or more offerings, including pursuant to our 2017 ATM Agreement with Cowen under which we can offer and sell our common stock from time to time up to aggregate sales proceeds of $150 million. As of September 30, 2019, we have $118.6 million remaining under this agreement. The sale or issuance of our securities, as well as the existence of outstanding options and shares of common stock reserved for issuance under our option and equity incentive plans also may adversely affect the terms upon which we are able to obtain additional capital through the sale of equity securities.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

Exhibit Number	Document	Incorporated by Reference				Filed Herewith
		Exhibit Number	Filing	Filing Date	File No.	
3.1	Sixth Amended and Restated Certificate of Incorporation	3.1	S-1/A	February 5, 2004	333-109965	
3.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation	3.1	8-K	January 4, 2010	001-34207	
3.3	Certificate of Amendment of Amended and Restated Certificate of Incorporation	3.1	8-K	January 5, 2011	001-34207	
3.4	Certificate of Amendment of Amended and Restated Certificate of Incorporation	3.6	8-K	May 30, 2013	001-34207	
3.5	Certificate of Amendment of the Sixth Amended and Restated Certificate of Incorporation	3.1	8-K	November 10, 2014	001-34207	
3.6	Certificate of Amendment of the Sixth Amended and Restated Certificate of Incorporation	3.1	8-K	June 2, 2017	001-34207	
3.7	Certificate of Amendment of the Sixth Amended and Restated Certificate of Incorporation	3.1	8-K	July 31, 2017	001-34207	
3.8	Certificate of Designation of Preferences, Rights and Limitations of Series B Convertible Preferred Stock	3.1	8-K	August 8, 2019	001-34207	
3.9	Amended and Restated Bylaws	3.8	10-Q	November 6, 2018	001-34207	
4.1	Reference is made to Exhibits 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.9 above					
4.2	Form of Specimen Common Stock Certificate	4.2	S-1/A	January 16, 2004	333-109965	
4.3	Form of Series B Preferred Stock Certificate					X
4.4	Form of Warrant to Purchase Common Stock	4.1	8-K	August 8, 2019	001-34207	
10.1+	Form of Indemnification Agreement					X
10.2	Sublease, by and between Dynavax Technologies Corporation and MedAmerica, Inc. (d/b/a Vituity), dated July 2, 2019.					X
10.3	Sublease, by and between Dynavax Technologies Corporation and Zymergen Inc., dated July 12, 2019					X

Exhibit Number	Document	Incorporated by Reference				Filed Herewith
		Exhibit Number	Filing	Filing Date	File No.	
10.4	Amendment No. 2 to Term Loan Agreement and Fee Letter, by and among Dynavax Technologies Corporation, CRG Partners III L.P., CRG Partners III–Parallel Fund "A" L.P. and CRG Servicing LLC.					X
31.1	Certification of Co-Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
31.2	Certification of Co-Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
31.3	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
32.1*	Certification of Co-Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X
32.2*	Certification of Co-Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X
32.3*	Certification of Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X

+ Indicates management contract, compensatory plan or arrangement.

EX—101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
EX—101.SCH	Inline XBRL Taxonomy Extension Schema Document
EX—101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
EX—101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase
EX—101.LAB	Inline XBRL Taxonomy Extension Labels Linkbase Document
EX—101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
EX—104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)

* The certifications attached as Exhibits 32.1, 32.2 and 32.3 that accompany this Quarterly Report on Form 10-Q, are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of this Form 10-Q), irrespective of any general incorporation language contained in such filing.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Emeryville, State of California.

DYNAVAX TECHNOLOGIES CORPORATION

Date: November 7, 2019

By: /s/ DAVID NOVACK
David Novack
Co-President, Senior Vice President, Operations
(Co-Principal Executive Officer)

Date: November 7, 2019

By: /s/ RYAN SPENCER
Ryan Spencer
Co-President, Senior Vice President, Commercial
(Co-Principal Executive Officer)

Date: November 7, 2019

By: /s/ MICHAEL OSTRACH
Michael Ostrach
Chief Financial Officer
(Principal Financial Officer)

Date: November 7, 2019

By: /s/ DAVID JOHNSON
David Johnson
Vice President, Chief Accounting Officer
(Principal Accounting Officer)

Exhibit 10.1

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this "***Agreement***") dated as of , 20 , is made by and between **DYNAVAX TECHNOLOGIES CORPORATION**, a Delaware corporation (the "***Company***"), and ("***Indemnitee***").

RECITALS

A. The Company desires to attract and retain the services of highly qualified individuals as directors, officers, employees and agents.

B. The Company's Amended and Restated Bylaws (the "***Bylaws***") require that the Company indemnify its directors and officers, and empowers the Company to indemnify its employees and other agents, as authorized by the Delaware General Corporation Law, as amended (the "***Code***"), under which the Company is organized and such Bylaws expressly provide that the indemnification provided therein is not exclusive and contemplates that the Company may enter into separate agreements with its directors, officers and other persons to set forth specific indemnification provisions.

C. Indemnitee does not regard the protection currently provided by applicable law, the Bylaws, the Company's other governing documents, and available insurance as adequate under the present circumstances, and the Company has determined that Indemnitee and other directors, officers, employees and agents of the Company may not be willing to serve or continue to serve in such capacities without additional protection.

D. The Company desires and has requested Indemnitee to serve or continue to serve as a director, officer, employee or agent of the Company, as the case may be, and has proffered this Agreement to Indemnitee as an additional inducement to serve in such capacity.

E. Indemnitee is willing to serve, or to continue to serve, as a director, officer, employee or agent of the Company, as the case may be, if Indemnitee is furnished the indemnity provided for herein by the Company.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions.

(a) Agent. For purposes of this Agreement, the term "***Agent***" of the Company means any person who: (i) is or was a director**,** officer, employee, agent, or other fiduciary of the Company or a subsidiary of the Company; or (ii) is or was serving at the request or for the convenience of, or representing the interests of, the Company or a subsidiary of the Company, as a director, officer, employee, agent, or other fiduciary of a foreign or domestic corporation, partnership, joint venture, trust or other enterprise.

(b) Change in Control. For purposes of this Agreement, a "***Change in Control***" shall be deemed to have occurred if (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 20% or more of the total voting power represented by the Company's then outstanding Voting Securities, (ii) individuals who on the date of this Agreement are members of the Board (the "***Incumbent Board***") cease for any reason to constitute at least a majority of the members of the Board (*provided, however,* that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall be considered as a member of the Incumbent Board), or (iii) the stockholders of the Company approve a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result

in the Voting Securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into Voting Securities of the surviving entity) at least 80% of the total voting power represented by the Voting Securities of the Company or such surviving entity outstanding immediately after such merger or consolidation, or the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of (in one transaction or a series of transactions) all or substantially all of the Company's assets.

(c) Expenses. For purposes of this Agreement, the term "***Expenses***" shall be broadly construed and shall include, without limitation, all direct and indirect costs of any type or nature whatsoever, including, without limitation, all attorneys', witness, or other professional fees and related disbursements, and other out-of-pocket costs of whatever nature, actually and reasonably incurred by Indemnitee in connection with the investigation, defense or appeal of a proceeding or establishing or enforcing a right to indemnification under this Agreement, the Code or otherwise. The term "***Expenses***" shall also include reasonable compensation for time spent by Indemnitee for which he or she is not compensated by the Company or any subsidiary or third party: (i) for any period during which Indemnitee is not an Agent, in the employment of, or providing services for compensation to, the Company or any subsidiary; and (ii) if the rate of compensation and estimated time involved is approved by the directors of the Company who are not parties to any action with respect to which Expenses are incurred, for Indemnitee while an Agent of, employed by, or providing services for compensation to, the Company or any subsidiary.

(d) Independent Counsel. For purposes of this Agreement, the term "***Independent Counsel***" means a law firm, or a partner (or, if applicable, member) of such a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party, or (ii) any other party to the proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "***Independent Counsel***" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company will pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(e) Liabilities. For purposes of this Agreement, the term "***Liabilities***" shall be broadly construed and shall include, without limitation, judgments, damages, deficiencies, liabilities, losses, penalties, excise taxes, fines, assessments and amounts paid in settlement, including any interest and any federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any payment under this Agreement.

(f) Proceedings. For purposes of this Agreement, the term "***proceeding***" shall be broadly construed and shall include, without limitation, any threatened, pending, or completed action, suit, claim, counterclaim, cross claim, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing, or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, and whether formal or informal in any case, in which Indemnitee was, is or will be involved as a party, potential party, non-party witness, or otherwise by reason of: (i) the fact that Indemnitee is or was a director or officer of the Company; (ii) the fact that any action taken by Indemnitee (or a failure to take action by Indemnitee) or of any action (or failure to act) on Indemnitee's part while acting as an Agent; or (iii) the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, and in any such case described above, whether or not serving in any such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement, or advancement of Expenses may be provided under this Agreement. If the Indemnitee believes in good faith that a given situation may lead to or culminate in the institution of a proceeding, this shall be considered a proceeding under this paragraph.

(g) Subsidiary. For purposes of this Agreement, the term "***subsidiary***" means any corporation, limited liability company, or other entity, of which more than 50% of the outstanding voting securities or equity interests are owned, directly or indirectly, by the Company and one or more of its subsidiaries, and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as an Agent.

(h) Voting Securities. For purposes of this Agreement, "***Voting Securities***" shall mean any securities of the Company that vote generally in the election of directors.

2. Agreement to Serve. Indemnitee will serve, or continue to serve, as the case may be, as an Agent, faithfully and to the best of his or her ability, at the will of such entity designated by the Company and at the request of the Company (or under separate agreement, if such agreement exists), in the capacity Indemnitee currently serves such entity, so long as Indemnitee is duly appointed or elected and qualified in accordance with the applicable provisions of the governance documents of such entity, or until such time as Indemnitee tenders his or her resignation in writing; provided, however, that nothing contained in this Agreement is intended as an employment agreement between Indemnitee and the Company or any of its subsidiaries or to create any right to continued employment of Indemnitee with the Company or any of its subsidiaries in any capacity.

The Company acknowledges that it has entered into this Agreement and assumes the obligations imposed on it hereby, in addition to and separate from its obligations to Indemnitee under the Bylaws, to induce Indemnitee to serve, or continue to serve, as an Agent, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as an Agent.

3. Indemnification.

(a) Indemnification in Third Party Proceedings. Subject to Section 10 below, the Company shall indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, to the fullest extent of the law, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to adoption of such amendment), if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any proceeding, other than a proceeding by or in the right of the Company to procure a judgment in its favor, for any and all Expenses and Liabilities (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses and Liabilities) incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of such proceeding, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal proceeding had no reasonable cause to believe that Indemnitee's conduct was unlawful. The parties hereto intend that this Agreement shall provide to the fullest extent permitted by law for indemnification in excess of that expressly permitted by statute, including, without limitation, any indemnification provided by the Certificate of Incorporation of the Company, the Bylaws, vote of its stockholders or disinterested directors, or applicable law.

(b) Indemnification in Derivative Actions and Direct Actions by the Company. Subject to Section 10 below, the Company shall indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, fullest extent permitted by applicable law, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to adoption of such amendment), if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any proceeding by or in the right of the Company to procure a judgment in its favor, against any and all Expenses actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement, or appeal of such proceedings, if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 3(b) in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court competent jurisdiction to be liable to the Company, unless and only to the extent that the Chancery Court of the State of Delaware or any court in which the proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

4. Indemnification of Expenses of Successful Party. Notwithstanding any other provision of this Agreement, in circumstances where indemnification is not available under Section 3(a) or 3(b), as the case may be, to the fullest extent permitted by law and to the extent that Indemnitee is a party to (or a participant in) any proceeding and has been successful on the merits or otherwise in defense of any proceeding or in defense of any claim, issue or matter therein, in whole or part, including the dismissal of any action without prejudice, the Company shall indemnify Indemnitee against all Expenses and Liabilities in connection with the investigation, defense or appeal of such proceeding. If Indemnitee is not wholly successful in such proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such proceeding, the Company shall indemnify Indemnitee against all Expenses and Liabilities incurred by Indemnitee or on Indemnitee's behalf in connection with or related to each successfully resolved claim, issue or matter to the fullest extent permitted by law.

5. Partial Indemnification; Witness Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of any Expenses and Liabilities incurred by Indemnitee in the investigation, defense, settlement or appeal of a proceeding, but is precluded by applicable law or the specific terms of this Agreement to indemnification for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee's acting as an Agent, a witness or otherwise asked to participate in any proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

6. Advancement of Expenses. To the extent not prohibited by law, the Company shall advance the Expenses incurred by Indemnitee in connection with any proceeding, and such advancement shall be made within twenty (20) days after the receipt by the Company of a statement or statements requesting such advances (which shall include invoices received by Indemnitee in connection with such Expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditures made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be included with the invoice) and upon request of the Company, an undertaking to repay the advancement of Expenses if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. Advances shall be unsecured, interest free and without regard to Indemnitee's ability to repay the Expenses. Advances shall include any and all Expenses incurred by Indemnitee pursuing an action to enforce Indemnitee's right to indemnification under this Agreement or otherwise and this right of advancement, including expenses incurred preparing and forwarding statements to the Company to support the advances claimed. Indemnitee acknowledges that the execution and delivery of this Agreement shall constitute an undertaking providing that Indemnitee shall, to the fullest extent required by law, repay the advance (without interest) if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. The right to advances under this Section shall continue until final disposition of any proceeding, including any appeal therein. This Section 6 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 10(b).

7. Notice and Other Indemnification Procedures.

(a) Notification of Proceeding. Indemnitee will notify the Company in writing promptly upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The written notification to the Company shall include a description of the nature of the proceeding and the facts underlying the proceeding. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise and any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement.

(b) Request for Indemnification Payments. To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification under the terms of this Agreement, and shall request payment thereof by the Company.

(c) Determination of Right to Indemnification Payments. Upon written request by Indemnitee for indemnification pursuant to the Section 7(b) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods, which shall be at the election of the Board of Directors: (1) by a majority vote of the disinterested directors, even though less than a quorum, (2) by a committee of disinterested directors designated by a majority vote of the disinterested directors, even though less than a quorum, (3) if there are no disinterested directors or if the disinterested directors so direct, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the Indemnitee, or (4) if so directed by the Board of Directors, by the stockholders of the Company; *provided, however*, that if there has been a Change in Control, then such determination shall be made by Independent Counsel selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld). For purposes hereof, disinterested directors are those members of the board of directors of the Company who are not parties to the action, suit or proceeding in respect of which indemnification is sought by Indemnitee. Indemnification payments requested by Indemnitee under Section 3 hereof shall be made by the Company no later than sixty (60) days after receipt of the written request of Indemnitee. Claims for advancement of Expenses shall be made under the provisions of Section 6 herein.

(d) Application for Enforcement. In the event the Company fails to make timely payments as set forth in Sections 6 or 7(b) above, Indemnitee shall have the right to apply to any court of competent jurisdiction for the purpose of enforcing Indemnitee's right to indemnification or advancement of Expenses pursuant to this Agreement. In such an enforcement hearing or proceeding, the burden of proof shall be on the Company to prove that indemnification or advancement of Expenses to Indemnitee is not required under this Agreement or permitted by applicable law. Any determination by the Company (including its Board of Directors, a committee thereof, Independent Counsel) or stockholders of the Company, that Indemnitee is not entitled to indemnification hereunder, shall not be a defense by the Company to the action nor create any presumption that Indemnitee is not entitled to indemnification or advancement of Expenses hereunder.

(e) Indemnification of Certain Expenses. The Company shall indemnify Indemnitee against all Expenses incurred in connection with any hearing or proceeding under this Section 7 unless the Company prevails in such hearing or proceeding on the merits in all material respects.

8. Assumption of Defense. In the event the Company shall be requested by Indemnitee to pay the Expenses of any proceeding, the Company, if appropriate, shall be entitled to assume the defense of such proceeding, or to participate to the extent permissible in such proceeding, with counsel reasonably acceptable to Indemnitee. Upon assumption of the defense by the Company and the retention of such counsel by the Company, the Company shall not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same proceeding, provided that Indemnitee shall have the right to employ separate counsel in such proceeding at Indemnitee's sole cost and expense. Notwithstanding the foregoing, if Indemnitee's counsel delivers a written notice to the Company stating that such counsel has reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense or the Company shall not, in fact, have employed counsel or otherwise actively pursued the defense of such proceeding within a reasonable time, then in any such event the fees and Expenses of Indemnitee's counsel to defend such proceeding shall be subject to the indemnification and advancement of Expenses provisions of this Agreement.

9. Insurance. To the extent that the Company maintains an insurance policy or policies providing liability insurance for Agents ("***D&O Insurance***"), Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such Agent under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has D&O Insurance in effect or otherwise potentially available, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

10. Exceptions.

(a) Certain Matters. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee on account of any proceeding with respect to: (i) remuneration paid to Indemnitee if it is determined by final judgment or other final adjudication that such remuneration was in violation of law (and, in this respect, both the Company and Indemnitee have been advised that the Securities and Exchange Commission believes that indemnification for liabilities arising under the federal securities laws is against public policy and is, therefore, unenforceable and that claims for indemnification should be submitted to appropriate courts for adjudication, as indicated in Section 10(d) below); (ii) a final judgment rendered against Indemnitee for an accounting, disgorgement or repayment of profits made from the purchase or sale by Indemnitee of securities of the Company against Indemnitee or in connection with a settlement by or on behalf of Indemnitee to the extent it is acknowledged by Indemnitee and the Company that such amount paid in settlement resulted from Indemnitee's conduct from which Indemnitee received monetary personal profit, pursuant to the provisions of Section 16(b) of the Exchange Act or other provisions of any federal, state or local statute or rules and regulations thereunder; (iii) a final judgment or other final adjudication that Indemnitee's conduct was in bad faith, knowingly fraudulent or deliberately dishonest or constituted willful misconduct (but only to the extent of such specific determination); or (iv) on account of conduct that is established by a final judgment as constituting a breach of Indemnitee's duty of loyalty to the Company or resulting in any personal profit or advantage to which Indemnitee is not legally entitled. For purposes of the foregoing sentence, a final judgment or other adjudication may be reached in either the underlying proceeding or action in connection with which indemnification is sought or a separate proceeding or action to establish rights and liabilities under this Agreement.

(b) Claims Initiated by Indemnitee. Any provision herein to the contrary notwithstanding, the Company shall not be obligated to indemnify or advance Expenses to Indemnitee with respect to proceedings or claims initiated or brought by Indemnitee against the Company or its Agents and not by way of defense, except (i) with respect to proceedings brought to establish or enforce a right to indemnification or advancement under this Agreement or under any other agreement, provision in the Bylaws or the Certificate of Incorporation or applicable law, or (ii) with respect to any other proceeding initiated by Indemnitee that is either approved by the Board of Directors or Indemnitee's participation is required by applicable law. However, indemnification or advancement of Expenses may be provided by the Company in specific cases if the Board of Directors determines it to be appropriate.

(c) Unauthorized Settlements. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee under this Agreement for any amounts paid in settlement of a proceeding effected without the Company's written consent. Neither the Company nor Indemnitee shall unreasonably withhold consent to any proposed settlement; provided, however, that the Company may in any event decline to consent to (or to otherwise admit or agree to any liability for indemnification hereunder in respect of) any proposed settlement if the Company is also a party in such proceeding and determines in good faith that such settlement is not in the best interests of the Company and its stockholders.

(d) Securities Act Liabilities. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee or otherwise act in violation of any undertaking appearing in and required by the rules and regulations promulgated under the Securities Act of 1933, as amended (the "***Securities Act***"), or in any registration statement filed with the SEC under the Securities Act. Indemnitee acknowledges that paragraph (h) of Item 512 of Regulation S-K currently generally requires the Company to undertake in connection with any registration statement filed under the Securities Act to submit the issue of the enforceability of Indemnitee's rights under this Agreement in connection with any liability under the Securities Act on public policy grounds to a court of appropriate jurisdiction and to be governed by any final adjudication of such issue. Indemnitee specifically agrees that any such undertaking shall supersede the provisions of this Agreement and to be bound by any such undertaking.

(e) Prior Payments. Except as provided in Section 13, any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify or advance Expenses to Indemnitee under this Agreement for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, expect with respect to any excess beyond the amount paid under any insurance policy or indemnity policy.

11. Nonexclusivity and Survival of Rights. The provisions for indemnification and advancement of Expenses set forth in this Agreement shall not be deemed exclusive of any other rights which Indemnitee may at any time be entitled under any provision of applicable law, the Company's Certificate of Incorporation, the Bylaws or other agreements, both as to action in Indemnitee's official capacity and Indemnitee's action as an Agent, in any court in which a proceeding is brought, and Indemnitee's rights hereunder shall continue after Indemnitee has ceased acting as an Agent and shall inure to the benefit of the heirs, executors, administrators and assigns of Indemnitee. The obligations and duties of the Company to Indemnitee under this Agreement shall be binding on the Company and its successors and assigns until terminated in accordance with its terms. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her corporate status prior to such amendment, alteration or repeal. To the extent that a change in the Code, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Company's Certificate of Incorporation, the Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, by Indemnitee shall not prevent the concurrent assertion or employment of any other right or remedy by Indemnitee.

12. Term. This Agreement shall continue until and terminate upon the later of: (a) five (5) years after the date that Indemnitee shall have ceased to serve as an Agent; or (b) one (1) year after the final termination of any proceeding, including any appeal then pending, in respect to which Indemnitee was granted rights of indemnification or advancement of Expenses hereunder.

No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against an Indemnitee or an Indemnitee's estate, spouse, heirs, executors or personal or legal representatives after the expiration of five (5) years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such five-year period; provided, however, that if any shorter period of limitations is otherwise applicable to such cause of action, such shorter period shall govern.

13. Primacy of Indemnification. The Company hereby acknowledges that Indemnitee has certain rights to indemnification, advancement of expenses and/or insurance provided by [Name of Fund/Sponsor] and certain of [its][their] affiliates (collectively, the "***Fund Indemnitors***"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by Indemnitee and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and the Certificate of Incorporation or Bylaws of the Company (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Fund Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Fund Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Fund Indemnitors are express third party beneficiaries of the terms of this Section 13.

14. Subrogation. Except as provided in Section 13, in the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who, at the request and expense of the Company, shall execute all papers required and shall do everything that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

15. Interpretation of Agreement. It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification and advancement of Expenses to Indemnitee to the fullest extent now or hereafter permitted by law.

16. Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (a) the validity, legality and enforceability of the remaining provisions of the Agreement (including without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable and to give effect to Section 15 hereof.

17. Amendment and Waiver. No supplement, modification, amendment, or cancellation of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

18. Notice. Except as otherwise provided herein, any notice or demand which, by the provisions hereof, is required or which may be given to or served upon the parties hereto shall be in writing and, if by electronic transmission, shall be deemed to have been validly served, given or delivered when sent, if by overnight delivery, courier or personal delivery, shall be deemed to have been validly served, given or delivered upon actual delivery and, if mailed, shall be deemed to have been validly served, given or delivered three (3) business days after deposit in the United States mail, as registered or certified mail, with proper postage prepaid and addressed to the party or parties to be notified at the addresses set forth on the signature page of this Agreement (or such other address(es) as a party may designate for itself by like notice). If to the Company, notices and demands shall be delivered to the attention of the Secretary of the Company.

19. Governing Law. This Agreement shall be governed exclusively by and construed according to the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within Delaware.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute but one and the same Agreement. Only one such counterpart need be produced to evidence the existence of this Agreement.

21. Headings. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

22. Entire Agreement. Subject to Section 11 hereof, this Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, written and oral, between the parties with respect to the subject matter of this Agreement; provided, however, that this Agreement is a supplement to and in furtherance of the Company's Certificate of Incorporation, the Bylaws, the Code and any other applicable law, and shall not be deemed a substitute therefor, and does not diminish or abrogate any rights of Indemnitee thereunder.

23. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such proceeding; and/or (ii) the relative fault of the Company and Indemnitee in connection with such event(s) and/or transaction(s).

24. Consent to Jurisdiction. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "***Delaware Court***"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) agree to appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, an agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the date first above written.

DYNAVAX TECHNOLOGIES CORPORATION

By: _____

Name: _____

Title: _____

INDEMNITEE

_____

Signature of Indemnitee

_____

Print or Type Name of Indemnitee

Exhibit 10.2

SUBLEASE

THIS SUBLEASE (this "***Sublease***") is entered into as of July 2, 2019 (the "***Effective Date***"), by and between MEDAMERICA, INC. (D/B/A VITUITY), a Delaware corporation ("***Sublandlord***"), and DYNAVAX TECHNOLOGIES CORPORATION, a Delaware corporation ("***Subtenant***"). Sublandlord and Subtenant may each be referred to herein as a "***Party***", and collectively, the "***Parties.***"

RECITALS

This Sublease is made with reference to the following recitals of essential facts:

A. Sublandlord, as Tenant, and SPUS8 2100 POWELL, LP, a California limited partnership, (as successor to Hines REIT Watergate LP, a Delaware Limited Partnership) ("***Master Landlord***"), as Landlord, are parties to that certain 2100 Powell Lease (as amended, the "***Master Lease***"), for certain space located on the ninth (9th) floor (the "***Subleased Premises***") of 2100 Powell Street, Emeryville, CA (the "***Building***"), containing approximately 23,976 rentable square feet, as more particularly described in the Master Lease, of that greater portion of the premises leased by Sublandlord in the Building (the "***Master Premises***"). Sublandlord may continue to lease and/or occupy that portion of the Master Premises that does not contain the Subleased Premises (the "***Reserved Premises***") during the Sublease Term (as defined in Section 3). Capitalized terms used, but not defined, herein have the meanings set forth in the Master Lease.

B. Subject to the terms and conditions of this Sublease, Sublandlord desires to sublease to Subtenant, and subtenant desires to sublease from Sublandlord the Subleased Premises.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. RECITALS. The foregoing recitals are hereby incorporated into this Sublease by this reference as if fully set forth herein.

2. SUBLEASED PREMISES. Sublandlord hereby subleases to Subtenant, and Subtenant hereby subleases from Sublandlord, the Subleased Premises. Additionally, Subtenant is hereby granted the nonexclusive right to use the common areas of the Building to the extent of Sublandlord's rights to use of the same pursuant to the Master Lease, in common with other tenants in the Building (collectively, the "***Common Areas***"), each throughout the Sublease Term (as defined in Section 3). Subtenant covenants that its use of the Subleased Premises and Common Areas shall at all times comply with all of the terms, conditions and provisions of the Master Lease and with all the rules and regulations established by Master Landlord from time to time. Sublandlord warrants to Subtenant that (i) sublandlord has delivered to Subtenant a complete copy of the Master Lease, (ii) the Master Lease is, as of the date of this Sublease, in full force and effect,

(iii) no event of default by Sublandlord and, to Sublandlord's knowledge, no event of default by Master Landlord has occurred under and is continuing under the Master Lease nor has any event occurred and is continuing that would constitute an event of default by Master Landlord under the Master Lease, but for the requirement of the giving of notice and the expiration of the period of time to cure, and (iv) Sublandlord has not subleased (other than pursuant to this Sublease) or encumbered the Subleased Premises or assigned the Master Lease.

3. SUBLEASE TERM. The term of this Sublease (the "***Sublease Term***") shall commence upon the later to occur of: (a) Sublandlord's receipt of the Landlord Consent (as defined in Section 34), and (b) July 15, 2019 (the "***Commencement Date***"). Notwithstanding the foregoing, Sublandlord and Subtenant agree that Subtenant shall not occupy or commence operations at the Subleased Premises prior to July 29, 2019 (the "***Operational Date***"), however, Sublandlord agrees to (a) provide Subtenant with access to the Subleased Premises as of the Commencement Date for purposes of planning, information technology, move logistics and other reasonable needs for other planning access after the Commencement Date but prior to the Operational Date provided that Subtenant complies with Sublandlord's reasonable security requirements during such period and (b) deliver the Premises to Subtenant in the condition required under this Sublease as of the Operational Date and fully vacate the premises prior to July 26, 2019, except as provided herein below with respect to Information Technology facilities, upon which date Subtenant will commence its move into the Subleased Premises. Additionally, Subtenant and Sublandlord agree that Subtenant and Sublandlord will securely share the existing Information Technology facilities within the Premises until Sublandlord can fully relocate its existing Information Technology infrastructure elsewhere in the Building, which Sublandlord will make best efforts to complete by September 1, 2019 and will complete no later than October 31, 2019, and during which time Subtenant shall not make any alterations, additions or improvements to such Information Technology facilities without prior written consent. Subtenant and Sublandlord further agree that Sublandlord shall permit Subtenant the use of Sublandlord's existing CenturyLink internet circuit until Subtenant's circuits are fully operational, and in return for such access Subtenant shall compensate Sublandlord in the amount of $1,600 per month during the period of access. Unless earlier terminated under any provision of the Master Lease or this Sublease, the Sublease Term shall continue until June 30, 2022 (the "***Expiration Date***"). Sublandlord shall deliver possession of the Subleased Premises to Subtenant, subject to the sentence above concerning access following the Commencement Date but prior to the Operational Date, upon the occurrence of all of the following: (a) Sublandlord's receipt of the Landlord Consent, (b) Sublandlord's receipt of the Security Deposit (as defined in Section 7), and (c) Sublandlord's receipt of evidence that Subtenant carries the insurance required by the Master Lease and this Sublease.

4. BASE RENT. Beginning on the Commencement Date, Subtenant shall pay as base rent to Sublandlord an amount determined by multiplying the rentable square feet of the Subleased Premises by the Applicable Monthly Base Rate (as hereinafter defined) (each payment, a monthly installment of "***Base Rent***"). As used herein, "***Applicable Monthly Base Rate***" shall be an amount equal to Three Dollars and Ninety cents ($3.90) for the twelve (12) month period following the Commencement Date, which amount shall increase by a compounded three percent (3%) on each annual anniversary thereafter. Notwithstanding the foregoing, the Base Rent for the first forty-five (45) full calendar days of the Sublease Term shall be abated; however, if Subtenant defaults under this Sublease during the Sublease Term, Subtenant shall not be entitled to any Base Rent abatement, and Subtenant shall immediately pay to Sublandlord all sums previously abated under this Sublease, together with interest thereon which shall be calculated based on the prime rate plus 3% (the "Default Rate"), from the date such sums were abated.

5. Basic Operating Cost Excess. In addition to paying Base Rent, beginning on the Commencement Date, Subtenant shall pay to Sublandlord, as additional rent, Tenant's Proportionate Share of Estimated Basic Operating Cost Excess on a monthly basis throughout the Sublease Term in accordance with Section 3.04 of the Master Lease, solely as it relates to the Subleased Premises, and based on costs as invoiced from Master Landlord to Sublandlord. As used in this Sublease, "***Tenant's Proportionate Share of Estimated Basic Operating Cost Excess***" means an amount which equals the ratio that the rentable square footage of the Subleased Premises bears to the rentable square footage of the Master Premises, calculated in accordance with the definition of "***Tenant's Proportionate Share***" for the Subleased Premises contained in Section 1.44 of the Master Lease. Reconciliations of Estimated Base Operating Cost Excess and the actual Base Operating Cost Excess, as per Section 3.06 of the Master Lease shall be binding as between Sublandlord and Subtenant. Commencing as of the Commencement Date and continuing until and including the Term Expiration Date as defined in the Master Lease, the Base Year for the calculation of Tenant's Proportionate Share of Estimated Basic Operating Cost Excess under this Sublease shall be the 2019 calendar year, with Subtenant only being responsible to pay for Tenant's Proportionate Share of Estimated Basic Operating Cost Excess with respect to the Base Operating Costs in excess of the amount of Base Operating Costs incurred in the 2019 calendar year.

Subtenant shall pay to Sublandlord, together with its payment of Tenant's Proportionate Share of Estimated Basic Operating Cost Excess, 100% of the cost of: (a) any charges that apply solely to the Subleased Premises (e.g., real estate taxes on leasehold improvements therein), (b) late fees or penalties assessed against Sublandlord or Master Landlord as a result of Subtenant's acts or omissions, and (c) charges incurred as a result of excess or additional services requested by Subtenant for the Subleased Premises.

6. Payment of Rent. Base Rent and any other amounts payable by Subtenant in connection with this Sublease are referred to in this Sublease as "***Rent.***" Rent shall be due and payable to Sublandlord without prior written notice or demand, in advance, without deduction or offset, in lawful money of the United States of America, on or before the first day of each calendar month during the Sublease Term. Rent shall be payable at Sublandlord's address set forth herein, or at such other place as Sublandlord may designate in writing to Subtenant. Rent for any period during this Sublease Term that is less than one (1) month shall be prorated based on a thirty (30) day month. Unpaid Rent that is three (3) days or more past due shall bear interest at the Default Rate until paid.

7. Security Deposit. Subtenant shall deposit with Sublandlord on or before the Effective Date the sum of $374,025.60 (the "***Security Deposit***"), which is the equivalent of four months' Rent, which Sublandlord will hold as security for Subtenant's faithful performance of all of the terms, covenants and conditions of this Sublease to be kept and performed by Subtenant during the period commencing on the Effective Date and ending upon the expiration or earlier termination of Subtenant's obligations under this Sublease. Sublandlord shall return to Subtenant one fourth of the Security Deposit (the equivalent of one month's Rent) in cash every 12 months of the Sub Lease Term, provided that Subtenant is not then in default of any provision of this Sublease. Such repayment shall be completed within 10 days following the completion of each such 12 month period. If a default occurs with respect to any provision of this Sublease, including any provision relating to the payment of Rent, then Sublandlord may, but is not required to, use, apply or retain all or any part of the Security Deposit for the payment of any Rent or any other sum

in default, or to compensate Sublandlord for any other loss or damage that Sublandlord may suffer by reason of Subtenant's default. If Sublandlord so uses or applies any portion of the Security Deposit, then Subtenant shall, within ten (10) days following demand therefor, deposit cash with Sublandlord in an amount sufficient to restore the Security Deposit to its original amount, and Subtenant's failure to do so shall be an Event of Default under this Sublease. If Subtenant pays all of the Rent due under this Sublease and fully performs all of the other covenants and obligations on its part to be performed under this Sublease, then Sublandlord shall return to Subtenant the Security Deposit, less any portion thereof which Sublandlord may have as permitted by this Section 7, within thirty (30) days after the expiration of the Sublease Term by lapse of time or termination of the Master Lease through no fault of Subtenant Subtenant shall not be entitled to any interest on the Security Deposit, and Sublandlord shall have the right to commingle the Security Deposit with Sublandlord's other funds. The provisions of this Section 7 shall survive the expiration or earlier termination of this Sublease. SUBTENANT HEREBY WAIVES THE REQUIREMENTS OF SECTION 1950.7 OF THE CALIFORNIA CIVIL CODE, AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

8. CONDITION OF SUBLEASED PREMISES. Subtenant (a) acknowledges that Subtenant has conducted a thorough inspection of the Subleased Premises and (b) agrees that the Subleased Premises are in good condition and repair, and Subtenant accepts the Subleased Premises in their current "***AS IS, WHERE IS***" condition with all faults. Subtenant hereby waives all warranties, whether express or implied (including warranties of merchantability or fitness for a particular purpose), with respect to the Subleased Premises or any furniture, fixtures and equipment located therein, including, without limitation, the FF&E (as defined in Section 9). Except as expressly set forth in this Sublease, Sublandlord makes no representation or warranty of any kind with respect to the Subleased Premises, and Subtenant shall have full responsibility for making any desired repairs, installations, alterations or additions to the Subleased Premises. Any installations, alterations or additions which Subtenant desires to make to the Subleased Premises shall be subject to the prior written approval of both Master Landlord and Sublandlord, which will not be unreasonably withheld and shall otherwise be constructed in accordance with all of the terms and conditions of the Master Lease. Notwithstanding the foregoing, Sublandlord, to the best of its knowledge, represents and warrants to Subtenant that as of the Effective Date, (i) the Building's systems in the Premises (including HVAC, electrical, mechanical systems and plumbing) are in good working condition and repair, and (ii) the Premises are in compliance with all local and state codes including Americans With Disabilities Act of 1990, 42 U.S.C. §12101, et seq. (as amended).

9. FF&E. Provided no Event of Default (as defined in Section 21) has occurred and is continuing, Subtenant may utilize the furniture, fixtures and equipment owned by Sublandlord and located in the Subleased Premises as of the Commencement Date (the "***FF&E***") during the Sublease Term which are itemized in **Exhibit A** attached hereto. Subtenant shall accept the FF&E in its presently existing, "AS-IS, WHERE-IS, WITH ALL FAULTS" condition. Sublandlord makes no representation or warranty of any kind whatsoever, express or implied, as to any matters concerning the FF&E, including, without limitation, any warranties as to title or implied warranties of merchantability or fitness for a particular purpose. Subtenant shall maintain the FF&E in good condition and repair, reasonable wear and tear excepted, and shall be responsible for any loss or damage to the same occurring during the Sublease Term. On the Expiration Date, Subtenant shall purchase the FF&E from Sublandlord for the sum of One Dollar ($1.00) pursuant to a bill of sale in form and content substantially identical to the form of Bill and Sale attached hereto as **Exhibit B**, in its "AS IS, WHERE IS" condition, without representation or warranty whatsoever.

10. Use. Subtenant may use the Subleased Premises solely for the Permitted Use, and for no other use. Subtenant's use of the Subleased Premises will at all times comply with the requirements of the Master Lease, and Subtenant shall not use the Subleased Premises in a manner that is in any way inconsistent with the Master Lease or that might cause Sublandlord to be in breach of the Master Lease. Subtenant shall not commit or allow to be committed any waste upon the Building or Subleased Premises, or any public or private nuisance or act which is unlawful.

11. Compliance with Laws. Subtenant shall, at its sole cost and expense, promptly comply with all laws, ordinances and regulations with respect to Subtenant's use, occupancy or improvement of the Subleased Premises, as such liabilities arise following the Commencement Date, including, without limitation, the Americans With Disabilities Act of 1990, 42 U.S.C. §12101, et seq. (as amended, together with the regulations promulgated pursuant thereto) (collectively, "***Applicable Laws***"). Additionally, Subtenant shall be responsible, at its sole cost and expense, to reimburse Sublandlord for any legal compliance costs incurred by Sublandlord with respect to the Subleased Premises as a result of Subtenant's (a) specific use and occupancy of the Subleased Premises (as opposed to general office use), or (b) obtaining any permit or license with respect to the Subleased Premises. For the avoidance of doubt, Subtenant shall not be responsible for curing any non-compliance with Applicable Laws that exist in the Subleased Premises as of the Commencement Date, except that Subtenant shall be responsible for curing any non-compliance with Applicable Laws that result from any alterations, additions and improvements initiated by Subtenant.

12. Compliance with Master Lease.

12.1 Subtenant Covenants. Subtenant covenants that it will occupy the Subleased Premises in accordance with all of the terms and conditions of the Master Lease as they apply to the Subleased Premises and will not suffer to be done or omit to do any act which may result in a violation of or a default under any of the terms and conditions of the Master Lease, or render Sublandlord liable for any damage, charge or expense thereunder. Subtenant further covenants and agrees to indemnify Sublandlord against and hold Sublandlord harmless from any claim, demand, action, proceeding, suit, liability, loss, judgment, expense (including reasonable attorneys' fees) and damages of any kind or nature whatsoever ("***Claims***") arising out of, by reason of, or resulting from, Subtenant's failure to perform or observe any of the terms and conditions of the Master Lease applicable to the Subleased Premises or this Sublease.

12.2 Sublandlord Covenants. Sublandlord covenants that it will maintain the Master Lease during the entire Sublease Term, subject, however, to any earlier termination of the Master Lease without the fault of Sublandlord. Sublandlord covenants that it will occupy the Reserved Premises in accordance with all of the terms and conditions of the Master Lease as they apply to the Reserved Premises and will not suffer to be done or omit to do any act which may result in a violation of or a default under any of the terms and conditions of the Master Lease, or render Sublandlord liable for any damage, charge or expense thereunder. Sublandlord shall cause the Master Landlord to perform its obligations under the Master Lease, and shall cooperate with Subtenant in its efforts to obtain such performance. Sublandlord hereby covenants not to enter into any amendment or other agreement with respect to the Master Lease which will prevent or adversely affect Subtenant's use of the Subleased Premises in accordance with the terms of this Sublease, materially increase Subtenant's obligations or decrease Subtenant's rights under this

Sublease. Provided that Subtenant agrees to pay all reasonable costs and expenses of Sublandlord and provides Sublandlord with security reasonably satisfactory to Sublandlord to pay such costs and expenses, Sublandlord will take appropriate legal action to enforce the Master Lease and/or Sublease. So long as Subtenant is not in default of its obligations hereunder (beyond applicable notice and cure periods), Subtenant's quiet and peaceable enjoyment of the Subleased Premises shall not be disturbed or interfered with by Sublandlord, or by any person claiming by, through, or under Sublandlord.

12.3 Subordination of Sublease. This Sublease is subject and subordinate to the Master Lease in all respects. If the Master Lease is terminated for any reason whatsoever, then this Sublease shall automatically terminate as if it expired by its terms (unless assumed by Master Landlord), and in such event neither Sublandlord nor Master Landlord shall have any liability whatsoever to Subtenant as a result of such termination, except that Sublandlord shall be liable to Subtenant for any such termination arising as a result of Sublandlord's default under the Master Lease (to the extent not caused by Subtenant's acts or omissions). Except as expressly provided in Section 12.2, under no circumstance shall Sublandlord be obligated to, or be responsible or liable in any way for, Master Landlord's failure to (a) perform any acts required to be completed by Master Landlord under the Master Lease, (b) supply any item, including, but not limited to, any utility or service to the Subleased Premises required to be supplied by Master Landlord under the Master Lease, or (c) complete any work or maintenance in the Subleased Premises, the Building or the Master Premises required to be completed by Master Landlord under the Master Lease; and no such failure will in any way excuse Subtenant's performance under this Sublease or entitle Subtenant to any abatement of Rent.

12.4 Incorporation of Terms. Except as expressly provided in this Section 12.4, Subtenant hereby assumes and agrees to perform each and every covenant and obligation of Sublandlord under the Master Lease with respect to the Subleased Premises (and Sublandlord shall have the right to elect to require Subtenant to perform its obligations under the Master Lease directly to Master Landlord on prior written notice and Master Landlord's consent to the same) and to satisfy all applicable terms and conditions of the Master Lease for the benefit of Sublandlord and Master Landlord. Notwithstanding the foregoing, (i) to the extent of any inconsistencies between the express terms of this Sublease and the terms of the Master Lease incorporated herein by reference, the express terms of this Sublease shall control, (ii) with respect to any obligation of Subtenant to be performed under this Sublease, wherever the Master Lease grants to Sublandlord a specified number of days after notice or other time condition to perform its corresponding obligation under the Master Lease (excluding the payment of Rent), Subtenant shall have one-fifths fewer days (rounded to the nearest whole day) to perform the obligation (by way of example only, Subtenant shall have 5 fewer days to perform an obligation to be performed in 30 days, and shall have 1 fewer day to perform an obligation to be performed in 5 days), including, without limitation, curing any defaults. Any default notice or other notice of any obligations (including any billing or invoice for any Rent or any other expense or charge due under the Master Lease) from Master Landlord which is received by Subtenant (whether directly or as a result of being forwarded by Sublandlord) shall constitute such notice from Sublandlord to Subtenant under this Sublease without the need for any additional notice from Sublandlord. Whenever the provisions of the Master Lease require the written consent of Master Landlord, said provisions shall be construed to require the written consent of both Master Landlord and Sublandlord. Wherever the provisions of the Master Lease require the indemnification of Master Landlord, said provisions

shall be construed to require the indemnification of both Master Landlord and Sublandlord (and their respective owners, partners, principals, members, trustees, officers, directors, shareholders, agents, employees and lenders).

12.5 Survival. The provisions of this Section 12 shall survive the expiration or earlier termination of this Sublease.

13. UTILITIES; SERVICES. Sublandlord shall have no obligation to provide to the Subleased Premises with any services or utilities (including, without limitation, telephone or internet services) of any kind and shall have no liability for any interruption in utilities or services to the Subleased Premises; provided, however, that to the extent Sublandlord provides any services or utilities to the Subleased Premises, Subtenant shall pay to Sublandlord (upon receipt of invoice) any reasonable amounts necessary to reimburse or compensate Sublandlord for providing such services. Sublandlord shall not be responsible or liable in any way for any failure or interruption, for any reason whatsoever, of the services, utilities or facilities that may or should be appurtenant or supplied to the Subleased Premises, and no such failure will in any way excuse Subtenant's performance under this Sublease or entitle Subtenant to any abatement of Rent, unless such failure is a result of Sublandlord's negligence or willful misconduct, or Sublandlord's default under the Master Lease, in which event Subtenant may contract directly with Master Landlord to restore such interrupted utilities and services. Subtenant shall pay to Sublandlord as Rent hereunder any and all sums which Sublandlord may be required to pay to Master Landlord or any service provider arising out of excess consumption by Subtenant or a request by Subtenant for additional building services (e.g., charges associated with after-hours HVAC usage and over-standard electrical charges). Notwithstanding anything to the contrary in this Sublease or the Master Lease, Subtenant agrees that Sublandlord shall not be required to perform any of the covenants, agreements or obligations of Master Landlord under the Master Lease and, insofar as any of the covenants, agreements and obligations of Sublandlord hereunder are required to be performed under the Master Lease by Master Landlord thereunder, Subtenant acknowledges and agrees that Subtenant will look solely to Master Landlord for such performance.

14. MAINTENANCE. Subtenant shall perform all maintenance and repairs in the Subleased Premises which Sublandlord is required to perform under the Master Lease; provided, however, that, at Sublandlord's option, or if Subtenant fails to make such repairs, Sublandlord may, but need not, make such repairs and replacements, and Subtenant shall pay Sublandlord's costs or expenses, arising from Sublandlord's involvement with such repairs and replacements upon being billed for same. For the avoidance of doubt, in no event shall Sublandlord be obligated to undertake any maintenance and repair obligations that are the responsibility of Master Landlord under the Master Lease.

15. ASSIGNMENT AND SUBLETTING. Subtenant shall not assign, mortgage, hypothecate, encumber or otherwise transfer this Sublease or sub-sublease (which term shall be deemed to include the granting of concessions and licenses and the like) the whole or any part of the Subleased Premises, including by operation of law (any of the foregoing, an "***Assignment***"), without in each case first obtaining the prior written consent of Sublandlord, not to be unreasonably withheld; it being agreed that it shall be deemed reasonable for Sublandlord to withhold its consent to an Assignment, if Master Landlord has withheld its consent to the same. No Assignment shall relieve Subtenant of any liability under this Sublease. Consent to any such Assignment shall not

operate as a waiver of the necessity for consent to any subsequent Assignment. Any assignee or subtenant shall assume all of Subtenant's obligations under this Sublease and be jointly and severally liable with Subtenant hereunder. Any Assignment hereunder must comply with terms and conditions in Article 5.06 of the Master Lease.

16. INDEMNITY. Without in any way limiting the applicability or terms of any indemnities found in the Master Lease, each Party shall, except to the extent caused by the other Party's negligence or willful misconduct, indemnify, protect, defend and hold harmless the other Party or any of its owners, partners, principals, members, trustees, officers, directors, shareholders, agents, employees and lenders ("***Related Parties***"), from and against any and all Claims occurring within the Subleased Premises or arising out of, involving, or in connection with, (a) the use or occupancy of the Subleased Premises by Subtenant, (b) the acts or omissions of either party or any of such Party's invitees, agents or employees, (c) any breach of this Sublease by either Party, and (d) any violation of Applicable Laws caused by either Party. If any action or proceeding is brought against either Party by reason of any of the foregoing matters, such Party shall upon notice defend the same at such Party's expense by counsel reasonably satisfactory to the other Party. This Section 16 shall survive the expiration or earlier termination of this Sublease.

17. EXEMPTION OF SUBLANDLORD FROM LIABILITY. Unless caused by Sublandlord's negligence or willful misconduct, Sublandlord shall not be liable for injury or damage to the person or goods, wares, merchandise, or other property of Subtenant, Subtenant's employees, contractors, invitees, customers, or any other person in or about the Master Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said injury or damage results from conditions arising from the Master Premises or from any other source or place, and regardless of whether the cause of damage or injury or the means of repairing the same is accessible. Notwithstanding any provision in this Sublease to the contrary, neither Sublandlord, nor Master Landlord nor any of its owners, partners, principals, members, trustees, officers, directors, shareholders, agents, employees and lenders, shall be liable for (and Subtenant hereby waives any claims for) any injury or damage to, or interference with, Subtenant's business, including loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, or for any form of special or consequential damage.

18. DAMAGE AND DESTRUCTION', CONDEMNATION. In no event shall Sublandlord have any obligation to Subtenant to restore the Subleased Premises or the Master Premises if damaged, destroyed or condemned as described in Article 7.08 or Article 7.09 of the Master Lease. To the extent any damage, destruction or casualty loss occurs in the Master Premises or Subleased Premises which entitles Sublandlord to terminate the Master Lease, Sublandlord may terminate the Master Lease (in which event this Sublease shall automatically terminate) without liability to Subtenant. With respect to damage, destruction or condemnation (as described in Articles 7.08 and 7.09 of the Master Lease), Subtenant shall have no right to abatement of Rent under this Sublease unless Sublandlord is entitled to abatement of rent under the Master Lease with respect to the Subleased Premises and receives such abatement from Master Landlord.

19. BROKERS. Sublandlord and Subtenant hereby represent and warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Sublease, and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Sublease, other than: (a) Scott Stone and Frank Palestini (Cresa Global), representing Sublandlord, and (b) Scott Stone (Cresa Global) and Mark Moser (Savills Studley), representing Subtenant (collectively, the "***Brokers***"). Each Party agrees to indemnify and defend the other Party against and hold the other Party harmless for, from and against any and all Claims 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. The indemnities in this Section 19 shall survive the expiration or termination of this Sublease. Sublandlord shall pay the Brokers applicable commissions per a separate agreement.

20. NOTICES. Any notice, demand or request required or desired to be given under this Sublease to Sublandlord or Subtenant shall be in writing via (a) personal delivery, (b) First Class U.S. Mail, return receipt requested, (c) FedEx or other reputable overnight carrier, or (d) email (but only if a hard copy is sent within one (1) business day thereafter by one of the methods in the foregoing sections (a) through (c)), and shall be addressed to the address of the Party to be served, as set forth in this Section 20. Either Party may from time to time, by written notice to the other Party in accordance with this Section 20, designate a different address than that set forth below for the purpose of notice. Upon receipt of any notice from Master Landlord, Subtenant shall promptly deliver a copy of such notice to Sublandlord in accordance with the terms and conditions of this Section 20.

Sublandlord:	**Subtenant:**
Medamerica, Inc. 2100 Powell Street, Suite 400 Emeryville, CA 94608 Attn: Legal and Compliance Department	Dynavax Technologies Corporation 2929 Seventh Street, #100 Berkeley, CA 94710 Attn: Legal Department

21. DEFAULT. The occurrence of any of the following events (each, an "***Event of Default***") shall constitute a material default and breach of this Sublease by Subtenant: (a) Subtenant's failure to pay Rent, where such failure shall continue for a period of seven (7) days following Subtenant's receipt of written notice thereof from Sublandlord; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure, Section 1161, (b) the occurrence of a default or material breach of the Master Lease due to Subtenant's acts or omissions, or (c) the occurrence of any of the events described in Article 7 of the Master Lease, which remain uncured after the cure period provided in the Master Lease as such cure period is adjusted pursuant to this Sublease. Upon any Event of Default under this Sublease, Sublandlord shall have all of the remedies available to Master Landlord pursuant to the Master Lease, including, without limitation, the remedies enumerated in Article 7.10 of the Master Lease. All of Sublandlord's rights and remedies herein enumerated or incorporated by reference above are cumulative, and none will exclude any other right or remedy allowed by law or in equity.

22. SURRENDER. On the expiration or earlier termination of this Sublease, Subtenant shall, at its sole cost and expense, surrender and deliver up the Subleased Premises to Sublandlord, in a broom-clean, in good order, condition and repair as required by Section 5.04 of the Master Lease, excepting ordinary wear and tear, repair and maintenance for which Master Landlord is responsible under the Master Lease and casualty damage, and otherwise in accordance with the requirements of the Master Lease. Subtenant explicitly agrees to comply with the Repair Obligation as referenced in Section 4.05 of the Master Lease, the License of Existing Furniture as referenced in Section 4.09 of the Master Lease and all other provisions concerning Alterations, Tenant Improvements and Tenant Extra Improvements referenced in the Master Lease. For the avoidance of doubt, Subtenant shall not be required to remove any telecommunications, data cabling, Alterations, Tenant Improvements or Tenant Extra Improvements that exist on the Subleased Premises as of the Commencement Date.

23. PARKING. During the Sublease Term, Subtenant shall have the right to park at the Building's parking garage, on an unreserved basis, up to 72 cars, with the cost of such parking calculated in accordance with Section 7.05 of the Master Lease. Subtenant's right to use the parking space is expressly conditioned upon Subtenant's compliance with terms and conditions of the Master Lease and all reasonable rules and regulations respecting parking established from time to time by Master Landlord.

24. SIGNAGE. Subtenant shall have the right to install corporate signage in the entrance to the Premises, as well as any common entries, subject to Section 4.04 of the Master Lease.

25. INSURANCE. The provisions of Article 7 of the Master Lease pertaining to insurance shall be incorporated into this Sublease, subject to the following terms. For purposes of this Sublease, the term "Tenant" in Article 7 of the Master Lease Agreement shall be deemed to mean Subtenant, and the term "Landlord" shall be deemed to mean Master Landlord (except that the release and waiver of subrogation shall also apply as between Sublandlord and Subtenant, as well as between Sublandlord and Subtenant) and the term "Premises" shall mean the "Subleased Premises," except that all policies of liability insurance required to be maintained by Subtenant hereunder and thereunder shall name Sublandlord and Master Landlord as additional named insureds and all notices related to such insurance and all evidence of such policies shall be delivered to Sublandlord and Master Landlord.

26. LIMITATION OF LIABILITY. None of the Related Parties shall have any personal liability for any default by either Party under this Sublease or arising in connection herewith or with the operation, management, leasing, repair, renovation, alteration or any other matter relating to the Project or the Subleased Premises, and each Party hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under such Party. The terms of this Section 27 shall inure to the benefit of each Party's and each Related Parties' present and future partners, beneficiaries, officers, directors, trustees, shareholders, agents and employees, and their respective partners, heirs, successors and assigns.

27. ESTOPPEL. Within ten (10) business days after request therefor by Sublandlord, Subtenant agrees to execute an Estoppel Certificate in accordance with Article 5.13 of the Master Lease.

28. GOVERNING LAW. The terms and provisions of this Sublease shall be construed in accordance with and governed by the laws of the State of California.

29. PARTIAL INVALIDITY. If any term, provision or condition contained in this Sublease shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Sublease shall be valid and enforceable to the fullest extent possible permitted by law.

30. ATTORNEYS' FEES. If any Party commences litigation against another in connection with this Sublease, for damages for the breach hereof or otherwise for enforcement of any remedy hereunder, the prevailing Party shall be entitled to recover from the other Party such costs and reasonable attorneys' fees as may have been incurred, including any and all costs incurred in enforcing, perfecting and executing such judgment.

31. COUNTERPARTS AND ELECTRONIC SIGNATURES. This Sublease may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement. This Sublease may be executed by a Party's signature transmitted by email, and copies of this Sublease executed and delivered by means of emailed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All Parties hereto may rely upon emailed signatures (including signatures in Portable Document Format) as if such signatures were originals. All Parties hereto agree that an emailed signature page may be introduced into evidence in any proceeding arising out of or related to this Sublease as if it were an original signature page.

32. ENTIRE AGREEMENT. This Sublease, together with the Master Lease as incorporated or referenced herein, constitutes the entire agreement and complete understanding of the Parties with respect to the matters set forth herein and merges and supersedes all prior, oral and written, agreements and understandings, and all contemporaneous oral agreements and understandings, of any nature whatsoever with respect to such subject matter.

33. MASTER LANDLORD'S CONSENT. This Sublease is subject to and contingent upon and shall be of no force or effect until Master Landlord's execution of a written consent to this Sublease in a form reasonably acceptable to the Parties hereto (the "***Landlord Consent***"). In the event Master Landlord does not so execute the Landlord Consent within thirty (30) days following the Effective Date, then Subtenant may, at its discretion, terminate this Sublease. If this Sublease is so terminated, Sublandlord shall promptly return to Subtenant any prepaid Rent and the Security Deposit previously paid to Sublandlord. Neither Party shall have any liability to the other for any termination or cancellation of this Sublease as a result of Master Landlord's failure or refusal to consent to this Sublease despite such efforts by the Parties hereto.

[Signature page follows]

In Witness Whereof, Sublandlord and Subtenant have executed this Sublease as of the date and year set forth above.

SUBLANDLORD:	**SUBTENANT:**
MEDAMERICA INC. (d/b/a Vituity), a Delaware corporation	**DYNAVAX TECHNOLOGIES CORPORATION** a Delaware corporation
By: /s/ Michael F. Harrington	**By:** /s/ Ryan Spencer
Name: Michael F. Harrinton	**Name:** **Ryan Spencer**
Title: CEO	**Title:** **Interim Co-President**

SUBLEASE

THIS SUBLEASE (this "***Sublease***") is entered into as of July 12, 2019 (the "***Effective Date***"), by and between DYNAVAX TECHNOLOGIES CORPORATION, a Delaware corporation ("***Sublandlord***"), and ZYMERGEN INC., a Delaware corporation ("***Subtenant***"). Sublandlord and Subtenant may each be referred to herein as a "***Party***", and collectively, the "***Parties.***"

RECITALS

This Sublease is made with reference to the following recitals of essential facts:

A. Sublandlord, as tenant, and Emery Station West, LLC, a California limited liability company ("***Master Landlord***"), as landlord, are parties to that certain Office/Laboratory Lease, dated as of September 17, 2018 (as may be amended from time to time, the "***Master Lease***"), for certain space located on the sixth (6th) and seventh (7th) floors of the building commonly known as 5959 Horton Street, Emeryville, CA (the "***Building***"), containing approximately 75,662 rentable square feet, as more particularly described in the Master Lease (the "***Master Premises***"). Capitalized terms used, but not defined, herein have the meanings set forth in the Master Lease, a copy of which has been previously provided to Subtenant.

B. Subject to the terms and conditions of this Sublease, Sublandlord desires to sublease to Subtenant, and Subtenant desires to sublease from Sublandlord, all of the Master Premises, as depicted in **Exhibit A** attached hereto (the "***Subleased Premises***") until the Expiration Date (as defined in Section 3).

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. RECITALS. The foregoing recitals are hereby incorporated into this Sublease by this reference as if fully set forth herein.

2. SUBLEASED PREMISES. Sublandlord hereby subleases to Subtenant, and Subtenant hereby subleases from Sublandlord, the Subleased Premises. Additionally, Subtenant is hereby granted the nonexclusive right to use the common areas of the Building to the extent of Sublandlord's rights to use of the same pursuant to the Master Lease, in common with other tenants in the Building (collectively, the "***Common Areas***"), each throughout the Sublease Term (as defined in Section 3). Subtenant covenants that its use of the Subleased Premises and Common Areas shall at all times comply with all of the terms, conditions and provisions of the Master Lease and with all the rules and regulations established by Master Landlord from time to time.

3. SUBLEASE TERM. The term of this Sublease (the "***Sublease Term***") shall commence upon the latest to occur of: (a) Sublandlord's receipt of the Landlord Consent (as defined in Section 35), (b) Sublandlord's receipt of a Certificate of Occupancy, and (c) July 15, 2019 (the "***Commencement Date***"). Unless earlier terminated under any provision of the Master Lease or this Sublease, the Sublease Term shall continue until March 31, 2031 (the "***Expiration Date***"). Sublandlord shall deliver possession of the Subleased Premises to Subtenant upon the occurrence

of all of the following: (a) Sublandlord's receipt of the Landlord Consent, (b) Sublandlord's receipt of the first full month's Base Rent (as defined in Section 4) and the Security Deposit (as defined in Section 8), and (c) Sublandlord's receipt of evidence that Subtenant carries the insurance required by the Master Lease and this Sublease.

4. BASE RENT. Beginning on the Commencement Date, Subtenant shall pay base rent to Sublandlord in an amount determined by multiplying rentable square feet of the Subleased Premises by the Applicable Monthly Base Rate (as hereinafter defined) (each payment, a monthly installment of "***Base Rent***"). As used herein, "***Applicable Monthly Base Rate***" shall be an amount equal to Five Dollars and Fifty Cents ($5.50) for the twelve (12) month period following the Commencement Date, which amount shall increase by a compounded three percent (3%) on each annual anniversary of the Commencement Date. Notwithstanding the foregoing, the Base Rent for the first five (5) full calendar months of the Sublease Term shall be abated; however, if Subtenant defaults resulting in an Event of Default under this Sublease during the Sublease Term, Subtenant shall not be entitled to any further Base Rent abatement, and if the Event of Default results in termination of the Sublease, then Subtenant shall pay to Sublandlord the unamortized portion of the abated Base Rent as of the termination date within thirty (30) days of receipt of an invoice therefor.

5. ADDITIONAL RENT. In addition to paying Base Rent, beginning on the Commencement Date, Subtenant shall pay to Sublandlord, as additional rent, Subtenant's Share of Rent Adjustment on a monthly basis throughout the Sublease Term in accordance with Section 4.1 of the Master Lease. As used in this Sublease, "***Subtenant's Share of Rent Adjustment***" means an amount which equals the ratio that the rentable square footage of the Subleased Premises bears to the rentable square footage of the Master Premises, multiplied by Rent Adjustment attributable to the Master Premises payable by Sublandlord to Master Landlord pursuant to Article 4 of the Master Lease. Sublandlord shall promptly forward to Subtenant all Landlord's Statements for the Master Premises that Sublandlord receives from Master Landlord. If Sublandlord receives a credit for overpayment of Rent Adjustment attributable to the Master Premises ("***Direct Expense Credit***") pursuant to Section 4.2 of the Master Lease, Subtenant shall receive a credit against the next installment of Rent due under this Sublease in an amount equal to the ratio that the rentable square footage of the Subleased Premises bears to the rentable square footage of the Master Premises at the time that the overpayment was made multiplied by the total Direct Expense Credit or, if the Sublease Term has ended, Sublandlord shall pay such amount to Subtenant within thirty (30) days of Sublandlord's receipt of the Direct Expense Credit. If Sublandlord needs to make a payment to Master Landlord due to an underpayment of Rent Adjustment attributable to the Master Premises ("***Direct Expense Shortfall***") pursuant to Section 4.2 of the Master Lease, Sublandlord shall submit to Subtenant an invoice therefor and Subtenant shall pay Sublandlord an amount equal to the ratio that the rentable square footage of the Subleased Premises bears to the rentable square footage of the Master Premises at the time the underpayment was made multiplied by the total Direct Expense Shortfall together with the next installment of Rent due or, if the Sublease Term has ended, Subtenant shall pay such amount to Sublandlord within thirty (30) days of Subtenant's receipt of an invoice therefor.

Notwithstanding anything in this Sublease to the contrary, Subtenant shall pay to Sublandlord, together with its payment of Subtenant's Share of Rent Adjustment, 100% of the cost of: (a) any charges that apply solely to the Subleased Premises (e.g., real estate taxes on leasehold

improvements therein), (b) late fees or penalties assessed against Sublandlord or Master Landlord as a result of Subtenant's acts or omissions, (c) charges incurred as a result of excess or additional services requested by Subtenant for the Subleased Premises, and (d) the cost of utilities and janitorial services consumed by Subtenant in accordance with Section 6.2 of the Master Lease. Sublandlord shall pass through to Subtenant all abatements, credits, set-offs, offsets, and refunds received by Sublandlord under the Master Lease to the extent such abatements, credits, set-offs, and offsets directly relate to the Subleased Premises.

6. PAYMENT OF RENT. Base Rent, Rent Adjustment and any other amounts payable by Subtenant in connection with this Sublease are referred to in this Sublease as "***Rent***". Except as explicitly provided in this Sublease or the Master Lease, Rent shall be due and payable to Sublandlord without prior written notice or demand, in advance, without deduction or offset, in lawful money of the United States of America, on or before the first day of each calendar month during the Sublease Term. Rent shall be payable at Sublandlord's address set forth herein, or at such other place as Sublandlord may designate in writing to Subtenant. Rent for any period during this Sublease Term that is less than one (1) month shall be prorated based on a thirty (30) day month.

7. DELINQUENT PAYMENTS.

7.1 Late Fee. Subtenant acknowledges that Subtenant's late payment of Rent will cause Sublandlord to incur costs not contemplated by this Sublease, the exact amount of such costs being difficult and impractical to fix. Such other costs include, without limitation, processing, administrative and accounting charges and late charges that may be imposed on Sublandlord. Accordingly, if Sublandlord does not receive any Rent within five (5) days of its due date, Subtenant shall pay to Sublandlord an additional sum of five percent (5%) of the delinquent amount as a late charge. The Parties agree that this late charge represents a fair and reasonable estimate of the costs that Sublandlord will incur due to Subtenant's late payment of Rent. Sublandlord's acceptance of a late charge will not constitute a waiver of Subtenant's default with respect to the delinquent amount or prevent Sublandlord from exercising any of the other rights and remedies available to Sublandlord under this Sublease or under Applicable Laws (as defined in Section 12).

7.2 Interest. In addition to the late charges referred to above, if Sublandlord is charged interest by Master Landlord in accordance with Article III of the Master Lease, then Subtenant shall be responsible for reimbursing Sublandlord for such amount. Sublandlord's acceptance of interest payments will not constitute a waiver of Subtenant's default with respect to the delinquent amount or prevent Sublandlord from exercising any of the other rights and remedies available to Sublandlord under this Sublease or under Applicable Laws.

8. SECURITY DEPOSIT. Subtenant shall deposit with Sublandlord on or before the Effective Date the sum of One Million Six Hundred Sixty-Four Thousand Five Hundred Sixty-Four Dollars ($1,664,564) (the "***Security Deposit***"), which Sublandlord will hold as security for Subtenant's faithful performance of all of the terms, covenants and conditions of this Sublease to be kept and performed by Subtenant during the period commencing on the Effective Date and ending upon the expiration or earlier termination of Subtenant's obligations under this Sublease. Sublandlord reserves the right to increase the amount of the Security Deposit (by the amount

required to restore such Tenant Alteration) in the event that Subtenant desires to construct any Tenant Alterations in accordance with the Master Lease, and Subtenant shall restore such Tenant Alteration as required under the Master Lease, with such increase serving as security for Subtenant's faithful performance of such restoration obligation. Notwithstanding the foregoing, the Security Deposit shall not be increased, nor shall Subtenant have restoration obligations, with respect to the Subtenant Alterations pursuant to Section 9, so long as Master Landlord does not seek restoration for such Subtenant Alterations. If an Event of Default occurs with respect to any provision of this Sublease, including any provision relating to the payment of Rent, then Sublandlord may, but is not required to, use, apply or retain all or any part of the Security Deposit for the payment of any Rent or any other sum in default, or to compensate Sublandlord for any other loss or damage that Sublandlord may suffer by reason of Subtenant's Event of Default. If Sublandlord so uses or applies any portion of the Security Deposit, then Subtenant shall, within ten (10) days following demand therefor, deposit cash with Sublandlord in an amount sufficient to restore the Security Deposit to its original amount, and Subtenant's failure to do so shall be an Event of Default under this Lease. Sublandlord shall return to Subtenant the Security Deposit, less any portion thereof which Sublandlord may have used, applied, or retained as permitted by this Section 8 (provided that Sublandlord provides Subtenant with an accounting of the amounts so retained and how they were used or applied), within sixty (60) days after the expiration of the Sublease Term by lapse of time or termination of the Master Lease. Subtenant shall not be entitled to any interest on the Security Deposit, and Sublandlord shall have the right to commingle the Security Deposit with Sublandlord's other funds. The provisions of this Section 8 shall survive the expiration or earlier termination of this Sublease. SUBTENANT HEREBY WAIVES THE REQUIREMENTS OF SECTION 1950.7 OF THE CALIFORNIA CIVIL CODE, AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

In lieu of the cash Security Deposit described above, the Security Deposit may be in the form of an irrevocable letter of credit (the "***Letter of Credit***") in an amount equal to the foregoing amount issued to Sublandlord, as beneficiary, in form and substance reasonably satisfactory to Sublandlord, by a bank reasonably approved by Sublandlord, in which case, the Letter of Credit shall serve as the Security Deposit under this Sublease. Subtenant shall deliver to Sublandlord the proposed form of Letter of Credit for Sublandlord's reasonable approval prior to issuance of such Letter of Credit. Subtenant shall maintain the Letter of Credit for the entire Sublease Term, provided that Subtenant may at any time substitute a cash Security Deposit for the Letter of Credit, and upon such substitution, Sublandlord shall return the Letter of Credit to Subtenant. Subtenant shall pay all expenses, points and/or fees incurred by Subtenant in obtaining and maintaining the Letter of Credit. The Letter of Credit shall secure Subtenant's full and faithful performance and observance of the terms, covenants and conditions of this Sublease. The Letter of Credit shall provide that it will be automatically renewed until at least sixty (60) days after the Expiration Date.

If, as of the sixth (6th) anniversary of the Commencement Date, all of the following are true: a) all Rent due has been paid, b) Subtenant is not in an Event of Default hereunder, c) Subtenant's net worth and liquidity, as calculated pursuant to GAAP, are each not materially less than they were as of the Commencement Date, Sublandlord agrees that the Security Deposit amount shall be reduced by fifty percent (50%), and the amount by which the Security Deposit is reduced shall be returned to Subtenant within thirty (30) days following the sixth (6th) anniversary of the Commencement Date. Failure of any of the above to be true at the end of the sixth (6th)

anniversary of the Commencement Date shall mean the Security Deposit shall remain unchanged in amount for the balance of the Sublease Term.

9. CONDITION OF SUBLEASED PREMISES; SUBTENANT ALTERATIONS. Sublandlord represents and warrants to Subtenant that (i) Sublandlord has completed the Tenant Work prior to the Commencement Date and in accordance with the Master Lease (including Exhibit B of the Master Lease) and all other work required of Sublandlord by Master Landlord for occupancy of the Master Premises (e.g., installation of the Meter), (ii) as of the Commencement Date, to the best of its knowledge, the Building Systems serving the Premises are in good working condition and repair, and (iii) as of the Commencement Date, to the best of its knowledge, the Premises are in compliance with all local and state codes including Americans With Disabilities Act of 1990, 42 U.S.C. §12101, et seq. (as amended). Provided the foregoing representations and warranties are true, Subtenant accepts the Subleased Premises in their current "AS IS, WHERE IS" condition with all faults. Except as expressly set forth in this Sublease, Subtenant hereby waives all warranties, whether express or implied (including warranties of merchantability or fitness for a particular purpose), with respect to the Subleased Premises or any furniture, fixtures and equipment located therein, including, without limitation, the FF&E (as defined in Section 10). Except as expressly set forth in this Sublease, Sublandlord makes no representation or warranty of any kind with respect to the Subleased Premises, and Subtenant shall have full responsibility for making any desired repairs, installations, alterations or additions to the Subleased Premises. Any installations, alterations or additions which Subtenant desires to make to the Subleased Premises shall be subject to the prior written approval of both Master Landlord and Sublandlord and shall otherwise be constructed in accordance with all of the terms and conditions of the Master Lease.

Provided that Subtenant complies with the provisions of Article 9 of the Master Lease, Sublandlord consents to Subtenant performing the alterations (the "***Subtenant Alterations***") described in **Exhibit B** attached hereto. Notwithstanding anything in this Sublease or the Master Lease to the contrary, the Security Deposit shall not be increased due to the Subtenant Alterations, nor shall Subtenant have any obligation to remove the Subtenant Alterations, or restore the Subleased Premises to its condition prior to the Subtenant Alterations, at the end of the Sublease Term. This paragraph, and Subtenant's consent hereto, shall be subject to Subtenant's receipt of consent to same from the Master Landlord.

10. FF&E. Provided no Event of Default (as defined in Section 22) has occurred and is continuing, Subtenant may utilize all the furniture, fixtures and equipment owned by Sublandlord and located in the Subleased Premises as of the Commencement Date (collectively, the "***FF&E***") during the Sublease Term, which such FF&E are itemized in **Exhibit C** attached hereto. Sublandlord represents and warrants as of the Commencement Date that (i) Sublandlord is the rightful owner of the FF&E, (ii) the FF&E has not otherwise been sold or assigned to any other person or entity, (iii) the FF&E is free and clear of all liens, encumbrances, claims and demands, and (iv) to the best of Sublandlord's knowledge, the FF&E is in good operating condition and free of any defects. Except as provided in the immediately preceding sentence, Subtenant shall accept the FF&E in its "AS-IS, WHERE-IS, WITH ALL FAULTS" condition as of the Commencement Date, and Sublandlord shall have no liability to Subtenant of any kind under any circumstances arising out of or in connection with the FF&E arising from and after the Commencement Date of such FF&E or Subtenant's use thereof. Subtenant hereby releases Sublandlord from and against any and all claims, damages, costs, expenses and liabilities arising out of or in connection with the

FF&E, and/or Subtenant's use thereof, from and after the Commencement Date, including, without limitation, any taxes with respect to the FF&E and/or Subtenant's use thereof, and any related interest and penalties resulting from late payment by Subtenant thereof (collectively, "**FF&E Claims**"), and Subtenant shall indemnify, defend and hold Sublandlord harmless from and against any and all FF&E Claims accruing on and after the Commencement Date. Notwithstanding the foregoing, Sublandlord shall inform Subtenant of the terms and conditions of any manufacturer's warranties or guarantees ("***Manufacturer's Warranties***") with respect to the FF&E in effect as of the Commencement Date, and in the event of any FF&E defect in design, material, or workmanship covered by such Manufacturer's Warranties, Sublandlord shall assert such applicable Manufacturer's Warranties using commercially reasonable efforts after Subtenant notifies Sublandlord of the defect. Subtenant shall maintain the FF&E in good condition and repair, reasonable wear and tear excepted, and shall be responsible for any loss or damage to the FF&E occurring from the Commencement Date through the Expiration Date. Subtenant may freely move, and/or remove any of the FF&E from the Subleased Premises without replacement thereof or notification to Sublandlord. On the Expiration Date, Subtenant shall purchase the FF&E from Sublandlord for the sum of One Dollar ($1.00) pursuant to a bill of sale in form and content substantially identical to the form of Bill and Sale attached hereto as **Exhibit D**, in its "AS IS, WHERE IS" condition, without representation or warranty whatsoever, except that Sublandlord is the rightful owner of the FF&E, that the FF&E has not otherwise been sold or assigned to any other person or entity, and that the FF&E is free and clear of all liens, encumbrances, claims and demand.

11. USE. Subtenant may use the Subleased Premises solely for the Permitted Use, and for no other use. Subtenant's use of the Subleased Premises must at all times comply with the requirements of the Master Lease, and Subtenant shall not use the Subleased Premises in a manner that is in any way inconsistent with the Master Lease or that might cause Sublandlord to be in breach of the Master Lease. Subtenant shall not commit or allow to be committed any waste upon the Building or Subleased Premises, or any public or private nuisance or act which is unlawful. Subtenant shall not commit any act that will increase the then existing rate of insurance on the Building or the Master Premises. Subtenant shall promptly pay upon demand the amount of any such increase in insurance rates caused by any act of Subtenant.

12. COMPLIANCE WITH LAWS. Subtenant shall, at its sole cost and expense, promptly comply with all laws, ordinances and regulations with respect to Subtenant's use, occupancy or improvement of the Subleased Premises, including, without limitation, the Americans With Disabilities Act of 1990, 42 U.S.C. §12101, et seq. (as amended, together with the regulations promulgated pursuant thereto) (collectively, "***Applicable Laws***"). Additionally, Subtenant shall be responsible, at its sole cost and expense, to reimburse Sublandlord for any legal compliance costs incurred by Sublandlord with respect to the Subleased Premises as a result of Subtenant's (a) specific use and occupancy of the Subleased Premises (as opposed to general office use), (b) obtaining any permit or license with respect to the Subleased Premises, or (c) making any installations, additions or alterations to the Subleased Premises.

13. COMPLIANCE WITH MASTER LEASE.

13.1 Subtenant Representations, Warranties, and Covenants. Subtenant represents and warrants that it will occupy the Subleased Premises in accordance with all of the

terms and conditions of the Master Lease as they apply to the Subleased Premises and will not suffer to be done or omit to do any act which may result in a violation of or a default under any of the terms and conditions of the Master Lease, or render Sublandlord liable for any damage, charge or expense thereunder. Subtenant further covenants and agrees that it will indemnify Sublandlord against and hold Sublandlord harmless from any claim, demand, action, proceeding, suit, liability, loss, judgment, expense (including reasonable attorneys' fees) and damages of any kind or nature whatsoever ("***Claims***") arising out of, by reason of, or resulting from, Subtenant's failure to perform or observe any of the terms and conditions of the Master Lease applicable to the Subleased Premises or this Sublease.

13.2 Sublandlord Representations, Warranties, and Covenants. Sublandlord represents and warrants the following is true and correct as of the Effective Date and Commencement Date: (i) Sublandlord is the tenant under the Master Lease and has the capacity to enter into this Sublease with Subtenant, subject to Master Landlord's consent, (ii) the Master Lease attached hereto as **Exhibit E** is a true, correct, and complete copy of the Master Lease, is in full force and effect, and has not been further modified, amended, or supplemented except as expressly set out herein, (iii) Sublandlord has not received any notice, and has no actual knowledge, of any default by Sublandlord under the Master Lease, and (iv) Sublandlord has no actual knowledge of any default by Master Landlord under the Master Lease. Sublandlord covenants that it will maintain the Master Lease during the entire Sublease Term, subject, however, to any earlier termination of the Master Lease without the fault of Sublandlord. Sublandlord shall use commercially reasonable efforts to cause the Master Landlord to perform its obligations under the Master Lease (including without limitation by making written demands to Master Landlord to perform its obligations under the Master Lease with respect to the Subleased Premises) and shall use commercially reasonable efforts to cooperate with Subtenant in its efforts to obtain such performance. Sublandlord hereby covenants not to enter into any amendment or other agreement with respect to the Master Lease without the prior written consent of the Subtenant.

13.3 Subordination of Sublease. This Sublease is subject and subordinate to the Master Lease in all respects. If the Master Lease is terminated for any reason whatsoever, then this Sublease shall automatically terminate as if it expired by its terms (unless assumed by Master Landlord), and in such event neither Sublandlord nor Master Landlord shall have any liability whatsoever to Subtenant as a result of such termination, except that Sublandlord shall be liable to Subtenant for any such termination arising as a result of Sublandlord's default under the Master Lease (to the extent not caused by Subtenant's acts or omissions). Except as expressly provided in Section 13.2, under no circumstance shall Sublandlord be obligated to, or be responsible or liable in any way for, Master Landlord's failure to (a) perform any acts required to be completed by Master Landlord under the Master Lease, (b) supply any item, including, but not limited to, any utility or service to the Subleased Premises required to be supplied by Master Landlord under the Master Lease, or (c) complete any work or maintenance in the Subleased Premises, the Building or the Master Premises required to be completed by Master Landlord under the Master Lease; and no such failure will in any way excuse Subtenant's performance under this Sublease or entitle Subtenant to any abatement of Rent, unless Sublandlord has so received an abatement of Rent from Master Landlord, in which case such abatement shall be passed through to Subtenant.

13.4 Incorporation of Terms. Except as expressly provided in this Section 13.4 or as otherwise stated in this Sublease, Subtenant hereby assumes and agrees to perform, and shall

inure to the benefit of, each and every covenant, term, condition, and obligation binding on or inuring to the benefit of Sublandlord under the Master Lease with respect to the Subleased Premises (and Sublandlord shall have the right to elect to require Subtenant to perform its obligations under the Master Lease directly to Master Landlord on prior written notice and Master Landlord's consent to the same). Whenever the term "Landlord," "Tenant," or "Premises" appears in the Master Lease, the word "Sublandlord," "Subtenant" or "Subleased Premises" shall be substituted therefore. Notwithstanding the foregoing, (i) to the extent of any inconsistencies between the express terms of this Sublease and the terms of the Master Lease incorporated herein by reference, the express terms of this Sublease shall control, (ii) Subtenant shall have no renewal or extension rights (including the Renewal Option), other options under the Master Lease (including the Right of First Offer and Special ROFO) or rights to terminate the Master Lease, whether following a casualty or condemnation event, or otherwise, without prior written consent of Sublandlord and Master Landlord, which may be withheld or conditioned at their sole discretion, (iii) with respect to any obligation of Subtenant to be performed under this Sublease, except as provided in this Sublease, wherever the Master Lease grants to Sublandlord a specified number of days after notice or other time condition to perform its corresponding obligation under the Master Lease (excluding the payment of Rent), Subtenant shall have one-third fewer days (rounded to the nearest whole day) to perform the obligation (by way of example only, Subtenant shall have 10 fewer days to perform an obligation to be performed in 30 days, and shall have 2 fewer days to perform an obligation to be performed in 5 days), including, without limitation, curing any defaults. Any default notice or other notice of any obligations (including any billing or invoice for any Rent or any other expense or charge due under the Master Lease) from Master Landlord which is received by Subtenant (whether directly or as a result of being forwarded by Sublandlord) shall constitute such notice from Sublandlord to Subtenant under this Sublease without the need for any additional notice from Sublandlord, and (iv) Sublandlord shall be solely responsible for any obligations and liability arising under the Master Lease prior to the Commencement Date. Whenever the provisions of the Master Lease require the written consent of Master Landlord, said provisions shall be construed to require the written consent of both Master Landlord and Sublandlord. For any act requiring Master Landlord consent, upon request from Subtenant and subject to Subtenant's full cooperation, Sublandlord shall promptly make such consent request on behalf of Subtenant and Subtenant shall promptly provide any information or documentation that Master Landlord may request. Wherever the provisions of the Master Lease require the indemnification of Master Landlord, said provisions shall be construed to require the indemnification of both Master Landlord and Sublandlord (and their respective owners, partners, principals, members, trustees, officers, directors, shareholders, agents, employees and lenders). Subtenant hereby acknowledges that it has read and is familiar with all the terms of the Master Lease.

13.5 Survival. The provisions of this Section 13 shall survive the expiration or earlier termination of this Sublease.

14. UTILITIES; SERVICES. Sublandlord shall have no obligation to provide to the Subleased Premises any services or utilities (including, without limitation, telephone or internet services) of any kind and shall have no liability for any interruption in utilities or services to the Subleased Premises; provided, however, that to the extent Sublandlord provides any services or utilities to the Subleased Premises, Subtenant shall pay to Sublandlord (upon receipt of invoice) the amounts necessary to reimburse Sublandlord for the actual costs of providing such services.

Sublandlord shall not be responsible or liable in any way for any failure or interruption, for any reason whatsoever, of the services, utilities or facilities that may or should be appurtenant or supplied to the Subleased Premises, and no such failure will in any way excuse Subtenant's performance under this Sublease or entitle Subtenant to any abatement of Rent, unless Sublandlord receives such an abatement from Master Landlord, in which case such abatement shall be passed through to Subtenant, or such failure is a result of Sublandlord's gross negligence or willful misconduct, or Sublandlord's default under the Master Lease, in which event Subtenant may contract directly with Master Landlord to restore such interrupted utilities and services. Subtenant shall pay to Sublandlord as Rent hereunder any and all sums which Sublandlord may be required to pay to Master Landlord or any service provider arising out of excess consumption by Subtenant or a request by Subtenant for additional building services (e.g., charges associated with after-hours HVAC usage and over-standard electrical charges). Notwithstanding anything to the contrary in this Sublease or the Master Lease, Subtenant agrees that Sublandlord shall not be required to perform any of the covenants, agreements or obligations of Master Landlord under the Master Lease and, insofar as any of the covenants, agreements and obligations of Sublandlord hereunder are required to be performed under the Master Lease by Master Landlord thereunder, Subtenant acknowledges and agrees that Subtenant will look solely to Master Landlord for such performance, subject to Section 13.2.

15. MAINTENANCE; "TENANT WORK". Subtenant shall perform all maintenance and repairs in the Subleased Premises which Sublandlord is required to perform under the Master Lease; provided, however, that, at Sublandlord's option, or if Subtenant fails to make such repairs, Sublandlord may, but need not, make such repairs and replacements, and Subtenant shall pay Sublandlord's costs or expenses, arising from Sublandlord's involvement with such repairs and replacements upon being billed for same. Notwithstanding the foregoing, with respect to the Tenant Work performed by Sublandlord pursuant to the Master Lease, Sublandlord shall be solely responsible for completing any "punch list" items and correcting any defects, deviations, or disapprovals identified by Master Landlord pursuant to Master Landlord's inspection under Exhibit B of the Master Lease. For the avoidance of doubt, in no event shall Sublandlord be obligated to undertake any maintenance and repair obligations that are the responsibility of Master Landlord under the Master Lease.

16. ASSIGNMENT AND SUBLETTING. Subtenant shall not assign, mortgage, hypothecate, encumber or otherwise transfer this Sublease or sub-sublease (which term shall be deemed to include the granting of concessions and licenses and the like) the whole or any part of the Subleased Premises, including by operation of law (any of the foregoing, an "***Assignment***"), without in each case first obtaining the prior written consent of Sublandlord, not to be unreasonably withheld; it being agreed that it shall be deemed reasonable for Sublandlord to withhold its consent to an Assignment, if Master Landlord has withheld its consent to the same. No Assignment shall relieve Subtenant of any liability under this Sublease. Consent to any such Assignment shall not operate as a waiver of the necessity for consent to any subsequent Assignment. In connection with each request for an Assignment, Subtenant shall pay up to $2,500 Sublandlord's reasonable costs of processing such Assignment, including reasonable attorneys' fees, and any fees or costs payable under the Master Lease, upon demand of Sublandlord. Any assignee or subtenant shall assume all of Subtenant's obligations under this Sublease and be jointly and severally liable with Subtenant hereunder. Any Assignment hereunder must comply with terms and conditions in Article 10 of the Master Lease.

17. INDEMNITY. Without in any way limiting the applicability or terms of any indemnities found in the Master Lease, Subtenant shall, except to the extent caused by Sublandlord's negligence or willful misconduct, indemnify, protect, defend and hold harmless Master Landlord and Sublandlord or any of its owners, partners, principals, members, trustees, officers, directors, shareholders, agents, employees and lenders ("***Sublandlord Related Parties***"), from and against any and all Claims occurring within the Subleased Premises on or after the Commencement Date or arising out of, involving, or in connection with, (a) the use or occupancy of the Subleased Premises by Subtenant, (b) the acts or omissions of Subtenant or any of Subtenant's invitees, agents or employees, (c) any breach of this Sublease by Subtenant, and (d) any violation of Applicable Laws caused by Subtenant. If any action or proceeding is brought against Master Landlord or Sublandlord by reason of any of the foregoing matters, Subtenant shall upon notice defend the same at Subtenant's expense by counsel reasonably satisfactory to Master Landlord and Sublandlord. Sublandlord shall, except to the extent caused by Subtenant's negligence or willful misconduct, indemnify, protect, defend, and hold harmless Subtenant and any of its owners, partners, principals, members, trustees, directors, officers, shareholders, agents, employees, and lenders ("***Subtenant Related Parties***"), from and against any and all Claims occurring within the Subleased Premises prior to the Commencement Date or arising out of, involving, or in connection with (a) the use or occupancy of the Subleased Premises by Sublandlord prior to the Commencement Date, or (b) breach of this Sublease by Sublandlord. If any action or proceeding is brought against Subtenant by reason of any of the foregoing matters, Sublandlord shall upon notice defend the same at Sublandlord's expense by counsel reasonably satisfactory to Subtenant. This Section 17 shall survive the expiration or earlier termination of this Sublease.

18. EXEMPTION OF SUBLANDLORD FROM LIABILITY. Unless caused by Sublandlord's gross negligence or willful misconduct, Sublandlord shall not be liable for injury or damage to the person or goods, wares, merchandise, or other property of Subtenant, Subtenant's employees, contractors, invitees, customers, or any other person in or about the Master Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said injury or damage results from conditions arising from the Master Premises or from any other source or place, and regardless of whether the cause of damage or injury or the means of repairing the same is accessible. Notwithstanding any provision in this Sublease to the contrary, neither Sublandlord nor any Sublandlord Related Parties, Master Landlord, any holder of any mortgage, deed of trust, or other security instrument encumbering the Building, the Building ground lessor, the Building property manager, the Building leasing manager, nor their respective partners, members, officers, directors, agents, or employees (collectively, the "***Indemnitees***"), shall be liable for (and Subtenant hereby waives any claims for) any consequential damages, compensation or claims for inconvenience or loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful and wrongful act of any of the foregoing Indemnitees. Subtenant and its respective partners, members, officers, directors, agents, and employees shall only be liable to Sublandlord and Sublandlord's Related Parties for any consequential damages, compensation or claims for inconvenience or loss of business, rents or profits as a result of any injury or damage to the extent; (a) (i) caused directly by an act or omission of Subtenant or any of Subtenant's invitees, agents or employees and (ii) Master Landlord has brought an action or proceeding against Sublandlord for same; or (b) to the extent resulting from a holdover (which is governed by Section

24 of this Sublease). Without limiting Subtenant's indemnity obligations under Section 17, Subtenant shall indemnify Sublandlord in accordance with Section 17 for any Claims brought by Master Landlord against Sublandlord pursuant to item (a)(ii) above, provided that (a)(i) is satisfied.

19. DAMAGE AND DESTRUCTION; CONDEMNATION. In no event shall Sublandlord have any obligation to Subtenant to restore the Subleased Premises or the Master Premises if damaged, destroyed or condemned as described in Article 14 or Article 15 of the Master Lease. To the extent any damage, destruction or casualty loss occurs in the Master Premises or Subleased Premises which entitles Sublandlord to terminate the Master Lease, Sublandlord shall so notify Subtenant, and Sublandlord may terminate the Master Lease, in which event this Sublease shall automatically terminate without liability to Subtenant. With respect to damage, destruction or condemnation (as described in Articles 14 and 15 of the Master Lease), Subtenant shall be entitled to any abatement, credits, allowances, awards, insurance proceeds, or other compensation for loss or relocation, in each case as received by Sublandlord and only to the extent pertaining to the Subleased Premises, any Tenant Additions made by Subtenant, or any Subtenant personal property, trade fixtures, and equipment, or any interruption of Subtenant's business, and only to the extent provided under the Master Lease.

20. BROKERS. Sublandlord and Subtenant hereby represent and warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Sublease, and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Sublease, other than: (a) Cresa, representing Sublandlord, and (b) Savills, representing Subtenant (collectively, the "***Brokers***"). Each Party agrees to indemnify and defend the other Party against and hold the other Party harmless for, from and against any and all Claims 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. The indemnities in this Section 20 shall survive the expiration or termination of this Sublease. Sublandlord shall pay the Brokers applicable commissions per a separate agreement.

21. NOTICES. Any notice, demand or request required or desired to be given under this Sublease to Sublandlord or Subtenant shall be in writing via (a) personal delivery, (b) First Class U.S. Mail, return receipt requested, (c) FedEx or other reputable overnight carrier, or (d) email (but only if a hard copy is sent within one (1) business day thereafter by one of the methods in the foregoing sections (a) through (c)), and shall be addressed to the address of the Party to be served, as set forth in this Section 21. Either Party may from time to time, by written notice to the other Party in accordance with this Section 21, designate a different address than that set forth below for the purpose of notice. Upon receipt of any notice from Master Landlord, Subtenant shall promptly deliver a copy of such notice to Sublandlord in accordance with the terms and conditions of this Section 21. Upon receipt of any notice from Master Landlord, Sublandlord shall promptly deliver a copy of such notice to Subtenant in accordance with the terms and conditions of this Section 20.

Sublandlord:

Dynavax Technologies Corporation
Attn: Chief Financial Officer
2929 7th Street, Suite 100
Berkeley, CA 94710
Email: mostrach@dynavax.com

With a copy to:

Dynavax Technologies Corporation
Attn: General Counsel
2929 7th Street, Suite 100
Berkeley, CA 94710

Subtenant:

Zymergen Inc.
Attn: VP Real Estate & Facilities
5980 Horton St., Suite 105
Emeryville, CA 94608
Email: zmcgahey@zymergen.com

With a copy to:

Zymergen Inc.
Attn: General Counsel
5980 Horton St., Suite 105
Emeryville, CA 94608
Email: legalnotices@zymergen.com

22. DEFAULT. The occurrence of any of the following events (each, an "***Event of Default***") shall constitute a material default and breach of this Sublease by Subtenant: (a) Subtenant's failure to pay Rent, where such failure shall continue for a period of four (4) days following Subtenant's receipt of written notice thereof from Sublandlord; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure, Section 1161, (b) the occurrence of any of the events described in Article 11 of the Master Lease due to Subtenant's acts or omissions, which remain uncured after the cure period provided in the Master Lease as such cure period is adjusted pursuant to this Sublease. Upon any Subtenant Event of Default under this Sublease, Sublandlord shall have all of the remedies available to Master Landlord pursuant to the Master Lease, including, without limitation, the remedies enumerated in Section 11.2 of the Master Lease. All of Sublandlord's rights and remedies herein enumerated or incorporated by reference above are cumulative, and none will exclude any other right or remedy allowed by law or in equity.

The following events (each, an "***Event of Default***") shall constitute a material default and breach of this Sublease by Sublandlord: the occurrence of any of the events described in Article 11 of the Master Lease due to Sublandlord's acts or omissions, which remain uncured after the cure period provided in the Master Lease. Upon any Sublandlord Event of Default under this Sublease, Subtenant shall have all rights or remedies allowed by law or in equity.

23. SURRENDER. On the expiration or earlier termination of this Sublease, Subtenant shall, at its sole cost and expense, surrender and deliver up the Subleased Premises to Sublandlord, in a broom-clean, good and tenantable condition, excepting ordinary wear and tear, repair and maintenance for which Master Landlord is responsible under the Master Lease and casualty damage, and otherwise in accordance with the requirements of the Master Lease, including, without limitation, removal of Required Removables in accordance with Section 12.1 of the Master Lease. Subtenant acknowledges that, pursuant to Section 12.1 of the Master Lease, all permanent improvements, including the Subtenant Alterations, shall remain upon the Subleased Premises at the end of the Sublease Term without compensation to Subtenant, except for the Required Removables.

24. HOLDOVER. If Subtenant fails to surrender the Subleased Premises in accordance with the terms and conditions of this Sublease on or before the Expiration Date or earlier termination of this Sublease, such tenancy shall be from month-to-month only, at a rental rate that is 150% of the monthly Rent payable under this Sublease immediately prior to termination or expiration of this Sublease, and shall not constitute a renewal or extension of this Sublease. Notwithstanding any provision to the contrary contained in this Sublease, (i) Sublandlord expressly reserves the right to require Subtenant to surrender possession of the Subleased Premises upon the expiration of the Sublease Term or upon the earlier termination hereof and the right to assert any remedy at law or in equity to evict Subtenant or collect damages in connection with any such holding over, and (ii) Subtenant shall indemnify, defend and hold Sublandlord harmless from and against any and all Claims incurred or suffered by Sublandlord by reason of Subtenant's failure to surrender the Subleased Premises on the expiration or earlier termination of this Sublease in accordance with the provisions of this Sublease, including without limitation one hundred percent (100%) of all holdover rent and other costs chargeable to Sublandlord pursuant to the Master Lease as a result of Subtenant's holdover. The provisions of this Section 24 shall survive the expiration or earlier termination of this Sublease.

25. PARKING. During the Sublease Term, Subtenant shall have the right to park at the Garage or at such other location(s) in the vicinity of the Project designated by Master Landlord or Master Landlord's parking operator from time to time, on an unreserved basis, up to 151 cars (two (2) unreserved parking spaces for each (1,000) rentable square feet of the Subleased Premises), in accordance with Section 2.5 of the Master Lease. Subtenant's right to use the parking space is expressly conditioned upon Subtenant's compliance with terms and conditions of the Master Lease and all reasonable rules and regulations respecting parking established from time to time by Master Landlord.

26. SIGNAGE. Subtenant's signage rights under Section 6.7 of the Master Lease are conditioned on Master Landlord's prior written consent.

27. INSURANCE. The provisions of Article 16 of the Master Lease pertaining to insurance shall be incorporated into this Sublease, subject to the following terms. For purposes of this Sublease, the term "Tenant" in Article 16 of the Master Lease Agreement shall be deemed to mean Subtenant, and the term "Landlord" shall be deemed to mean Master Landlord (except that the release and waiver of subrogation shall also apply as between Sublandlord and Subtenant, as well as between Sublandlord and Subtenant) and the term "Premises" shall mean the "Subleased Premises", except that all policies of liability insurance required to be maintained by Subtenant hereunder and thereunder shall name Sublandlord and Master Landlord as additional named insureds and all notices related to such insurance and all evidence of such policies shall be delivered to Sublandlord and Master Landlord. The form of insurance certificate to be provided by Sublandlord shall be subject to approval by Sublandlord and Master Landlord.

28. LIMITATION OF LIABILITY. None of the Sublandlord Related Parties shall have any personal liability for any default by Sublandlord under this Sublease or arising in connection herewith or with the operation, management, leasing, repair, renovation, alteration or any other matter relating to the Project or the Subleased Premises, and Subtenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Subtenant. The terms of this Section 28 shall inure to the benefit of Sublandlord's and the

Sublandlord Related Parties' present and future partners, beneficiaries, officers, directors, trustees, shareholders, agents and employees, and their respective partners, heirs, successors and assigns.

29. ESTOPPEL. Within ten (10) business days after request therefor by Sublandlord, Subtenant agrees to execute an Estoppel Certificate in accordance with Article 21 of the Master Lease.

30. GOVERNING LAW. The terms and provisions of this Sublease shall be construed in accordance with and governed by the laws of the State of California.

31. PARTIAL INVALIDITY. If any term, provision or condition contained in this Sublease shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Sublease shall be valid and enforceable to the fullest extent possible permitted by law.

32. ATTORNEYS' FEES. If any Party commences litigation against another in connection with this Sublease, for damages for the breach hereof or otherwise for enforcement of any remedy hereunder, the prevailing Party shall be entitled to recover from the other Party such costs and reasonable attorneys' fees as may have been incurred, including any and all costs incurred in enforcing, perfecting and executing such judgment.

33. COUNTERPARTS AND ELECTRONIC SIGNATURES. This Sublease may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement. This Sublease may be executed by a Party's signature transmitted by email, and copies of this Sublease executed and delivered by means of emailed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All Parties hereto may rely upon emailed signatures (including signatures in Portable Document Format) as if such signatures were originals. All Parties hereto agree that an emailed signature page may be introduced into evidence in any proceeding arising out of or related to this Sublease as if it were an original signature page.

34. ENTIRE AGREEMENT. This Sublease, together with the Master Lease as incorporated or referenced herein, constitutes the entire agreement and complete understanding of the Parties with respect to the matters set forth herein and merges and supersedes all prior, oral and written, agreements and understandings, and all contemporaneous oral agreements and understandings, of any nature whatsoever with respect to such subject matter.

35. MASTER LANDLORD'S CONSENT. This Sublease is subject to and contingent upon and shall be of no force or effect until Master Landlord's execution of a written consent to this Sublease in a form reasonably acceptable to the Parties hereto (the "***Landlord Consent***"). In the event Master Landlord does not so execute the Landlord Consent within thirty (30) days of the Effective Date, either Party may terminate this Sublease upon written notice to the other Party after the expiration of such thirty (30) day period, but before Master Landlord delivers the Landlord Consent. If this Sublease is so terminated, Sublandlord shall promptly return to Subtenant any prepaid Rent and the Security Deposit previously paid to Sublandlord. Neither Party shall have

any liability to the other for any termination or cancellation of this Sublease as a result of Master Landlord's failure or refusal to consent to this Sublease despite such efforts by the Parties hereto.

[*Signature page follows*]

In Witness Whereof, Sublandlord and Subtenant have executed this Sublease as of the date and year set forth above.

SUBLANDLORD:

DYNA VAX TECHNOLOGIES CORPORATION,
a Delaware corporation

By: /s/ Ryan Spencer
Name: Ryan Spencer
Title: Co-President

SUBTENANT:

ZYMERGEN INC.,
a Delaware corporation

By: /s/ Enakshi Singh
Name: Enakshi Singh
Title: VP, Finance

EXHIBIT A

Subleased Premises

6th Floor

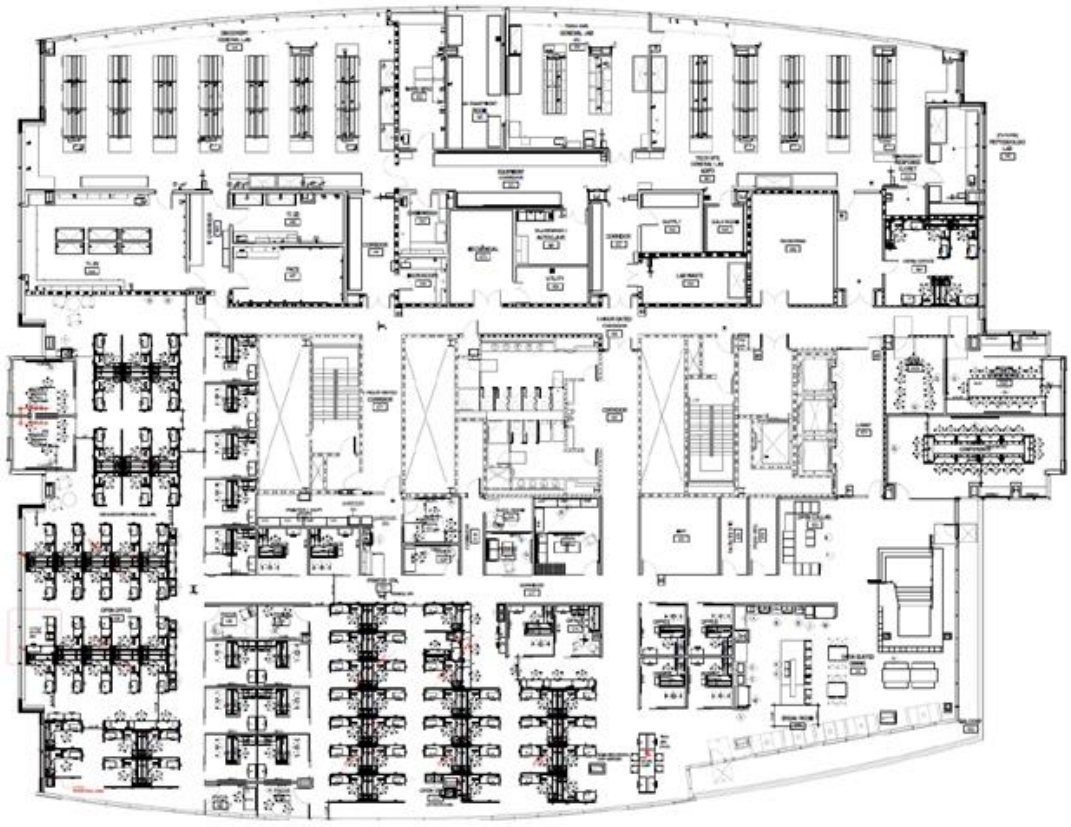


EXHIBIT A

Subleased Premises

7th Floor

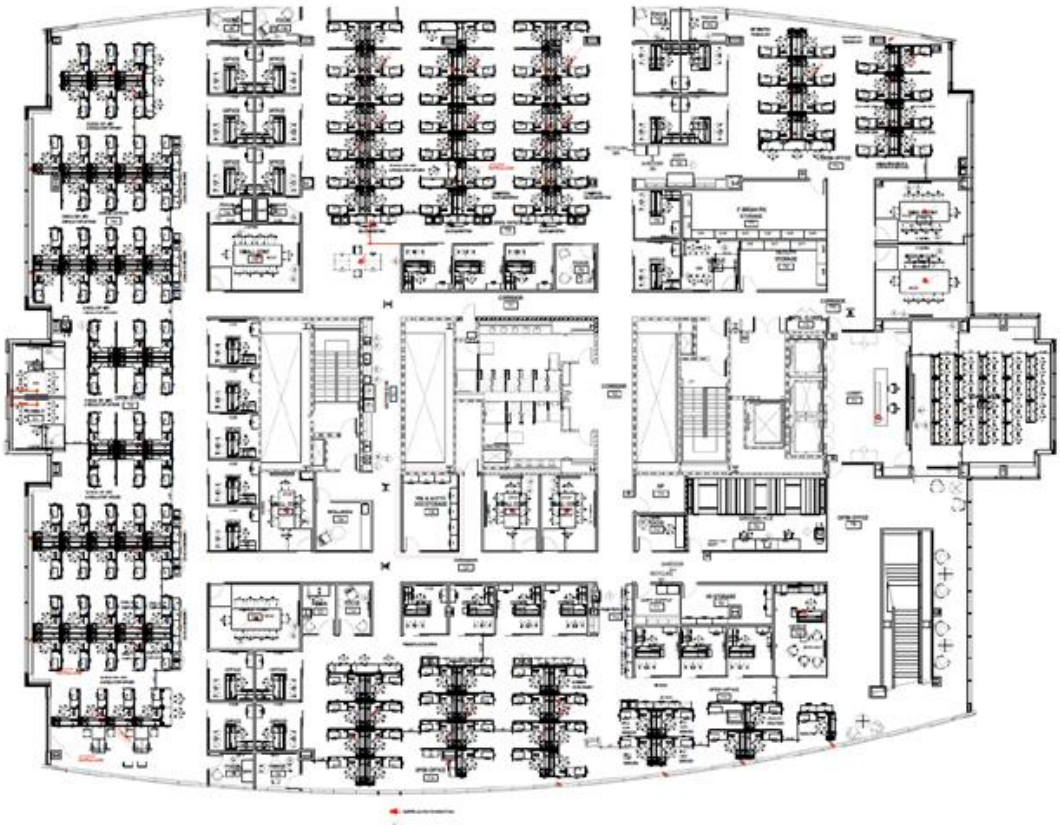


EXHIBIT B

Subtenant Alterations

6th Floor

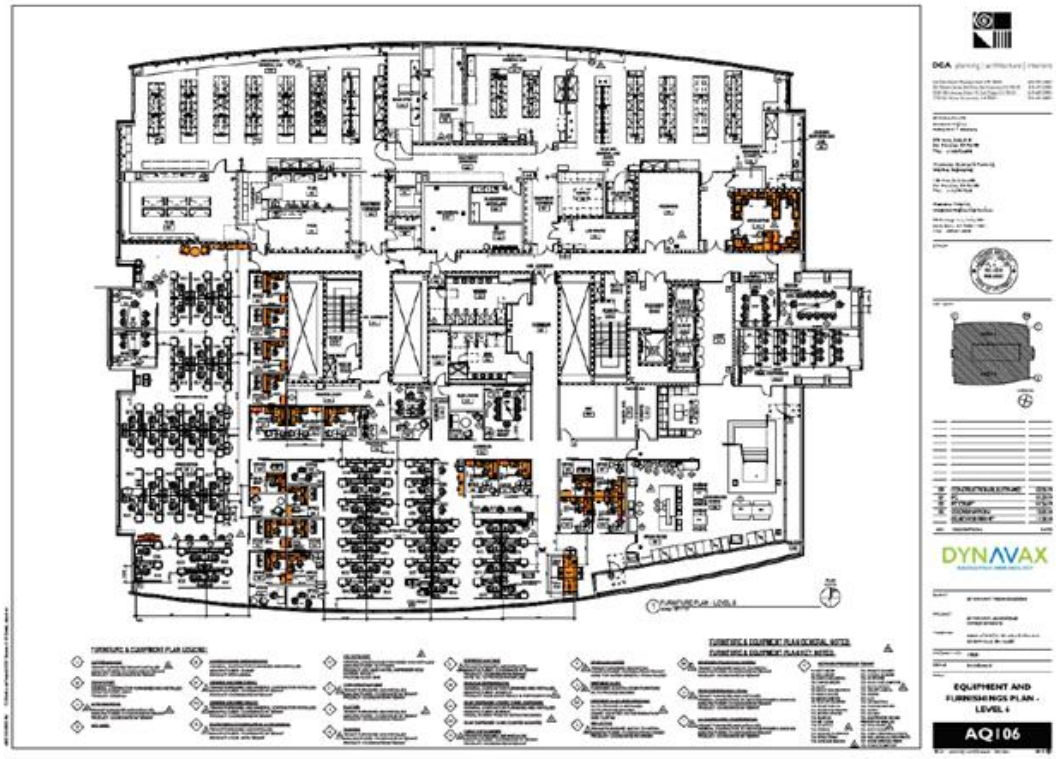


EXHIBIT B

Subtenant Alterations

7th Floor

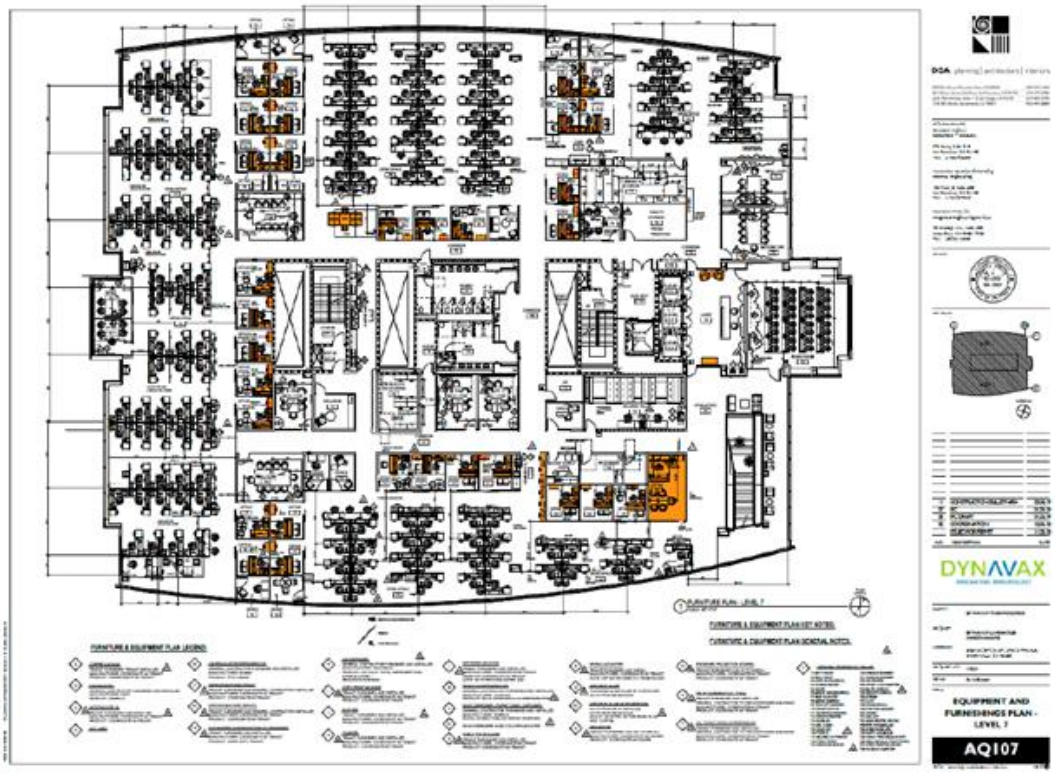


EXHIBIT C

FF&E

5959 Horton FF&E

- (216) 6x8 workstations with height adjustable work surface and various storage configurations
- Assorted conference/huddle/focus room furniture including tables, chairs and credenzas
- 100 black desk chairs
- Breakroom and open collaboration area furniture on 6th floor
- 6 leatherette chairs & 3 tables on 7th floor
- All centralized waste containers
- Small tables located in private offices
- Security hardware including card readers, security cameras, and AiPhone stations in freight elevators
- TAB file system
- Breakroom and coffee bar accessories: refrigerators, microwaves, and dishwashers
- 2 lab freezers
- 1 lab deli case
- 9 biosafety cabinets
- Televisions in conference and huddle rooms

Exhibit D

BILL OF SALE

This BILL OF SALE ("**Agreement**") is made and entered into as of _____, from _____ ("**Seller**") to _____ ("**Buyer**").

RECITALS

A. Seller has subleased to Buyer, and Buyer has subleased from Seller, certain space located at _____ in that certain Sublease dated _____ (the "**Premises**").

B. Seller is the owner of certain furniture, fixtures and equipment (the "**FF&E**") as listed on Exhibit C of the Sublease and made a part hereof, which is currently located in the Sublease Premises.

C. Seller has agreed to sell, transfer and convey to Buyer all of Seller's right, title and interest in and to the FF&E upon the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Seller and Buyer agree as follows:

TERMS AND CONDITIONS

1. Consideration. As consideration for the sale of the FF&E by Seller to Buyer, Buyer hereby agrees to pay to Seller the amount of One Dollar ($1.00) (the "**Purchase Price**").

2. Transfer and Assignment. Subject to the terms and provisions contained herein, as of the date of this Agreement, Seller transfers and conveys to Buyer all of Seller's right, title and interest in and to the FF&E, and under any manufacturer's warranties or guarantees (the "**Manufacturer's Warranties**") related to the FF&E, free and clear of all liens, encumbrances and security interests created by Seller. Buyer accepts the transfer and conveyance of the right, title and interest of Seller in and to the FF&E and the Manufacturer's Warranties, subject to the provisions contained herein. Buyer accepts the FF&E in its currently existing "AS-IS", "WHERE-IS" condition.

3. Inspection of the FF&E. Buyer has inspected the FF&E and determined that it is acceptable to Buyer. Seller has not made, and shall not be bound by, any statements, agreement, or representations regarding the FF&E not specifically set forth herein.

4. NO WARRANTY FOR MERCHANTABILITY AND FITNESS. BUYER AGREES THAT SELLER MAKES NO WARRANTIES, EXPRESSED OR IMPLIED AND ALL WARRANTIES OF ANY KIND, INCLUDING ANY EXPRESSED OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE OR CONDITION OF SAME, ARE HEREBY EXCLUDED BOTH AS TO THE FF&E AND AS TO MAINTENANCE OR REPAIR WORK PERFORMED BY SELLER, IF ANY, ON THE FF&E. BUYER HEREBY ACCEPTS THE FF&E ON AN "AS-IS" "WHERE-IS" BASIS WITH ALL FAULTS. IT IS EXPRESSLY AGREED THAT SELLER SHALL HAVE NO RESPONSIBILITY TO REPAIR, MAINTAIN, REPLACE, OR OTHERWISE CARE FOR THE FF&E ON AND AFTER THE DATE HEREOF. SELLER AND BUYER AGREE THAT THE DISCLAIMERS OF WARRANTIES AS CONTAINED IN THIS PARAGRAPH ARE CONSPICUOUS.

5. Entire Agreement. This Agreement constitutes the entire agreement between Seller and Buyer regarding the subject matter hereof and supersedes all oral statements and prior writings relating

thereto. Except to the extent expressly set forth in this Agreement, no representations, warranties, or agreements have been made by Seller or Buyer with respect to this Agreement or the obligations of Seller or Buyer in connection therewith.

6. Severability. If any provisions of this Agreement shall be held to be invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

7. Voluntary Agreement. The parties hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof and that they sign the same freely and voluntarily. This Agreement and each provision of this Agreement was negotiated by the parties and therefore, neither this Agreement nor any provision of this Agreement shall be interpreted for or against any party on the basis that such party or its attorney drafted the Agreement or provision in question.

8. Successor and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

9. Counterparts. This Agreement may be executed in counterparts, all of which executed counterparts shall together constitute a single document. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

[Signatures follow on next page]

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date first set forth above.

"**SELLER**"

By:
Name:
Its:

"**BUYER**"

By:
Name:
Its:

EXHIBIT E

MASTER LEASE

Exhibit 10.3

OFFICE/LABORATORY LEASE

BETWEEN

EMERY STATION WEST, LLC (LANDLORD)

AND

DYNAVAX TECHNOLOGIES CORPORATION (TENANT)

EmeryStation West
Emeryville, California

Exhibit 10.3

ARTICLE 1

BASIC LEASE PROVISIONS

1.1 BASIC LEASE PROVISIONS

In the event of any conflict between these Basic Lease Provisions and any other provisions in the Lease (as hereinafter defined), such other Lease provision shall control.

(1) BUILDING AND ADDRESS:

5959 Horton Street
Emeryville, California 94608

(2) LANDLORD AND ADDRESS:

Emery Station West, LLC
1120 Nye Street, Suite 400
San Rafael, California 94901

Notices to Landlord shall be addressed:

Emery Station West, LLC
c/o Wareham Property Group
1120 Nye Street, Suite 400
San Rafael, California 94901

With a copy to:

Shartsis Friese LLP
One Maritime Plaza, 18th Floor
San Francisco, California 94901
Attention: David H. Kremer, Esq.

(3) TENANT AND CURRENT ADDRESS:

Name: Dynavax Technologies Corporation, a Delaware corporation

Federal Tax Identification Number: 33-0728374

Tenant shall promptly notify Landlord of any change in the foregoing items.

Notices to Tenant shall be addressed:

Prior to the Commencement Date:

2929 Seventh Street, Suite 100
Berkeley, California 94710
Attention: Michael Ostrach, Senior Vice President, Chief Financial Officer and Chief Business Officer

On and after the Commencement Date:

At the Premises
Attention: Michael Ostrach, Senior Vice President, Chief Financial Officer and Chief Business Officer

(4) DATE OF LEASE: September 17, 2018

(5) LEASE TERM: Commencing on the Rent Commencement Date and continuing through the last day of the one hundred forty-fourth (144th) full calendar month following the Rent Commencement Date; subject to the options set forth in Section 2.6 below.

(6) COMMENCEMENT DATE: The date which Landlord delivers possession of the Premises to Tenant with the Landlord Work Substantially Complete to allow Tenant to commence construction of the Tenant Work.

(7) PROJECTED COMMENCEMENT DATE: September 20, 2018

(8) RENT COMMENCEMENT DATE: The earlier to occur of: a) Tenant's commencement of its business operations at the Premises, and b) April 1, 2019.

(9) EXPIRATION DATE: The last day of the one hundred forty-fourth (144th) full calendar month following the Rent Commencement Date.

(10) MONTHLY BASE RENT: An amount determined by multiplying the Rentable Area of the Premises (as the same may exist from time) by the Applicable Monthly Base Rate. As used herein, the "**Applicable Monthly Base Rate**" shall be an amount equal to Four Dollars and Seventy-Five Cents ($4.75) for the twelve (12) month period following the Rent Commencement Date (which twelve (12) month period shall include any partial calendar month following the Commencement Date if the Commencement Date is other than the first (1st) day of a calendar month), which amount shall increase by a compounded three percent (3%) on each annual anniversary thereafter.

(11) RENTABLE AREA: 75,662 square feet.

(12) TENANT IMPROVEMENT ALLOWANCE: Notwithstanding anything in this Lease to the contrary, Landlord shall provide Tenant a tenant improvement allowance to be utilized to pay for Tenant Improvement Costs (as such are defined in the work letter attached to this Lease as Exhibit B (the "**Workletter**")), in the amount of up to $8,322,820.00, calculated to be equal to

one hundred-ten dollars ($110.00) per rentable square foot of Premises (the "**Tenant Improvement Allowance**"). Provided that no Default under the Lease has occurred and is continuing with respect to Tenant, the Tenant Improvement Allowance shall be drawn down pursuant to the terms of the Workletter.

(13) SECURITY DEPOSIT: $1,437,578.00, subject to reduction at the end of the sixth (6th) full year of the Lease Term, as more specifically defined in Article 5 hereof.

(14) PREMISES: The leasable area located on the sixth (6th) and seventh (7th) floors of the Building, as outlined on Exhibit A hereto (such portion of the Building collectively hereafter the "**Premises**").

(15) TENANT'S USE OF PREMISES: Office, laboratory, biotechnology research and development, ancillary uses thereto and other related legal uses, subject to any and all applicable government approvals (the "**Permitted Use**"). Any other uses shall be subject to Landlord's approval which shall not be unreasonably withheld.

(16) PARKING: Rights to park at the parking garage located at 6100 Horton Street (the "**Garage**") or at such other location(s) in the vicinity of the Project designated by Landlord or Landlord's parking operator from time to time, on an unreserved basis, up to one hundred fifty-one (151) cars, calculated using a ratio of two (2) unreserved parking rights for each 1,000 square feet of Rentable Area of the Premises. The current parking charge is $145. In addition, Tenant shall have the right to use, on an unreserved basis in common with other tenants and Building users, the secured bicycle parking area and charging stations for electric cars inside the Garage.

(17) BROKERS:

Landlord's Broker: Kidder Mathews

Tenant's Broker: Scott Stone (CRESA Partners) and Mark Moser (Savills Studley)

1.2 ENUMERATION OF EXHIBITS, SCHEDULES AND RIDER

The exhibits, schedules and rider set forth below and attached to this Lease are incorporated in this Lease by this reference:

EXHIBIT A	Outline of the Premises
EXHIBIT B	Workletter Agreement
EXHIBIT B-1	Applicable Green Building Standards
EXHIBIT B-2	Landlord Work / Warm Shell Description
EXHIBIT C-1	Laboratory Rules and Regulations
EXHIBIT C-2	Rules and Regulations
RIDER 1	Rent Commencement Date Agreement
SCHEDULE 1	Superior Rights
SCHEDULE 2	Special Superior Rights

1.3 DEFINITIONS

For purposes hereof, in addition to terms defined elsewhere in this Lease, the following terms shall have the following meanings:

AFFILIATE: Any corporation or other business entity that is currently owned or controlled by, owns or controls, or is under common ownership or control with Tenant or Landlord, as the case may be. The term "**control**" means (i) ownership or voting control, directly or indirectly, of 50% or more of the beneficial ownership interest of the entity in question, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ability to exercise voting power by contract or otherwise.

BUILDING: The building located at the address specified in Section 1.1(1). The Building may include office, laboratory, medical, retail and other uses.

CABLE: As defined in Section 8.2.

COMMENCEMENT DATE: The date specified in Section 1.1(6).

COMMON AREAS: All areas of the Project made available by Landlord from time to time for the general common use or benefit of the tenants of the Building, and their employees and invitees, or the public, as such areas currently exist and as they may be changed from time to time.

DECORATION: Tenant Alterations which do not require a building permit, are not visible from outside of the Premises, and which do not involve any changes to the structural elements of the Building, or any of the Building's systems, including its electrical, mechanical, plumbing, security, heating, ventilating, air-conditioning, communication, and fire and life safety systems.

DEFAULT: As defined in Section 11.1.

DEFAULT RATE: Two (2) percentage points above the rate then most recently announced by Bank of America N.T. & S.A. at its San Francisco main office as its base lending reference rate, from time to time announced, but in no event higher than the maximum rate permitted by Law.

EXPIRATION DATE: The date specified in Section 1.1(9), as may be extended in accordance with Section 2.6.

FORCE MAJEURE: Any accident, casualty, act of God, war or civil commotion, strike or labor troubles, or any cause whatsoever beyond the reasonable control of Landlord or Tenant, including water shortages, energy shortages or governmental preemption in connection with an act of God, a national emergency, or by reason of Law, or by reason of the conditions of supply and demand which have been or are affected by act of God, war or other emergency; in no event, however, shall any Force Majeure event excuse or delay Tenant's obligation to timely pay all Rent owing under this Lease.

GREEN BUILDING STANDARDS: One or more of the following: the U.S. EPA's Energy Stare Portfolio Manager, the Green Building Initiative's Green Globes™ building rating system, the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED®)

building rating system, the ASHRAE Building Energy Quotient (BEQ), the Global Real Estate Sustainability Benchmark (GRESB), or other standard for high performance buildings adopted by Landlord with respect to the Building or the Project, as the same may be revised from time to time. The Green Building Standards applicable to the Tenant Improvements are set forth on Exhibit B-1 to this Lease.

INDEMNITEES: Collectively, Landlord, any Mortgagee or ground lessor of the Property, the property manager and the leasing manager for the Property and their respective partners, members, directors, officers, agents and employees.

LAND: The parcel(s) of real estate on which the Building and Project are located.

LANDLORD WORK: The construction or installation of the improvements to the Premises, to be furnished by Landlord, as specifically described in the Workletter.

LAWS OR LAW: All laws, ordinances, rules, regulations, other requirements, orders, rulings or decisions adopted or made by any governmental body, agency, department or judicial authority having jurisdiction over the Property, the Premises or Tenant's activities at the Premises and any covenants, conditions or restrictions of record which affect the Property.

LEASE: This instrument and all exhibits, schedules and any riders attached hereto, as may be amended from time to time.

LEASE YEAR: The twelve month period beginning on the first day of the first month following the Commencement Date (unless the Commencement Date is the first day of a calendar month in which case beginning on the Commencement Date), and each subsequent twelve month, or shorter, period until the Expiration Date.

LEASEHOLD IMPROVEMENTS: As defined in Section 12.1.

MONTHLY BASE RENT: The monthly rent specified in Section 1.1(10).

MORTGAGEE: Any holder of a mortgage, deed of trust or other security instrument encumbering the Property.

NATIONAL HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and other holidays reasonably recognized by the Landlord and the janitorial and other unions servicing the Building in accordance with their contracts.

OPERATING EXPENSES: All costs, expenses and disbursements of every kind and nature which Landlord shall pay or become obligated to pay in connection with the ownership, management, operation, maintenance, replacement and repair of the Property, including, without limitation, property management fees not to exceed 3.5% of gross revenues; costs and expenses of capital repairs, replacements and improvements which shall be amortized over a period reasonably determined by Landlord pursuant to sound accounting principles consistently applied together with interest thereon at a rate reasonably determined by Landlord (not to exceed the Default Rate) which, in the case of capital improvements, are (A) reasonably expected by Landlord to produce

an actual net reduction in operating charges or energy consumption or effect other economies in the operation or maintenance of the Project (except in the case of capital replacements, which shall not require this test), or (B) required under any governmental law or regulation not in effect as of the Commencement Date (such capital repairs, replacements and improvements collectively, "**Permitted Capital Expenditures**"); an equitable allocation of management office expenses (including, without limitation, market office rent, supplies, equipment, salaries, wages, bonuses and other compensation relating to employees of Landlord or its agents engaged in the management, operation, repair, or maintenance of the EmeryStation Campus); and, if applicable, the cost of operating any shared campus amenities, including but not limited to a fitness center and/or conference center, that are available for use by Tenant (which amenities may be located in the Building or in other buildings in the EmeryStation Campus owned by Landlord or affiliates of Landlord), as reasonably determined by Landlord. Operating Expenses shall not include, (i) costs of alterations of the premises of tenants of the Project, including all costs relating to preparing rental space for tenants, (ii) costs of goods or services to the extent billed directly to other tenants of the Project (other than as reimbursement of general operating expenses), (iii) depreciation charges, (iv) interest, fees and principal payments on loans (except for interest charges for Permitted Capital Expenditures as provided for above, which Landlord may include in Operating Expenses), (v) ground rental payments, (vi) real estate brokerage and leasing commissions, (vii) advertising and marketing expenses, (viii) costs to the extent Landlord has been reimbursed for the same by insurance proceeds, condemnation awards, third party warranties or other third parties (other than tenant's reimbursement of general operating expenses), (ix) expenses incurred in negotiating leases of tenants in the Project or enforcing lease obligations of tenants in the Project, (x) Landlord's general corporate overhead, (xi) costs directly incurred in connection with a sale, financing, refinancing or transfer of all or any portion of the Project, (xii) costs incurred to comply with Laws relating to the removal and remediation of any Hazardous Material which were (A) in existence at the Project as of the Commencement Date or (B) not brought on to the Premises by Tenant or (C) migrated thereto through air, water or soil through no fault of Tenant; provided, however, that any costs incurred in the cleanup or remediation of de minimis amounts of Hazardous Materials customarily used in office buildings or used to operate motor vehicles and customarily found in parking facilities shall be included as Operating Expenses, (xiii) original construction costs or original capital expenditures for expansion of the Project, (xiv) costs for employees not dedicated full time to the Project unless such costs are reasonably prorated to reflect time spent on the Project, (xv) legal costs for disputes with tenants, (xvi) capital improvements, capital replacements, capital repairs, capital equipment and tools that are not Permitted Capital Expenditures, (xvii) reserves, (xviii) expenses for any item or service which is not provided to Tenant but is provided for the sole use or benefit of another tenant, (xix) interest or penalties attributable to late payment by Landlord (provided that such late payment is not caused by Tenant), (xx) cost of correcting any building code or curing violations of other applicable law which existed prior to the Commencement Date. and (xxi) any item that, if included, in Operating Expenses, would involve a double collection for such item by Landlord. In the event there exists a conflict as to an expense that is specified to be included in Operating Expenses and is also specified to be excluded from Operating Expenses within the above list, the exclusions listed above shall prevail and the expenses shall be deemed excluded. If any Operating Expense, though paid in one year, relates to more than one calendar year, at the option of Landlord such expense may be proportionately allocated among such related calendar years; provided that only those periods falling within the Term of the Lease shall be allocated to Tenant. Landlord agrees that Landlord

will not collect or be entitled to collect Operating Expenses from Tenant in an amount in excess of Tenant's Share of one hundred percent (100%) of the Operating Expenses attributable to the Project. In addition, Operating Expenses shall be reduced by all cash discounts, trade discounts or quantity discounts received by Landlord or Landlord's managing agent in the purchase of any goods, utilities or services in connection with the prudent operation of the Building. Operating Expenses for the Building that are not, in Landlord's reasonable discretion, allocable solely to either the office, laboratory, or retail portion of the Building shall be equitably allocated by Landlord between/amongst such uses.

PREMISES: The space located in the Building described in Section 1.1(14) and as outlined on Exhibit A attached hereto.

PROJECT or PROPERTY: The Project consists of the mixed-use building located at the street address specified in Section 1.1(1) in Emeryville, California, and associated surface and garage parking as designated by Landlord from time to time, landscaping and improvements, together with the Land, any associated interests in real property, and the personal property, fixtures, machinery, equipment, systems and apparatus located in or used in conjunction with any of the foregoing. A portion of the parking garage located at 6100 Horton Street shall be designated by Landlord as part of the Project. The Project may also be referred to as the Property.

PROJECT'S SUSTAINABILITY PRACTICES: The operations and maintenance practices for the Building, whether incorporated into the Building's Rules and Regulations, construction rules and regulations, separate written sustainability policies or otherwise reasonably implemented by Landlord with respect to the Building or the Project, as the same may be revised from time to time, addressing, among other things: energy efficiency; energy measurement and reporting; water usage; recycling, composting, and waste management; indoor air quality; and chemical use.

PROJECTED COMMENCEMENT DATE: The date specified in Section 1.1(7).

REAL PROPERTY: The Property excluding any personal property.

RENT: Collectively, Monthly Base Rent, Rent Adjustments and Rent Adjustment Deposits, and all other charges, payments, late fees or other amounts required to be paid by Tenant under this Lease.

RENT ADJUSTMENT: Any amounts owed by Tenant for payment of Operating Expenses and/or Taxes. The Rent Adjustments shall be determined and paid as provided in Article 4.

RENT ADJUSTMENT DEPOSIT: An amount equal to Landlord's estimate of the Rent Adjustment attributable to each month of the applicable calendar year (or partial calendar year) during the Term. On or before the Commencement Date and with each Landlord's Statement (defined in Article 4), Landlord may estimate and notify Tenant in writing of its estimate of Tenant's Share of the Operating Expenses and of Taxes for such calendar year (or partial calendar year). Prior to the first determination by Landlord of the amount of Operating Expenses and of Taxes for the first calendar year (or partial calendar year), Landlord may estimate such amounts in the foregoing calculation. Landlord shall have the right from time to time during any calendar year to provide a new or revised estimate of Operating Expenses and/or Taxes and to notify Tenant

in writing thereof, of corresponding adjustments in Tenant's Rent Adjustment Deposit payable over the remainder of such year, and of the amount or revised amount due allocable to months preceding such change. The last estimate by Landlord shall remain in effect as the applicable Rent Adjustment Deposit unless and until Landlord notifies Tenant in writing of a change, which notice may be given by Landlord from time to time during each year throughout the Term.

RENTABLE AREA OF THE PREMISES: The amount of square footage stipulated and/or determined, from time to time, pursuant to Section 1.1(11).

STANDARD OPERATING HOURS: Monday through Friday from 8:00 A.M. to 6:00 P.M. and Saturdays from 9:00 A.M. to 1:00 P.M., excluding National Holidays.

SUBSTANTIALLY COMPLETE or SUBSTANTIAL COMPLETION: The completion of the Landlord Work in good and workmanlike manner, in material compliance with all applicable Laws and the plans and specifications, except for minor insubstantial details of construction, decoration or mechanical adjustments which remain to be done which do not materially and substantially interfere with Tenant's construction of the Tenant Work in the Premises. Substantial Completion shall be deemed to have occurred notwithstanding a requirement to complete "punchlist" or similar minor corrective work.

TAXES: All federal, state and local governmental taxes, assessments, license fees and charges of every kind or nature, whether general, special, ordinary or extraordinary, which Landlord shall pay or become obligated to pay because of or in connection with the ownership, leasing, management, control, sale, transfer or operation of the Property or any of its components (including any personal property used in connection therewith) or Landlord's business of owning and operating the Property, which may also include any rental, revenue, general gross receipts or similar taxes levied in lieu of or in addition to general real and/or personal property taxes. For purposes hereof, Taxes for any year shall be Taxes which are assessed for any period of such year, whether or not such Taxes are billed and payable in a subsequent calendar year. There shall be included in Taxes for any year the amount of all fees, costs and expenses (including reasonable attorneys' fees) paid by Landlord during such year in seeking or obtaining any refund or reduction of Taxes. Taxes for any year shall be reduced by the net amount of any tax refund received by Landlord attributable to such year. If a special assessment payable in installments is levied against any part of the Property, Taxes for any year shall include only the installment of such assessment and any interest payable or paid during such year. Taxes shall not include any federal or state inheritance, general income, transfer, gift or estate taxes, except that if a change occurs in the method of taxation resulting in whole or in part in the substitution of any such taxes, or any other assessment, for any Taxes as above defined, such substituted taxes or assessments shall be included in the Taxes. Tenant and Landlord acknowledge 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 purposes as fire protection, street, sidewalk, road, utility construction and maintenance, refuse removal and for other governmental services which may formerly have been provided without charge to property owners or occupants. It is the intention of the parties that all new and increased assessments, taxes, fees, levies and charges due to any cause whatsoever are to be included within the definition of real property taxes for purposes of this Lease.

TENANT ADDITIONS: Collectively, Tenant Work and Tenant Alterations.

TENANT ALTERATIONS: Any alterations, improvements, additions, installations or construction in or to the Premises or any Building Systems serving the Premises (excluding Landlord Work and Tenant Work); and any supplementary air-conditioning systems installed by Landlord or by Tenant at Landlord's request pursuant to Section 6.1(b).

TENANT WORK: All work installed or furnished to the Premises by Tenant in accordance with the Workletter.

TENANT'S SHARE: The percentage that represents the ratio of the Rentable Area of the Premises to the Rentable Area of the Building, as determined by Landlord from time to time, and which as of the Date of Lease is 28.94%. Tenant acknowledges that the Rentable Area of the Premises or Building may change from re-measurement or otherwise during the Term, or as a result of Tenant leasing additional space within the Building or a physical change to the size of the Premises or Building (provided, however, that, the Base Rent payable hereunder shall not be changed as a consequence of a re-measurement of the Building and/or the Premises unless the Premises are physically expanded). Notwithstanding anything herein to the contrary, Landlord may equitably adjust Tenant's Share for all or part of any item of expense or cost reimbursable by Tenant that relates to a repair, replacement, or service that benefits only the Premises or only a portion of the Building and/or the Project or that varies with the occupancy of the Building and/or the Project, provided such adjustment is done in accordance with sound real estate accounting and management principles, consistently applied.

TERM: The initial term of this Lease commencing on the Commencement Date and expiring on the Expiration Date, including the Renewal Term, if Tenant properly exercises the Renewal Option in accordance with Section 2.6.

TERMINATION DATE: The Expiration Date or such earlier date as this Lease terminates or Tenant's right to possession of the Premises terminates.

WORKLETTER: The Agreement regarding the manner of completion of Landlord Work and Tenant Work set forth on Exhibit B attached hereto.

ARTICLE 2

PREMISES, TERM, FAILURE TO GIVE POSSESSION, AND PARKING

2.1 LEASE OF PREMISES

(a) Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for the Term and upon the terms, covenants and conditions provided in this Lease.

(b) The parties acknowledge and agree that the Rentable Area set forth in this Lease has been conclusively determined and is deemed final for the purposes of this Lease and that prior to the Date of Lease, Tenant had the right to cause its Architect to verify and confirm the Rentable Area of the Premises.

2.2 TERM

(a) The Commencement Date shall be the date which Landlord delivers possession of the Premises to Tenant with the Landlord Work Substantially Complete to allow Tenant to commence construction of the Tenant Work.

(b) Within thirty (30) days following the Rent Commencement Date, Landlord and Tenant shall enter into an agreement (the form of which is attached hereto as Rider 1_) confirming the Rent Commencement Date and the Expiration Date. If Tenant fails to enter into such agreement, then the Rent Commencement Date and the Expiration Date shall be the date designated by Landlord in such agreement.

2.3 DELIVERY OF POSSESSION

Landlord shall use commercially reasonable efforts to tender possession of the Premises to Tenant by the later of the Date of Lease or the Projected Commencement Date with the Landlord Work Substantially Complete. Tenant agrees that if Landlord shall be unable to tender possession of the Premises with the Landlord Work Substantially Complete by the Projected Commencement Date for any reason, then this Lease shall not be void or voidable, nor shall Landlord be subject to any liability therefor. Landlord and Tenant hereby acknowledge and agree that Tenant's access/entry to the Premises prior to Rent Commencement Date shall be subject to all the provisions of this Lease (including payment of any utilities used in the Premises) other than the payment of Monthly Base Rent and Tenant's Share of Operating Expenses, including, without limitation, Tenant's compliance with the insurance and indemnity requirements of this Lease. In connection with any such early entry, Tenant agrees that it shall not in any way unreasonably interfere with the progress of any other work being conducted in the Building, either by Landlord and/or Landlord's tenants. Should such early entry unreasonably interfere with the progress of other work, in Landlord's reasonable judgment, then Landlord may demand that Tenant forthwith cease the activities that are causing such interference or vacate the Premises as necessary until such interference would not occur, and Tenant shall immediately comply with such demand.

2.4 CONDITION OF PREMISES

Landlord represents and warrants that, as of the Commencement Date, the Building's structural components and electrical and plumbing systems, including, without limitation, heating, ventilation and air-conditioning (collectively, "**Building Systems**"), are in good condition and repair. No later than one hundred twenty (120) days after the Commencement Date, Tenant shall notify Landlord in writing of any defects in the Landlord Work and/or the Building Systems (other than defects caused by Tenant after the Commencement Date) that are claimed by Tenant or in the materials or workmanship furnished by Landlord in completing the Landlord Work. Except for defects stated in such notices, Tenant shall be conclusively deemed to have accepted the Premises "AS IS" in the condition existing on the Commencement Date. Landlord shall proceed diligently to correct the defects stated in such notices unless Landlord disputes in good faith the existence of any such defects. In the event of any dispute as to the existence of any such defects, the reasonable and good faith decision of Landlord's architect shall be final and binding on the parties. No agreement of Landlord to alter, remodel, decorate, clean or improve the Premises or the Real Property and no representation regarding the condition of the Premises or the Real Property has

been made by or on behalf of Landlord to Tenant, except as may be specifically stated in this Lease or in the Workletter.

2.5 PARKING

During the Term, Tenant shall have the right to park up to one hundred fifty-one (151) cars of Tenant and its employees ("**Tenant's Parking**"), such quantity calculated to be two (2) vehicle rights for every one thousand (1,000) rentable square feet of Premises. Subject to the aforementioned maximum, Tenant shall have the right to set the number of Tenant's Parking as of the Commencement Date and thereafter to adjust the amount of Tenant's Parking not more often than monthly upon thirty (30) days' advance written notice to Landlord. Initially, Tenant's Parking shall be located in the Garage owned by Landlord and located at 6100 Horton Street and shall be leased by Tenant at then quoted rates. In the event Tenant fails at any time to pay the full amount of any such parking charges beyond all applicable notice and cure periods, then Tenant's parking rights shall be reduced to the extent of Tenant's failure to pay for any such parking, and Tenant shall be in Default hereunder. The locations and type of parking shall be designated by Landlord or Landlord's parking operator from time to time; provided, however, that any portion of Tenant's Parking that is not provided in the garage shall be located at other location(s) in the vicinity of the Project. Tenant acknowledges and agrees that the parking stalls serving the Project may include valet parking and a mixture of stalls for compact vehicles as well as full-size passenger automobiles, and that Tenant shall not use parking stalls for vehicles larger than the striped size of the parking stalls nor shall Tenant park cars overnight. All vehicles utilizing Tenant's parking privileges shall prominently display identification stickers or other markers, and/or have passes or keycards for ingress and egress, as may be required and provided by Landlord or its parking operator from time to time. To the extent provided to Tenant in writing, Tenant shall comply with any and all non-discriminatory parking rules and regulations from time to time established by Landlord or Landlord's parking operator, including a requirement that Tenant pay to Landlord or Landlord's parking operator a charge for loss and replacement of passes, keycards, identification stickers or markers, and for any and all loss or other damage caused by persons or vehicles related to use of Tenant's parking privileges. Tenant shall not allow any vehicles using Tenant's parking privileges to be parked, loaded or unloaded except in accordance with this Section, including in the areas and in the manner reasonably designated by Landlord or its parking operator for such activities. If any vehicle is using the parking or loading areas contrary to any provision of this Section, Landlord or its parking operator shall have the right, in addition to all other rights and remedies of Landlord under this Lease, to remove or tow away the vehicle without prior notice to Tenant, and the cost thereof shall be paid to Landlord within ten (10) days after notice from Landlord to Tenant.

2.6 RENEWAL OPTIONS

(a) Tenant shall have the option to renew this Lease ("**Renewal Option**") with respect to the entirety of the Premises for two (2) consecutive additional terms of five (5) years each (each a "**Renewal Term**"), commencing upon expiration of the initial Term or the first Renewal Term, as applicable. Each Renewal Option must be exercised, if at all, by written notice given by Tenant to Landlord not earlier than eighteen (18) months and not later than twelve (12) months prior to commencement of the Renewal Term. If Tenant properly exercises a Renewal Option, then references in this Lease to the Term shall be deemed to include the Renewal Term. Tenant's rights

under this Section 2.6 shall, at the option of Landlord, be null and void and Tenant shall have no right to renew this Lease if on the date Tenant exercises a Renewal Option or on the date immediately preceding the commencement date of a Renewal Term a Default beyond the applicable notice and cure period shall have occurred and be continuing hereunder; provided, however, if Tenant cures such Default within the applicable periods provided under this Lease, then the Renewal Option shall be reinstated.

(b) If Tenant properly exercises a Renewal Option, then during such Renewal Term all of the terms and conditions set forth in this Lease as applicable to the Premises during the initial Term shall apply during the Renewal Term, including, without limitation, the obligation to pay Rent Adjustments, except that (i) Tenant shall accept the Premises in their then "**as-is**" state and condition, and Landlord shall have no obligation to make or pay for any improvements to the Premises, and (ii) during the Renewal Term the Monthly Base Rent payable by Tenant shall be the Fair Market Value during the Renewal Term as hereinafter set forth, except that in no event shall Monthly Base Rent during a Renewal Term be less than one hundred percent (100%) of the Monthly Base Rent in effect during the month immediately preceding the Renewal Term.

(c) For purposes of this Section, the term "**Fair Market Value**" shall mean the base rental rate, including periodic rent adjustment, for space comparable in size, location and quality of the Premises under primary lease (and not sublease) to new or renewing tenants, for a comparable term with base rent adjusted for the relative tenant improvement allowance, if applicable, and taking into consideration such amenities as existing improvements and non-removable fixtures in place at the time of such renewal (but not including the value of any Tenant Alterations made to the Premises following the Rent Commencement Date and the completion of Tenant's initial build-out), view, floor on which the Premises is situated and the like, situated in comparable science/laboratory buildings in Emeryville and Berkeley.

(d) If Tenant properly exercises a Renewal Option, then Landlord, by notice to Tenant not later than six (6) months prior to commencement of the Renewal Term, shall indicate Landlord's determination of the Fair Market Value. Tenant, within fifteen (15) days after the date on which Landlord provides such notice of the Fair Market Value shall either (i) give Landlord final binding written notice ("**Binding Notice**") of Tenant's acceptance of Landlord's determination of the Fair Market Value, or (ii) if Tenant disagrees with Landlords' determination, provide Landlord with written notice of Tenant's election to submit the Fair Market Value to binding arbitration (the "**Arbitration Notice**"). If Tenant fails to provide Landlord with either a Binding Notice or Arbitration Notice within such fifteen (15) day period, Landlord shall send Tenant a second written notice specifying the Fair Market Rent ("**Second FMV Notice**"), and such Second FMV Notice shall include the following: "**FAILURE TO ACCEPT SAID FAIR MARKET RENT AMOUNT IN WRITING OR DISPUTE SUCH AMOUNT BY SUBMITTING TO ARBITRATION IN ACCORDANCE WITH SECTION 2.6(d) OF THIS LEASE WITHIN TEN (10) DAYS SHALL BE DEEMED TENANT'S AGREEMENT TO PAY SUCH AMOUNT DURING THE RENEWAL TERM.**" If Tenant fails to provide Landlord with either a Binding Notice or Arbitration Notice within ten (10) days after receiving the Second FMV Notice, Tenant shall have been deemed to have given the Binding Notice. If Tenant provides or is deemed to have provided Landlord with a Binding Notice, Landlord and Tenant shall enter into the Renewal Amendment (as defined below) upon the terms and conditions set forth herein.

(e) If the parties are unable to agree upon the Fair Market Value for the Premises within ten (10) business days after Landlord's receipt of the Arbitration Notice, Fair Market Value as of commencement of the Renewal Term shall be determined as follows:

(1) Within thirty (30) days after the date Tenant delivers the Arbitration Notice, Tenant, at its sole expense, shall obtain and deliver in writing to Landlord a determination of the Fair Market Value for the Premises for a term equal to the Renewal Term from an independent broker or appraiser ("**Tenant's broker**") licensed in the State of California and engaged in the science/laboratory markets in Emeryville and Berkeley, California, for at least the immediately preceding five (5) years who has not been engaged by either Landlord or Tenant in the last five (5) years. If Landlord accepts such determination, Landlord shall provide written notice thereof within ten (10) days after Landlord's receipt of such determination and the Base Rent for the Renewal Term shall be adjusted to an amount equal to the Fair Market Value determined by Tenant's broker. Landlord shall be deemed to have rejected Tenant's determination if Landlord fails to respond within the ten (10) day period.

(2) If Landlord provides notice that it rejects, or is deemed to have rejected, such determination, within twenty (20) days after receipt of the determination of Tenant's broker, Landlord shall designate a broker or appraiser ("**Landlord's broker**") licensed in the State of California and possessing the qualifications set forth in (1) above. Landlord's broker and Tenant's broker shall name a third broker, similarly qualified, within five (5) days after the appointment of Landlord's broker ("**Neutral Broker**").

(3) The Neutral Broker shall determine the Fair Market Value for the Premises as of the commencement of the Renewal Term within fifteen (15) days after the appointment of such Neutral Broker by choosing the determination of the Landlord's broker that was set forth in the initial notice delivered by Landlord pursuant to Section 2.6(d) or the Tenant's broker that was delivered pursuant to Section 2.6(e)(1) which is closest to its own determination of Fair Market Value. The decision of the Neutral Broker shall be binding on Landlord and Tenant.

(f) Landlord shall pay the costs and fees of Landlord's broker in connection with any determination hereunder, and Tenant shall pay the costs and fees of Tenant's broker in connection with such determination. The costs and fees of the Neutral Broker shall be paid one-half by Landlord and one-half by Tenant. Landlord shall have no obligation to pay a fee or commission to any broker retained by Tenant in connection with Tenant's exercise of a Renewal Option.

(g) If the amount of the Fair Market Value has not been determined pursuant to this Section 2.6 as of the commencement of the Renewal Term, then Tenant shall continue to pay the Base Rent in effect during the last month of the initial Term until the amount of the Fair Market Value is determined. When such determination is made, Tenant shall pay any deficiency to Landlord upon demand.

(h) If Tenant is entitled to and properly exercises its Renewal Option, upon determination of Fair Market Value pursuant to this Section 2.6, Landlord shall prepare an amendment (the "**Renewal Amendment**") to reflect changes in the Base Rent, Term, Expiration Date and other appropriate terms. The Renewal Amendment shall be sent to Tenant within a reasonable time after determination of Fair Market Value and, provided the same is accurate,

Tenant shall execute and return the Renewal Amendment to Landlord within ten (10) days after Tenant's receipt of same, but an otherwise valid exercise of the Renewal Option shall be fully effective whether or not the Renewal Amendment is executed.

2.7 RIGHT OF FIRST OFFER: ADJACENT FLOOR

Subject to the rights of other parties existing as of the Date of Lease ("**Superior Rights**") as set forth in Schedule 1 attached hereto, commencing upon the Rent Commencement Date and continuing throughout the Term (including the Renewal Term), Tenant shall have the right of first offer ("**Right of First Offer**", or "**ROFO**") with respect to no more than one (1) adjacent full floor in the Building which becomes Available for Lease (described below) (the "**Offering Space**"). Landlord represents and warrants that all Superior Rights are set forth in Schedule 1 attached hereto and incorporated herein. For the avoidance of doubt, Landlord shall have the right to lease any space in the Building at any time prior to the Rent Commencement Date on such terms as Landlord may determine in its sole and absolute discretion regardless of whether such space would otherwise qualify as Special Offering Space if it were Available for Lease as of the Rent Commencement Date. Offering Space shall be deemed to be "**Available for Lease**" as follows: (i) with respect to any Offering Space that has been leased to a third party tenant prior to the Rent Commencement Date hereunder or that at any time and from time to time thereafter is under lease to a third party tenant, such Offering Space shall be deemed to be Available for Lease when Landlord has determined that such third party will not extend or renew the term of its lease for the Offering Space (whether or not pursuant to the terms of a renewal option provided for in its lease), no occupant has a Superior Right which is subject to exercise and Landlord is ready to market such space for lease, or (ii) with respect to any Offering Space that is not under lease, such Offering Space shall be deemed to be Available for Lease when Landlord has determined that no occupant has a Superior Right which is subject to exercise and Landlord is ready to market such space for lease. After Landlord has determined that any portion of Offering Space is Available for Lease, Landlord shall advise Tenant (the "**ROFO Notice**") of the terms under which Landlord is prepared to lease such portion of the Offering Space to Tenant, including, without limitation, description of the space so offered to Tenant and material economic terms and conditions applicable to Tenant's lease of such space (collectively, "**First Offer Economic Terms**"). Tenant may lease such Offering Space in its entirety only, under such First Offer Economic Terms, by delivering written notice of exercise to Landlord ("**ROFO Notice of Exercise**") within fifteen (15) days after the date of delivery of the ROFO Notice, except that Tenant shall have no such Right of First Offer and Landlord need not provide Tenant with a ROFO Notice, if: (i) Tenant is in Default under this Lease at the time Landlord would otherwise deliver the ROFO Notice; or (ii) the Premises, or any portion thereof, is sublet (other than pursuant to a Permitted Transfer) at the time Landlord would otherwise deliver the ROFO Notice; or (iii) this Lease has been assigned (other than pursuant to a Permitted Transfer) prior to the date Landlord would otherwise deliver the ROFO Notice; or (iv) either Tenant or Permitted Transferee is not occupying at least fifty percent (50%) of the Premises on the date Landlord would otherwise deliver the ROFO Notice. If Tenant does not accept a ROFO Notice from Landlord pursuant to the above, then Landlord shall have the right to lease all or any portion of the Offering Space to any third party or parties upon such terms as Landlord and such tenant(s) may approve, in their respective sole and absolute discretion.

(a) Terms. The term for the Offering Space shall commence upon the commencement date stated in the ROFO Notice and thereupon such Offering Space shall be considered a part of

the Premises, provided that all of the First Offer Economic Terms stated in the ROFO Notice shall govern Tenant's leasing of the Offering Space and only to the extent that they do not conflict with the ROFO Notice, the terms and conditions of this Lease shall apply to the Offering Space.

(b) Limitation on Right of First Offer. The rights of Tenant hereunder with respect to any portion of the Offering Space shall terminate on the earlier to occur of: (i) with respect to any portion of the Offering Space that is the subject of a ROFO Notice, Tenant's failure to exercise its Right of First Offer within the fifteen (15) day period provided in Section 2.7(a) above, and (ii) with respect to any portion of the Offering Space which would otherwise have been the subject of a ROFO Notice, the date Landlord would have provided Tenant a ROFO Notice if Tenant had not been in violation of one or more of the conditions set forth in clauses (i) through (iv) of Section 2.7(a) above. In addition, at any time that Tenant has expanded its Premises beyond 150% of the size set forth in Section 1.1(11) hereof pursuant to the above ROFO process or otherwise, Tenant shall have no further ROFO rights hereunder.

(c) Offering Amendment. If Tenant exercises its Right of First Offer, Landlord shall prepare an amendment (the "**Offering Amendment**") adding the Offering Space to the Premises on the First Offer Economic Terms and reflecting the changes in the Monthly Base Rent, Rentable Area of the Premises, Tenant's Share, Rent Adjustments and other appropriate terms. A copy of the Offering Amendment shall be (i) sent to Tenant within a reasonable time after receipt of the ROFO Notice of Exercise executed by Tenant, and (ii) executed by Tenant and returned to Landlord within fifteen (15) days thereafter, but an otherwise valid exercise of the Right of First Offer shall be fully effective whether or not the Offering Amendment is signed.

2.8 SPECIAL RIGHT OF FIRST OFFER

(a) In the Building: Subject to the superior rights of other parties existing as of the date of this Lease ("**Special Superior Rights**") as set forth in Schedule 2 attached hereto, for the period commencing January 1, 2020 and ending March 31, 2021 (the "**Special ROFO Period**"), Tenant shall have the right of first offer (the "**Special ROFO**") with respect to any suite in the Building measuring no less than twelve thousand (12,000) rentable square feet nor more than twenty-thousand (20,000) rentable square feet that becomes Available for Lease (described below) (the "**Special Offering Space**"). Landlord represents and warrants that all Special Superior Rights are set forth in Schedule 2 attached hereto and incorporated herein. For the avoidance of doubt, Landlord shall have the right to lease any space in the Building at any time prior to the commencement of the Special ROFO Period Special on such terms as Landlord may determine in its sole and absolute discretion regardless of whether such space might otherwise qualify as Special Offering Space if it were Available for Lease as of the first day of the Special ROFO Period. Special Offering Space shall be deemed to be "**Available for Lease**" as follows: (i) with respect to any Special Offering Space that has been leased to a third party tenant prior to the commencement of the Special ROFO Period (or if Landlord has entered into a letter of intent with a prospective third party for the lease of any such space prior to the commencement of the Special ROFO Period), such Special Offering Space shall be deemed to be Available for Lease when Landlord has determined that such third party (i.e., one who has entered into a lease prior to the Special ROFO Period or who has entered into a lease that was the subject of a letter of intent entered into prior to the commencement of the Special ROFO Period) will not extend or renew the term of its lease for the Special Offering Space (whether or not pursuant to the terms of a renewal

option provided for in its lease), no occupant has a Special Superior Right which is subject to exercise and Landlord is ready to market such space for lease, or (ii) with respect to any Special Offering Space that is not under lease prior to the commencement of the Special ROFO Period, such Special Offering Space shall be deemed to be Available for Lease when Landlord has determined that no occupant has a Special Superior Right which is subject to exercise and Landlord is ready to market such space for lease. If during the Special ROFO Period, Landlord has determined that any Special Offering Space is Available for Lease, Landlord shall advise Tenant (the "**Special ROFO Notice**") of the terms under which Landlord is prepared to lease such Special Offering Space to Tenant, including, without limitation, description of the space so offered to Tenant and material economic terms and conditions applicable to Tenant's lease of such space (collectively, "**Special ROFO Economic Terms**"). Tenant may lease such Special Offering Space in its entirety only, under such Special ROFO Economic Terms, by delivering written notice of exercise to Landlord ("**Special ROFO Notice of Exercise**") within fifteen (15) days after the date of delivery of the Special ROFO Notice, except that Tenant shall have no such Special Right of First Offer and Landlord need not provide Tenant with a Special ROFO Notice, if: (i) Tenant is in Default under this Lease at the time Landlord would otherwise deliver the Special ROFO Notice; or (ii) the Premises, or any portion thereof, is sublet (other than pursuant to a Permitted Transfer) at the time Landlord would otherwise deliver the Special ROFO Notice; or (iii) this Lease has been assigned (other than pursuant to a Permitted Transfer) prior to the date Landlord would otherwise deliver the Special ROFO Notice; or (iv) either Tenant or Permitted Transferee is not occupying all of the Premises on the date Landlord would otherwise deliver the Special ROFO Notice. If Tenant does not accept a Special ROFO Notice from Landlord pursuant to the above, then Landlord shall have the right to lease all or any portion of the Special Offering Space to any third party or parties upon such terms as Landlord and such tenant(s) may approve, in their respective sole and absolute discretion.

(i) Terms. The term for the Special Offering Space shall commence upon the commencement date stated in the Special ROFO Notice and thereupon such Special Offering Space shall be considered a part of the Premises, provided that all of the Special ROFO Economic Terms stated in the Special ROFO Notice shall govern Tenant's leasing of the Special Offering Space and only to the extent that they do not conflict with the Special ROFO Notice, the terms and conditions of this Lease shall apply to the Special Offering Space.

(ii) Limitation on Special Right of First Offer. The rights of Tenant hereunder with respect to any Special Offering Space shall terminate on the earlier to occur of: (i) with respect to any Special Offering Space that is the subject of a Special ROFO Notice, Tenant's failure to exercise its Special Right of First Offer within the fifteen (15) day period provided in Section 2.8(a) above, (ii) with respect to any Special Offering Space which would otherwise have been the subject of a Special ROFO Notice, the date Landlord would have provided Tenant a Special ROFO Notice if Tenant had not been in violation of one or more of the conditions set forth in clauses (i) and (iv) of Section 2.8(a) above, or (iii) the expiration of the Special ROFO Period. In addition, at any time that Tenant has expanded its Premises beyond the 150% of the size set forth in Section 1.1(11) hereof, or to an additional floor, pursuant to the above ROFO process outlined in Section 2.7 above or otherwise, Tenant shall have no further Special ROFO rights hereunder.

(iii) Offering Amendment. If Tenant exercises its Special Right of First Offer, Landlord shall prepare an amendment (the "**Offering Amendment**") adding the Special Offering Space to the Premises on the Special ROFO Economic Terms and reflecting the changes in the Monthly Base Rent, Rentable Area of the Premises, Tenant's Share, Rent Adjustments and other appropriate terms. A copy of the Offering Amendment shall be (i) sent to Tenant within a reasonable time after receipt of the Special ROFO Notice of Exercise executed by Tenant, and (ii) executed by Tenant and returned to Landlord within fifteen (15) days thereafter, but an otherwise valid exercise of the Special Right of First Offer shall be fully effective whether or not the Offering Amendment is signed.

(b) In Property Owned By Landlord Affiliates: During the Special ROFO Period, but only if (i) Landlord has not previously offered Offering Space to Tenant pursuant to Section 2.7, or Special Offering Space to Tenant pursuant to Section 2.8(a), or (ii) a Landlord Affiliate has not previously offered Affiliate Offering Space to Tenant pursuant to this Section 2.8(b), Tenant may request in writing (a "**Tenant Affiliate Offering Space Request**") that Landlord use commercially-reasonable efforts to cause a Landlord Affiliate that owns office and/or lab property in Emeryville, California (if any, an "**Emeryville Affiliate to provide Tenant with an offer (**"Affiliate Offer Right") to lease to Tenant any space owned by such an Emeryville Affiliate which measures no less than twelve thousand (12,000) rentable square feet nor more than twenty-thousand (20,000) rentable square feet and is then Available for Lease (described below) (the "Affiliate Offering Space"). Tenant's rights hereunder shall be subject to the superior rights of other parties (an "Affiliate Offer Superior Rights") in any respective Emeryville Affiliate's property or properties, which superior right(s) may be granted by any Emeryville Affiliate at any time and from time to time. For the avoidance of doubt, any Emeryville Affiliate shall have the right shall have the right to lease any space in a property it owns at any time on such terms as such Emeryville Affiliate may determine in its sole and absolute discretion regardless of whether such space might otherwise qualify as Affiliate Offering Space if it were Available for Lease at the time that Tenant delivers a Tenant Affiliate Offering Space Request. An Affiliate Offering Space shall be deemed to be "Available for Lease" if, at the time that Tenant delivers a Tenant Affiliate Offering Space Request, (i) such space is not then under lease to a third party and the Emeryville Affiliate in question is not then in negotiations with a third party for the lease thereof, (ii) no third party has an Affiliate Offer Superior Right which is subject to exercise, and (iii) the respective Emeryville Affiliate is ready to market such space for lease. If at the time Tenant delivers a Tenant Affiliate Offering Space Request, Landlord determines that an Emeryville Affiliate has Affiliate Offering Space that is Available for Lease, said Emeryville Affiliate may advise Tenant (the "Affiliate Offer Notice") of the terms under which said Emeryville Affiliate may be prepared to lease such Affiliate Offering Space to Tenant, including, without limitation, description of the space so offered to Tenant and proposed material economic terms and conditions applicable to Tenant's lease of such space (collectively, "Affiliate Offer Economic Terms"). Tenant may lease such Affiliate Offering Space in its entirety only, under such Affiliate Offer Economic Terms, by delivering written notice of exercise to the appropriate Emeryville Affiliate ("Affiliate Offer Notice of Exercise") within fifteen (15) days after the date of delivery of the Affiliate Offer Notice, except that Tenant shall have no such Affiliate Offer Right and an Emeryville Affiliate need not provide Tenant with an Affiliate Offer Notice, if: (i) Tenant is in Default under this Lease at the time the Emeryville Affiliate would otherwise deliver the Affiliate Offer Notice; or (ii) the Premises, or any portion thereof, is sublet (other than pursuant to a Permitted Transfer) at the time the Emeryville Affiliate would otherwise deliver the Affiliate Offer Notice; (iii) this Lease has

been assigned (other than pursuant to a Permitted Transfer) prior to the date the Emeryville Affiliate would otherwise deliver the Affiliate Offer Notice; or (iv) either Tenant or Permitted Transferee is not occupying all of the Premises on the date the Emeryville Affiliate would otherwise deliver the Affiliate Offer Notice.

(i) Terms. The term for any Affiliate Offering Space shall commence upon the commencement date stated in the Affiliate Offer Notice. Tenant understands and acknowledges that the terms of any accepted Affiliate Offer Notice would require documentation in a new lease between said Emeryville Affiliate and Tenant, the terms of which lease, other than the Affiliate Offer Economic Terms, must be approved by both the Emeryville Affiliate and Tenant in their respective sole and absolute discretions.

(ii) Limitation on Affiliate Offer Right. The Affiliate Offer Right is a one-time only right; and if Tenant does not accept an Affiliate Offer Notice from an Emeryville Affiliate within the fifteen (15) day period provided in Section 2.8(b) above, such right shall terminate. Further, the Affiliate Offer Right shall terminate if and at such time as Landlord is able to offer either Offering Space or Special Offering Space to Tenant pursuant to process outlined in Section 2.7 or 2.8(a) above prior to the expiration of the Special ROFO Period, whether or not Tenant accepts any such offer from Landlord. The Affiliate Offer Right shall also terminate upon the expiration of the Special ROFO Period.

Tenant specifically understands and agrees that, while Landlord has agreed to use its commercially-reasonable efforts to cause an Emeryville Affiliate to follow the Affiliate Offer process outlined above, Landlord's inability or failure to do so shall not constitute a Default under this Lease, and that Tenant shall have no remedy nor cause of action either against Landlord or against any Emeryville Affiliate for such failure or inability on the part of Landlord nor for the failure of any Emeryville Affiliate to make any Affiliate Offer Notice to Tenant or of any Emeryville Affiliate to conclude a lease with Tenant pursuant to terms contained in any Affiliate Offer Notice that Tenant may have accepted via Affiliate Offer Notice of Exercise.

ARTICLE 3

RENT

Tenant shall pay to Landlord at the address specified in Section 1.1(2), or to such other persons, or at such other places designated by Landlord or by electronic funds transfer pursuant to Landlord's written instructions, without any prior demand therefor in immediately available funds and without any deduction or offset whatsoever, Rent, including Monthly Base Rent and Rent Adjustments in accordance with Article 4, during the Term. Monthly Base Rent shall be paid monthly in advance on the first day of each month of the Term, except that the first installment of Monthly Base Rent shall be paid by Tenant to Landlord concurrently with execution of this Lease. Monthly Base Rent shall be prorated for partial months within the Term. Unpaid Rent shall bear interest at the Default Rate from the date Tenant receives a notice of such default due until paid. Tenant's covenant to pay Rent shall be independent of every other covenant in this Lease.

ARTICLE 4

RENT ADJUSTMENTS AND PAYMENTS

4.1 RENT ADJUSTMENTS

From and after the Commencement Date, Tenant shall pay to Landlord Rent Adjustments with respect to each calendar year (or partial calendar year in the case of the year in which the Commencement Date and the Termination Date occur) as follows:

(a) The Rent Adjustment Deposit representing Tenant's Share of Operating Expenses for the applicable calendar year (or partial calendar year), monthly during the Term with the payment of Monthly Base Rent;

(b) The Rent Adjustment Deposit representing Tenant's Share of Taxes for the applicable calendar year (or partial calendar year), monthly during the Term with the payment of Monthly Base Rent;

(c) Any Rent Adjustments due in excess of the Rent Adjustment Deposits in accordance with Section 4.2. Rent Adjustments due from Tenant to Landlord for any Lease Year shall be Tenant's Share of Operating Expenses for such Lease Year and Tenant's Share of Taxes for such Lease Year; and

(d) For purposes of determining Rent Adjustments, if the Building or Property is not fully occupied during all or a portion of any calendar year (or partial calendar year), Landlord shall make appropriate adjustments to the variable components of Operating Expenses for such calendar year (or partial calendar year), employing sound accounting and management principles consistently applied, to determine the amount of Operating Expenses that would have been paid or incurred by Landlord had the Building or Property been fully occupied, and the amount so determined shall be deemed to have been the amount of Operating Expenses for such calendar year (or partial calendar year). In the event that the Property is not fully assessed for all or a portion of any calendar year (or partial calendar year) during the Term, then Taxes shall be adjusted to an amount which would have been payable in such calendar year (or partial calendar year) if the Property had been fully assessed.

4.2 STATEMENT OF LANDLORD

On or before April 1 of each calendar year (or as soon thereafter as practical), Landlord will furnish to Tenant a statement ("**Landlord's Statement**") respecting the prior calendar year showing the following:

(a) Operating Expenses and Taxes for such calendar year;

(b) The amount of Rent Adjustments due Landlord for the last calendar year, less credit for Rent Adjustment Deposits paid, if any; and

(c) Any change in the Rent Adjustment Deposit due monthly in the current calendar year, including the amount or revised amount due for months preceding any such change pursuant to Landlord's Statement.

Tenant shall pay to Landlord within thirty (30) days after receipt of each Landlord's Statement any amounts for Rent Adjustments then due in accordance with such Landlord's Statement. Any amounts due from Landlord to Tenant pursuant to this Section shall be credited to the Rent Adjustment Deposit next coming due or refunded to Tenant if the Term has expired, provided Tenant is not in Default hereunder. No interest or penalties shall accrue on any amounts that Landlord is obligated to credit or refund to Tenant by reason of this Section 4.2. Landlord's failure to deliver Landlord's Statement or to compute the amount of the Rent Adjustments shall not constitute a waiver by Landlord of its right to deliver such items nor constitute a waiver or release of Tenant's obligations to pay such amounts. The Rent Adjustment Deposit shall be credited against Rent Adjustments due for the applicable calendar year (or partial calendar year). During the last complete calendar year (or partial calendar year) or during any partial calendar year in which this Lease terminates, Landlord may include in the Rent Adjustment Deposit its estimate of Rent Adjustments which may not be finally determined until after the termination of this Lease. Tenant's obligation to pay Rent Adjustments and Landlord's obligation to refund any Rent Adjustment Deposit to Tenant shall survive the expiration or termination of this Lease.

4.3 BOOKS AND RECORDS

Landlord shall maintain books and records showing Operating Expenses and Taxes in accordance with sound accounting and management practices, consistently applied. Tenant or its representative (which representative shall be a certified public accountant licensed to do business in the state in which the Property is located and whose primary business is certified public accounting and who shall not be paid on a contingency basis) shall have the right, for a period of ninety (90) days following the date upon which Landlord's Statement is delivered to Tenant, to examine the Landlord's books and records with respect to the items in the foregoing statement of Operating Expenses and Taxes during normal business hours, upon written notice, delivered at least three (3) business days in advance. Tenant shall pay for all costs of such examination, provided, however, if such examination results in a discrepancy of more than five percent (5%) in the actual Operating Expenses and Taxes from those shown on the Landlord's Statement, such costs shall be reimbursed by Landlord. If Tenant does not object in writing to Landlord's Statement within ninety (90) days of Tenant's receipt thereof, specifying the nature of the item in dispute and the reasons therefor, then Landlord's Statement shall be considered final and accepted by Tenant and Tenant shall be deemed to have waived its right to dispute Landlord's Statement. If Tenant does dispute any item in the Landlord's Statement, Tenant shall give notice of such dispute to Landlord and deliver a copy of any such audit to Landlord at the time of notification of the dispute. If Tenant does not provide such notice of dispute and a copy of such audit to Landlord within such ninety (90) day period, it shall be deemed to have waived such right to dispute Landlord's Statement. Any amount due to Landlord as shown on Landlord's Statement, whether or not disputed by Tenant as provided herein shall be paid by Tenant when due as provided above, without prejudice to any such written exception. In no event shall Tenant be permitted to examine Landlord's records or to dispute any statement of Operating Expenses and Taxes while Tenant is in Default under this Lease. Upon resolution of any dispute with respect to Operating Expenses and/or Taxes, Tenant shall either pay Landlord any shortfall or Landlord shall credit Tenant with

respect to any overages paid by Tenant (or promptly pay such amount directly to Tenant, if there are not sufficient months left in the Term to credit such amount to). The records obtained by Tenant shall be treated as confidential and neither Tenant nor any of its representatives or agents (including without limitation any financial or legal consultants) shall disclose or discuss the information set forth in the audit to or with any other person or entity except (a) to Tenant's lawyers and accountants, or (b) as required by applicable law ("**Confidentiality Requirement**"). Tenant shall indemnify and hold Landlord harmless for any losses or damages arising out of the breach of the Confidentiality Requirement.

4.4 TENANT OR LEASE SPECIFIC TAXES

In addition to Monthly Base Rent, Rent Adjustments, Rent Adjustment Deposits and other charges to be paid by Tenant, Tenant shall pay to Landlord, within thirty (30) days following receipt of written demand, any and all taxes payable by Landlord (other than federal or state inheritance, franchise, general income, gift or estate taxes) whether or not now customary or within the contemplation of the parties hereto: (a) upon, allocable to, or measured by the Rent payable hereunder, including any gross receipts tax or excise tax levied by any governmental or taxing body with respect to the receipt of such rent; or (b) 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; or (c) upon the measured value of Tenant's personal property located in the Premises or in any storeroom or any other place in the Premises or the Property, or the areas used in connection with the operation of the Property, it being the intention of Landlord and Tenant that, to the extent possible, such personal property taxes shall be billed to and paid directly by Tenant; (d) resulting from any Landlord Work, Tenant Work, Tenant Alterations, or any other improvements to the Premises, whether title thereto is in Landlord or Tenant; or (e) upon this transaction; provided, however, Tenant shall not have any obligation to pay such taxes to the extent they are already included in the calculation of the Operating Expenses for the Project. Taxes paid by Tenant pursuant to this Section 4.4 shall not be included in any computation of Taxes payable pursuant to Sections 4.1 and 4.2.

ARTICLE 5

SECURITY DEPOSIT

Concurrently with the execution of this Lease, Tenant shall pay to Landlord the Security Deposit, in immediately available funds. The Security Deposit may be applied by Landlord to cure, in whole or part, any Default of Tenant under this Lease, and upon notice by Landlord of such application, Tenant shall replenish the Security Deposit in full by paying to Landlord within ten (10) days following receipt of written demand from Landlord the amount so applied. Landlord's application of the Security Deposit shall not constitute a waiver of Tenant's default to the extent that the Security Deposit does not fully compensate Landlord for all losses, damages, costs and expenses incurred by Landlord in connection with such default and shall not prejudice any other rights or remedies available to Landlord under this Lease or by Law. Landlord shall not pay any interest on the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its general accounts. The Security Deposit shall not be deemed an advance payment of Rent or a measure of damages for any default by Tenant under this Lease, nor shall it be a bar or defense of any action that Landlord may at any time commence against Tenant. In the absence

of evidence satisfactory to Landlord of an assignment of the right to receive the Security Deposit or the remaining balance thereof, Landlord may return the Security Deposit to the original Tenant, regardless of one or more assignments of this Lease. Upon the transfer of Landlord's interest under this Lease, Landlord's obligation to Tenant with respect to the Security Deposit shall terminate upon the date Landlord transfers to the transferee of the Security Deposit, or any balance thereof, and such transferee assumes all of Landlord's obligations under this Lease in writing, including, without limitation, those relating to the Security Deposit. If Tenant shall fully and faithfully comply with all the terms, provisions, covenants, and conditions of this Lease, the Security Deposit, or any balance thereof, shall be returned to Tenant within thirty (30) days after Landlord recovers possession of the Premises. Tenant hereby waives any and all rights of Tenant under the provisions of Section 1950.7 of the California Civil Code or other Law regarding the uses to which security deposits may be applied.

If, upon the expiration of the sixth (6th) Lease Year, all of the following are true: a) all Rent due has been paid, b) Tenant is not in Default hereunder, c) Tenant's net worth and liquidity, as calculated pursuant to GAAP, are each not materially less than they were as of the Date of Lease, Landlord agrees that the Security Deposit amount shall be reduced by fifty percent (50%), to become a revised total of $718,789.00, and the difference of $718,789.00 shall be returned to Tenant within ten (10) days following the expiration of the sixth (6th) Lease Year. Failure of any of the above to be true at the end of the sixth (6th) Lease Year shall mean the Security Deposit shall remain unchanged in amount for the balance of the Lease Term.

ARTICLE 6

SERVICES

6.1 LANDLORD'S GENERAL SERVICES

(a) So long as this Lease is in full force and effect, Landlord shall furnish the following services the cost of which services shall be included in Operating Expenses or paid directly by Tenant to utility or service provider:

(1) heat, ventilation and air-conditioning ("**HVAC**") in the Premises during Standard Operating Hours as necessary in Landlord's reasonable judgment for the comfortable occupancy of the Premises under normal business office and laboratory operations, and (ii) outside of Tenant's Standard Operating Hours to minimum safe setback levels for laboratory operations ("**After-Hours Setback**"), subject to compliance with all applicable mandatory regulations and Laws;

(2) tempered and cold water for normal and customary use in the Premises and in lavatories in common with other tenants from the regular supply of the Building;

(3) customary cleaning and janitorial services in the Common Areas five (5) days per week, excluding National Holidays;

(4) washing of the outside windows in the Premises weather permitting at intervals determined by Landlord; and

(5) automatic passenger elevator service in common with other tenants of the Building and freight elevator service subject to reasonable scheduling by Landlord. Tenant shall have access to the Premises seven (7) days per week, twenty-four (24) hours per day, subject to such reasonable measures and systems for access control and/or tenant identification as exist from time to time at the Building, including, for example only, keys or card-keys for entry which shall be provided to Tenant.

(b) Landlord shall provide a security program for the Building (but not individually for Tenant or the Premises) and Tenant's Parking generally consistent with the standards of comparable office/laboratory buildings in Emeryville. The cost of the security program shall be an Operating Expense. Landlord shall not be liable in any manner to Tenant or any other Tenant Parties for any acts (including criminal acts) of others, or for any direct, indirect, or consequential damages, or any injury or damage to, or interference with, Tenant's business, including, but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, or other loss or damage, bodily injury or death, related to any malfunction, circumvention or other failure of any security program, or for the failure of any security program to prevent bodily injury, death, or property damage, or loss, or to apprehend any person suspected of causing such injury, death, damage or loss.

(c) Upon the Rent Commencement Date, Landlord agrees that in the event of an interruption of power to the Building, Tenant will connect Tenant loads to the emergency generator serving the Building (the "**Emergency Generator**") on the following conditions: (i) Tenant loads to the Emergency Generator shall in no event exceed Tenant's Share of the kVA capacity of the Emergency Generator Landlord elects to make available for shared use by tenants of the Building; (ii) any use of the Emergency Generator, including the duration of use, shall be subject to the requirements and limitations (if any) imposed by applicable Law; and (iii) in the event of an emergency causing an interruption of power to any portion of the Building, Landlord may, in its reasonable discretion, immediately shed or shut down Tenant loads (an "**Emergency Shut Down**") to the extent reasonably necessary to redirect the power from the Emergency Generator ("**Emergency Generator Power**") to the Building's emergency/life-safety systems (e.g., elevators, fire-life safety and emergency lighting). To the extent Landlord's load shedding equipment accommodates shedding Tenant loads in stages, then Landlord shall use commercially reasonable good-faith efforts to shed Tenant loads in a priority which Tenant has delivered to Landlord in writing. As a condition to Tenant's right to connect Tenant loads to the Emergency Generator:

(i) Tenant shall install and maintain, at Tenant's sole cost and expense (the cost of which may be deducted from Tenant Improvement Allowance), a meter (the "**Meter**"), which shall be designed and configured to capture all Tenant loads connected to the Emergency Generator. Any and all reasonable out of pocket costs and expenses incurred by Landlord in connection with the Emergency Generator, including, without limitation, provisions for load-shedding and shunt trips, fuel and maintenance/repair/replacement costs, shall be an Operating Expense; and

(ii) Landlord shall have the right to require Tenant to install and maintain a shunt trip device ("**Shunt Trip Device**") designed and configured to automatically shut down Tenant's connection to the Emergency Generator and use of Emergency Generator Power in the

event that the generator load for the Building exceeds eighty percent (80%) of the Emergency Generator rating.

(iii) Tenant shall provide Landlord and Landlord's building management staff (the "Building Management Staff") with access to the Meter installed on the Emergency Generator ("EG Meter") during normal business hours with at least 48 hours' advance notice for the purpose of inspection. In the event that Tenant fails to repair the EG Meter within thirty (30) days following receipt of written notice from Landlord thereof, Landlord shall have the right to perform necessary maintenance or repairs thereto, and Tenant shall reimburse Landlord for Landlord's reasonable and customary out-of-pocket costs and expenses in connection therewith within thirty (30) days after Tenant's receipt of Landlord's written demand therefor (which demand shall be accompanied by documentation of the costs and expenses which are the subject of such demand). Landlord shall have the right at any time during the Lease Term to install and maintain additional or separate transfer switches, meters, control devices and shunt trip devices in order to monitor and control Tenant's connection to the Emergency Generator and use of the Emergency Generator Power.

(iv) Notwithstanding anything to the contrary herein, Tenant acknowledges that the Emergency Generator and any transfer switch may be exercised on a periodic basis, such exercise to be conducted by Landlord or the Building Management Staff at Landlord's reasonable discretion. Tenant further acknowledges that annual maintenance procedures require that the Emergency Generator be taken off-line and that an annual full load test be performed on an annual basis, which test shall be conducted by Landlord or the Building Management Staff at Landlord's reasonable discretion; provided, however, Landlord shall give Tenant not less than five (5) business days' prior written notice thereof. Landlord shall not be liable to Tenant, and Tenant shall not be entitled to any abatement of rent or other recourse in the event that Emergency Generator Power is not available for any reason. Landlord's actual out-of-pocket cost of such exercise and testing shall be included in the maintenance costs, of which Tenant shall pay its proportionate share as set forth above in Paragraph 5(f).

(v) Upon the expiration or earlier termination of the Lease Term, Tenant shall surrender and assign to Landlord the Meter with the Premises. In no event shall Tenant be entitled to any reimbursement from Landlord for costs incurred by Tenant in connection with Tenant's installation and maintenance of the Meter.

(vi) The rights granted to Tenant under this Section 6.1(c) are personal to the named Tenant hereunder (and any assignee pursuant to a Permitted Transfer) (each an "**Approved User**"), and shall only be exercisable by an Approved User so long only one connection exists from the Premises to the Emergency Generator at a time. Any attempt by an Approved User or any of its subtenants or other transferees to make any additional connection from the Premises to the Emergency Generator shall constitute a material breach and default, and Tenant shall reimburse Landlord for all reasonable and customary out-of-pocket costs and expenses incurred by Landlord in connection with curing any such default within ten (10) business days following Tenant's receipt of Landlord's demand therefor accompanied by documentation of such costs and expenses.

(d) So long as this Lease is in full force and effect, Landlord shall furnish to the Premises replacement lamps, bulbs, ballasts and starters used in any normal Building lighting installed in the Premises, except that if the replacement or repair of such items is a result of

negligence of Tenant, its employees, agents, servants, licensees, subtenants, contractors or invitees, such cost shall be paid by Tenant within ten (10) days after notice from Landlord and shall not be included as part of Operating Expenses.

(e) If Tenant uses heat generating machines or equipment in the Premises to an extent which materially and adversely affects the temperature otherwise maintained by the air-cooling system or whenever the occupancy or electrical load materially and adversely affects the temperature otherwise maintained by the air-cooling system, and if Tenant fails to eliminate such impact within thirty (30) days following written notice from Landlord, Landlord reserves the right to install or to require Tenant to install supplementary air-conditioning units to service the Premises. Tenant shall bear all reasonable costs and expenses related to the installation, maintenance and operation of such units.

6.2 UTILITIES AND JANITORIAL SERVICES

All utility services used in the production of heating and cooling and air supply and exhaust from the central HVAC systems serving the Building and Premises, including, without limitation, electricity and gas, as well as water and sewer services, shall constitute Operating Expenses. If Landlord so elects, any or all utility services used by Tenant within the Premises, including, without limitation, electricity and gas, shall be paid for by Tenant by separate charge and shall not be included as part of Operating Expenses. Such charges shall be based upon Tenant's usage as measured by a separate meter or sub-meter for the Premises installed by Tenant at Tenant's sole cost and expense (the cost of which may be deducted from Tenant Improvement Allowance), a meter, or as reasonably estimated by Landlord and shall be payable by Tenant to Landlord within 30 days after billing by Landlord. In addition, Tenant shall provide its own janitorial services to the Premises, using a janitorial service reasonably acceptable to Landlord or shall make arrangements with Landlord for Landlord, through Landlord's vendors, to perform such Premises cleaning services, and shall pay the costs thereof directly to Landlord. Notwithstanding any provision of this Lease to the contrary, Tenant shall not make any alterations or additions to the electric equipment or systems, in each instance, without the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed so long as such alterations or additions (i) do not exceed the capacity of the wiring, feeders and risers and (ii) are in compliance with the City's building code. Tenant's use of electric current shall at no time exceed the capacity of the wiring, feeders and risers providing electric current to the Premises or the Building. The consent of Landlord to the installation of electric equipment shall not relieve Tenant from the obligation to limit usage of electricity to no more than such capacity.

6.3 ADDITIONAL AND AFTER HOUR SERVICES

At Tenant's written request, Landlord shall furnish additional quantities of any of the services or utilities specified in Section 6.1, if Landlord can reasonably do so, on the terms set forth herein. For services or utilities requested by Tenant and furnished by Landlord, Tenant shall pay to Landlord as a charge therefor Landlord's prevailing rates charged from time to time for such services and utilities, including, without limitation, HVAC service outside of Standard Operating Hours and beyond After-Hours Setback levels.

6.4 TELEPHONE SERVICES

All telephone, and communication connections which Tenant may desire shall be subject to Landlord's prior written approval, in Landlord's reasonable discretion, and the location of all wires and the work in connection therewith shall be performed by contractors reasonably approved by Landlord, and shall be subject to the direction of Landlord and in compliance with Landlord's then current Building Standards for voice, data and wiring installation. Notwithstanding the foregoing, such approval is not required for Tenant's telephone equipment (including cabling) within the Premises and from the Premises in a route reasonably designated by Landlord to any telephone cabinet or panel provided on Tenant's floor for Tenant's connection to the telephone cable serving the Building so long as Tenant's equipment does not require connections different from or additional to those to the telephone cabinet or panel provided. Tenant shall be responsible for and shall pay all costs incurred in connection with the installation of telephone cables and communication wiring in the Premises, including any hook up, access and maintenance fees related to the installation of such wires and cables in the Premises and the commencement of service therein, and the maintenance thereafter of such wire and cables; and there shall be included in Operating Expenses for the Building all installation, removal, hook up or maintenance costs incurred by Landlord in connection with telephone cables and communication wiring serving the Building which are not allocable to any individual users of such service but are allocable to the Building generally. If Tenant fails to maintain all telephone cables and communication wiring in the Premises, and such failure adversely affects or interferes with the operation or maintenance of any other telephone cables or communication wiring serving the Building, Landlord or any vendor hired by Landlord may enter into and upon the Premises forthwith and perform such repairs, restorations or alterations as Landlord deems reasonably necessary in order to eliminate any such interference (and Landlord may recover from Tenant all of Landlord's reasonable costs in connection therewith). Tenant agrees that neither Landlord nor any of its agents or employees shall be liable to Tenant, or any of Tenant's employees, agents, customers or invitees or anyone claiming through, by or under Tenant, for any damages, injuries, losses, expenses, claims or causes of action because of any interruption, diminution, delay or discontinuance at any time for any reason in the furnishing of any telephone or other communication service to the Premises and the Building. Notwithstanding the foregoing to the contrary, to the extent such interruption, diminution, delay or discontinuance is caused by the gross negligence or willful misconduct by Landlord, the property manager, the leasing manager for the Property and their respective partners, members, directors, officers, agents and employees, then Tenant shall be entitled, as its sole remedy, to pursue an action for actual damages (but not punitive, consequential, exemplary, treble or special damages) against Landlord. In no event shall Tenant be entitled to any abatement of Rent or the right to terminate this Lease due to any such interruption, diminution, delay or discontinuance.

6.5 DELAYS IN FURNISHING SERVICES

Tenant agrees that Landlord shall not be in breach of this Lease nor be liable to Tenant for damages or otherwise, for any failure to furnish, or a delay in furnishing, or a change in the quantity or character of any service when such failure, delay or change is occasioned, in whole or in part, by repairs, improvements or mechanical breakdowns, by the act or default of Tenant or other parties or by an event of Force Majeure. No such failure, delay or change shall be deemed to be an eviction or disturbance of Tenant's use and possession of the Premises, or relieve Tenant from paying Rent or from performing any other obligations of Tenant under this Lease, without any

deduction or offset; provided, however, in the case of any such failure or delay is caused by the gross negligence or willful misconduct of Landlord and the same materially interferes with Tenant's ability to conduct business in the Premises, then unless Landlord is diligently pursuing a remedy, Rent shall be abated commencing on the fifth (5th) consecutive business day following such failure or delay and shall continue until such time as the failure or delay that materially interferes with Tenant's ability to conduct business in the Premises is cured. Failure to any extent to make available, or any slowdown, stoppage, or interruption of, the specified utility services resulting from any cause, including changes in service provider or Landlord's compliance with any voluntary or similar governmental or business guidelines now or hereafter published or any requirements now or hereafter established by any governmental agency, board, or bureau having jurisdiction over the operation of the Property shall not render Landlord liable in any respect for damages to either persons, property, or business, nor be construed as an eviction of Tenant or work an abatement of Rent, nor relieve Tenant of Tenant's obligations for fulfillment of any covenant or agreement hereof. Notwithstanding the foregoing, Landlord shall make commercially reasonable efforts to provide Tenant with at least three (3) business days' notice of any known, planned interruption in utilities or services. Should any equipment or machinery furnished by Landlord break down or for any cause cease to function properly, Landlord shall use reasonable diligence to repair same promptly, but Tenant shall have no claim for abatement of Rent or damages on account of any interruption of service occasioned thereby or resulting therefrom.

6.6 CHOICE OF SERVICE PROVIDER

Tenant acknowledges that Landlord may, at Landlord's sole option, to the extent permitted by applicable law, elect to change, from time to time, the company or companies which provide services (including electrical service, gas service, water, telephone and technical services) to the Building, the Premises and/or its occupants. Notwithstanding anything to the contrary set forth in this Lease, Tenant acknowledges that Landlord has not and does not make any representations or warranties concerning the identity or identities of the company or companies which provide services to the Building and the Premises or its occupants and Tenant acknowledges that the choice of service providers and matters concerning the engagement and termination thereof shall be solely that of Landlord. The foregoing provision is not intended to modify, amend, change or otherwise derogate any provision of this Lease concerning the nature or type of service to be provided or any specific information concerning the amount thereof to be provided. Tenant agrees to cooperate with Landlord and each of its service providers in connection with any change in service or provider.

6.7 SIGNAGE

(a) Initial Building standard signage for Tenant will be installed by Landlord in the directory in the main lobby of the Building and, in the case of any multi-tenant floor, in the listing of tenants in the elevator lobby for the floor on which the Premises is located, at Landlord's sole cost and expense. In the event Tenant occupies an entire floor of the Building, Tenant may install its own signage in the elevator lobby of such floor, at Tenant's sole cost and expense, and otherwise in accordance with the provisions of Article 9 below. Any change in such initial signage shall be only with Landlord's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), shall conform to Building standard signage and shall be at Tenant's sole cost and expense.

(b) Landlord hereby agrees not to offer exterior, non-exclusive, top of building signage to any other tenant of the Building who has leased two (2) full floors or less without first offering such signage rights to Tenant. Landlord and Tenant hereby agree and acknowledge that if such exterior signage rights are offered by Landlord and accepted by Tenant, Tenant shall pay Landlord the prevailing market rate for such rights, and Landlord and Tenant also agree that the cost to design, secure approvals and permits for, fabricate, install, maintain, repair, remove and restore any such exterior signage shall be at Tenant's sole cost and expense.

ARTICLE 7

POSSESSION, USE AND CONDITION OF PREMISES

7.1 POSSESSION AND USE OF PREMISES

(a) Tenant shall occupy and use the Premises only for the uses specified in Section 1.1(15) to conduct Tenant's business. Tenant shall not occupy or use the Premises (or permit the use or occupancy of the Premises) for any purpose or in any manner which: (1) is unlawful or in violation of any applicable Law or Environmental Law; (2) may be dangerous to persons or property or which may increase the cost of, or invalidate, any policy of insurance carried on the Building or covering its operations; (3) is contrary to or prohibited by the terms and conditions of this Lease or the rules of the Building set forth in Article 18; (4) creates a nuisance, or (5) in any manner that will cause the Building or any part thereof not to conform with the Project's Sustainability Practices or the certification of the Building pursuant to the applicable Green Building Standards; provided, however, that in no event shall such practices or certification requirements have the effect of preventing Tenant from conducting its business at the Premises in a manner consistent with the Permitted Use.

(b) Upon Commencement Date, Landlord shall provide Tenant with 250 Access Card Keys the cost of which shall be paid by Tenant within ten (10) days of Landlord's demand therefor (or at Tenant's election, the cost thereof may be deducted from Tenant Improvement Allowance), and Tenant shall place a deposit for such cards with Landlord to cover lost cards or cards which are not returned at the end of the Term.

(c) Landlord and Tenant acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "**ADA**") establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises, the Building and the Project depending on, among other things: (1) whether Tenant's business is deemed a "public accommodation" or "commercial facility", (2) whether such requirements are "readily achievable", and (3) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that, as between Landlord and Tenant, compliance with any accessibility requirement relating to the Common Area and Landlord Work, on an unoccupied basis, promulgated under the ADA shall be responsibility of Landlord (and not Tenant), except to the extent that any specific compliance is triggered by Tenant's Use in the Premises or any Tenant Alterations, and more specifically, (A) Landlord shall be responsible for ADA Title III compliance in the Common Areas, except as provided below; (B) Tenant shall be

responsible for ADA Title III compliance in the Premises, subject to Landlord's obligation to construct all of the Landlord Work in compliance with all applicable Laws (including ADA), on an unoccupied basis and without regard to Tenant's specific use of the Premises, the cost of which compliance shall be a Tenant Improvement Allowance Item (as defined in the Workletter); provided, however, Landlord shall make commercially reasonable efforts to cause such ADA Title III compliance to be at the cost of the Architect, Building Consultants, and/or Contractor (all as defined in the Workletter), to the extent such non-compliance was due to any negligent act or omission on any of their parts; (C) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III "path of travel" requirements triggered by Tenant Additions in the Premises, and (D) Landlord may perform, or require Tenant to perform, and Tenant shall be responsible for the cost of, ADA Title III compliance in the Common Areas necessitated by the Building being deemed to be a "public accommodation" instead of a "commercial facility" as a result of Tenant's use of the Premises. Tenant shall be solely responsible for requirements under Title I of the ADA relating to Tenant's employees.

(d) Civil Code Section 1938. TENANT HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE PROTECTIONS OF CALIFORNIA CIVIL CODE SECTION 1938. IF SUCH WAIVER IS NOT ENFORCEABLE UNDER CALIFORNIA LAW, THEN THE FOLLOWING PROVISIONS SHALL APPLY. The Premises have not been issued a disability access inspection certificate or undergone inspection by a Certified Access Specialist ("**CASp**"). The following notice is given pursuant to California Civil Code Section 1938: "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." Landlord and Tenant hereby agree that if Tenant elects to perform a CASp inspection of the Premises, Tenant will provide written notice to Landlord, and Landlord may elect, in Landlord's sole discretion, to retain a CASp to perform the inspection. If Landlord does not so elect, the time and manner of the CASp inspection is subject to the prior written approval of Landlord. In either event, the payment of the fee for the CASp inspection shall be borne by Tenant. The cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises shall be allocated as provided in this Article.

(e) Tenant agrees to cooperate and use commercially reasonable efforts to participate in traffic management programs provided to Tenant in writing by Landlord, and Tenant shall encourage and support van, shuttle service, and carpooling by, and staggered and flexible working hours for, its office workers and service employees to the extent reasonably permitted by the requirements of Tenant's business. Neither this Section or any other provision of this Lease is intended to or shall create any rights or benefits in any other person, firm, company, governmental entity or the public.

(f) Tenant agrees to cooperate with Landlord and to comply with any and all reasonable guidelines or controls concerning energy management and usage disclosure imposed upon Landlord by federal or state governmental organizations or by any energy conservation association to which Landlord is a party or which is applicable to the Building, including, without limitation, the requirements of California's Nonresidential Building Energy Use Disclosure Program, as more particularly specified in California Public Resources Code Sections 25402.10 *et seq.* and regulations adopted pursuant thereto. Further, Tenant hereby authorizes (and agrees that Landlord shall have the authority to authorize) any electric or gas utility company providing service to the Building to disclose from time to time so much of the data collected and maintained by it regarding Tenant's energy consumption data as may be necessary to cause the Building to participate in the ENERGY STAR® Portfolio Manager system and similar programs; and Tenant further authorizes Landlord to disclose information concerning energy use by Tenant, either individually or in combination with the energy use of other tenants, as applicable as Landlord determines to be necessary to comply with applicable Laws pertaining to the Building or Landlord's ownership thereof.

(g) Hazardous Materials.

(1) Definitions. The following terms shall have the following meanings for purposes of this Lease:

(i) "**Biohazardous Materials**" means any and all substances and materials defined or referred to as "**a-medical waste,**" "**biological waste,**" "**biohazardous waste,**" "**biohazardous material**" or any other term of similar import under any Hazardous Materials Laws, including (but not limited to) California Health & Safety Code Sections 25105 *et seq*., and any regulations promulgated thereunder, as amended from time to time.

(ii) "**Environmental Condition**" means the Release of any Hazardous Materials in, over, on, under, through, from or about the Project (including, but not limited to, the Premises).

(iii) "**Environmental Damages**" means all claims, suits, judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, arising out of or in connection with any Environmental Condition, including, to the extent arising out of an Environmental Condition, without limitation: (A) damages for personal injury, or for injury or damage to the Project or natural resources occurring on or off the Project, including without limitation (1) any claims brought by or on behalf of any person, (2) any loss of, lost use of, damage to or diminution in value of any Project or natural resource, and (3) costs of any investigation, remediation, removal, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or otherwise reasonably necessary to protect the public health or safety, whether on or off the Project; (B) reasonable fees incurred for the services of attorneys, consultants, contractors, experts and laboratories in connection with the preparation of any feasibility studies, investigations or reports or the performance of any work described above: (C) any liability to any third person or governmental agency to indemnify such person or agency for costs expended or liabilities incurred in connection with any items described in clause (A) or (B) above; (D) any fair market or fair

market rental value of the Project; and (E) the amount of any penalties, damages or costs a party is required to pay or incur in excess of that which the party otherwise would reasonably have expected to pay or incur absent the existence of the applicable Environmental Condition.

(iv) "**Handling**" or "**Handles**", when used with reference to any substance or material, includes (but is not limited to) any receipt, storage, use, generation, Release, transportation, treatment or disposal of such substance or material.

(v) "**Hazardous Materials**" means any and all chemical, explosive, biohazardous, radioactive or otherwise toxic or hazardous materials or hazardous wastes, including without limitation any asbestos-containing materials, PCB's, CFCs, petroleum and derivatives thereof, Radioactive Materials, Biohazardous Materials, Hazardous Wastes, any other substances defined or listed as or meeting the characteristics of a hazardous substance, hazardous material, Hazardous Waste, toxic substance, toxic waste, biohazardous material, biohazardous waste, biological waste, medical waste, radiation, radioactive substance, radioactive waste, or other similar term, as applicable, under any law, statute, ordinance, code, rule, regulation, directive, order, condition or other written requirement enacted, promulgated or issued by any public officer or governmental or quasi-governmental authority, whether now in force or hereafter in force at any time or from time to time to protect the environment or human health, and/or any mixed materials, substances or wastes containing more than one of the foregoing categories of materials, substances or wastes.

(vi) "**Hazardous Materials Laws**" means, collectively, (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601-9657, (B) the Hazardous Materials Transportation Act of 1975, 49 U.S.C. Sections 1801-1812, (C) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901-6987 (together with any amendments thereto, any regulations thereunder and any amendments to any such regulations as in effect from time to time, "**RCRA**"), (D) the California Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health & Safety Code Sections 25300 et seq., (E) the Hazardous Materials Release Response Plans and Inventory Act, California Health & Safety Code Sections 25500 et seq., (F) the California Hazardous Waste Control Law, California Health & Safety Code Sections 25100 et seq. (together with any amendments thereto, any regulations thereunder and any amendments to any such regulations as in effect from time to time, the "**CHWCL**"), (G) California Health & Safety Code Sections 25015- 25027.8, (H) any amendments to or successor statutes to any of the foregoing, as adopted or enacted from time to time, (I) any regulations or amendments thereto promulgated pursuant to any of the foregoing from time to time, (J) any Laws relating to Biohazardous Materials, including (but not limited to) any regulations or requirements with respect to the shipping, use, decontamination and disposal thereof, and (K) any other Law now or at any time hereafter in effect regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials, including (but not limited to) any requirements or conditions imposed pursuant to the terms of any orders, permits, licenses, registrations or operating plans issued or approved by any governmental or quasi-governmental authority from time to time either on a Project-wide basis or in connection with any Handling of Hazardous Materials in, on or about the Premises or the Project.

(vii) "**Hazardous Wastes**" means (A) any waste listed as or meeting the identified characteristics of a "hazardous waste" or terms of similar import under RCRA, (B) any

waste meeting the identified characteristics of a "hazardous waste", "extremely hazardous waste" or "restricted hazardous waste" under the CHWCL, and/or (C) any and all other substances and materials defined or referred to as a "hazardous waste" or other term of similar import under any Hazardous Materials Laws.

(viii) "**Radioactive Materials**" means (A) any and all substances and materials the Handling of which requires an approval, consent, permit or license from the Nuclear Regulatory Commission, (B) any and all substances and materials the Handling of which requires a Radioactive Material License or other similar approval, consent, permit or license from the State of California, and (C) any and all other substances and materials defined or referred to as "radiation," a "radioactive material" or "radioactive waste," or any other term of similar import under any Hazardous Materials Laws, including (but not limited to) Title 26, California Code of Regulations Section 17-30100, and any statutes, regulations or other laws administered, enforced or promulgated by the Nuclear Regulatory Commission.

(ix) "**Release**" means any accidental or intentional spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching, migrating, dumping or disposing into the air, land, surface water, groundwater or the environment (including without limitation the abandonment or discarding of receptacles containing any Hazardous Materials).

(x) "**Tenant's Contamination**" means any Hazardous Material Release on or about the Property caused by Tenant and/or any agents, employees, contractors, vendors, suppliers, licensees, subtenants, and invitees of Tenant (individually a "**Tenant Party**" and collectively, "**Tenant Parties**").

(xi) "**Landlord's Contamination**" means any Hazardous Materials which exist in, on, under or in the vicinity of the Project as of the Commencement Date or which migrate onto or beneath the Project from off-site sources during the Term or after termination of this Lease or which are brought onto the Project during the Term by Landlord and/or any agents, employees, contractors, vendors or licensees of Landlord (collectively with Landlord, "**Landlord Parties**"). Tenant shall not be required to pay any costs with respect to the remediation or abatement of Landlord's Contamination.

(2) Handling of Hazardous Materials. The parties acknowledge that Tenant wishes and intends to use all or a portion of the Premises as a bio-pharmaceutical laboratory, research and development and otherwise for the conduct by Tenant of its business in accordance with the use specified in Section 1.1(14), that such use, as conducted or proposed to be conducted by Tenant, would customarily include the Handling of Hazardous Materials, and that Tenant shall therefore be permitted to engage in the Handling in the Premises of necessary and reasonable quantities of Hazardous Materials customarily used in or incidental to the operation of a bio pharmaceutical research, development, preparation and dispensing facility and the other business operations of Tenant in the manner conducted or proposed to be conducted by Tenant hereunder ("**Permitted Hazardous Materials**"), provided that the Handling of such Permitted Hazardous Materials by all Tenant Parties shall at all times comply with and be subject to all provisions of this Lease and all applicable Laws, including all Hazardous Materials Laws as well as be in compliance with Landlord's Chemical Control Area Plan for the Building. Without limiting the generality of the foregoing, Tenant shall comply at all times with all Hazardous Materials Laws

applicable to any aspect of Tenant's use of the Premises and the Project and of Tenant's operations and activities in, on and about the Premises and the Project, and shall ensure at all times that Tenant's Handling of Hazardous Materials in, on and about the Premises does not violate (x) the terms of any governmental licenses or permits applicable to the Building (including, but not limited to, the Building Discharge Permit as defined below) or Premises or to Tenant's Handling of any Hazardous Materials therein, or (y) any applicable requirements or restrictions relating to the occupancy classification of the Building and the Premises.

(3) Disposition or Emission of Hazardous Materials. Tenant shall not Release or dispose of any Hazardous Materials, except to the extent authorized by permit, at the Premises or on the Project, but instead shall arrange for off-site disposal, under Tenant's own name and EPA waste generator number (or other similar identifying information issued or prescribed by any other governmental authority with respect to Radioactive Materials, Biohazardous Materials or any other Hazardous Materials) and at Tenant's sole expense, in compliance with all applicable Hazardous Materials Laws, with the Laboratory Rules and Regulations (defined below) and with all other applicable Laws and regulatory requirements.

(4) Information Regarding Tenant's Hazardous Materials. Tenant shall maintain and make available to Landlord the following information and/or documentation within thirty (30) days following written demand:

(i) An inventory of all Hazardous Materials that Tenant receives, uses, handles, generates, transports, stores, treats or disposes of from time to time, or at the time of preparation of such inventory proposes or expects to use, handle, generate, transport, store, treat or dispose of from time to time, in connection with its operations at the Premises. Such inventory shall include, but shall separately identify, any Hazardous Wastes, Biohazardous Materials and Radioactive Materials covered by the foregoing description. If such inventory includes any Biohazardous Materials, Tenant shall also disclose in writing to Landlord the Biosafety Level designation associated with the use of such materials.

(ii) Copies of all then existing permits, licenses, registrations and other similar documents issued by any governmental or quasi-governmental authority that authorize any Handling of Hazardous Materials in, on or about the Premises or the Project by any Tenant Party.

(iii) All Material Safety Data Sheets ("**MSDSs**"), if any, required to be completed with respect to operations of Tenant at the Premises from time to time in accordance with Title 26, California Code of Regulations Section 8-5194 or 42 U.S.C. Section 11021, or any amendments thereto, and any Hazardous Materials Inventory Sheets that detail the MSDSs.

(iv) All hazardous waste manifests (as defined in Title 26, California Code of Regulations Section 22-66481), if any, that Tenant is required to complete from time to time in connection with its operations at the Premises.

(v) A copy of any "**Hazardous Materials Business Plan**" required from time to time with respect to Tenant's operations at the Premises pursuant to California Health & Safety Code Sections 25500 et seq., and any regulations promulgated thereunder, as amended from time to time, or in connection with Tenant's application for a business license from the City

of Emeryville. If applicable law does not require Tenant to prepare a Hazardous Materials Business Plan, Tenant shall furnish to Landlord at the times and in the manner set forth above the information that would customarily be contained in a Hazardous Materials Business Plan, including (but not limited to) information regarding Tenant's Hazardous Materials inventories. The parties acknowledge that a Hazardous Materials Business Plan would ordinarily include an emergency response plan, and that regardless of whether applicable Law requires Tenant or other tenants in the Building to prepare Hazardous Materials Business Plans, Landlord in its discretion may elect to prepare a coordinated emergency response plan for the entire Building and/or for multiple Buildings on the Project.

(vi) Any "**Contingency Plans and Emergency Procedures**" required of Tenant from time to time, in connection with its operations at the Premises, pursuant to applicable Law, Title 26, California Code of Regulations Sections 22-67140 et seq., and any amendments thereto, and any "**Training Programs and Records**" required under Title 26, California Code of Regulations Section 22-66493, and any amendments thereto from time to time. Landlord in its discretion may elect to prepare a Contingency Plan and Emergency Procedures for the entire Building and/or for multiple Buildings on the Project, in which event, if applicable law does not require Tenant to prepare a Contingency Plan and Emergency Procedures for its operations at the Premises, Tenant shall furnish to Landlord at the times and in the manner set forth above the information that would customarily be contained in a Contingency Plan and Emergency Procedures.

(vii) Copies of any biennial or other periodic reports furnished or required to be furnished to the California Department of Health Services from time to time, under applicable law, pursuant to Title 26, California Code of Regulations Section 22-66493 and any amendments thereto, relating to any Hazardous Materials.

(viii) Copies of any industrial wastewater discharge permits issued to or held by Tenant from time to time in connection with its operations at the Premises (the parties presently anticipate, however, that because of the existence of the Building Discharge Permit in Landlord's name as described above. Tenant will not be required to maintain a separate, individual discharge permit).

(ix) Copies of any other lists, reports, studies, or inventories of Hazardous Materials or of any subcategories of materials included in Hazardous Materials that Tenant is otherwise required to prepare and file from time to time with any governmental or quasi-governmental authority in connection with Tenant's operations at the Premises, including (but not limited to) reports filed by Tenant with the federal Food & Drug Administration or any other regulatory authorities primarily in connection with the presence (or lack thereof) of any "**select agents**" or other Biohazardous Materials on the Premises, together with proof of filing thereof.

(x) Any other information reasonably requested by Landlord in writing from time to time in connection with (A) Landlord's monitoring (in Landlord's reasonable discretion) and enforcement of Tenant's obligations under this Section and of compliance with applicable Laws in connection with any Handling or Release of Hazardous Materials in the Premises or Building or on or about the Project by any Tenant Party, (B) any inspections or enforcement actions by any governmental authority pursuant to any Hazardous Materials Laws or

any other Laws relating to the presence or Handling of Hazardous Materials in the Premises or Building or on or about the Project by any Tenant Party, and/or (C) Landlord's preparation (in Landlord's discretion) and enforcement of any reasonable rules and procedures relating to the presence or Handling by Tenant or any Tenant Party of Hazardous Materials in the Premises or Building or on or about the Project, including (but not limited to) any contingency plans or emergency response plans as described above. Except as otherwise required by applicable Law, Landlord shall keep confidential any information supplied to Landlord by Tenant pursuant to the foregoing, provided, however, that the foregoing shall not apply to any information filed with any governmental authority or available to the public at large. Landlord may provide such information to its lenders, consultants or investors provided such entities agree to keep such information confidential.

(5) Indemnification; Notice of Release. Tenant shall be responsible for and shall indemnify, defend and hold Landlord harmless from and against all Environmental Damages to the extent arising out of or otherwise relating to, (i) any Handling of Hazardous Materials by any Tenant Party in, on or about the Premises or the Project in violation of this Section, (ii) any breach of Tenant's obligations under this Section or of any Hazardous Materials Laws by any Tenant Party, or (iii) the existence of any Tenant Contamination in, on or about the Premises or the Project to the extent caused by any Tenant Party, including without limitation any removal, cleanup, restoration or remediation work and materials necessary to return the Project or any improvements of whatever nature located on the Project to the condition existing prior to the Handling of Hazardous Materials in, on or about the Premises or the Project by any Tenant Party and as required by applicable Laws. In the event of any Tenant Contamination in, on or about the Premises or any other portion of the Project or any adjacent lands, Tenant shall promptly remedy the problem in accordance with all applicable Hazardous Materials Laws and other applicable Laws, shall give Landlord oral notice of any such non-standard or non-customary Release promptly after Tenant becomes aware of such Release, followed by written notice to Landlord within five (5) days after Tenant becomes aware of such Release, and shall furnish Landlord with concurrent copies of any and all notices, reports and other written materials filed by any Tenant Party with any governmental authority in connection with such Release. Tenant shall have no obligation to remedy any Hazardous Materials contamination which was not caused or released by a Tenant Party.

(6) Governmental Notices. Tenant shall promptly provide Landlord with copies of all notices received by Tenant relating to any actual or alleged presence or Handling by any Tenant Party of Hazardous Materials in, on or about the Premises or any other portion of the Project, including, without limitation, any notice of violation, notice of responsibility or demand for action from any federal, state or local governmental authority or official in connection with any actual or alleged presence or Handling by any Tenant Party of Hazardous Materials in or about the Premises or any other portion of the Project.

(7) Inspection by Landlord. In addition to, and not in limitation of, Landlord's rights under this Lease, upon reasonable prior request by Landlord (of no less than one (1) business day's notice), Tenant shall grant Landlord and its consultants, as well as any governmental authorities having jurisdiction over the Premises or over any aspect of Tenant's use thereof, reasonable access to the Premises at reasonable times to inspect Tenant's Handling of Hazardous Materials in, on and about the Premises, and Landlord shall not thereby incur any liability to Tenant

or be deemed guilty of any disturbance of Tenant's use or possession of the Premises by reason of such entry; provided, however, that Landlord shall use reasonable efforts to minimize interference with Tenant's use of the Premises caused by such entry. Landlord shall comply with any safety and security precaution reasonably imposed by Tenant during any entry onto the Premises (which may include, without limitation, requiring escort by a Tenant representative at all times except during an emergency) and shall minimize to the extent reasonably possible any interference with Tenant's use of the Premises caused by such entry. Notwithstanding Landlord's rights of inspection and review of documents, materials and physical conditions under this Section with respect to Tenant's Handling of Hazardous Materials, Landlord shall have no duty or obligation to perform any such inspection or review or to monitor in any way any documents, materials, physical conditions or compliance with applicable Laws in connection with Tenant's Handling of Hazardous Materials, and no third party shall be entitled to rely on Landlord to conduct any such inspection, review or monitoring by reason of the provisions of this Section.

(8) Monitoring by Landlord. Landlord reserves the right to monitor, in Landlord's reasonable discretion and at Landlord's cost (the reasonable cost of which shall be recoverable as an Operating Expense (except in the case of a breach of any of Tenant's obligations under this Section, in which event such monitoring costs may be charged back entirely to Tenant and shall be reimbursed by Tenant to Landlord within ten (10) business days after written demand by Landlord from time to time, accompanied by supporting documentation reasonably evidencing the costs for which such reimbursement is claimed), at such times and from time to time as Landlord in its reasonable discretion may determine, through consultants engaged by Landlord or otherwise as Landlord in its reasonable discretion may determine, (x) all aqueous and atmospheric discharges and emissions from the Premises during the Term by a Tenant Party, (y) Tenant's compliance and the collective compliance of all tenants in the Building with requirements and restrictions relating to the occupancy classification of the Building (including, but not limited to, Hazardous Materials inventory levels of Tenant and all other tenants in the Building), and (z) Tenant's compliance with all other requirements of this Section.

(9) Discovery of Discharge. If Landlord, Tenant or any governmental or quasi-governmental authority discovers any Release from the Premises during the Term caused by a Tenant Party in violation of this Section that, in Landlord's reasonable determination, jeopardizes the ability of the Building or the Project to meet applicable Laws or otherwise adversely affects the Building's or the Project's compliance with applicable discharge or emission standards, or if Landlord discovers any other breach of Tenant's obligations under this Section, then upon receipt of written notice from Landlord or at such earlier time as Tenant obtains actual knowledge of the applicable discharge, emission or breach, Tenant at its sole expense shall within a reasonable time (x) in the case of a Release caused by a Tenant Party in violation of this Lease, cease the applicable discharge or emission and remediate any continuing effects of the discharge or emission until such time, if any, as Tenant demonstrates to Landlord's reasonable satisfaction that the applicable discharge or emission is in compliance with all applicable Laws and any other applicable regulatory commitments and obligations to the satisfaction of the appropriate governmental agency with jurisdiction over the Release, and (y) in the case of any other breach of Tenant's obligations under this Section, take such corrective measures as Landlord may reasonably request in writing in order to cure or eliminate the breach as promptly as practicable and to remediate any continuing effects of the breach.

(10) Post-Occupancy Study. No later than thirty (30) days prior to the Termination Date, Tenant at its sole cost and expense, shall obtain and deliver to Landlord an environmental study, performed by an expert reasonably satisfactory to Landlord, evaluating, the presence or absence of any Tenant Contamination in, on and about the Premises and the Project. Such study shall be based on a reasonable and prudent level of tests and investigations of the Premises and surrounding portions of the Project (if appropriate) and, if applicable, as required by governing regulatory agencies or bodies for such closure, which tests shall be conducted no earlier than thirty (30) days prior to the Termination Date. Liability for any remedial actions required or recommended on the basis of such study shall be allocated in accordance with the applicable provisions of this Lease. To the extent any such remedial actions are the responsibility of Tenant, Tenant at its sole expense shall promptly commence and diligently pursue to completion the required remedial actions.

(11) Emergency Response Plans. If Landlord in its reasonable discretion adopts any emergency response plan and/or any Contingency Plan and Emergency Procedures for the Building or for multiple Buildings on the Project as contemplated above, Landlord shall provide copies of any such plans and procedures to Tenant and, so long as such plans and procedures are reasonable, comply with applicable Laws, do not unreasonably interfere with Tenant's use of or access to the Premises or materially increase the cost incurred by Tenant with respect to the Premises. Tenant shall comply with all of the requirements of such plans and procedures to the extent applicable to Tenant and/or the Premises. If Landlord elects to adopt or materially modify any such plans or procedures that apply to the Building during the Term, Landlord shall consult with Tenant, and Tenant shall cooperate, in the preparation of such plans, procedures or modifications in efforts to accurately reflect and maintain consistency with Tenant's operations in the Premises, but Landlord alone shall determine, in its good faith reasonable discretion, the appropriate scope of such consultation and nothing in this paragraph shall be construed to give Tenant any right of approval or disapproval over Landlord's adoption or modification of any such plans or procedures so long as such plans and procedures are reasonable. do not unreasonably interfere with Tenant's use of or access to the Premises or materially increase the cost incurred by Tenant with respect to the Premises.

(12) Radioactive Materials. Without limiting any other applicable provisions of this Section, if Tenant Handles or proposes to Handle any Radioactive Materials in or about the Premises, Tenant shall provide Landlord with copies of Tenant's licenses or permits for such Radioactive Materials and with copies of all radiation protection programs and procedures required under applicable Laws or otherwise adopted by Tenant from time to time in connection with Tenant's Handling of such Radioactive Materials. In addition, Tenant shall comply with any and all rules and procedures issued by Landlord in its good faith discretion from time to time with respect to the Handling of Radioactive Materials on the Project (such as, by way of example but not limitation, rules implementing a label defacement program for decayed waste destined for common trash and/or rules relating to transportation and storage of Radioactive Materials on the Project), provided that such rules and procedures shall be reasonable and not in conflict with any applicable Laws.

(13) Deemed Holdover Occupancy. Notwithstanding any other provisions of this Lease, Tenant expressly agrees as follows:

(i) If Tenant Handles any Radioactive Materials in or about the Premises or the Project during the Term, then for so long as any license or permit relating to such Radioactive Materials remains open following the Termination Date, and another entity handling Radioactive Materials which is a prospective tenant of Landlord is legally prohibited from occupying a portion of the Premises for a use similar to Tenant's use, then Tenant shall be deemed to be occupying that portion of the Premises on a holdover basis without Landlord's consent (notwithstanding such otherwise applicable termination or expiration of the Term) and shall be required to continue to pay Rent and other charges in accordance with Article 13 solely for that portion of the Premises effected by the radioactive materials license, until such time as all such Radioactive Materials licenses and permits have been fully closed out in accordance with the requirements of this Lease and with all applicable Hazardous Materials Laws and other Laws.

(ii) If Tenant Handles any Hazardous Materials in or about the Premises or the Project during the Term and, on or before the Termination Date, has failed to remove from the Premises or the Project all known Hazardous Materials Handled by a Tenant Party or has failed to complete any remediation or removal of Tenant's Contamination and/or to have fully remediated in compliance with the requirements of this Lease and with all applicable Hazardous Materials Laws and any other applicable Laws, the Tenant's Handling and/or Release (if applicable) of any such Hazardous Materials during the Term, then for so long as such circumstances continue to exist, Tenant shall be deemed to be occupying the Premises on a holdover basis without Landlord's consent (notwithstanding such otherwise applicable termination or expiration of the Term) and shall be required to continue to pay Rent and other charges in accordance with Article 13 until such time as all such circumstances have been fully resolved in accordance with the requirements of this Lease and with all applicable Hazardous Materials Laws and other Laws.

(14) Survival of Obligations. Each party's obligations under this Section shall survive the Termination Date and shall survive any conveyance by Landlord of its interest in the Premises. The provisions of this Section and any exercise by either party of any of the rights and remedies contained herein shall be without prejudice to any other rights and remedies that such party may have under this Lease or under applicable Law with respect to any Environmental Conditions and/or any Hazardous Materials. Either party's exercise or failure to exercise, at any time or from time to time, any or all of the rights granted in this Section shall not in any way impose any liability on such party or shift from the other party to such party any responsibility or obligation imposed upon the other party under this Lease or under Hazardous Materials Laws, Environmental Conditions and/or compliance with applicable Laws.

(15) Laboratory Rules and Regulations. Tenant agrees for itself and for its subtenants, employees, agents, and invitees to comply with the laboratory rules and regulations ("**Laboratory Rules and Regulations**") attached to this Lease as Exhibit C-1 and with all reasonable modifications and additions thereto which Landlord may make from time to time.

7.2 LANDLORD ACCESS TO PREMISES; APPROVALS

(a) Tenant shall permit Landlord to erect, use and maintain pipes, ducts, wiring and conduits in and through the Premises, so long as Tenant's use, layout or design of the Premises is not materially affected or altered. Landlord or Landlord's agents shall have the right to enter upon the Premises (i) to perform scheduled janitorial and other routine services or (ii) in the event of an emergency, or (ii) upon not less than 48 hours' prior notice, to inspect the Premises, to conduct safety and other testing in the Premises, and to make such repairs, alterations, improvements or additions to the Premises or the Building or other parts of the Property as Landlord may deem necessary or desirable (including all alterations, improvements and additions in connection with a change in service provider or providers) during reasonable times, in all cases, subject to the terms and conditions set forth in this Lease. Janitorial and cleaning services shall be performed after Standard Operating Hours. Any entry or work by Landlord may be during Standard Operating Hours and Landlord shall use reasonable efforts to ensure that any entry or work shall not materially interfere with Tenant's access to, use and occupancy of the Premises.

(b) Advance notice shall not be required for entry to perform routine janitorial and cleaning services or for entry in the event of an emergency or urgent situation, as reasonably determined by Landlord, but any other entry or work by Landlord shall be upon at least two (2) business day's prior notice to Tenant, which notice may be delivered orally or by e-mail to Tenant's on-site manager at the Premises. If Tenant shall not be personally present to permit an entry into the Premises when for any reason an entry therein shall be necessary or permissible, Landlord (or Landlord's agents), after notifying Tenant (unless Landlord believes an emergency situation exists), may enter the Premises without rendering Landlord or its agents liable therefor, and without relieving Tenant of any obligations under this Lease.

(c) Subject to the entry requirements set forth in this Section 7.1(g)(7), Landlord may enter the Premises for the purpose of conducting such inspections, tests and studies as Landlord may deem reasonably desirable or necessary to confirm Tenant's compliance with all Laws and Hazardous Materials Laws or for other purposes necessary in Landlord's reasonable judgment to ensure the sound condition of the Property and the systems serving the Property. Landlord's rights under this Section 7.2(c) are for Landlord's own protection only, and Landlord has not, and shall not be deemed to have assumed, any responsibility to Tenant or any other party as a result of the exercise or non-exercise of such rights, for compliance with Laws or Hazardous Materials Laws or for the accuracy or sufficiency of any item or the quality or suitability of any item for its intended use.

(d) Landlord may do any of the foregoing, or undertake any of the inspection or work described in the preceding paragraphs without such action constituting an actual or constructive eviction of Tenant, in whole or in part, or giving rise to an abatement of Rent by reason of loss or interruption of business of Tenant, or otherwise; provided that such activities are conducted in accordance with the requirements under this Lease.

(e) The review, approval or consent of Landlord with respect to any item required or permitted under this Lease is for Landlord's own protection only, and Landlord has not, and shall not be deemed to have assumed, any responsibility to Tenant or any other party, as a result of the exercise or non-exercise of such rights, for compliance with Laws or Hazardous Materials Laws

or for the accuracy or sufficiency of any item or the quality or suitability of any item for its intended use.

7.3 QUIET ENJOYMENT

Landlord covenants, in lieu of any implied covenant of quiet possession or quiet enjoyment, that so long as Tenant is in compliance with the covenants and conditions set forth in this Lease, Tenant shall have the right to quiet enjoyment of the Premises without hindrance or interference from Landlord or those claiming through Landlord, and subject to the covenants and conditions set forth in this Lease and to the rights of any Mortgagee or ground lessor.

7.4 TENANT ACKNOWLEDGMENTS REGARDING PROPERTY

(a) The Property is situated in the City of Emeryville ("**City**") in a mixed-use area that

includes, among other possible uses permitted by the City, residential, commercial, manufacturing, industrial and laboratory/research uses. In recognition of such mixed-use character of area in which the Property is located, as a condition of the approval of the development of the Building on the Property, the City has required that Landlord disclose to tenants of the Building that:

(1) industrial and laboratory/research uses located in nearby buildings have the potential to emit noise at levels and during hours of the day that persons may find disturbing;

(2) nearby manufacturing, industrial and laboratory/research uses may generate odor;

(3) at times there may be substantial truck traffic in the area;

(4) there is a mainline railroad in the vicinity of the Property that operates 24 hours per day, seven days per week, with associated train horns and other sounds and vibration;

(5) future development in the vicinity of the Property may block views from the Building; and

(6) the site on which the Building is built formerly contained hazardous materials; under the direction of the Environmental Protection Agency and the State Department of Toxic Substances Control (the "**Agencies**"), remediation and abatement measures have been undertaken to address potential health risks associated with such hazardous materials; and the documents relating to the remediation and abatement measures at the Property are on file at Landlord's property management office and at the offices of the Agencies (the parties acknowledge that this clause (6) constitutes the notice required by Cal. Health and Safety Code Section 25359.7).

Tenant acknowledges the foregoing disclosures required to be made by Landlord regarding the mixed-use character of the area in which the Property is located.

(b) As required by the terms of that certain Covenant and Restriction referenced hereinbelow, the following notice regarding the land upon which the 6100 Horton Street parking garage is situated is provided:

"The land described herein [i.e., the land upon which the Parking Garage is located] contains polychlorinated biphenyls (PCBs) in soil and volatile organic compounds in groundwater under the Burdened Property referred to as "Emery Station West Parking Garage", and is subject to a deed restriction dated as of August 11, 2016, and recorded on August 19, 2016, in the Official Records of Alameda County, California, as Document No. 2016210925, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists."

(c) During the Lease Term, Landlord shall provide Tenant and its employees reasonable access to any shared lockers and showers serving the Building and other properties owned by Landlord or Landlord's Affiliates, such access to be free of charge other that for charges customarily charged to all tenants and employees.

7.5 TRANSPORTATION DEMAND MANAGEMENT PROGRAM

Landlord may elect or may be required to develop and implement a Transportation Demand Management ("**TDM**") program for the Building in order to reduce the traffic-related impacts resulting from development of the Property. One element of any such TDM program will require tenants of the Building to adopt programs and offer incentives to their employees to reduce auto use and support the increase of alternative modes of transit. The following are examples of such programs and incentives:

- Alternative commute subsidies and/or parking cash-out, where employees are provided with a subsidy if they use transit or commute by alternative modes;

- Opportunities to purchase commuter checks which allow employees to purchase transit tickets at discounted rates from their before-tax income; and

- Compressed work weeks and flex time where employees adjust their work schedules to reduce peak hour trips to/from the Building.

In order to support any such TDM program for the Building, Tenant agrees that it shall use commercially reasonable efforts to adopt programs and offer incentives to its employees in order to reduce auto use and support the increase of alternative modes of transit. The specifics of Tenant's programs and incentives shall be tailored to the needs of Tenant's workforce and shall be determined by Tenant in its good faith efforts to meet the goals of the TDM program. Upon request by Landlord from time to time, but not more often than once per calendar year, Tenant shall provide to Landlord a written report summarizing the programs and incentives being offered by Tenant to achieve the goals of the TDM program.

ARTICLE 8

MAINTENANCE

8.1 LANDLORD'S MAINTENANCE

Subject to the provisions of Articles 4 and 14, Landlord shall, as an Operating Expense, maintain and make necessary repairs to the foundations, roofs, exterior walls, and the structural elements of the Building, the electrical, plumbing, heating, ventilating, air-conditioning, mechanical, communication, security and the fire and life safety systems of the Building and those corridors, washrooms and lobbies which are Common Areas of the Building, except that: (a) Landlord shall not be responsible for the maintenance or repair of any floor or wall coverings in the Premises or any of such systems which are located within the Premises and are supplemental or special to the Building's standard systems; and (b) the cost of performing any of said maintenance or repairs whether to the Premises or to the Building caused by the negligence of Tenant, its employees, agents, servants, licensees, subtenants, contractors or invitees, shall be paid by Tenant, subject to the waivers set forth in Section 16.4. Landlord shall not be liable to Tenant for any expense, injury, loss or damage resulting from work done in or upon, or in connection with the use of, any adjacent or nearby building, land, street or alley. Notwithstanding the foregoing to the contrary, to the extent such expense, injury, loss or damage is caused by the gross negligence or willful misconduct by Landlord, the property manager, the leasing manager for the Property and their respective partners, members, directors, officers, agents and employees, then Tenant shall be entitled, as its sole remedy, to pursue an action for actual damages (but not punitive, consequential, exemplary, treble or special damages) against Landlord. In no event shall Tenant be entitled to any abatement of Rent or the right to terminate this Lease due to any such expense, injury, loss or damage.

8.2 TENANT'S MAINTENANCE

Tenant shall periodically inspect the Premises to identify any conditions that are dangerous or in need of maintenance or repair. Tenant shall promptly provide Landlord with notice of any such conditions. Tenant shall, at its sole cost and expense, perform all maintenance and repairs to the Premises that are not Landlord's express responsibility under this Lease, and keep the Premises in good condition and repair, reasonable wear and tear and damages from casualty excepted. Tenant's repair and maintenance obligations include, without limitation, repairs to: (a) floor covering; (b) interior partitions; (c) doors; (d) the interior side of demising walls; (e) electronic, phone and data cabling, wiring and related equipment that is installed by or for the exclusive benefit of Tenant (collectively, "**Cable**"); (f) supplemental air conditioning units, kitchens, including hot water heaters, plumbing, and similar facilities exclusively serving Tenant; and (g) Tenant Alterations. To the extent Landlord is not reimbursed by insurance proceeds, Tenant shall reimburse Landlord for the cost of repairing damage to the Building caused by the acts of Tenant, Tenant Parties and their respective contractors and vendors. All maintenance and repairs, including, but not limited to, janitorial and cleaning services, pest control and waste management and recycling performed by or on behalf of Tenant must comply with the Project's Sustainability Practices and the applicable Green Building Standards. If Tenant fails to make any repairs to the Premises for more than thirty (30) days after notice from Landlord (although notice shall not be required in an emergency), Landlord may make the repairs, and Tenant shall pay the reasonable

cost of the repairs, together with an administrative charge in an amount equal to 10% of the cost of the repairs. Tenant hereby waives all right to make repairs at the expense of Landlord or in lieu thereof to vacate the Premises and its other similar rights as provided in California Civil Code Sections 1932(1), 1941 and 1942 or any other Laws (whether now or hereafter in effect). In addition to the foregoing, Tenant shall be responsible for repairing all special tenant fixtures and improvements, including garbage disposals, showers, plumbing, and appliances.

ARTICLE 9

ALTERATIONS AND IMPROVEMENTS

9.1 TENANT ALTERATIONS

(a) The following provisions shall apply to the completion of any Tenant Alterations:

(1) Tenant shall not, except as provided herein, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, make or cause to be made any Tenant Alterations in or to the Premises or any Building Systems serving the Premises. Prior to making any Tenant Alterations, Tenant shall give Landlord ten (10) days' prior written notice (or such earlier notice as would be necessary pursuant to applicable Law) to permit Landlord sufficient time to post appropriate notices of non-responsibility. Subject to all other requirements of this Article 9, Tenant may undertake Decoration work without Landlord's prior written consent. Tenant shall furnish Landlord with the names and addresses of all contractors and subcontractors and copies of all contracts. All Tenant Alterations shall be completed at such time and in such manner as Landlord may from time to time designate, and only by contractors or mechanics approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that Landlord may, in its sole discretion, specify the engineers and contractors to perform all work relating to the Building's Systems (including the mechanical, heating, plumbing, security, ventilating, air-conditioning, electrical, communication and the fire and life safety systems in the Building). The contractors, mechanics and engineers who may be used are further limited to those whose work will not cause or threaten to cause disharmony or unreasonable interference with Landlord or other tenants in the Building and their respective agents and contractors performing work in or about the Building. Landlord may further condition its consent upon Tenant furnishing to Landlord and Landlord approving prior to the commencement of any work or delivery of materials to the Premises related to the Tenant Alterations such of the following as specified by Landlord (only to the extent applicable and applicable to the type of Tenant Alterations proposed by Tenant): architectural plans and specifications, opinions from Landlord's engineers stating that the Tenant Alterations will not in any way adversely affect the Building's systems, necessary permits and licenses, certificates of insurance, and such other documents in such form reasonably requested by Landlord. Landlord may, in the exercise of reasonable judgment, request that Tenant provide Landlord with appropriate evidence of Tenant's ability to complete and pay for the completion of the Tenant Alterations such as a performance bond or letter of credit for any Tenant Alterations which are expected to cost more than Five Hundred Thousand Dollars ($500,000). Upon completion of the Tenant Alterations, Tenant shall deliver to Landlord an as-built mylar and digitized (if available) set of plans and specifications for the Tenant Alterations.

(2) Tenant shall pay the cost of all Tenant Alterations and the cost of decorating the Premises and any work to the Property occasioned thereby. Upon completion of Tenant Alterations, Tenant shall furnish Landlord with contractors' affidavits and full and final waivers of lien and receipted bills covering all labor and materials expended and used in connection therewith and such other documentation reasonably requested by Landlord or Mortgagee.

(3) Tenant agrees to complete all Tenant Alterations (i) in accordance with all Laws, Hazardous Materials Laws, all requirements of applicable insurance companies and in accordance with Landlord's standard construction rules and regulations, (ii) in a good and workmanlike manner with the use of good grades of materials, and (iii) in accordance with the requirements of the Project's Sustainability Practices and comply with the applicable Green Building Standards. Tenant shall notify Landlord immediately if Tenant receives any notice of violation of any Law in connection with completion of any Tenant Alterations and shall immediately take such steps as are necessary to remedy such violation. In no event shall such supervision or right to supervise by Landlord nor shall any approvals given by Landlord under this Lease constitute any warranty by Landlord to Tenant of the adequacy of the design, workmanship or quality of such work or materials for Tenant's intended use or of compliance with the requirements of Section 9.1(a)(3)(i) and (ii) above or impose any liability upon Landlord in connection with the performance of such work.

(b) All Tenant Additions, whether installed by Landlord or Tenant, shall without compensation or credit to Tenant, become part of the Premises and the property of Tenant at the time of their installation and shall remain in the Premises, unless pursuant to Article 12, Tenant may remove them or is required to remove them at Landlord's request. Any remaining Tenant Additions and Landlord Work shall become the property of Landlord at the expiration or termination of this Lease. For the avoidance of doubt, Tenant shall retain the right to depreciation deductions of all Tenant Alterations made at Tenant's expense.

9.2 LIENS

Tenant shall not permit any lien or claim for lien of any mechanic, laborer or supplier or any other lien to be filed against the Building, the Land, the Premises, or any other part of the Property arising out of work performed, or alleged to have been performed by, or at the direction of, or on behalf of Tenant; provided that Tenant shall have no obligation for liens or encumbrances caused by Landlord even if such liens or encumbrances arise out of work done on behalf of or for the benefit of Tenant. If any such lien or claim for lien is filed, Tenant shall within twenty (20) days of receiving notice of such lien or claim (a) have such lien or claim for lien released of record or (b) deliver to Landlord a bond in form, content, amount, and issued by surety, reasonably satisfactory to Landlord, indemnifying, protecting, defending and holding harmless the Indemnitees against all costs and liabilities resulting from such lien or claim for lien and the foreclosure or attempted foreclosure thereof. If Tenant fails to take any of the above actions, Landlord, in addition to its rights and remedies under Article 11, without investigating the validity of such lien or claim for lien, may pay or discharge the same and Tenant shall, as payment of additional Rent hereunder, reimburse Landlord upon demand for the amount so paid by Landlord, including Landlord's expenses and reasonable attorneys' fees.

ARTICLE 10

ASSIGNMENT AND SUBLETTING

10.1 ASSIGNMENT AND SUBLETTING

(a) Subject to Landlord's recapture right set forth in Section 10.2, without the prior written consent of Landlord, which consent of Landlord shall not be unreasonably withheld, conditioned or delayed, Tenant may not sublease, assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Lease or the encumbering of Tenant's interest therein in whole or in part, by operation of Law or otherwise or permit the use or occupancy of the Premises, or any part thereof, by anyone other than Tenant. Tenant agrees that the provisions governing sublease and assignment set forth in this Article 10 shall be deemed to be reasonable. If Tenant desires to enter into any sublease of the Premises or assignment of this Lease, Tenant shall deliver written notice thereof to Landlord ("**Tenant's Notice**"), together with the identity of the proposed subtenant or assignee and the proposed principal terms thereof and financial and other information sufficient for Landlord to make an informed judgment with respect to such proposed subtenant or assignee at least thirty (30) days prior to the commencement date of the term of the proposed sublease or assignment. If Tenant proposes to sublease a portion of the Premises containing more than 3,000 rentable square feet, the space proposed to be sublet and the space retained by Tenant must each be a marketable unit as reasonably determined by Landlord and otherwise in compliance with all Laws. Landlord shall notify Tenant in writing of its approval or disapproval of the proposed sublease or assignment or its decision to exercise its rights under Section 10.2 within ten (10) business days after receipt of Tenant's Notice (and all required information). In the event Landlord fails to respond to Tenant's Notice within such ten (10) day period, then Tenant may deliver to Landlord a second (2nd) written request, which must contain the following inscription, in bold faced lettering: "SECOND NOTICE DELIVERED PURSUANT TO SECTION 10.1 OF THE LEASE - - FAILURE TO TIMELY RESPOND WITHIN THREE (3) BUSINESS DAYS SHALL RESULT IN DEEMED APPROVAL OF PROPOSED TRANSFER." If Landlord fails to respond within such three (3) business day period, then Landlord shall be deemed to have approved the proposed transfer that was the subject of such Tenant Notice. Tenant shall submit for Landlord's approval (which approval shall not be unreasonably withheld, conditioned or delayed) any advertising which Tenant or its agents intend to use with respect to the space proposed to be sublet.

(b) With respect to Landlord's consent to an assignment or sublease, Landlord may take into consideration any factors that Landlord may deem relevant in its commercially reasonable judgment, and the reasons for which Landlord's denial shall be deemed to be reasonable shall include, without limitation, the following:

(i) the business reputation or creditworthiness of any proposed subtenant or assignee is not acceptable to Landlord; or

(ii) in Landlord's reasonable judgment the proposed assignee or sublessee would diminish the value or reputation of the Project or Landlord; or

(iii) any proposed assignee's or sublessee's use of the Premises would violate Section 7.1 of this Lease or would violate the provisions of any other leases of tenants in the Project; or

(iv) the proposed sublessee or assignee is a bona fide prospective tenant of Landlord in the Project as demonstrated by a written proposal dated within six (6) months prior to the date of Tenant's request and Landlord has vacancy in the Project of a similar size and finish as the space subject to such proposed sublease or assignment; or

(v) the proposed sublessee or assignee would materially increase the estimated pedestrian and vehicular traffic to and from the Premises and the Project above that deemed typical by Landlord for office/lab use in the Project; or

(vi) a Default by Tenant under this Lease shall be continuing.

(c) Any sublease or assignment shall be expressly subject to the terms and conditions of this Lease. Any subtenant or assignee shall execute such commercially reasonable and customary documents as Landlord may reasonably require to evidence such subtenant or assignee's assumption of the obligations and liabilities of Tenant under this Lease. Tenant shall deliver to Landlord a copy of all agreements executed by Tenant and the proposed subtenant and assignee with respect to the Premises. Landlord's approval of a sublease, assignment, hypothecation, transfer or third party use or occupancy shall not constitute a waiver of Tenant's obligation to obtain Landlord's consent to further assignments or subleases, hypothecations, transfers or third party use or occupancy.

(d) For purposes of this Article 10, an assignment shall be deemed to include a change in the majority control of Tenant, resulting from any transfer, sale or assignment of shares of stock of Tenant occurring by operation of Law or otherwise if Tenant is a corporation whose shares of stock are not traded publicly. If Tenant is a partnership, any change in the partners of Tenant shall be deemed to be an assignment.

(e) For purposes of this Lease, a "**Permitted Transferee**" shall mean any Person which: (i) is an Affiliate; or (ii) is the corporation or other entity (the "**Successor**") resulting from a merger, consolidation or non-bankruptcy reorganization with Tenant; or (iii) is otherwise a deemed assignee due to a change of control under Section 10.1(d) above; or (iv) purchases substantially all of the assets of Tenant as a going concern (the "**Purchaser**"). Notwithstanding anything to the contrary in Sections 10.1(a) and (b) and 10.3, provided there is no uncured Default under this Lease, Tenant shall have the right, without the prior written consent of Landlord, to assign this Lease to a Permitted Transferee or to sublease the Premises or any part thereof to a Permitted Transferee provided that: (1) Landlord receives ten (10) days' prior written notice of an assignment or sublease (including a proposed transaction described in subparts (i), (ii), (iii) or (iv) of this Section 10.1(e), to the extent such prior notice is permitted under applicable Laws); (2) with respect to an assignment of this Lease or a sublease of more than half the Premises to an entity described in subparts (ii) or (iv) of this Section 10.1(e), the Permitted Transferee's net worth and liquidity are each not less than Tenant's net worth immediately prior to such assignment or subletting; (3) with respect to an assignment of this Lease or a sublease of more than half the Premises to an entity described in subparts (i) or (iii) of this Section 10.1(e), Tenant (as the assignor

or sublandlord) continues in existence with a net worth not less than Tenant's net worth immediately prior to such assignment or subletting; (4) the Permitted Transferee expressly assumes (except a Permitted Transferee which is a deemed assignee under subpart (iii) of this Section 10.1(e) or which is a sublessee in the event of a sublease under this Section 10.1(e)) in writing reasonably satisfactory to Landlord all of the obligations of Tenant under this Lease and delivers such assumption to Landlord no later than fifteen (15) days following the effective date of the assignment; (5) Landlord receives no later than five (5) days following the effective date a fully executed copy of the applicable assignment or sublease agreement between Tenant and the Permitted Transferee; (6) promptly after Landlord's written request, Tenant and the Permitted Transferee provide such reasonable documents and information which Landlord reasonably requests for the purpose of substantiating whether or not the assignment or sublease is to a Permitted Transferee; and (7) such transfer is not being entered into for the primary purpose of avoiding the requirement for Landlord's prior consent or the provisions of Sections 10.2 or 10.3. All determinations of net worth and liquidity for purposes of this Subsection shall exclude any value attributable to goodwill or going concern value.

(f) With respect to any sublease hereunder, subject to Section 10.3 below, Tenant hereby irrevocably assigns to Landlord, effective upon any such sublease, all rent and other payments due from subtenant under the sublease, provided however, that Tenant shall have a license to collect such rent and other payments until the occurrence of a Default by Tenant under any of the provisions of this Lease. At any time after such Default, at Landlord's option, Landlord shall have the right to give notice to the subtenant of such assignment. Landlord shall credit Tenant with any rent received by Landlord under such assignment, but the acceptance of any payment on account of rent from the subtenant as the result of any such default shall in no manner whatsoever serve to release Tenant from any liability under the terms, covenants, conditions, provisions or agreement under this Lease. No such payment of rent or any other payment by the subtenant directly to Landlord and/or acceptance of such payment(s) by Landlord, regardless of the circumstances or reasons therefor, shall in any manner whatsoever be deemed an attornment by the subtenant to Landlord in the absence of a specific written agreement signed by Landlord to such an effect.

10.2 RECAPTURE

Excluding any assignment or sublease contemplated in Section 10.1(e), if Tenant requests an assignment of this Lease or a sublease of the entire Premises for any period or a sublease for at least seventy-five (75%) of the Premises for the remainder of the then-current Term, Landlord shall have the option to exclude from the Premises covered by this Lease ("**recapture**") the space proposed to be sublet or subject to assignment, effective as of the proposed commencement date of such sublease or proposed effective date of such assignment. If Landlord elects to recapture, Tenant shall have the right to revoke the request to so sublet or assign by providing Landlord written notice thereof no later than five (5) days following Landlord's recapture notice to Tenant in which case, the Premises shall not be transferred, and this Lease will remain in full force and effect with respect to the entirety of the Premises then-existing as of the date of such request or consent by Tenant. If Landlord elects to recapture and Tenant has not revoked its request for consent, Tenant shall surrender possession of the space proposed to be subleased or subject to the assignment to Landlord on the effective date of recapture of such space from the Premises, such date being the Termination Date for such space. Effective as of the date of recapture of any portion

of the Premises pursuant to this section, the Monthly Base Rent, Rentable Area of the Premises and Tenant's Share shall be adjusted accordingly.

10.3 EXCESS RENT

Except in connection with any assignment or sublease contemplated in Section 10.1(e), Tenant shall pay Landlord on the first day of each month during the term of the sublease or assignment, fifty percent (50%) of the amount by which the sum of all rent and other consideration (direct or indirect) due from the subtenant or assignee for such month exceeds: a) that portion of the Monthly Base Rent and Rent Adjustments due under this Lease for said month which is allocable to the space sublet or assigned, and b) the following costs and expenses for the subletting or assignment of such space: (i) brokerage commissions and attorneys' fees and expenses, (ii) the actual costs paid in making any improvements or substitutions in the Premises required by any sublease or assignment; and (iii) "**free rent**" periods, costs of any inducements or concessions given to subtenant or assignee, moving costs, and other amounts in respect of such subtenant's or assignee's other leases or occupancy arrangements.

10.4 TENANT LIABILITY

In the event of any sublease or assignment, whether or not with Landlord's consent, Tenant shall not be released or discharged from any liability, whether past, present or future, under this Lease, including any liability arising from the exercise of any renewal or expansion option, to the extent such exercise is expressly permitted by Landlord. Tenant's liability shall remain primary, and in the event of default by any subtenant, assignee or successor of Tenant in performance or observance of any of the covenants or conditions of this Lease, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against said subtenant, assignee or successor. In addition, if Tenant has any options to extend the Term or to add other space to the Premises, such options shall not be available to any subtenant or assignee (other than Permitted Transferees), directly or indirectly without Landlord's express written consent, which may be withheld in Landlord's sole discretion.

10.5 ASSUMPTION AND ATTORNMENT

If Tenant shall assign this Lease as permitted herein, the assignee shall expressly assume all of the obligations of Tenant hereunder in a written instrument satisfactory to Landlord and furnished to Landlord not later than fifteen (15) days prior to the effective date of the assignment. If Tenant shall sublease the Premises as permitted herein, Tenant shall, at Landlord's option, within fifteen (15) days following any request by Landlord, obtain and furnish to Landlord the written agreement of such subtenant to the effect that the subtenant will attorn to Landlord and will pay all sublease rent directly to Landlord.

10.6 PROCESSING EXPENSES

Tenant shall pay to Landlord, as Landlord's cost of processing each proposed assignment or subletting (whether or not the same is ultimately approved by Landlord or consummated by Tenant) except in connection with Permitted Transfers, an amount equal to the sum of (i) Landlord's reasonable attorneys' and other professional fees, not to exceed $2,000, plus (ii) the sum of $1,500.00 for the cost of Landlord's administrative, accounting and clerical time

(collectively, "**Processing Costs**"). Notwithstanding anything to the contrary herein, Landlord shall not be required to process any request for Landlord's consent to an assignment or subletting until Tenant has paid to Landlord the amount of Landlord's estimate of the Processing Costs. When the actual amount of the Processing Costs is determined, it shall be reconciled with Landlord's estimate, and any payments or refunds required as a result thereof shall promptly thereafter be made by the parties.

10.7 EFFECT OF IMPERMISSIBLE TRANSFER

Any assignment or sublease effected without Landlord's consent in violation of this Article 10 shall, at Landlord's option, be a non-curable Default under Section 11.1 without the necessity of any notice and grace period.

ARTICLE 11

DEFAULT AND REMEDIES

11.1 EVENTS OF DEFAULT

The occurrence or existence of any one or more of the following shall constitute a "**Default**" by Tenant under this Lease:

(i) Tenant fails to pay any installment or other payment of Rent including Rent Adjustment Deposits or Rent Adjustments when due, where such failure shall continue for a period of five (5) days after Tenant's receipt of written notice thereof from Landlord;

(ii) Tenant fails to observe or perform any of the other covenants, conditions or provisions of this Lease or the Workletter and fails to cure such default within thirty (30) days after written notice thereof to Tenant, unless the default involves a hazardous condition, which shall be cured forthwith or unless the failure to perform is a Default for which this Lease specifies there is no cure or grace period. Notwithstanding the foregoing, if any such cure cannot be reasonably completed within such thirty (30) day period, Tenant shall have such longer period as needed to complete such cure (up to ninety (90) days, subject to extension due to Force Majeure) so long as the cure is commenced within such thirty (30) day period and Tenant diligently pursues to completion;

(iii) Tenant fails to maintain any insurance policy required hereunder, and fails to cure such default within five (5) business days after written notice thereof to Tenant;

(iv) Tenant abandons the Premises for a period of ten (10) consecutive days or any abandonment of the Premises by Tenant which would cause any insurance policy to be invalidated or otherwise lapse, in each of forgoing cases if Tenant is then in monetary default under this Lease;

(v) an assignment or sublease, or attempted assignment or sublease, of this Lease or the Premises by Tenant contrary to the provisions of Article 10, unless such assignment or sublease is expressly conditioned upon Tenant having received Landlord's consent thereto;

(vi) the interest of Tenant in this Lease is levied upon under execution or other legal process;

(vii) a petition is filed by or against Tenant to declare Tenant bankrupt or seeking a plan of reorganization or arrangement under any Chapter of the Bankruptcy Act, or any amendment, replacement or substitution therefor, or to delay payment of, reduce or modify Tenant's debts, which in the case of an involuntary action is not discharged within sixty (60) days;

(viii) Tenant is declared insolvent by Law or any assignment of Tenant's property is made for the benefit of creditors;

(ix) a receiver is appointed for Tenant or Tenant's property, which appointment is not discharged within thirty (30) days;

(x) any action taken by or against Tenant to reorganize or modify Tenant's capital structure in a materially adverse way which in the case of an involuntary action is not discharged within thirty (30) days; or

(xi) upon the dissolution of Tenant.

11.2 LANDLORD'S REMEDIES

(a) A Default shall constitute a breach of this Lease for which Landlord shall have the rights and remedies set forth in this Section 11.2 and all other rights and remedies set forth in this Lease or now or hereafter allowed by Law, whether legal or equitable, and all rights and remedies of Landlord shall be cumulative and none shall exclude any other right or remedy now or hereafter allowed by applicable Law.

(b) With respect to a Default, at any time Landlord may terminate Tenant's right to possession by written notice to Tenant stating such election. Any written notice required pursuant to Section 11.1 shall constitute notice of unlawful detainer pursuant to California Code of Civil Procedure Section 1161 if, at Landlord's sole discretion, it states Landlord's election that Tenant's right to possession is terminated after expiration of any period required by Law or any longer period required by Section 11.1. Upon the expiration of the period stated in Landlord's written notice of termination (and unless such notice provides an option to cure within such period and Tenant cures the Default within such period), Tenant's right to possession shall terminate and this Lease shall terminate, and Tenant shall remain liable as hereinafter provided. Upon such termination in writing of Tenant's right to possession, Landlord shall have the right, subject to applicable Law, to re-enter the Premises and dispossess Tenant and the legal representatives of Tenant and all other occupants of the Premises by unlawful detainer or other summary proceedings, or as otherwise permitted by Law, regain possession of the Premises and remove their property (including their trade fixtures, personal property and Required Removables pursuant to Article 12), but Landlord shall not be obligated to effect such removal, and such property may, at Landlord's option, be stored elsewhere, sold or otherwise dealt with as permitted by Law, at the risk of, expense of and for the account of Tenant, and the proceeds of any sale shall be applied pursuant to Law. Landlord shall in no event be responsible for the value, preservation or safekeeping of any such property. Tenant hereby waives all claims for damages that may be caused by Landlord's removing or storing Tenant's personal property pursuant to this Section or Section

12.1, and Tenant hereby indemnifies, and agrees to defend, protect and hold harmless, the Indemnitees from any and all loss, claims, demands, actions, expenses, liability and cost (including attorneys' fees and expenses) arising out of or in any way related to such removal or storage. Upon such written termination of Tenant's right to possession and this Lease, Landlord shall have the right to recover damages for Tenant's Default as provided herein or by Law, including the following damages provided by California Civil Code Section 1951.2:

(1) the worth at the time of award of the unpaid Rent which had been earned at the time of termination;

(2) 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 Rent loss that Tenant proves could reasonably have been avoided;

(3) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term of this Lease after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided; and

(4) 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, without limitation, Landlord's unamortized costs of tenant improvements, leasing commissions and legal fees incurred in connection with entering into this Lease.

The word "rent" as used in this Section 11.2 shall have the same meaning as the defined term Rent in this Lease. The "worth at the time of award" of the amount referred to in clauses (1) and (2) above is computed by allowing interest at the Default Rate. The worth at the time of award of the amount referred to in clause (3) above 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%). For the purpose of determining unpaid Rent under clause (3) above, the monthly Rent reserved in this Lease shall be deemed to be the sum of the Monthly Base Rent, monthly storage space rent, if any, and the amounts last payable by Tenant as Rent Adjustments for the calendar year in which Landlord terminated this Lease as provided hereinabove.

(c) Even if Tenant is in Default and/or has abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession by written notice as provided in Section 11.2(b) above, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due under this Lease. In such event, Landlord shall have all of the rights and remedies of a landlord under California Civil Code Section 1951.4 (Landlord may continue Lease in effect after Tenant's Default and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations), or any successor statute. During such time as Tenant is in Default, if Landlord has not terminated this Lease by written notice and if Tenant requests Landlord's consent to an assignment of this Lease or a sublease of the Premises, subject to Landlord's option to recapture pursuant to Section 10.2, Landlord shall not unreasonably withhold, condition or delay its consent to such assignment or sublease. Tenant acknowledges and agrees that in the absence of written notice pursuant to Section 11.2(b) above terminating Tenant's right to possession, no other

act of Landlord shall constitute a termination of Tenant's right to possession or an acceptance of Tenant's surrender of the Premises, including acts of maintenance or preservation or efforts to re-let the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease or the withholding of consent to a subletting or assignment, or terminating a subletting or assignment, if in accordance with other provisions of this Lease.

(d) in the event that Landlord seeks an injunction with respect to a breach or threatened breach by Tenant of any of the covenants, conditions or provisions of this Lease, Tenant agrees to pay the premium for any bond required in connection with such injunction.

(e) Tenant hereby waives any and all rights to relief from forfeiture, redemption or reinstatement granted by Law (including California Civil Code of Procedure Sections 1174 and 1179) in the event of Tenant being evicted or dispossessed for any cause or in the event of Landlord obtaining possession of the Premises by reason of Tenant's Default or otherwise;

(f) Notwithstanding any other provision of this Lease, a notice to Tenant given under this Article and Article 24 of this Lease or given pursuant to California Code of Civil Procedure Section 1161, and any notice served by mail, shall be deemed served, and the requisite waiting period deemed to begin under said Code of Civil Procedure Section upon mailing (except as may be required under Code of Civil Procedure Section 1161 et seq.), without any additional waiting requirement under Code of Civil Procedure Section 1011 et seq. or by other Law. For purposes of Code of Civil Procedure Section 1162, Tenant's "place of residence", "usual place of business", "the property" and "the place where the property is situated" shall mean and be the Premises, whether or not Tenant has vacated same at the time of service.

(g) The voluntary or other surrender or termination of this Lease, or a mutual termination or cancellation thereof, shall not work a merger and shall terminate all or any existing assignments, subleases, subtenancies or occupancies permitted by Tenant, except if and as otherwise specified in writing by Landlord.

(h) No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant, and no exercise by Landlord of its rights pursuant to Section 26.16 to perform any duty which Tenant fails timely to perform, shall impair any right or remedy or be construed as a waiver. No provision of this Lease shall be deemed waived by Landlord unless such waiver is in writing signed by Landlord. The waiver by Landlord of any breach of any provision of this Lease shall not be deemed a waiver of any subsequent breach of the same or any other provision of this Lease.

11.3 ATTORNEY'S FEES

In the event any party brings any suit or other proceeding with respect to the subject matter or enforcement of this Lease, the prevailing party (as determined by the court, agency or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover reasonable attorneys' fees, expenses and costs of investigation as actually incurred, including court costs, expert witness fees, costs and expenses of investigation, and all reasonable attorneys' fees, costs and expenses in any such suit or proceeding (including in any action or participation in or in connection with any case or proceeding under the

Bankruptcy Code, 11 United States Code Sections 101 et seq., or any successor statutes, in establishing or enforcing the right to indemnification, in appellate proceedings, or in connection with the enforcement or collection of any judgment obtained in any such suit or proceeding).

11.4 BANKRUPTCY

The following provisions shall apply in the event of the bankruptcy or insolvency of Tenant:

(a) In connection with any proceeding under Chapter 7 of the Bankruptcy Code where the trustee of Tenant elects to assume this Lease for the purposes of assigning it, such election or assignment, may only be made upon compliance with the provisions of subclauses (b) and (c) below, which conditions Landlord and Tenant acknowledge to be commercially reasonable. In the event the trustee elects to reject this Lease then Landlord shall immediately be entitled to possession of the Premises without further obligation to Tenant or the trustee.

(b) Any election to assume this Lease under Chapter 11 or 13 of the Bankruptcy Code by Tenant as debtor-in-possession or by Tenant's trustee (the "**Electing Party**") must provide for the Electing Party to cure or provide to Landlord adequate assurance that it will cure all monetary defaults under this Lease within fifteen (15) days from the date of assumption and that it will cure all nonmonetary defaults under this Lease within thirty (30) days from the date of assumption. Landlord and Tenant acknowledge such condition to be commercially reasonable.

(c) If the Electing Party has assumed this Lease or elects to assign Tenant's interest under this Lease to any other person, such interest may be assigned only if the intended assignee has provided adequate assurance of future performance (as herein defined), of all of the obligations imposed on Tenant under this Lease.

(d) For the purposes hereof, "adequate assurance of future performance" means that Landlord has ascertained that each of the following conditions has been satisfied:

(i) The assignee has submitted a current financial statement, certified by its chief financial officer, which shows a net worth and working capital in amounts sufficient to assure the future performance by the assignee of Tenant's obligations under this Lease; and

(ii) Landlord has obtained consents or waivers from any third parties that may be required under a lease, mortgage, financing arrangement, or other agreement by which Landlord is bound, to enable Landlord to permit such assignment.

(e) Landlord's acceptance of rent or any other payment from any trustee, receiver, assignee, person, or other entity will not be deemed to have waived, or waive, the requirement of Landlord's consent, Landlord's right to terminate this Lease for any transfer of Tenant's interest under this Lease without such consent, or Landlord's claim for any amount of Rent due from Tenant.

11.5 LANDLORD'S DEFAULT

Landlord shall be in default hereunder in the event Landlord has not commenced and pursued with reasonable diligence the cure of any failure of Landlord to meet its obligations hereunder within thirty (30) days after the receipt by Landlord of written notice from Tenant of the alleged failure to perform. Failure to provide the requisite notice and cure period by Tenant under this paragraph shall be an absolute defense by Landlord against any claims for failure to perform any of its obligations. In no event shall Tenant have the right to terminate or rescind this Lease as a result of Landlord's default as to any covenant or agreement contained in this Lease. Tenant hereby waives such remedies of termination and rescission and hereby agrees that Tenant's remedies for default hereunder and for breach of any promise or inducement shall be limited to a suit for damages and/or injunction. In addition, Tenant hereby covenants that, prior to the exercise of any such remedies, it will give the Mortgagee notice and a reasonable time to cure any default by Landlord, provided that Tenant has received written notice of the address of such Mortgagee.

ARTICLE 12

SURRENDER OF PREMISES

12.1 IN GENERAL

Upon the Termination Date, Tenant shall surrender and vacate the Premises immediately and deliver possession thereof to Landlord in a broom-clean, good and tenantable condition, excepting ordinary wear and tear, repairs and maintenance for which Landlord is responsible under this Lease and damage caused by casualty and/or Landlord. Tenant shall deliver to Landlord all keys to the Premises. All permanent improvements in and to the Premises (other than Tenant's trade fixtures, equipment and personal property), including any Tenant Alterations (collectively, "**Leasehold Improvements**") shall remain upon the Premises at the end of the Term without compensation to Tenant. Landlord, however, by written notice to Tenant at least 90 days prior to the Termination Date, may require Tenant, at its expense, to remove (a) any Cable, and (b) any Tenant Additions that, in Landlord's reasonable judgment, are of a nature that would require removal and repair costs that are materially in excess of the removal and repair costs associated with standard laboratory and office improvements, as applicable, only to the extent Landlord notified Tenant of such required removal at the time Landlord approved such Tenant Addition (collectively referred to as "**Required Removables**"). Required Removables shall include, without limitation, raised floors, personal baths and showers, vaults, rolling file systems and structural alterations and modifications. The designated Required Removables shall be removed by Tenant before the Termination Date. Tenant's removal and disposal of items pursuant to this Paragraph 12 must comply with the Project's Sustainability Practices and the applicable Green Building Standards. Tenant shall repair damage caused by the installation or removal of Required Removables. If Tenant fails to perform its obligations in a timely manner, Landlord may perform such work at Tenant's expense. Tenant, at the time it requests approval for a proposed Tenant Alteration, may request in writing that Landlord advise Tenant whether the proposed Tenant Alteration or any portion of the proposed Tenant Alteration is a Required Removable. Within 10 days after receipt of Tenant's request, Landlord shall advise Tenant in writing as to which portions of the proposed Tenant Alterations are Required Removables. If any of the Tenant Additions which were installed by Tenant involved the lowering of ceilings, raising of floors or the installation of

specialized wall or floor coverings or lights, unless otherwise approved by Landlord, then Tenant shall also be obligated to return such surfaces to their condition prior to the commencement of this Lease. Tenant shall also be required to close any staircases or other openings between floors. In the event possession of the Premises is not delivered to Landlord when required hereunder, or if Tenant shall fail to remove those items described above, Landlord may (but shall not be obligated to), at Tenant's expense, remove any of such property and store, sell or otherwise deal with such property, and undertake, at Tenant's expense, such restoration work as Landlord deems necessary or advisable.

12.2 LANDLORD'S RIGHTS

All property which remains in the Premises after the Termination Date (including any of Tenant's trade fixtures, equipment and personal property) shall be conclusively presumed to have been abandoned by Tenant, and Landlord may deal with such property as provided in Section 11.2(b), including the waiver and indemnity obligations provided in that Section. Tenant shall also reimburse Landlord for all costs and expenses incurred by Landlord in removing any Required Removables Tenant failed to remove prior to the Termination Date and in restoring the Premises to the condition required by this Lease. For the period prior to the Termination Date, Landlord hereby waives any lien rights which it may otherwise have concerning Tenant's furniture, fixtures, equipment and/or supplies at the Premises, and Tenant shall have the right to remove the same at any time without Landlord's consent.

ARTICLE 13

HOLDING OVER

In the event that Tenant holds over in possession of the Premises after the Termination Date, for each month or partial month Tenant holds over possession of the Premises, Tenant shall pay Landlord 150% of the monthly Base Rent payable for the month immediately preceding the holding over, as well as Rent Adjustments during the period of such holding over, as the same may be reasonably estimated by Landlord). Tenant shall also pay all damages, but not including consequential damages, sustained by Landlord by reason of such holding over. The provisions of this Article 13 shall not constitute a waiver by Landlord of any re-entry rights of Landlord, and Tenant's continued occupancy of the Premises shall be as a tenancy in sufferance.

ARTICLE 14

DAMAGE BY FIRE OR OTHER CASUALTY

14.1 SUBSTANTIAL UNTENANTABILITY

(a) If any fire or other casualty (whether insured or uninsured) renders all or a substantial portion of the Premises or the Building untenantable, Landlord shall, with reasonable promptness after the occurrence of such damage, cause a licensed and qualified architect or contractor to estimate the length of time that will be required to substantially complete the repair and restoration and shall, by notice advise Tenant of such estimate ("**Landlord's Notice**"). If Landlord's Notice indicates that the amount of time required to substantially complete such repair

and restoration will exceed one hundred eighty (180) days from the date such damage occurred, then Landlord, or Tenant if all or a substantial portion of the Premises is rendered untenantable, shall have the right to terminate this Lease as of the date of such damage by delivering written notice to the other at any time within thirty (30) days after delivery of Landlord's Notice, provided that if Landlord so chooses, Landlord's Notice may also constitute such notice of termination.

(b) Unless this Lease is terminated as provided in the preceding subparagraph, Landlord shall proceed with reasonable promptness to repair and restore the Premises to its condition as existed prior to such casualty, subject to reasonable delays for insurance adjustments and Force Majeure delays, and also subject to zoning Laws and building codes then in effect. Landlord shall have no liability to Tenant, and Tenant shall not be entitled to terminate this Lease if such repairs and restoration are not in fact completed within the time period estimated by Landlord so long as Landlord shall proceed with reasonable diligence to complete such repairs and restoration. Notwithstanding the foregoing, if Landlord is obligated to repair or restore the Premises pursuant to this Section 14.1(b) and does not Commence (as defined below in this Section 14.1(b)) such repair or restoration within ninety (90) days after such obligation shall accrue (the "**Outside Start Date**"), which Outside Start Date shall be subject to extension due to Force Majeure, Tenant shall have the right, as its sole remedy, to terminate this Lease effective as of the date that is thirty (30) days after the Outside Start Date (the "**Casualty Lease Termination Date**") by giving written notice thereof to Landlord ("**Tenant's Termination Notice**") within fifteen (15) days after the Outside Start Date; provided, however, that if Landlord does Commence the repair or restoration on or before the Casualty Lease Termination Date, Tenant's election to termination shall be null and void and this Lease shall continue in full force and effect. "**Commence**" shall mean either the unconditional authorization of the preparation of the required plans necessary for such repair or restoration, or the beginning of the actual work to repair or restore the Premises, whichever first occurs. In order for Tenant to have the termination right provided for in this Section 14.1(b), Tenant's Termination Notice must (i) be concurrently sent to any Mortgagee whose address has been provided to Tenant, and (ii) state Tenant's intention to terminate this Lease as of the Casualty Lease Termination Date.

(c) Tenant acknowledges that Landlord shall be entitled to the full proceeds of any insurance coverage, whether carried by Landlord or Tenant, for damages to the Premises, except for (i) those proceeds of Tenant's insurance of its own personal property, trade fixtures and equipment which would be removable by Tenant at the Termination Date, and (ii) proceeds of any business interruption insurance maintained by Tenant. All such insurance proceeds shall be payable to Landlord whether or not the Premises are to be repaired and restored, provided, however, if this Lease is not terminated and the parties proceed to repair and restore Tenant Additions at Tenant's cost, to the extent Landlord received proceeds of Tenant's insurance covering Tenant Additions, such proceeds shall be applied to reimburse Tenant for its cost of repairing and restoring Tenant Additions.

(d) Notwithstanding anything to the contrary herein set forth: (i) Landlord shall have no duty pursuant to this Section to repair or restore any portion of any Tenant Additions or to expend for any repair or restoration of the Premises or Building in amounts in excess of insurance proceeds paid to Landlord and available for repair or restoration; and (ii) Tenant shall not have the right to terminate this Lease pursuant to this Section if any damage or destruction was caused by the act or neglect of Tenant, its agent or employees. Whether or not this Lease is terminated

pursuant to this Article 14, in no event shall Tenant be entitled to any compensation or damages for loss of the use of the whole or any part of the Premises or for any inconvenience or annoyance occasioned by any such damage, destruction, rebuilding or restoration of the Premises or the Building or access thereto.

(e) Any repair or restoration of the Premises performed by Tenant shall be in accordance with the provisions of Article 9 hereof.

14.2 INSUBSTANTIAL UNTENANTABILITY

If the Premises or the Building is damaged by a casualty but neither is rendered substantially untenantable for the Permitted Use, and Landlord's Notice indicates that the time to substantially complete the repair or restoration will not exceed one hundred eighty (180) days from the date such damage occurred, then Landlord shall proceed to repair and restore the Building and/or the Premises other than Tenant Additions, with reasonable promptness, unless such damage is to the Premises and occurs during the last twelve (12) months of the Term (regardless of the estimated repair time), in which event either Tenant or Landlord shall have the right to terminate this Lease as of the date of such casualty by giving written notice thereof to the other within thirty (30) days after the date of such casualty. Notwithstanding the aforesaid, Landlord's obligation to repair shall be limited in accordance with the provisions of Section 14.1 above.

14.3 RENT ABATEMENT

Except for the negligence or willful act of Tenant or its agents, employees, contractors or invitees, if all or any part of the Premises are rendered untenantable by fire or other casualty and this Lease is not terminated, Monthly Base Rent and Rent Adjustments shall abate for that part of the Premises which is untenantable on a per diem basis from the date of the casualty until Landlord has Substantially Completed the repair and restoration work in the Premises which it is required to perform, provided, that as a result of such casualty, Tenant does not occupy the portion of the Premises which is untenantable during such period.

14.4 WAIVER OF STATUTORY REMEDIES

The provisions of this Lease, including this Article 14, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, the Premises or the Property or any part of either, and any Law, including Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code, with respect to any rights or obligations concerning damage or destruction shall have no application to this Lease or to any damage to or destruction of all or any part of the Premises or the Property or any part of either, and are hereby waived.

ARTICLE 15

EMINENT DOMAIN

15.1 TAKING OF WHOLE OR SUBSTANTIAL PART

In the event the whole or any substantial part of the Building or of the Premises is taken or condemned by any competent authority for any public use or purpose (including a deed given in

lieu of condemnation) and is thereby rendered untenantable or such taking could reasonably expected to have a material adverse effect on Tenant's ability to operate its business at the Premises in substantially the same manner operated by Tenant prior to such taking, this Lease shall terminate as of the date title vests in such authority, and Monthly Base Rent and Rent Adjustments shall be apportioned as of the Termination Date. Notwithstanding anything to the contrary herein set forth, in the event the taking is temporary (for less than the remaining Term of this Lease), Landlord may elect either (i) to terminate this Lease, or (ii) permit Tenant to receive the entire award attributable to the Premises in which case Tenant shall continue to pay Rent and this Lease shall not terminate.

15.2 TAKING OF PART

In the event a part of the Building or the Premises is taken or condemned by any competent authority (or a deed is delivered in lieu of condemnation) and this Lease is not terminated, this Lease shall be amended to reduce or increase, as the case may be, the Monthly Base Rent and Tenant's Share to reflect the Rentable Area of the Premises or Building, as the case may be, remaining after any such taking or condemnation. Landlord, upon receipt and to the extent of the award in condemnation (or proceeds of sale) shall make necessary repairs and restorations to the Premises (exclusive of Tenant Additions) and to the Building to the extent necessary to constitute the portion of the Building not so taken or condemned as a complete architectural and economically efficient unit. Notwithstanding the foregoing, if as a result of any taking, or a governmental order that the grade of any street or alley adjacent to the Building is to be changed and such taking or change of grade makes it necessary or desirable to substantially remodel or restore the Building or prevents the economical operation of the Building, Landlord shall have the right to terminate this Lease upon ninety (90) days' prior written notice to Tenant.

15.3 COMPENSATION

Landlord shall be entitled to receive the entire award (or sale proceeds) from any such taking, condemnation or sale without any payment to Tenant, and Tenant hereby assigns to Landlord, Tenant's interest, if any, in such award; provided, however, Tenant shall have the right separately to pursue against the condemning authority a separate award in respect of the loss, if any, to Tenant Additions paid for by Tenant and relocation costs without any credit or allowance from Landlord so long as there is no diminution of Landlord's award as a result.

ARTICLE 16

INSURANCE

16.1 TENANT'S INSURANCE

Tenant, at Tenant's expense, agrees to maintain in force, with a company or companies acceptable to Landlord, during the Term: (a) Commercial General Liability Insurance on a primary basis and without any right of contribution from any insurance carried by Landlord covering the Premises on an occurrence basis against all claims for personal injury, bodily injury, death and property damage, including contractual liability covering the indemnification provisions in this Lease, and such insurance shall be for such limits that are reasonably required by Landlord from time to time but not less than a combined single limit (each occurrence and in the aggregate) of

Five Million and No/100 Dollars ($5,000,000.00) (which limit may be achieved through use of umbrella coverage); (b) Workers' Compensation and Employers' Liability Insurance to the extent required by and in accordance with the Laws of the State of California; (c) "**All Risks**" property insurance in an amount adequate to cover the full replacement cost of all Tenant Additions, equipment, installations, fixtures and contents of the Premises (including coverage in the event of loss from earthquake, water damage, and earthquake sprinkler leakage, up to a maximum coverage amount of Five Million and No/100 Dollars ($5,000,000.00)); (d) in the event a motor vehicle is to be used by Tenant in connection with its business operation from the Premises, Comprehensive Automobile Liability Insurance coverage with limits of not less than One Million and No/100 Dollars ($1,000,000.00) combined single limit coverage against bodily injury liability and property damage liability arising out of the use by or on behalf of Tenant, its agents and employees in connection with this Lease, of any owned, non-owned or hired motor vehicles; (e) environmental liability (also known as "**Pollution Legal Liability**") coverage with limits of not less than One Million and No/100 Dollars ($1,000,000.00) to cover Tenant's indemnity obligations pursuant to Section 7.1(f)(5) above; and (f) such other insurance or coverages as Landlord reasonably requires, so long as such coverages are then required for all comparable tenants of the Project.

16.2 FORM OF POLICIES

Each policy referred to in Section 16.1 shall satisfy the following requirements. Each policy shall (i) name Landlord and the Indemnitees as additional insureds (except Workers' Compensation and Employers' Liability Insurance), (ii) be issued by one or more responsible insurance companies licensed to do business in the State of California reasonably satisfactory to Landlord, (iii) where applicable, provide for deductible amounts satisfactory to Landlord and not permit co-insurance, and (iv) each policy of "**All-Risks**" property insurance shall provide that the policy shall not be invalidated should the insured waive in writing prior to a loss, any or all rights of recovery against any other party for losses covered by such policies. Tenant shall deliver to Landlord, certificates of insurance (and at Landlord's request, copies of all policies and renewals thereof to be maintained by Tenant hereunder), prior to Tenant's entry into the Premises and prior to the expiration date of each policy. Additionally, Tenant shall provide Landlord written notice of any cancelation or amendment of any such insurance within two (2) business days following Tenant's knowledge of the same. If Tenant fails to carry the insurance required under this Article 16 or fails to provide certificates of renewal as and when required hereunder, Landlord may, but shall not be obligated to acquire such insurance on Tenant's behalf or Tenant's sole cost and expense.

16.3 LANDLORD'S INSURANCE

Landlord agrees to purchase and keep in full force and effect during the Term hereof, including any extensions or renewals thereof, insurance under policies issued by insurers of recognized responsibility, qualified to do business in the State of California on the Building in amounts sufficient to cover the replacement cost thereof, insuring against fire and such other risks as may be included in standard forms of all risk coverage insurance reasonably available from time to time. Landlord agrees to maintain in force during the Term, Commercial General Liability Insurance covering the Building on an occurrence basis against all claims for personal injury, bodily injury, death, and property damage. Such insurance shall be for a combined single limit (each occurrence and in the aggregate) of not less than Five Million and No/100 Dollars

($5,000,000.00) (which limit may be achieved through use of umbrella coverage). Neither Landlord's obligation to carry such insurance nor the carrying of such insurance shall be deemed to be an indemnity by Landlord with respect to any claim, liability, loss, cost or expense due, in whole or in part, to Tenant's negligent acts or omissions or willful misconduct. Without obligation to do so, Landlord may, in its sole discretion from time to time, carry insurance in amounts greater and/or for coverage additional to the coverage and amounts set forth above.

16.4 WAIVER OF SUBROGATION

(a) Landlord agrees that, if obtainable at no, or minimal, additional cost, and so long as the same is permitted under the laws of the State of California, it will include in its "**All Risks**" policies appropriate clauses pursuant to which the insurance companies (i) waive all right of subrogation against Tenant with respect to losses payable under such policies and/or (ii) agree that such policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policies.

(b) Tenant agrees to include, if obtainable at no, or minimal, additional cost, and so long as the same is permitted under the laws of the State of California, in its "**All Risks**" insurance policy or policies on Tenant Additions, whether or not removable, and on Tenant's furniture, furnishings, fixtures and other property removable by Tenant under the provisions of this Lease, appropriate clauses pursuant to which the insurance company or companies (i) waive the right of subrogation against Landlord and/or any tenant of space in the Building with respect to losses payable under such policy or policies and/or (ii) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies. If Tenant is unable to obtain in such policy or policies either of the clauses described in the preceding sentence, Tenant shall, if legally possible and without necessitating a change in insurance carriers, have Landlord named in such policy or policies as an additional insured. If Landlord shall be named as an additional insured in accordance with the foregoing, Landlord agrees to endorse promptly to the order of Tenant, without recourse, any check, draft, or order for the payment of money representing the proceeds of any such policy or representing any other payment growing out of or connected with said policies, and Landlord does hereby irrevocably waive any and all rights in and to such proceeds and payments.

(c) Provided that Landlord's right of full recovery under its policy or policies aforesaid is not adversely affected or prejudiced thereby, Landlord hereby waives any and all right of recovery which it might otherwise have against Tenant, its servants, agents and employees, for loss or damage occurring to the Real Property and the fixtures, appurtenances and equipment therein, to the extent the same is covered by Landlord's insurance, notwithstanding that such loss or damage may result from the negligence or fault of Tenant, its servants, agents or employees. Provided that Tenant's right of full recovery under its aforesaid policy or policies is not adversely affected or prejudiced thereby, Tenant hereby waives any and all right of recovery which it might otherwise have against Landlord, its servants, and employees and against every other tenant of the Real Property who shall have executed a similar waiver as set forth in this Section 16.4 (c) for loss or damage to Tenant Additions, whether or not removable, and to Tenant's furniture, furnishings, fixtures and other property removable by Tenant under the provisions hereof to the extent the same is coverable by Tenant's insurance required under this Lease, notwithstanding that such loss or

damage may result from the negligence or fault of Landlord, its servants, agents or employees, or such other tenant and the servants, agents or employees thereof.

(d) Landlord and Tenant hereby agree to advise the other promptly if the clauses to be included in their respective insurance policies pursuant to subparagraphs (a) and (b) above cannot be obtained on the terms hereinbefore provided. Landlord and Tenant hereby also agree to notify the other promptly of any cancellation or change of the terms of any such policy that would affect such clauses.

16.5 NOTICE OF CASUALTY

Tenant shall give Landlord notice in case of a fire or accident in the Premises promptly after Tenant is aware of such event.

ARTICLE 17

WAIVER OF CLAIMS AND INDEMNITY

17.1 WAIVER OF CLAIMS

To the extent permitted by Law, Tenant hereby releases the Indemnitees from, and waives all claims for, damage to person or property sustained by Tenant or any occupant of the Premises or the Property resulting directly or indirectly from any existing or future condition, defect, matter or thing in and about the Premises or the Property or any part of either or any equipment or appurtenance therein, or resulting from any accident in or about the Premises or the Property, or resulting directly or indirectly from any act or neglect of any tenant or occupant of the Property or of any other person, including Landlord's agents and servants, except to the extent caused by the gross negligence or willful and wrongful act of any of the Indemnitees. To the extent permitted by Law, Tenant hereby waives any consequential damages, compensation or claims for inconvenience or loss of business, rents, or profits as a result of such injury or damage, whether or not caused by the gross negligence or willful and wrongful act of any of the Indemnitees. If any such damage, whether to the Premises or the Property or any part of either, or whether to Landlord or to other tenants in the Property, results from any act or negligence of Tenant, its employees, servants, agents, contractors, invitees or customers, Tenant shall be liable therefor and Landlord may, at Landlord's option, repair such damage and Tenant shall, upon demand by Landlord, as payment of additional Rent hereunder, reimburse Landlord within thirty (30) days of demand for the total cost of such repairs, in excess of amounts, if any, paid to Landlord under insurance covering such damages. Tenant shall not be liable for any such damage caused by its acts or negligence if Landlord or a tenant has recovered the full amount of the damage from proceeds of insurance policies and the insurance company has waived its right of subrogation against Tenant.

17.2 INDEMNITY BY TENANT

To the extent permitted by Law, and except to the extent indemnified by Landlord under Section 17.3, Tenant hereby indemnifies, and agrees to protect, defend and hold the Indemnitees harmless, against any and all actions, claims, demands, liability, costs and expenses, including reasonable attorneys' fees and expenses for the defense thereof, arising from Tenant's occupancy of the Premises, from the undertaking of any Tenant Additions or repairs to the Premises by

Tenant, from the conduct of Tenant's business on the Premises, or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or from any willful act or negligence of Tenant, its agents, contractors, servants, employees, customers or invitees, in or about the Premises or the Property or any part of either. In case of any action or proceeding brought against the Indemnitees by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel reasonably acceptable to Landlord. Landlord reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity. The foregoing indemnity shall not operate to relieve Indemnitees of liability to the extent such liability is caused by the willful and wrongful act of Indemnitees. Further, the foregoing indemnity is subject to and shall not diminish any waivers in effect in accordance with Section 16.4 by Landlord or its insurers to the extent of amounts, if any, paid to Landlord under its "All-Risks" property insurance. This Article 17 shall survive the expiration or earlier termination of this Lease.

17.3 INDEMNITY BY LANDLORD

To the extent permitted by Law, Landlord hereby indemnifies, and agrees to protect, defend and hold Tenant, its partners, members, directors, officers, agents and employees (the "**Tenant Indemnitees**") harmless, against any and all actions, claims, demands, liability, costs and expenses, including reasonable attorneys' fees and expenses for the defense thereof, arising from any willful act or the gross negligence of Landlord, in or about the Premises or the Property or any part of either. In case of any action or proceeding brought against the Tenant Indemnitees by reason of any such claim, upon notice from Tenant, Landlord covenants to defend such action or proceeding by counsel chosen by Landlord. The foregoing indemnity shall not operate to relieve Tenant Indemnitees of liability to the extent such liability is caused by the willful and wrongful act of the Tenant Indemnitees. Further, the foregoing indemnity is subject to and shall not diminish any waivers in effect in accordance with Section 16.4 by Tenant or its insurers to the extent of amounts, if any, paid to Tenant under its "All-Risks" property insurance.

17.4 WAIVER OF CONSEQUENTIAL DAMAGES

To the extent permitted by law, Tenant hereby waives and releases the Indemnitees from any consequential damages, compensation or claims for inconvenience or loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful and wrongful act of any of the Indemnitees.

ARTICLE 18

RULES AND REGULATIONS

18.1 RULES

Tenant agrees for itself and for its subtenants, employees, agents, and invitees to comply with the rules and regulations listed on Exhibit C-2 attached hereto and with all reasonable modifications and additions thereto which Landlord may make from time to time and provided to Tenant in writing, provided that such modifications and additions apply to all tenants generally

and non-discriminatory manner. In the event of any conflict between such rules and regulations and any provision in this Lease, such provision of this Lease shall control.

18.2 ENFORCEMENT

Nothing in this Lease shall be construed to impose upon Landlord any duty or obligation to enforce the rules and regulations as set forth on Exhibit C-2 or as hereafter adopted, or the terms, covenants or conditions of any other lease as against any other tenant, and Landlord shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees. Landlord shall use reasonable efforts to enforce the rules and regulations of the Project in a uniform and non-discriminatory manner.

ARTICLE 19

LANDLORD'S RESERVED RIGHTS

Landlord shall have the following rights exercisable without notice to Tenant and without liability to Tenant for damage or injury to persons, property or business and without being deemed an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for offset or abatement of Rent: (1) to change the Building's name or street address upon thirty (30) days' prior written notice to Tenant; (2) to install, affix and maintain all signs on the exterior and/or interior of the Building; (3) to designate and/or approve prior to installation, all types of signs, window shades, blinds, drapes, awnings or other similar items, and all internal lighting that may be visible from the exterior of the Premises; (4) upon reasonable written notice to Tenant, to display the Premises to prospective purchasers and lenders at reasonable hours at any time during the Term and to prospective tenants at reasonable hours during the last twelve (12) months of the Term, subject to Tenant's reasonable security and safety rules and procedures (which may include, without limitation, requiring a Tenant representative to escort visitors at all times); (5) to grant to any party the exclusive right to conduct any business or render any service in or to the Building, provided such exclusive right shall not operate to unreasonably interfere with Tenant's use of the Premises for the purpose permitted hereunder; (6) to change the arrangement and/or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, washrooms or public portions of the Building, and to close entrances, doors, corridors, elevators or other facilities, provided that such action shall not materially and adversely interfere with Tenant's access to the Premises or the Building or unreasonably interfere with Tenant's use of the Preemies for the purposes permitted hereunder; (7) to have access for Landlord and other tenants of the Building to any mail chutes and boxes located in or on the Premises as required by any applicable rules of the United States Post Office; and (8) to close the Building after Standard Operating Hours, except that Tenant and its employees and invitees shall be entitled to admission at all times, under such reasonable regulations as Landlord prescribes for the Building for security purposes.

ARTICLE 20

RELOCATION OF TENANT

At any time during the Term, Landlord may substitute for the Premises, other premises in the Building, in which event the New Premises shall be deemed to be the Premises for all purposes

under this Lease, provided that (i) the New Premises shall be located on higher floors in the Building than the Premises and shall be substantially similar to the Premises in area, configuration and functionality; (ii) if Tenant is then occupying the Premises, Landlord shall pay the actual and reasonable expenses of physically moving Tenant, its property and equipment to the New Premises; (iii) Landlord shall give Tenant not less than ninety (90) days' prior written notice of such substitution; and (iv) Landlord, at its expense, shall improve the New Premises with improvements substantially similar to those in the Premises at the time of such substitution, if the Premises are then improved.

ARTICLE 21

ESTOPPEL CERTIFICATE

21.1 TENANT ESTOPPEL

Within ten (10) business days after request therefor by Landlord, Mortgagee or any prospective mortgagee or owner, Tenant agrees as directed in such request to execute an Estoppel Certificate in recordable form, binding upon Tenant, certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Lease as modified is in full force and effect); (ii) the dates to which Rent has been paid; (iii) that Tenant is in the possession of the Premises, if that is the case; (iv) that to the best knowledge of Tenant without any duty to investigate, Landlord is not in default under this Lease (or if Tenant believes Landlord is in default, the nature thereof in detail); (v) that to the best knowledge of Tenant without any duty to investigate, Tenant has no offsets or defenses to the performance of its obligations under this Lease (or if Tenant believes there are any offsets or defenses, a full and complete explanation thereof); (vi) that the Premises have been completed in accordance with the terms and provisions hereof or the Workletter, that Tenant has accepted the Premises and the condition thereof and of all improvements thereto and has no claims against Landlord or any other party with respect thereto (or stating such exceptions thereto as applicable); (vii) that if an assignment of rents or leases has been served upon the Tenant by a Mortgagee, Tenant will acknowledge receipt thereof and agree to be bound by the reasonable provisions thereof; (viii) that Tenant will give to the Mortgagee copies of all notices required or permitted to be given by Tenant to Landlord, provided that the Mortgagee's address is provided to Tenant in writing; and (ix) to any other factual information reasonably and customarily requested.

21.2 ENFORCEMENT

In the event that Tenant fails to deliver an Estoppel Certificate within three (3) days of its receipt of a second written notice from Landlord to Tenant after the expiration of the initial ten (10) day period, then such failure shall be a Default for which there shall be no cure or grace period. In addition to any other remedy available to Landlord, Tenant shall be deemed to have irrevocably appointed Landlord as Tenant's attorney-in-fact to execute and deliver such Estoppel Certificate.

21.3 LANDLORD ESTOPPEL

Within ten (10) business days after request therefor by Tenant, Landlord shall also certify that (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Lease as modified is in full force and effect); (ii) the dates to which Rent has been paid; (iii) whether or not to the best knowledge of Landlord without any duty to investigate, Tenant 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 Landlord may have knowledge.

ARTICLE 22

REAL ESTATE BROKERS

Tenant represents that, except for the broker(s) listed in Section 1.1(17), Tenant has not dealt with any real estate broker, sales person, or finder in connection with this Lease, and no such person initiated or participated in the negotiation of this Lease, or showed the Premises to Tenant. Landlord represents that, except for the broker(s) listed in Section 1.1(17), Landlord has not dealt with any real estate broker, sales person, or finder in connection with this Lease, and no such person initiated or participated in the negotiation of this Lease, or showed the Premises on behalf of Landlord. Tenant hereby agrees to indemnify, protect, defend and hold Landlord and the Indemnitees, harmless from and against any and all liabilities and claims for commissions and fees arising out of a breach of the foregoing representation as well as from any claim or claims for any commission or fee by any broker or other party claiming to represent Tenant in connection with any future extensions or renewals hereof. Landlord hereby agrees to indemnify, protect, defend and hold Tenant and the Tenant Indemnitees, harmless from and against any and all liabilities and claims for commissions and fees arising out of a breach of the foregoing representation by Landlord as well as from any claim or claims for any commission or fee by any broker or other party claiming to represent Landlord in connection with any future extensions or renewals hereof. Landlord agrees to pay any commission to which the brokers listed in Section 1.1(17) are entitled in connection with this Lease pursuant to Landlord's written agreement with such broker.

ARTICLE 23

MORTGAGEE PROTECTION

23.1 SUBORDINATION AND ATTORNMENT

This Lease is and shall be expressly subject and subordinate at all times to (i) any ground or underlying lease of the Real Property, now or hereafter existing, and all amendments, extensions, renewals and modifications to any such lease, and (ii) the lien of any mortgage or trust deed now or hereafter encumbering fee title to the Real Property and/or the leasehold estate under any such lease, and all amendments, extensions, renewals, replacements and modifications of such mortgage or trust deed and/or the obligation secured thereby, unless such ground lease or ground lessor, or mortgage, trust deed or Mortgagee, expressly provides or elects that this Lease shall be superior to such lease or mortgage or trust deed. If any such mortgage or trust deed is foreclosed (including any sale of the Real Property pursuant to a power of sale), or if any such lease is

terminated, upon request of the Mortgagee or ground lessor, as the case may be, Tenant shall, provided that such Mortgagee or ground lessor agrees not to disturb Tenant's rights under this Lease if Tenant is not in Default hereunder, attorn to the purchaser at the foreclosure sale or to the ground lessor under such lease, as the case may be, provided, however, that such purchaser or ground lessor shall not be (i) bound by any payment of Rent for more than one month in advance except payments in the nature of security for the performance by Tenant of its obligations under this Lease; (ii) subject to any offset, defense or damages arising out of a default of any obligations of any preceding Landlord; (iii) bound by any amendment or modification of this Lease made without the written consent of the Mortgagee or ground lessor, or (iv) liable for any security deposits not actually received in cash by such purchaser or ground lessor. This subordination shall be self-operative and no further certificate or instrument of subordination need be required by any such Mortgagee or ground lessor. In confirmation of such subordination, however, Tenant shall execute promptly any commercially reasonable certificate or instrument that Landlord, Mortgagee or ground lessor may request. Tenant hereby constitutes Landlord as Tenant's attorney-in-fact to execute such certificate or instrument for and on behalf of Tenant upon Tenant's failure to do so within fifteen (15) days of a request to do so. Upon request by such successor in interest, Tenant shall execute and deliver reasonable instruments confirming the attornment provided for herein. The terms of this paragraph shall survive any termination of this Lease by reason of foreclosure.

During the thirty (30) day period following the Date of this Lease, Landlord shall use commercially reasonable efforts to obtain a subordination, non-disturbance and attornment agreement (a "**SNDA**") from the current Mortgagee in a form reasonably acceptable to Tenant; provided, however, in no event shall Landlord be in default of this Lease if, despite Landlord's exercise of commercially reasonable efforts, Landlord is unable to obtain a SNDA for Tenant from any such Mortgagee. Additionally, notwithstanding anything herein to the contrary, Tenant's obligation to subordinate this Lease to any future ground lease or mortgage as provided above is conditioned upon Landlord providing a SNDA from such future Mortgagee on the standard form provided by such Mortgagee (with such commercially reasonable modifications as may be requested by Tenant and approved by such Mortgagee).

23.2 MORTGAGEE PROTECTION

Tenant agrees to give any Mortgagee or ground lessor, by registered or certified mail, a copy of any notice of default served upon Landlord by Tenant, provided that prior to such notice Tenant has received written notice (by way of service on Tenant of a copy of an assignment of rents and leases, or otherwise) of the address of such Mortgagee or ground lessor. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the Mortgagee or ground lessor shall have an additional thirty (30) days after receipt of notice thereof within which to cure such default or if such default cannot be cured within that time, then such additional notice time as may be necessary, if, within such thirty (30) days, any Mortgagee or ground lessor has commenced and is diligently pursuing the remedies necessary to cure such default (including the commencement of foreclosure proceedings or other proceedings to acquire possession of the Real Property, if necessary to effect such cure). Such period of time shall be extended by any period within which such Mortgagee or ground lessor is prevented from commencing or pursuing such foreclosure proceedings or other proceedings to acquire possession of the Real Property by reason of Landlord's bankruptcy. Until the time allowed as aforesaid for Mortgagee or ground lessor to cure such defaults has expired without cure, Tenant shall have no

right to, and shall not, terminate this Lease on account of default. This Lease may not be modified or amended so as to reduce the Rent or shorten the Term, or so as to adversely affect in any other respect to any material extent the rights of Landlord, nor shall this Lease be canceled or surrendered, without the prior written consent, in each instance, of the ground lessor or the Mortgagee. Landlord agrees to diligently use reasonable efforts to obtain such Mortgagee consents as may be required and shall promptly inform Tenant in writing upon obtaining such consents.

ARTICLE 24

NOTICES

(a) All notices, demands or requests provided for or permitted to be given pursuant to this Lease must be in writing and shall be personally delivered, sent by Federal Express or other reputable overnight courier service, or mailed by first class, registered or certified United States mail, return receipt requested, postage prepaid, or sent by electronic mail, provided that the sender also sends a hard copy of the notice within one (1) business day by one of the other methods.

(b) All notices, demands or requests to be sent pursuant to this Lease shall be deemed to have been properly given or served by delivering or sending the same in accordance with this Section, addressed to the parties hereto at their respective addresses listed in Section 1.1.

(c) Notices, demands or requests sent by mail or overnight courier service as described above shall be effective upon deposit in the mail or with such courier service. However, except with respect to a notice given under Code of Civil Procedure Section 1161 et seq., the time period in which a response to any such notice, demand or request must be given shall commence to run from (i) in the case of delivery by mail, the date of receipt on the return receipt of the notice, demand or request by the addressee thereof, or (ii) in the case of delivery by Federal Express or other overnight courier service, the date of acceptance of delivery by an employee, officer, director or partner of Landlord or Tenant. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given, as indicated by advice from Federal Express or other overnight courier service or by mail return receipt, shall be deemed to be receipt of notice, demand or request sent. Notices may also be served by personal service upon any officer, director or partner of Landlord or Tenant, and shall be effective upon such service.

(d) By giving to the other party at least thirty (30) days' written notice thereof, either party shall have the right from time to time during the term of this Lease to change their respective addresses for notices, statements, demands and requests, provided such new address shall be within the United States of America.

ARTICLE 25

OFAC

Landlord advises Tenant hereby that the purpose of this Article is to provide to the Landlord information and assurances to enable Landlord to comply with the law relating to OFAC.

Tenant hereby represents, warrants and covenants to Landlord, either that (i) Tenant is regulated by the SEC, FINRA or the Federal Reserve (a "**Regulated Entity**") or (ii) neither Tenant

nor any person or entity that directly or indirectly (a) controls Tenant or (b) has an ownership interest in Tenant of twenty-five percent (25%) or more, appears on the list of Specially Designated Nationals and Blocked Persons ("**OFAC List**") published by the Office of Foreign Assets Control ("**OFAC**") of the U.S. Department of the Treasury.

If, in connection with this Lease, there is one or more Guarantors of Tenant's obligations under this Lease, then Tenant further represents, warrants and covenants either that (i) any such Guarantor is a Regulated Entity or (ii) neither Guarantor nor any person or entity that directly or indirectly (a) controls such Guarantor or (b) has an ownership interest in such Guarantor of twenty-five percent (25%) or more, appears on the OFAC List.

Tenant covenants that during the term of this Lease to provide to Landlord information reasonably requested by Landlord including without limitation, organizational structural charts and organizational documents which Landlord may deem to be necessary ("**Tenant OFAC Information**") in order for Landlord to confirm Tenant's continuing compliance with the provisions of this Article. Tenant represents and warrants that the Tenant OFAC Information it has provided or to be provided to Landlord or Landlord's Broker in connection with the execution of this Lease is true and complete.

ARTICLE 26

MISCELLANEOUS

26.1 LATE CHARGES

(a) All payments required hereunder (other than the Monthly Base Rent, Rent Adjustments, and Rent Adjustment Deposits, which shall be due as hereinbefore provided) to Landlord shall be paid within ten (10) days after Landlord's demand therefor if not otherwise set forth in this Lease. All such amounts (including Monthly Base Rent, Rent Adjustments, and Rent Adjustment Deposits) not paid when due shall bear interest from the date due until the date paid at the Default Rate in effect on the date such payment was due.

(b) In the event Tenant is more than five (5) days late in paying any installment of Rent due under this Lease, Tenant shall pay Landlord a late charge equal to five percent (5%) of the delinquent installment of Rent. The parties agree that (i) such delinquency will cause Landlord to incur costs and expenses not contemplated herein, the exact amount of which will be difficult to calculate, including the cost and expense that will be incurred by Landlord in processing each delinquent payment of rent by Tenant, (b) the amount of such late charge represents a reasonable estimate of such costs and expenses and that such late charge shall be paid to Landlord for each delinquent payment in addition to all Rent otherwise due hereunder. The parties further agree that the payment of late charges and the payment of interest provided for in subparagraph (a) above are distinct and separate from one another in that the payment of interest is to compensate Landlord for its inability to use the money improperly withheld by Tenant, while the payment of late charges is to compensate Landlord for its additional administrative expenses in handling and processing delinquent payments.

(c) Payment of interest at the Default Rate and/or of late charges shall not excuse or cure any default by Tenant under this Lease, nor shall the foregoing provisions of this Article or any such payments prevent Landlord from exercising any right or remedy available to Landlord upon Tenant's failure to pay Rent when due, including the right to terminate this Lease.

26.2 NO JURY TRIAL; VENUE: JURISDICTION

To the fullest extent permitted by law, including laws enacted after the Commencement Date, each party hereto (which includes any assignee, successor, heir or personal representative of a party) shall not seek a jury trial, hereby waives trial by jury, and hereby further waives any objection to venue in the County in which the Project is located, and agrees and consents to personal jurisdiction of the courts of the State of California, in any action or proceeding or counterclaim brought by any party hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any statute, emergency or otherwise, whether any of the foregoing is based on this Lease or on tort law. No party will seek to consolidate any such action in which a jury has been waived with any other action in which a jury trial cannot or has not been waived. It is the intention of the parties that these provisions shall be subject to no exceptions. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

26.3 NO DISCRIMINATION

Tenant agrees for Tenant and Tenant's heirs, executors, administrators, successors and assigns and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry (whether in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises or otherwise) nor shall Tenant or any person claiming under or through Tenant establish or permit any such practice or practices of discrimination or segregation with reference to the use or occupancy of the Premises by Tenant or any person claiming through or under Tenant.

26.4 FINANCIAL STATEMENTS

Within ten (10) days after written request from Landlord from time to time during the Term (not more than once per any 12-month period), Tenant shall provide Landlord with current financial statements setting forth Tenant's financial condition and net worth for the most recent quarter, including balance sheets and statements of profits and losses. Such statements shall be prepared by an independent accountant and certified by Tenant's president, chief executive officer or chief financial officer. Landlord shall keep such financial information confidential and shall only disclose such information to Landlord's lenders, consultants, purchasers or investors, or other agents (who shall be subject to the same confidentiality obligations) on a need to know basis in connection with the administration of this Lease. Notwithstanding the foregoing, Tenant shall have no obligation to deliver any financial statements so long as Tenant is a publicly traded entity and its financial statements are publicly available.

26.5 OPTION

This Lease shall not become effective as a lease or otherwise until executed and delivered by both Landlord and Tenant. The submission of this Lease to Tenant does not constitute a reservation of or option for the Premises, but when executed by Tenant and delivered to Landlord, this Lease shall constitute an irrevocable offer by Tenant in effect for fifteen (15) days to lease the Premises on the terms and conditions herein contained.

26.6 TENANT AUTHORITY

Tenant represents and warrants to Landlord that it has full authority and power to enter into and perform its obligations under this Lease, that the person executing this Lease is fully empowered to do so, and that no consent or authorization is necessary from any third party. Landlord may request that Tenant provide Landlord evidence of Tenant's authority.

26.7 LANDLORD AUTHORITY

Landlord represents and warrants to Tenant that it has full authority and power to enter into and perform its obligations under this Lease, that the person executing this Lease is fully empowered to do so, and that no consent or authorization is necessary from any third party (or, if required, such consent has been obtained by Landlord).

26.8 ENTIRE AGREEMENT

This Lease, the exhibits, schedules, and riders attached hereto contain the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements, either oral or written, and no other representations or statements, either oral or written, on which Tenant has relied. This Lease shall not be modified except by a writing executed by Landlord and Tenant.

26.9 MODIFICATION OF LEASE FOR BENEFIT OF MORTGAGEE

If Mortgagee of Landlord requires a modification of this Lease which shall not result in any increased cost or expense to Tenant or in any other substantial and adverse change in the rights and obligations of Tenant hereunder, then Tenant agrees that this Lease may be so modified.

26.10 EXCULPATION

Tenant agrees, on its behalf and on behalf of its successors and assigns, that any liability or obligation under this Lease shall only be enforced against Landlord's equity interest in the Property up to a maximum of Twenty Million Dollars ($20,000,000.00) and in no event against any other assets of Landlord, or Landlord's members, officers or directors or partners, and that any liability of Landlord with respect to this Lease shall be so limited and Tenant shall not be entitled to any judgment in excess of such amount. Notwithstanding anything to the contrary contained herein, in no event shall Landlord be liable to Tenant for consequential, punitive or special damages with respect to this Lease.

26.11 ACCORD AND SATISFACTION

No payment by Tenant or receipt by Landlord of a lesser amount than any installment or payment of Rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or payment of Rent or pursue any other remedies available to Landlord. No receipt of money by Landlord from Tenant after the termination of this Lease or Tenant's right of possession of the Premises shall reinstate, continue or extend the Term. Receipt or acceptance of payment from anyone other than Tenant, including an assignee of Tenant, is not a waiver of any breach of Article 10, and Landlord may accept such payment on account of the amount due without prejudice to Landlord's right to pursue any remedies available to Landlord.

26.12 LANDLORD'S OBLIGATIONS ON SALE OF BUILDING

In the event of any sale or other transfer of the Building, subject to purchaser's assumption of Landlord's obligations under this Lease accruing or to be performed after the date of such sale or transfer, Landlord shall be entirely freed and relieved of all agreements and obligations of Landlord hereunder accruing or to be performed after the date of such sale or transfer, and any remaining liability of Landlord with respect to this Lease shall be limited to the dollar amount specified in Section 26.10 and Tenant shall not be entitled to any judgment in excess of such amount.

26.13 BINDING EFFECT

Subject to the provisions of Article 10, this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and permitted assigns.

26.14 CAPTIONS

The Article and Section captions in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such Articles and Sections.

26.15 TIME; APPLICABLE LAW; CONSTRUCTION

Time is of the essence of this Lease and each and all of its provisions. This Lease shall be construed in accordance with the Laws of the State of California. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each item, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by Law. Wherever the term "including" or "includes" is used in this Lease, it shall have the same meaning as if followed by the phrase "but not limited to". The language in all parts of this Lease shall be construed according to its normal and usual meaning and not strictly for or against either Landlord or Tenant.

26.16 ABANDONMENT

In the event Tenant abandons the Premises but is otherwise in compliance with all the terms, covenants and conditions of this Lease, Landlord shall (1) have the right to enter into the Premises in order to show the space to prospective tenants, (ii) have the right to reduce the services provided to Tenant pursuant to the terms of this Lease to such levels as Landlord reasonably determines to be adequate services for an unoccupied premises, and (iii) during the last six (6) months of the Term, have the right to prepare the Premises for occupancy by another tenant upon the end of the Term. Tenant expressly acknowledges that in the absence of written notice pursuant to Section 11.2(b) or pursuant to California Civil Code Section 1951.3 terminating Tenant's right defenses to the enforcement of the terms of this Lease based on such telecopied or e-mailed signatures. Promptly following request by either party, the other party shall provide the requesting party with original signatures on this Lease.

26.23 EXHIBITS, SCHEDULES AND RIDERS

All exhibits, schedules, riders and/or addenda referred to in this Lease as an exhibit, schedule, rider, or addenda hereto, or attached hereto, are hereby incorporated into and made a part of this Lease.

[Signatures on Following Page]

IN WITNESS WHEREOF, this Lease has been executed as of the date set forth in Section 1.1(4) hereof.

TENANT:

Dynavax Technologies Corporation,
a Delaware corporation

By: /s/ Eddie Gray
Print Name: Eddie Gray
Its: Chief Executive

By: /s/ Michael Ostrach
Print Name: Michael Ostrach
Its: Senior Vice President, Chief Financial Officer and Chief Business Officer

LANDLORD:

Emery Station West, LLC,
a California limited liability company

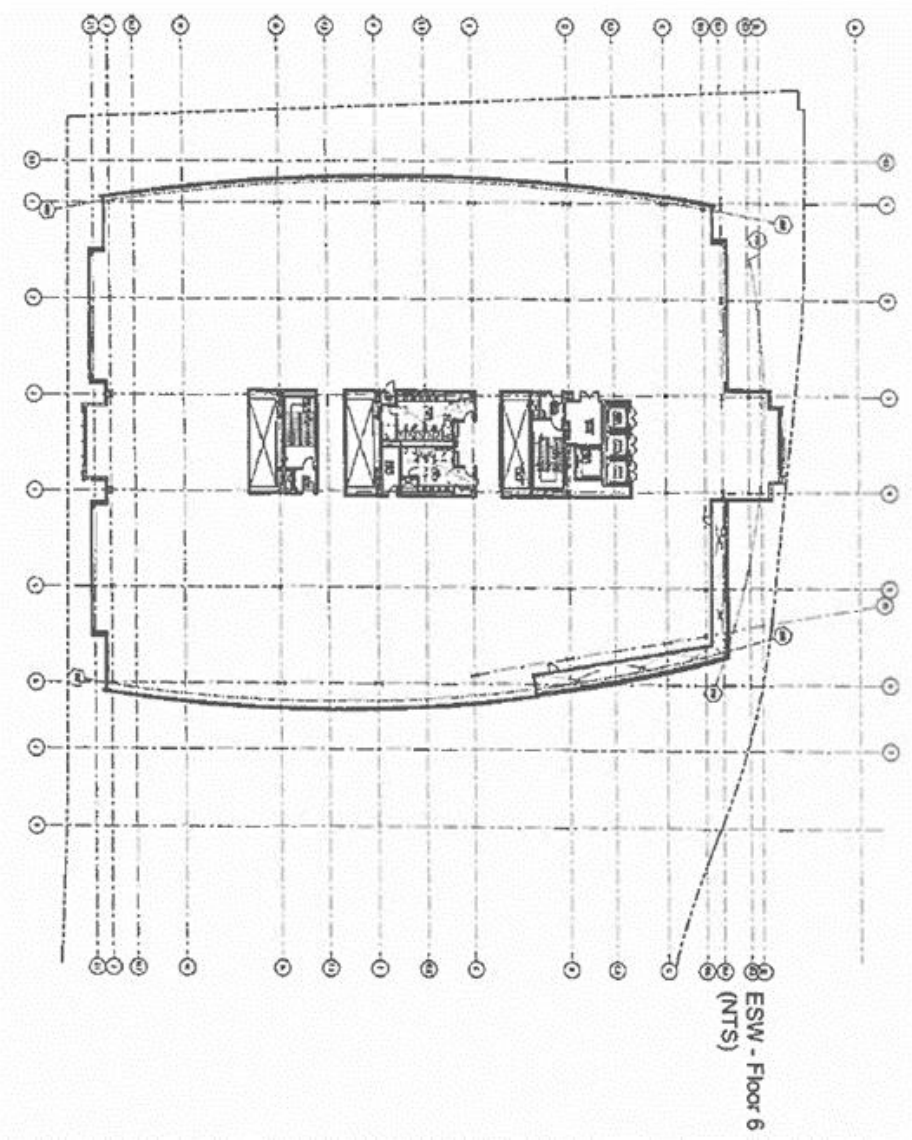
By: ES West Associates, LLC
a California limited liability company,
it's Managing Member

By: Wareham-NZL, LLC
a California limited liability company,
it's Manager

By: /s/ Richard K. Robbins
Richard K. Robbins
Manager

EXHIBIT A

OUTLINE OF PREMISES



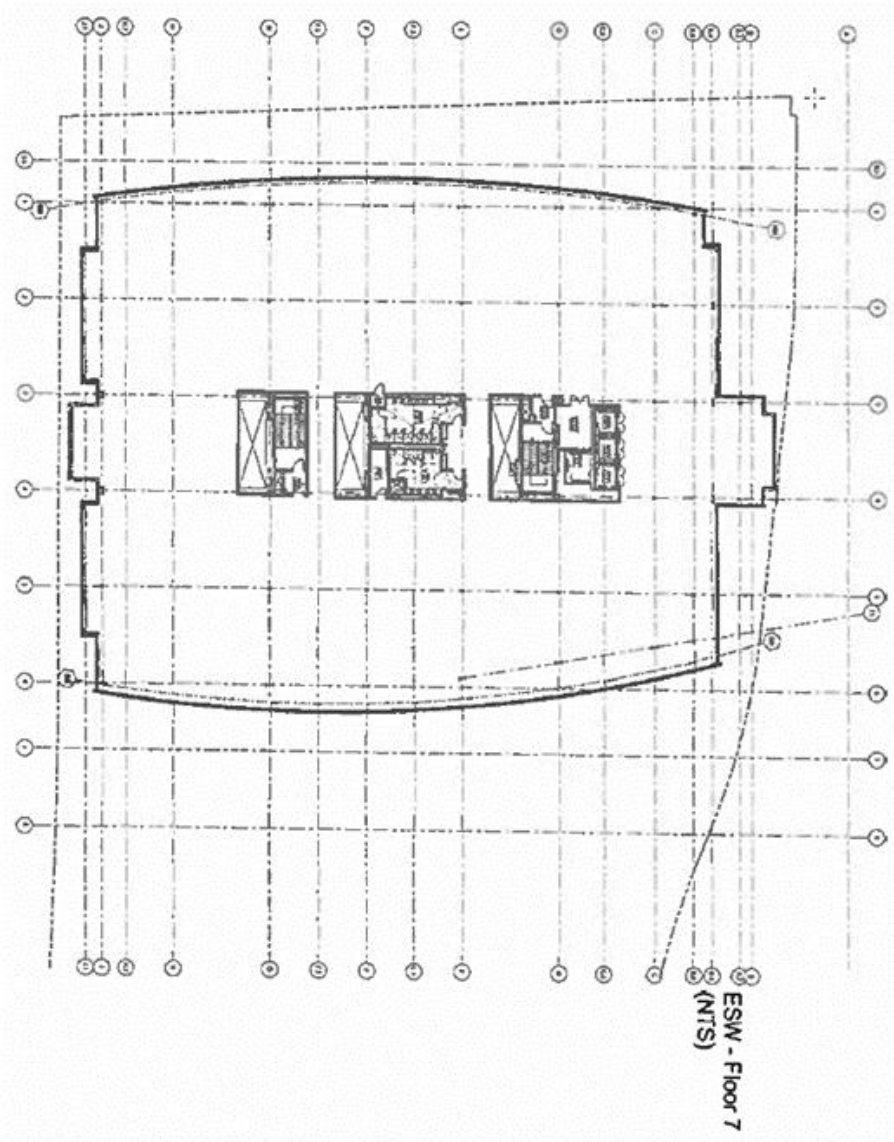


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EXHIBIT B

WORKLETTER

THIS WORKLETTER (this "**Workletter**") is attached to and made a part of that certain Lease (the "**Lease**") between EMERY STATION WEST, LLC, a California limited liability company ("**Landlord**"), and DYNAVAX TECHNOLOGIES CORPORATION, a Delaware corporation ("**Tenant**"). All capitalized terms used but not defined herein shall have the respective meanings given such terms in the Lease. This Workletter sets forth the terms and conditions relating to the construction of Tenant Improvements (defined below) in the Premises.

SECTION 1

ALLOWANCE; TENANT IMPROVEMENTS

1.1 Allowance. Tenant shall be entitled to an allowance (the "**Tenant Improvement Allowance**") in an amount not to exceed $110.00 per square foot of Rentable Area of the Premises for the costs relating to the design, permitting and construction of Tenant's improvements which will be permanently affixed to the Premises in accordance with this Workletter (the "**Tenant Improvements**"). In no event will Landlord be obligated to make disbursements pursuant to this Workletter in a total amount which exceeds the Tenant Improvement Allowance. Tenant agrees that it shall commence the Tenant Improvements promptly following the Commencement Date and diligently proceed to complete the same. Tenant must submit Payment Request Supporting Documentation (defined below) for such work in accordance with this Workletter no later than April 1, 2020, after which date Landlord's obligation to fund such costs shall expire.

1.2 Disbursement of the Tenant Improvement Allowance.

(a) Tenant Improvement Allowance Items. Except as otherwise set forth in this Workletter, the Tenant Improvement Allowance shall be disbursed by Landlord only for the following items and costs (collectively the "**Tenant Improvement Allowance Items**"):

(i) Payment of the fees of the Architect and the Building Consultants (as those terms are defined below) and payment of fees and costs reasonably incurred by Landlord for the review of the Construction Drawings (defined below) by Landlord or by Landlord's third party consultants;

(ii) The payment of plan check, permit and license fees relating to the Tenant Improvements, including, without limitation, taxes, fees, charges and levies by governmental agencies;

(iii) The cost of construction of the Tenant Improvements, including, without limitation, costs and expenses for labor, materials, equipment and fixtures, after hours charges, testing and inspection costs, freight elevator usage, trash removal costs, any other services provided by third parties unaffiliated with Tenant in connection with the construction and contractors' fees and general conditions;

(iv) The cost of any changes to the Building when such changes are required by the Construction Drawings, such cost to include all direct architectural and/or engineering fees and expenses incurred in connection therewith;

(v) The cost of any changes to the Construction Drawings (defined below) or Tenant Improvements required by applicable laws, including, without limitation, building codes (collectively, "**Code**"); and

(vi) The Coordination Fee (defined below).

(b) Disbursement of Tenant Improvement Allowance. During the design and construction of the Tenant Improvements, Landlord shall make periodic disbursements (no more often than once per month) of the Tenant Improvement Allowance to reimburse Tenant for Tenant Improvement Allowance Items and shall authorize the release of funds as follows.

(i) To request a periodic disbursement, Tenant shall deliver to Landlord: (A) a request for payment from Contractor (defined below) approved by Tenant, in a reasonable form to be provided or approved in advance by Landlord, including a schedule of values and showing the percentage of completion, by trade, of the Tenant Improvements, which details the portion of the work completed and the portion not completed; (B) invoices from all of Tenant's Agents (defined below) for labor rendered and materials delivered to the Premises; (C) executed conditional mechanic's lien releases from all of Tenant's Agents who have lien rights with respect to the subject request for payment (along with unconditional mechanics' lien releases with respect to payments made pursuant to Tenant's prior submission hereunder) in compliance with all applicable laws; (D) if not already supplied to Landlord, a copy of the construction permits referenced in Section 3.2(a) below; and (E) all other information reasonably requested by Landlord (collectively, the "**Payment Request Supporting Documentation**").

(ii) Within forty (40) days after Tenant's delivery to Landlord of all Payment Request Supporting Documentation, Landlord shall deliver to Tenant payment in an amount equal to the lesser of: (x) the amount so requested by Tenant, as set forth in Section 1.2(b)(i) above, less (i) the applicable Over-Tenant Improvement Allowance Amount (defined in Section 3.2(a) below and (ii) a ten percent (10%) retention (the aggregate amount of such retentions to be known as the "**Final Retention**"), and (y) the balance of any remaining available portion of the Tenant Improvement Allowance (not including the Final Retention), provided that if Landlord, in good faith, disputes any item in a request for payment based on non-compliance of any work with the Approved Working Drawings (defined below) or due to any substandard work (reasonably determined by Landlord) and delivers a written objection to such item setting forth with reasonable particularity Landlord's reasons for its dispute (a "**Draw Dispute Notice**") within ten (10) days following Tenant's submission of its Payment Request Supporting Documentation, Landlord may deduct the amount of such disputed item from the payment. Landlord and Tenant shall, in good faith, endeavor to diligently resolve any such dispute. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's payment request.

(iii) Subject to the provisions of this Work Agreement, following the final completion of construction of the Tenant Improvements, Landlord shall deliver to Tenant a

check made payable to Tenant, or a check or checks made payable to another party or parties as reasonably requested by Tenant, in the amount of the Final Retention, provided that (A) Tenant delivers to Landlord properly executed unconditional mechanics' lien releases from all of Tenant's Agents in compliance with all applicable laws, as reasonably determined by Landlord; (B) Landlord has determined in good faith that no substandard work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building, the curtain wall of the Building, the structure or exterior appearance of the Building; (C) Architect delivers to Landlord a certificate, in a form reasonably acceptable to Landlord, certifying that the construction of the Tenant Improvements has been finally completed; (D) Tenant supplies Landlord with evidence that all governmental approvals required for an occupant to legally occupy the Premises has been obtained; and (E) Tenant has fulfilled its Completion Obligations (defined below) and has otherwise complied with Landlord's standard "close-out" requirements regarding city approvals, closeout tasks, closeout documentation regarding the general contractor, financial close-out matters, and Tenant's vendors.

SECTION 2

CONSTRUCTION DRAWINGS

2.1 Selection of Architect; Construction Drawings. Tenant shall retain DGA Architects (the "**Architect**") to prepare the Construction Drawings. Such approval shall be granted or denied within three (3) business days upon request, and Landlords' failure to respond within such three (3) business day period shall be deemed approval by Landlord. Tenant shall retain engineering consultants approved in writing, in advance by Landlord, such approval not to be unreasonably withheld (the "**Building Consultants**") to prepare all plans and engineering working drawings and perform all work relating to mechanical, electrical and plumbing ("**MEP**"), HVAC/Air Balancing, life-safety, structural, sprinkler and riser work. Landlord acknowledges its pre-approval of the following Building Consultants:

MEP: Interface

Structural: Rutherford & Chekene.

The plans and drawings to be prepared by Architect and the Building Consultants hereunder (i.e., both the Space Plan and the Working Drawings, as each term is defined below) shall be known collectively as the "**Construction Drawings.**" All Construction Drawings shall comply with the drawing format and specifications reasonably determined or approved by Landlord and shall be subject to Landlord's prior written approval, not to be unreasonably withheld, conditioned or delayed. Such approval shall be granted or denied within ten (10) business days after delivery to Landlord, and Landlord's failure to respond within such ten (10) business day period, if such failure continues following a second, five (5) business day notice, shall be deemed approval by Landlord. Any disapproval of the Construction Drawings shall accompany Landlord's detailed reasons for such disapproval. All MEP drawings must be fully engineered and cannot be prepared on a "design-build" basis. Landlord's review of the Construction Drawings shall be for its sole purpose and shall not obligate Landlord to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Landlord or its space planner, architect, engineers and consultants, and

notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings.

2.2 Space Plan. Tenant shall supply Landlord for Landlord's review and approval with four (4) copies signed by Tenant of its space plan for the Premises (the "**Space Plan**") before any architectural working drawings or engineering drawings have been commenced. The Space Plan shall include a layout and designation of all laboratory facilities, offices, rooms and other partitioning, their intended use, and equipment to be contained therein. Landlord may request clarification or more specific drawings for special use items not included in the Space Plan. Landlord shall advise Tenant within five (5) business days after Landlord's receipt of the Space Plan (or, if applicable, such additional information reasonably requested by Landlord pursuant to the provisions of the immediately preceding sentence) if the same is approved or is unsatisfactory or incomplete in any respect, and any disapproval of the Space Plan shall accompany Landlord's detailed reasons for such disapproval. Upon any disapproval by Landlord, Tenant shall promptly cause the Space Plan to be revised to correct any deficiencies or other matters Landlord may reasonably require and deliver such revised Space Plan to Landlord. Landlord's failure to respond within five (5) business days thereafter, if such failure continues following a second, three (3) business day notice, shall be deemed approval by Landlord.

2.3 Working Drawings. After the Space Plan has been approved by Landlord, Tenant shall cause the Architect and the Engineers to promptly complete the architectural and engineering drawings, and Architect shall compile a fully coordinated set of drawings, including but not limited to architectural, structural, mechanical, electrical, plumbing, fire sprinkler and life safety in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the "**Working Drawings**") and shall submit the same to Landlord for Landlord's review and approval (such approved Working Drawings, "**Approved Working Drawings**"). Tenant shall supply Landlord with four (4) copies signed by Tenant of the Working Drawings. Landlord shall advise Tenant within ten (10) business days after Landlord's receipt of the Working Drawings if Landlord, in good faith, determines that the same are approved or are unsatisfactory or incomplete, and any disapproval of the Working Drawings shall accompany Landlord's detailed reasons for such disapproval. If Tenant is so advised, Tenant shall promptly revise the Working Drawings to correct any deficiencies or other matters Landlord may reasonably require and deliver such revised Working Drawing to Landlord. Landlord's failure to respond within five (5) business days thereafter, if such failure continues following a second, three (3) business day notice, shall be deemed approval by Landlord.

2.4 Landlord's Approval. Tenant acknowledges that it shall be deemed reasonable for Landlord to disapprove the Space Plan and any subsequent Working Drawings unless, at a minimum, the same are prepared on the basis that they will only utilize the appropriate pro-rated share of building systems capacity made available by Landlord for tenant usage in the building (including, but not limited to, the HVAC equipment, electrical power, fire sprinkler, emergency electrical power), (b) the Tenant Improvements as specified and designed comply with the requirements of the Project's Sustainability Practices and the applicable Green Building Standards set forth in Exhibit B-1 attached hereto, and (c) the sprinkler systems shall be designed in compliance with the specifications provided by FM Global. Additionally, Landlord's approval of

any matter under this Workletter may be withheld if Landlord reasonably determines that the same would violate any provision of the Lease or this Workletter or would adversely affect the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building, the curtain wall of the Building, the structure or exterior appearance of the Building.

2.5 Changes to the Working Drawings. Any changes to the Approved Working Drawings (each, a "**Change**") shall be requested and instituted in accordance with the provisions of this Section 2.5 and shall be subject to the written approval of the non-requesting party in accordance with this Workletter.

(a) Either Landlord or Tenant may request Changes after Landlord approves the Working Drawings by notifying the other party thereof in writing in substantially the same form as the AIA standard change order form (a "**Change Request**"), which Change Request shall detail the nature and extent of any requested Changes, including (i) the Change, and (ii) any modification of the Approved Working Drawings, as applicable, necessitated by the Change. If the nature of a Change requires revisions to the Approved Working Drawings, then Tenant shall be solely responsible for the cost and expense of such revisions and any increases in the cost of the Tenant Improvements as a result of such Change. Change Requests shall be signed by the requesting party's representative. Landlord shall only request a Change if it reasonably believes that such Change is necessary to comply with applicable Laws, to prevent a material adverse impact on the Building's systems or to address a material Building structural issue.

(b) All Change Requests shall be subject to the other party's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. The non-requesting party shall have three (3) business days after receipt of a Change Request to notify the requesting party in writing of the non-requesting party's decision either to approve or object to the Change Request. The non-requesting party's failure to respond within such three (3) business day period shall be deemed approval by the non-requesting party.

SECTION 3

CONSTRUCTION OF THE TENANT IMPROVEMENTS

3.1 Tenant's Selection of Contractors.

(a) The Contractor. Tenant will retain Dome Construction as a general contractor to construct the Tenant Improvements ("**Contractor**").

(b) Tenant's Agents. A list of all subcontractors, laborers, materialmen, and suppliers used by Tenant (such subcontractors, laborers, materialmen, and suppliers, and the Contractor to be known collectively as "**Tenant's Agents**") must be provided to Landlord, provided that Landlord will require Tenant to retain the Building Consultants. Tenant shall contract with Landlord's base building subcontractors for any mechanical, electrical, plumbing, life safety, structural or HVAC work in the Premises. All of Tenant's Agents shall be licensed in the State of California, capable of being bonded and union-affiliated in compliance with all then existing master labor agreements.

3.2 Construction of Tenant Improvements by Tenant's Agents.

(a) Construction Contract. Prior to Tenant's execution of the construction contract and general conditions with Contractor (the "**Contract**"), Tenant shall submit the Contract to Landlord for its approval, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord shall have three (3) business days upon receipt of the Contract to either grant or deny its approval, and Landlord's failure to respond within such three (3) business day period shall be deemed approval by Landlord. Prior to the commencement of the construction of the Tenant Improvements, Tenant shall provide Landlord with a schedule of values consisting of a detailed breakdown, by trade, of the final costs to be incurred or which have been incurred, for all Tenant Improvement Allowance Items in connection with the design and construction of the Tenant Improvements, which costs form the basis for the amount of the Contract ("**Final Costs**"). Prior to the commencement of construction of the Tenant Improvements, Landlord and Tenant shall identify the amount equal to the difference between the amount of the Final Costs and the amount of the Tenant Improvement Allowance (less any portion thereof already disbursed by Landlord, or in the process of being disbursed by Landlord, on or before the commencement of construction of the Tenant Improvements), the "**Over-Allowance Amount**", and Landlord will reimburse Tenant on a monthly basis, as described in Section 1.2(b)(ii) above, for a percentage of each amount requested by the Contractor or otherwise to be disbursed under this Workletter, which percentage shall be equal to the Tenant Improvement Allowance divided by the amount of the Final Costs (after deducting from the Final Costs any amounts expended in connection with the preparation of the Construction Drawings, and the cost of all other Tenant Improvement Allowance Items incurred prior to the commencement of construction of the Tenant Improvements), and Tenant shall be solely responsible for any Over-Allowance Amount. If, after the Final Costs have been initially determined, the costs relating to the design and construction of the Tenant Improvements shall change, any additional costs for such design and construction in excess of the Final Costs shall be added to the Over-Allowance Amount and the Final Costs, and Landlord's reimbursement percentage, shall be recalculated in accordance with the terms of the immediately preceding sentence. Notwithstanding anything set forth herein to the contrary, construction of the Tenant Improvements shall not commence until Tenant has procured and delivered to Landlord a copy of all permits necessary for commencement of construction of the Tenant Improvements.

(b) Construction Requirements.

(i) Landlord's General Conditions for Tenant's Agents and Tenant Improvement Work. Construction of the Tenant Improvements shall comply with the following: (A) the Tenant Improvements shall be constructed in strict accordance with the Approved Working Drawings and Landlord's then-current published construction guidelines; (B) Tenant's Agents shall submit schedules of all work relating to the Tenant Improvements to Landlord and Landlord shall, within five (5) business days of receipt thereof, inform Tenant's Agents of any changes which are necessary thereto, and Tenant's Agents shall adhere to such corrected schedule; and (C) Tenant shall abide by all reasonable and non-discriminatory rules made and provided to Tenant in writing by Landlord's Building manager with respect to the use of contractor parking, materials delivery, freight, loading dock and service elevators, any required shutdown of utilities (including life-safety systems), storage of materials, coordination of work with the contractors of Landlord, and any other matter in connection with this Workletter, including, without limitation, the construction of the Tenant Improvements, provided that such rules shall not include additional

charge for the use of freight, loading dock and service elevators or storage of materials. Tenant shall pay an oversight and supervisory fee (the "**Coordination Fee**") to Landlord in an amount equal to one percent (1.0%) of the Final Costs.

(ii) Indemnity. Tenant's indemnity of Landlord as set forth in the Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Tenant or Tenant's Agents, or anyone directly or indirectly employed by any of them, or in connection with Tenant's non-payment of any amount arising out of the Tenant Improvements and/or Tenant's disapproval of all or any portion of any request for payment. Such indemnity by Tenant, as set forth in the Lease, shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to Landlord's performance of any ministerial acts reasonably necessary (A) to permit Tenant to complete the Tenant Improvements, and (B) to enable Tenant to obtain any related building permit or certificate of occupancy; provided, however, nothing contained in this Workletter shall be deemed to indemnify Landlord from or against liability caused solely by Landlord's negligence or willful misconduct.

(iii) Requirements of Tenant's Agents. Each of Tenant's Agents shall guarantee to Tenant and for the benefit of Landlord that the portion of the Tenant Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each of Tenant's Agents shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the completion of the work performed by such contractor or subcontractor. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with the removal or replacement of all or any part of the Tenant Improvements, and/or the Building and/or common areas that are damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Tenant Improvements shall be contained in the Contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances as may be necessary to effect such right of direct enforcement.

(c) Insurance Requirements.

(i) General Coverages. All of Tenant's Agents shall carry employer's liability and worker's compensation insurance covering all of their respective employees, and shall also carry commercial general liability insurance, including personal and bodily injury, property damage and completed operations liability, all with limits, in form and with companies as are required to be carried by Tenant as set forth in the Lease.

(ii) Special Coverages. Tenant or Contractor shall carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of the Tenant Improvements, and such other insurance as Landlord may require, it being understood and agreed that the Tenant Improvements shall be insured by Tenant pursuant to the Lease immediately upon completion thereof. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord, and shall be in form and with companies as are required to be carried by Tenant as set forth in the Lease.

(iii) General Terms. Certificates for all of the foregoing insurance coverage shall be delivered to Landlord before the commencement of construction of the Tenant Improvements and before the Contractor's equipment is moved onto the site. All such policies of insurance must contain a provision that the company writing said policy will endeavor to give Landlord thirty (30) days' prior written notice of any cancellation of such insurance. In the event that the Tenant Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's Agents shall maintain all of the foregoing insurance coverage in force until the Tenant Improvements are fully completed and accepted by Landlord, except for any Products and Completed Operations Coverage insurance required by Landlord, which is to be maintained for one (1) year following completion of the work and acceptance by Landlord and Tenant. All policies carried hereunder shall insure Landlord, Wareham Property Group as Landlord's manager, and Tenant, as their interests may appear, as well as Tenant's Agents. All insurance, except Workers' Compensation, maintained by Tenant's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects Landlord and Tenant and that any other insurance maintained by Landlord or Tenant is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Landlord by Tenant under the Lease and/or this Workletter.

(d) Governmental Compliance. The Tenant Improvements shall comply in all respects with the following: (i) the Code and other applicable federal, state, city and/or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person or entity; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; (iii) building material manufacturer's specifications, and (iv) the Project's Sustainability Practices and the applicable Green Building Standards as set forth in Exhibit B-1. Landlord Work shall comply with all respects with the following: (i) the Code and other applicable federal, state, city and/or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person or entity; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications.

(e) Inspection by Landlord. Landlord shall have the right to inspect the Tenant Improvements during normal business hours upon no less than 48 hours' advance notice, provided however, that Landlord's failure to inspect the Tenant Improvements shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Tenant Improvements constitute Landlord's approval of the same. Should Landlord disapprove any portion of the Tenant Improvements, Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved and the reasons therefor. Any defects or deviations in, and/or disapproval by Landlord of, the Tenant Improvements shall be rectified by Tenant at no expense to Landlord, provided however, that in the event Landlord determines that a defect or deviation exists or disapproves of any matter in connection with any portion of the Tenant Improvements and such defect, deviation or matter might adversely affect the mechanical, electrical, plumbing, heating, ventilating and air conditioning or life-safety systems of the Building, the structure or exterior appearance of the Building or any other tenant's use of such

other tenant's leased premises, and Tenant fails to commence to remedy the same within thirty (30) days after Landlord's written notice thereof or Tenant fails to diligently execute the same to completion, Landlord may take such action as Landlord deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such defect, deviation and/or matter, including, without limitation, causing the cessation of performance of the construction of the Tenant Improvements until such time as the defect, deviation and/or matter is corrected to Landlord's reasonable satisfaction.

(f) Meetings. Tenant shall hold periodic meetings at a reasonable time with the Architect and the Contractor regarding the progress of the preparation of the Construction Drawings and the construction of the Tenant Improvements, which meetings shall be held at the Premises (unless otherwise notified by Tenant to Landlord), and Landlord and/or its agents shall receive prior written notice of, and shall have the right to attend, all such meetings. Upon Landlord's reasonable request, certain of Tenant's Agents shall attend such meetings. In addition, minutes shall be taken at all such meetings, and Landlord will be included in the distribution list for such minutes. One such meeting each month shall include the review of Contractor's current request for payment.

3.3 Notice of Completion; Copy of Record Set of Plans. Following completion of construction of the Tenant Improvements, Landlord shall cause a Notice of Completion to be recorded in the office of the Recorder of Alameda County and shall furnish a copy thereof to Tenant. Within thirty (30) days following the completion of construction, (i) Tenant shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the updated drawings are true and correct, which certification shall survive the expiration or termination of the Lease, and (C) to deliver to Landlord such updated drawings in accordance with Landlord's then-current CAD Requirements within ninety (90) days following issuance of a certificate of occupancy for the Premises, and (ii) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the Premises. Tenant's obligations set forth in this Section are collectively referred to as the "**Completion Obligations.**"

SECTION 4

LANDLORD WORK

Landlord shall deliver the Premises in "warm shell" condition and in conformance with the base building standards as set forth on Exhibit B-2 hereto (the "Landlord Work"). The Landlord Work shall be performed in a good workmanlike manner and comply in all respects with the Code and other federal, state, city and/or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person or entity; the applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters), and the National Electrical Code. Subject to the foregoing and the terms of the Lease, Tenant shall accept the Premises in its then existing, "AS-IS" condition.

SECTION 5

MISCELLANEOUS

5.1 Tenant's Representative. Tenant has designated Dave Johnson as its sole representative with respect to the matters set forth in this Workletter, until further notice to Landlord, who shall have full authority and responsibility to act on behalf of Tenant as required in this Workletter.

5.2 Landlord's Representative. Landlord has designated Geoffrey Sears as its sole representative with respect to the matters set forth in this Workletter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of Landlord as required in this Workletter.

5.3 Tenant's Default. Notwithstanding any provision to the contrary contained in the Lease, if a Default by Tenant under the Lease (including, without limitation, this Workletter) has occurred and is continuing at any time on or before the substantial completion of the Tenant Improvements, then in addition to all other rights and remedies granted to Landlord pursuant to the Lease, Landlord shall have the right to withhold payment of all or any portion of the Tenant Improvement Allowance until such time as such Default is cured pursuant to the terms of the Lease.

EXHIBIT B-1

APPLICABLE GREEN BUILDING STANDARDS

Tenant shall cause the Architect, Engineers and General Contractor (the Tenant's "**TI Project Team**") to rate the proposed Tenant Improvements on a "**LEED**" scorecard with a goal of achieving at least a "**Gold**" level as set forth by the USGBC, and shall provide that information, attested to by TI Project Team as part of the Space Plan and Working Drawings approval process.

Tenant agrees to direct the Architect and Engineers to design the Tenant Improvements such that they meet the following standards:

Under the LEED 2004 Core & Shell Rating System, achieving certain credits is dependent upon integrating the credit requirements into a binding tenant lease or sales agreement. In these cases, the technical requirements must be clearly identified as part of the tenants' scope, and enforced through the tenant lease agreement. The following sample text can be referenced to that end.

TENANT'S WORK

Tenant agrees that Tenant's Work shall include the following

SUSTAINABLE DESIGN

Please refer to the LEED Reference Guide for Green Building Design and Construction 2009 for detailed information on the specific credits and goals described below.

WATER EFFICIENCY

WEc3 - Water Use Reduction (reduce by 40%)

Tenant installed plumbing fixtures must comply with the following applicable maximum fixture flush and low rates.

- Water closet: 1.1 gpf
- Urinals: 0.125 gpf
- Lavatory faucets: 0.35 gpm
- Kitchen faucets: 1.5 gpm
- Showerheads: 1.5 gpm

ENERGY & ATMOSPHERE

EAc3 – Fundamental Refrigerant Management and EAc4 – Enhanced Refrigerant Management

Tenant installed heating, ventilating, air conditioning and refrigeration (HVAC&R) systems must contain zero chlorofluorocarbon (CFC) based refrigerants and either eliminate the use of chance refrigerants or select refrigerants that minimize or eliminate the emission of compounds that contribute to ozone depletion.

Refer to LEED 2009 EAc4 Enhanced Refrigerant Management for details on calculating maximum thresholds for refrigerant contributions to ozone depletion and global warming potential.

EAc1 - Optimize Energy Performance

Tenant installed regulated building energy consuming systems demonstrate a minimum 20% improvement when measured by energy cost than a baseline building determined according to Appendix G of ASHRAE Standard 90.1-2007. Regulated energy includes lighting; HVAC; and service water heating for domestic or space heating purposes.

Refer to LEED 2009 EAp2 Minimum Energy Performance and EAc1 Optimize Energy Performance for details on calculating baseline and proposed building performance.

INDOOR ENVIRONMENTAL QUALITY

IEQp1 – Minimum Indoor Air Quality Performance - Prerequisite

Mechanical ventilation systems must be designed using the ventilation rate procedure as defined by ASHRAE 62.1- 2007, or the applicable local code, whichever it more stringent.

IEQp2 - Environmental Tobacco Smoke (ETS) Control - Prerequisite

Prohibit smoking inside the building and within 25 feet of all building entrances, outdoor air intakes, and operable windows.

IEQc1 – Outdoor Air Delivery Monitoring

Tenant installed ventilation systems must provide permanent monitoring systems that monitor CO2 concentrations within all mechanically ventilated densely occupied spaces and provide direct outdoor air flow measurement devices in air handling units where more than 20% of the design supply air flow serves non-densely occupied spaces. All naturally ventilated spaces must monitor CO2 concentrations end all CO2 monitors must be placed between 3 and 6 feet above the floor.

Refer to LEED 2009 IEQc1 Outdoor Air Delivery Monitoring for details on monitoring accuracy and integration into building automation system.

IEQc2 – Increased Ventilation

Tenant Installed ventilation systems must increase breathing zone outdoor air ventilation rates by at least 30% above the minimum rates prescribed by ASHRAE 62.1.2007.

IEQc3.1 - Construction Indoor Air Quality Management Plan

Tenant construction must develop an Indoor Air Quality (IAQ) management plan that meets or exceeds the recommended control measures of the Sheet Metal and Air Conditioning National Contractors Association (SMACNA) IAQ Guidelines for Occupied Buildings under Construction, 2nd edition, 2007, ANSI/SMACNA 008-2008, Chapter 3. In addition, the plan should address.

- Protection of absorptive materials stored on-site and installed from moisture damage.
- Permanently installed air-handling equipment is not operated during construction unless filtration media with a minimum efficiency reporting value (MERV) of 8 are installed at each return air grille and return. Immediately before occupancy, replace all filtration media with the final design filtration media.

Refer to LEED 2009 IEQc3.1 - Construction Indoor Air Quality Management Plan - During Construction for details on IAQ plan requirements and reporting.

IEQc4.1-4.4 Low-Emitting Materials

All adhesives and sealants used on the interior of the Tenant construction must comply to the VOC limits established by the South Coast Air Quality Management District (SCAQMD) Rule #1168. All paints and coatings used must not exceed the VOC limits established by Green Seal Standard GS-11, Green Seal Standard GC-03, and SCAQMD Rule #1113. All Installed flooring must meet the requirements of IECQc4.3 Low-Emitting Materials – Floor Systems. Carpet must meet the requirements of the Carpet and Rug Institute Green Label Plus program. Carpet adhesive must meet the requirements of IEQc4.1 Low-Emitting Materials – Adhesives and Sealants. Hard surface flooring must be FloorScore Standard certified. All flooring sealers, stains and finish must meet the SCAQMD Rule #1113 and tile setting adhesives must meet Rule #1168. All composite wood and agrifiber products used must comply with the no-added urea formaldehyde requirements of IEQc4.4 Low-Emitting Materials – Composite and Agrifiber Products.

Refer to LEED 2009 IEQc4.1 to 4.4 Low-Emitting Materials for further details on VOC limits and third-party certification requirements.

IEQc5 - Indoor chemical and pollutant source control

Sufficiently exhaust each space where hazardous gases or chemicals may be present or used (e.g., garages, housekeeping and laundry areas, copying and printing rooms) to create negative pressure with respect to adjacent spaces when the doors to the room are dosed. For each of these spaces, provide self-closing doors and deck-to-deck partitions or a hard-lid ceiling. The exhaust rate must be at least 0.50 cubic feet per minute (cfm) per square foot (0.15 cubic meters per minute per square meter) with no air recirculation, The pressure differential with the surrounding spaces must be at least 5 Pascals (Pa) (0.02 Inches or water gauge) on average and 1 Pa (0.004 inches of water) at a minimum when the doors to the rooms one closed.

In mechanically ventilated buildings, each ventilation system that supplies outdoor air shall provide MERV 13 air filtration.

EXHIBIT B-2

LANDLORD WORK / WARM-SHELL DESCRIPTION

OCCUPANCY

- Tower designed to accommodate “B” and “L” occupancies.

SITEWORK / PARKING

- Exterior hardscape and landscape including site lighting, curbs, sidewalks and drive aisles, miscellaneous site furnishings and stormwater bio-filtration system.
- Hardscape and landscaping on podium rooftop (tower’s base), accessible from tower.
- Connection from podium roof terrace to pedestrian bridge.
- Landlord-provided Generac emergency generator with enclosure for life-safety and tenant purpose back-up power (1600kW / 2000 kVA/60Hz).
- Immediate connection to area commuter trains, buses and free EmeryGoRound shuttle.
- Ample visitor/transient parking in podium with tenant employee parking in adjacent 6100 Horton St Garage structure, including provisions for electric vehicle charging.
- Outdoor bike racks and large indoor, secured bike storage.
- Significant on-site public art.

STRUCTURE

- Structural slab on grade supported by auger piles, pile caps and grade beams.
- Steel superstructure for podium and commercial tower above.
- Lateral system using moment frames and buckling-restrained brace frames (BRB’s). Seismic importance of 1.0.
- Floors of concrete slab on metal deck. Floor load of 100 lbs/SF, reducible.
- Structural roof (100 lbs per SF, reducible), and central mechanical penthouse.
- Floor-to-floor height of 14’10” with top (9th) floor at 15’0”. Designed to allow robust lab MEP above a minimum finished ceiling height of 10’0”.
- Floor vibration: 3rd floor 14,000 micro-inches/second, Floors 4-9 18,000 micro-inches/second.

EXTERIOR SKIN

- Glass (curtainwall, storefront and ribbon window systems), metal panels and precast panels.
- Head of ribbon windows at 9’-0” above finished floor, sills at 3’-0.”
- Metal panels for penthouse and screened mechanical area.
- Accessible private exterior terraces on Floors 4-6.

COMMON AREAS / FACILITIES

- Double-height ground floor lobby, complete with main greeting/security desk, and all interior finishes, FF&E and art.
- Ground floor main electrical room, and fire control room with main fire alarm panel.
- Covered loading dock with roll-down door, at-grade area for shipping/receiving, and hydraulic scissor lift.
- Trash room.
- 750 GPM Patterson fire pump and 60,000 gallon fire water storage tank.
- Telecom main point of entry (MPOE) room. At grade with pathway to stacked tower riser closets on every floor. Open access to main telco providers (AT&T, Comcast and Paxio Fiber).
- One service/freight elevator with capacity of 5,000 lbs. (sized to accommodate an 8 ft. chemical fume hood). This elevator is accessible from loading dock and services all floors plus roof and penthouse.
- Three destination dispatch passenger elevators serving the commercial tower with capacity of 3,500 lbs. Fourth pit for potential future elevator.
- Two exit stair towers completed including drywall enclosure finished and painted on interior, stair treads, handrails, lighting, and stairway pressurization/smoke evacuation.

FULL FLOOR TENANT AREAS:

- Central, fully finished men's and women's restrooms on each floor.
- Janitor closet on every floor.
- Electrical closet with access to main bus duct riser on every floor. Closets have been sized to allow some amount of future tenant transformers.
- IDF riser closet on every floor.
- Tenant and employee access to nearby shared campus conference facility and workout room.
- Exterior cladding and framing ready for tenant insulation and drywall.

MECHANICAL

- Floor heights and structural beam depths allow for 22" duct height while still maintaining a 10'0" finished ceiling, with higher ceilings possible. Indicative duct layout drawings can be shared upon request.
- Stand-alone split system serves the main lobby and ground floor back of house areas.
- Completed vertical shafts sized to accommodate supply air mains, exhaust duct mains, and chilled and heating water risers.
- 74"x24" supply air duct stub-out at each shaft (typ. x3) per floor
- 66"x24" general lab exhaust sub-duct stub-out at each shaft (typ. x3) per floor

- 4” process condenser water stub-out at each floor
- 4” heat hot water stub-out at each floor
- Central equipment (air handlers, exhaust fans, chillers, boilers, pumps, cooling tower, and associated equipment) designed to supply 100% outside air of 1.6 CFM per square foot of tenant area.
- (3) 100,000 CFM GovernAir custom air handling units
- (4) 60,000 CFM Lorin Cook lab exhaust fans
- (2) 750 ton Trane water cooled chillers
- (1) 400 ton heat exchanger for process cooling
- (1) 1875 GPM BAC cooling tower
- (4) 5,600 MBH Aerco output boilers.
- Central Building Management System (BMS) to control core HVAC.
- Pre-identified future louver area on each floor allows for potential additional on-floor air handler for greater capacities, if necessary.
- High-rise smoke evacuation system as required by code for base building shell.
- Core restrooms on every floor served by dedicated bathroom exhaust riser with rooftop
- exhaust fan. Transfer/make-up air will be provided as part of Tenant Improvement.

ELECTRICAL

- PG&E transformer at 100kVA, 480Y/277V.
- Transformer serves installed main switchboard rated at 4,000 amp, 480Y/277V.
- 3000 amp, 277/480V 3P, 4W bus duct runs from main electrical room up to penthouse and connecting all on-floor tenant electrical rooms. Tenants have their pro-rata share of access to this electrical riser. Assuming a typical 60/40 lab to office mix for any tenant, this electrical system allows for power and lighting at 5.2W/sq.ft. in office areas and of 6.2W/sq.ft. in lab areas. Please note that the Mechanical system electrical needs have been accommodated outside/on top of of these amounts.
- Each tenant electrical room has a 200 amp 277/480V panel, a 45 kVA step down transformer, and a 100 amp 120/208V panel. If Tenants’ electrical allowance (above) permits, they can add taps to the 480V bus duct to access more power. The electrical room on each floor has been sized to allow for the siting of transformer(s) tenants will likely employ.
- Landlord-provided 1.5 MW 60Hz 480V diesel standby emergency generator at grade at building exterior. Generator is sized for 2400A. Two Automatic Transfer Switches (ATS) divide life safety loads from tenant discretionary loads. 800A is allocated for life safety purposes and 1600 A for tenant discretionary loads. Off this riser each floor has a 200A emergency panel (rated 277/480V, 3-phase, 4 wire) to which tenants have their pro-rata access. There is an 800A emergency panel on the roof. 400A was used to support certain

AHU and EF HVAC equipment, and the 400A balance is available for future loads. The opportunity to serve greater tenant loads would be through separate standby power equipment on ground floor.

PLUMBING:

- Building storm and overflow drainage system, including bio-retention system to biologically treat/filter all site-generated storm water.
- Backflow prevention device at main water entry point.
- Cold and hot water provided to all restrooms in core and shell.
- Two 2” Cold water stub outs on every floor.
- 4” Waste and 3” vent stub on every floor, located at risers in each quadrant.
- Tenant domestic hot water to be via electric hot water heaters as part of Tenant Improvements.
- Natural gas riser to serve core and shell domestic hot water needs and building penthouse HVAC heat boilers. Tenant natural gas available at each floor with 1-1/4” stub-out at 2psi. Tenant to provide pressure reducing valves and sub-meters.
- No provisions for acid waste. Neutralization, if and as required, to be performed by tenants in tenant spaces.

FIRE / LIFE SAFTEY:

- Existing 2-hour separation between floors.
- Base building sprinkler system with shell configuration heads on every floor as part of base building.
- Fire pump with 60,000 gallon emergency fire water tank at ground floor.
- Main fire alarm closet with main fire alarm panel at ground level (Notifier by Honeywell).
- Code fire alarm devices for core areas at every floor.
- 2-hour fire rating at north façade met with addition of tenant-supplied interior drywall.

SECURITY / TELECOM:

- Main MPOE room at grade, with central risers up commercial tower connecting tenant IDF rooms on every floor.
- Card access at all exterior points of entry and at parking garage.
- Manned security station in main lobby with 24/7 manned campus security.

EXHIBIT C-1

LABORATORY RULES AND REGULATIONS

1. Any laboratory equipment (glass and cage washers, sterilizers, centrifuges, etc.) being used during normal business hours must be properly insulated for noise to prevent interruption of other tenants' business. Landlord reserves the right to request all equipment be reasonably insulated prior to occupancy. Should other tenants complain of noise, Tenant will be responsible for abating any noise issues, at Tenant's sole cost.

2. Any damages to property due to leaks from laboratory equipment of Tenant will be the sole responsibility of Tenant. Should damage occur in other tenant spaces, any and all damages and clean-up will be the responsibility of Tenant.

3. Animal activities are a recognized and necessary process in the biotech industry. It can only be conducted by laboratory tenants pursuant to all the requirements of their respective lease (including any "Use" clause) and requires specific, written approval by Landlord in advance, which shall not be unreasonably withheld, conditioned or delayed. Any animal operations shall be conducted pursuant to all regulations, standards and best industry practices relating to them.

4. The Project may be a mixed-use facility in which laboratory tenants share space with office tenants. To reduce the potential interaction with office tenants and their employees and visitors with any biotech animal operations, any animal testing, delivery and removal of animals and/or any equipment, foods, cleaners, etc. associated with animal activities must be coordinated through the loading dock and freight elevator after hours and with the cooperation and approval of building management and security personnel. No cartons, containers or cardboard boxes bearing the nature of contents may be stored or left in common area spaces, to include any garage/freight areas. Feed bags, animal carriers, and any and all containers must be disposed of properly and with discretion.

5. All exterior signage relating to laboratory operations (i.e. visible to common areas including corridors) must be kept to the minimum required by law. All signs must have Landlord's approval prior to installation.

EXHIBIT C-2

RULES AND REGULATIONS

1. No sidewalks, entrance, passages, courts, elevators, vestibules, stairways, corridors or halls shall be obstructed or encumbered by Tenant or used for any purpose other than ingress and egress to and from the Premises and if the Premises are situated on the ground floor of the Project, Tenant shall further, at Tenant's own expense, keep the sidewalks and curb directly in front of the Premises clean and free from rubbish.

2. No awning or other projection shall be attached to the outside walls or windows of the Project without the prior written consent of Landlord. No curtains, blinds, shades, drapes or screens shall be attached to or hung in, or used in connection with any window or door of the Premises, without the prior written consent of Landlord which shall not be unreasonably withheld, conditioned or delayed. Such awnings, projections, curtains, blinds, shades, drapes, screens and other fixtures must be of a quality, type, design, color, material and general appearance approved by Landlord, and shall be attached in the manner reasonably approved by Landlord. All lighting fixtures hung in offices or spaces which can be seen from the outside the Premises must be of a quality, type, design, bulb color, size and general appearance reasonably approved by Landlord.

3. No sign, advertisement, notice, lettering, decoration or other thing shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside of the Premises or of the Project, without the prior written consent of Landlord. In the event of the violation of the foregoing by Tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to Tenant.

4. The sashes, sash doors, skylights, windows and doors that reflect or admit light or air into the halls, passageways or other public places in the Project shall not be covered or obstructed by Tenant, nor shall any bottles, parcels or other articles be placed on the window sills that can be seem from the outside of the Premises or in the public portions of the Project.

5. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Project, nor placed in public portions thereof without the prior written consent of Landlord.

6. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, 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 Tenant to the extent that Tenant or Tenant's agents, servants, employees, contractors, visitors or licensees shall have caused the same.

7. Tenant shall not mark, paint, drill into or in any way deface any part of the Premises or the Project other than Decoration which is permitted under the Lease. No boring, cutting or stringing of wires belonging to Landlord shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct.

8. No animal or bird of any kind shall be brought into or kept in or about the Premises or the Project, except registered service animals.

9. Tenant shall cooperate with Landlord's efforts to implement the Project's Sustainability Practices and the applicable Green Building Standards, including, but not limited to, complying with Landlord's then-current energy saving efforts and participating in any recycling programs and occupant satisfaction and transportation surveys.

10. Tenant shall not make, or permit to be made, any unseemly or unreasonably disturbing noises or disturb or unreasonably interfere with occupants of the Project, or neighboring buildings or premises, or those having business with them. Tenant shall not throw anything out of the doors, windows or skylights or down the passageways.

11. Tenant shall regularly conduct cleaning and janitorial activities, especially in bathrooms, kitchens and janitorial spaces, to remove mildew and prevent moist conditions and shall comply with the Project's Sustainability Practices and the applicable Green Building Standards.

12. No additional locks, bolts or mail slots of any kind shall be placed upon any of the doors or windows by Tenant, nor shall any change be made in existing locks or the mechanism thereof. Tenant must, upon the termination of the tenancy, restore to Landlord all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by Tenant, and in the event of the loss of any keys so furnished, Tenant shall pay to Landlord the cost thereof.

13. All removals, or the carrying in or out of any safes, freight, furniture, construction material, bulky matter or heavy equipment of any description must take place during the hours which Landlord or its agent may reasonably determine from time to time. Landlord reserves the right to prescribe the weight and position of all safes, which must be placed upon two-inch thick plank strips to distribute the weight. The moving of safes, freight, furniture, fixtures, bulky matter or heavy equipment of any kind must be made upon previous notice to the Building Manager and in a manner and at times prescribed by him, and the persons employed by Tenant for such work are subject to Landlord's prior approval. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Project and to exclude from the Project 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.

14. Tenant shall not purchase janitorial or maintenance or other like service from any company or persons not approved by Landlord. Landlord shall approve a sufficient number of sources of such services to provide Tenant with a reasonable selection, but only in such instances and to such extent as Landlord in its judgment shall consider consistent with security and proper operation of the Project.

15. Landlord shall have the right to prohibit any advertising conducted by Tenant referring to the Project which, in Landlord's reasonable opinion, tends to impair the reputation of the Project or its desirability as a first class building for offices and/or commercial services and upon notice from Landlord, Tenant shall refrain from or discontinue such advertising.

16. Landlord reserves the right to exclude from the Project between the hours of 6:00 p.m. and 8:00 a.m. Monday through Friday, after 1:00 p.m. on Saturdays and at all hours Sundays and legal holidays, all persons who do not present a pass to the Project issued by Landlord.

Landlord may furnish passes to Tenant so that Tenant may validate and issue same. Tenant shall safeguard said passes and shall be responsible for all acts of persons in or about the Project who possess a pass issued to Tenant.

17. Tenant's vendors and contractors shall, while in the Premises or elsewhere in the Project, be subject to and under the control and direction of the Building Manager (but not as agent or servant of said Building Manager or of Landlord) and shall be required to maintain such insurance coverage as reasonably approved by Landlord with liability policies naming Landlord and the Indemnitees as additional insureds.

18. If the Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith at Tenant's expense cause the same to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord.

19. The requirements of Tenant will be attended to only upon application at the office of the Project. Project personnel shall not perform any work or do anything outside of their regular duties unless under special instructions from the office of the Landlord.

20. Canvassing, soliciting and peddling in the Project are prohibited and Tenant shall cooperate to prevent the same.

21. No water cooler, air conditioning unit or system or other apparatus shall be installed or used by Tenant without the written consent of Landlord which shall not be unreasonably withheld, conditioned or delayed.

22. There shall not be used in any premises, or in the public halls, plaza areas, lobbies, or elsewhere in the Project, either by Tenant or by jobbers or others, in the delivery or receipt of merchandise, any hand trucks or dollies, except those equipped with rubber tires and sideguards.

23. Tenant, Tenant's agents, servants, employees, contractors, licensees, or visitors shall not park any vehicles in any driveways, service entrances, or areas posted "**No Parking**" and shall comply with any other parking restrictions imposed by Landlord from time to time.

24. Tenant shall install and maintain, at Tenant's sole cost and expense, an adequate visibly marked (at all times properly operational) fire extinguisher next to any duplicating or photocopying machine or similar heat producing equipment, which may or may not contain combustible material, in the Premises.

25. Tenant shall make reasonable efforts to close the window coverings of any areas of the Premises that remain fully lighted after 10:00 pm.

26. Tenant shall not use the name of the Project for any purpose other than as the address of the business to be conducted by Tenant in the Premises, nor shall Tenant use any picture of the Project in its advertising, stationery or in any other manner without the prior written permission of Landlord. Landlord expressly reserves the right at any time to change said name without in any manner being liable to Tenant therefor.

27. Tenant shall not conduct any restaurant, catering operations, or similar activities at the Premises; provided, however, Tenant may cook and/or prepare food and beverage solely for in-Premises consumption by its employees provided that no odors of cooking or other processes emanate from the Premises. Tenant shall not install or permit the installation or use of any vending machine or permit the delivery of any food or beverage to the Premises except by such persons and in such manner as are approved in advance in writing by Landlord.

28. The Premises shall not be used as an employment agency, a public stenographer or typist, a labor union office, a physician's or dentist's office, a dance or music studio, a school, a beauty salon, or barber shop, the business of photographic, multilith or multigraph reproductions or offset printing (not precluding using any part of the Premises for photographic, multilith or multigraph reproductions solely in connection with Tenant's own business and/or activities), a restaurant or bar, an establishment for the sale of confectionery, soda, beverages, sandwiches, ice cream or baked goods, an establishment for preparing, dispensing or consumption of food or beverages of any kind in any manner whatsoever, or news or cigar stand, or a radio, television or recording studio, theatre or exhibition hall, or manufacturing, or the storage or sale of merchandise, goods, services or property of any kind at wholesale, retail or auction, or for lodging, sleeping or for any immoral purposes.

29. Business machines and mechanical equipment shall be placed and maintained by Tenant at Tenant's expense in settings sufficient in Landlord's judgment to absorb and prevent vibration, noise and annoyance. Tenant shall not install any machine or equipment which causes noise, heat, cold or vibration to be transmitted to the structure of the building in which the Premises are located without Landlord's prior written consent, which consent may be conditioned on such terms as Landlord may require. Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot that such floor was designed to carry and which is allowed by Law.

30. Tenant shall not store any vehicle within the parking area. Tenant's parking rights are limited to the use of parking spaces for short-term parking, of up to twenty-four (24) hours, of vehicles utilized in the normal and regular daily travel to and from the Project. Tenants who wish to park a vehicle for longer than a 24-hour period shall notify the Building Manager for the Project and consent to such long-term parking may be granted for periods up to two (2) weeks. Any motor vehicles parked without the prior written consent of the Building Manager for the Project for longer than a 24-hour period shall be deemed stored in violation of this rule and regulation and shall be towed away and stored at the owner's expense or disposed of as provided by Law.

31. Smoking is prohibited in the Premises, the Building and all enclosed Common Areas of the Project, including all lobbies, all hallways, all elevators and all lavatories.

Exhibit 10.3

RIDER 1

RENT COMMENCEMENT DATE AGREEMENT

Emery Station West, LLC, a California limited liability company ("**Landlord**"), and _____ a _____ corporation ("**Tenant**"), have entered into a certain Office/Laboratory Lease dated as of _____, 2018 (the "**Lease**"). Unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed to them in the Lease.

WHEREAS, Landlord and Tenant wish to confirm and memorialize the Rent Commencement Date and Expiration Date of the Lease as provided for in Section 2.2(b) of the Lease.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein and in the Lease, Landlord and Tenant agree as follows:

1. The Rent Commencement Date is acknowledged to be _____. The Expiration Date is acknowledged to be _____.
2. Tenant hereby confirms that it has accepted possession of the Premises pursuant to the terms of the Lease and that the Lease is in full force and effect.
3. Except as expressly modified hereby, all terms and provisions of the Lease are hereby ratified and confirmed and shall remain in full force and effect and binding on the parties hereto.
4. The Lease and this Rent Commencement Date Agreement contain all of the terms, covenants, conditions and agreements between the Landlord and the Tenant relating to the subject matter herein. No prior other agreements or understandings pertaining to such matters are valid or of any force and effect.

TENANT:

_____,
a _____ corporation

By:_
Print Name:
Its:

By:_
Print Name:
Its:

LANDLORD:

Emery Station West, LLC,
a California limited liability company

By: ES West Associates, LLC
a California limited liability company,
it's Managing Member

By: Wareham-NZL, LLC
a California limited liability company,
it's Manager

By:
Richard K. Robbins
Manager

SCHEDULE 1

SUPERIOR RIGHTS

The rights of Stanford Health Care.

SCHEDULE 2

SPECIAL SUPERIOR RIGHTS

The rights of Stanford Health Care.

AMENDMENT NO. 2 TO TERM LOAN AGREEMENT AND FEE LETTER

THIS AMENDMENT NO. 2 TO TERM LOAN AGREEMENT AND FEE LETTER, dated as of August 7, 2019 and effective as of August 7, 2019 (this "***Agreement***"), is made among Dynavax Technologies Corporation, a Delaware corporation (the "***Borrower***"), the Subsidiary Guarantors from time to time party thereto (together with Borrower, the ***Obligors***"), the Lenders listed on the signature pages hereof under the heading "LENDERS" (each a "***Lender***" and, collectively, the "***Lenders***"), and CRG Servicing LLC, a Delaware limited liability company ("***CRG Servicing***"), as administrative agent and collateral agent for the Lenders (in such capacities, together with its successors and assigns, "***Agent***"), with respect to the Loan Agreement referred to below.

RECITALS

(i) The Obligors, Lenders and Agent are parties to that certain Term Loan Agreement, dated as of February 20, 2018, as amended by that certain Waiver and Amendment, dated as of November 20, 2018 (as further amended, amended and restated, modified or supplemented from time to time, the "***Loan Agreement***") and (ii) the Borrower and CRG Servicing are parties to that certain Fee Letter, dated as of February 20, 2018 (as further amended, amended and restated, modified or supplemented from time to time, the "***Fee Letter***" and, collectively with the Loan Agreement, the "***Transaction Documents***").

WHEREAS, the parties hereto desire to amend the Transaction Documents on the terms and subject to the conditions set forth herein and therein.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein and therein, the parties agree as follows:

SECTION 1. Definitions; Interpretation.

(a) **Terms Defined in Loan Agreement or Fee Letter**. All capitalized terms used in this Agreement (including in the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement or the Fee Letter, as applicable.

(b) **Interpretation**. The rules of interpretation set forth in Section 1.03 of the Loan Agreement shall be applicable to this Agreement and are incorporated herein by this reference.

SECTION 2. Amendment. Subject to **Section 4**, the Loan Agreement is hereby amended as follows:

(a) **Section 10.02** of the Loan Agreement is hereby amended as follows:

(i) **Section 10.02(a)** of the Loan Agreement is hereby amended by replacing the date "January 1, 2019" where it appears therein with "July 1, 2019";

(ii) **Section 10.02(b)** of the Loan Agreement is hereby amended by replacing the date "January 1, 2020" where it appears therein with "July 1, 2020";

(iii) **Section 10.02(c)** of the Loan Agreement is hereby amended by replacing the date "January 1, 2021" where it appears therein with "July 1, 2021";

(iv) **Section 10.02(d)** of the Loan Agreement is hereby amended by replacing the date "January 1, 2022" where it appears therein with "July 1, 2022"; and

(v) **Section 10.02(e)** of the Loan Agreement is hereby deleted in its entirety.

SECTION 3. **Amendment**. Subject to **Section 4**, the Fee Letter is hereby amended as follows:

(a) **Section 2(a)** of the Fee Letter is hereby amended by replacing "three percent (3.00%)" where it appears therein with "four percent (4.00%)".

(b) **Section 2(b)** of the Fee Letter is hereby amended by replacing "three percent (3.00%)" where it appears therein with "four percent (4.00%)".

SECTION 4. **Conditions to Effectiveness**. The effectiveness of **Section 2 and 3** shall be subject to the satisfaction of each of the following conditions precedent:

(a) Agent shall have received, in form and substance reasonably satisfactory to it and Lenders, this Agreement duly executed by Borrower, Agent and Lenders.

(b) The Borrower shall have received at least $40,000,000 in gross proceeds from an equity investment within six (6) weeks following the execution of this Agreement.

(c) The Borrower shall have paid or reimbursed Lenders for Lenders' reasonable out of pocket costs and expenses incurred in connection with this Agreement, including Lenders' reasonable and documented out of pocket legal fees and costs, pursuant to **Section 13.03(a)(i)(z)** of the Loan Agreement, to the extent that Borrower has been provided an invoice at least one Business Day prior to the date of satisfaction of the conditions set forth in **Sections 4(a)** and **4(b)**.

(d) The representations and warranties in **Section 5** shall be true in all material respects on the date hereof and on the date on which each of the foregoing conditions is satisfied.

SECTION 5. **Representations and Warranties**. Each Obligor hereby represents and warrants to Agent and each Lender as follows:

(i) Such Obligor has full power, authority and legal right to make and perform this Agreement and the Transaction Documents, as modified by this Agreement (the "***Amended Transaction Documents***"). Each of this Agreement and the Amended Transaction Documents are within such Obligor's corporate powers and has been duly authorized by all necessary corporate and, if required, by all necessary shareholder action. This Agreement has been duly executed and delivered by such Obligor and each of this Agreement and the Amended Transaction Documents constitutes legal, valid and binding obligations of such Obligor,

enforceable against such Obligor in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Each of this Agreement and the Amended Transaction Documents (x) does not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any third party, except for such as have been obtained or made and are in full force and effect, (y) will not violate any applicable law or regulation or the charter, bylaws or other organizational documents of such Obligor and its Subsidiaries or any order of any Governmental Authority, other than any such violations that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (z) will not violate or result in an event of default under any material indenture, agreement or other instrument binding upon such Obligor and its Subsidiaries or assets, or give rise to a right thereunder to require any payment to be made by any such Person.

(ii) No Default has occurred or is continuing or will result after giving effect to this Agreement.

(iii) There has been no Material Adverse Effect since the date of the Loan Agreement and Fee Letter.

(iv) The representations and warranties made by or with respect to such Obligor in Section 7 of the Loan Agreement are true in all material respects (and, in all respects, for such representations and warranties that are by their terms already qualified as to materiality, material adverse effect or similar language), taking into account any changes made to schedules updated in accordance with Section 7.20 of the Loan Agreement, except that such representations and warranties that refer to a specific earlier date were true in all material respects on such earlier date (and, in all respects, for such representations and warranties that are by their terms already qualified as to materiality, material adverse effect or similar language).

SECTION 6. **Reaffirmation**. Each Obligor hereby ratifies, confirms, reaffirms, and acknowledges its obligations under the Loan Documents to which it is a party and agrees that the Loan Documents remain in full force and effect, undiminished by this Agreement, except as expressly provided herein. By executing this Agreement, each Obligor acknowledges that it has read, consulted with its attorneys regarding, and understands, this Agreement.

SECTION 7. **Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) **Governing Law**. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction; *provided that* Section 5-1401 of the New York General Obligations Law shall apply.

(b) **Submission to Jurisdiction**. Each Obligor agrees that any suit, action or proceeding with respect to this Agreement or any other Loan Document to which it is a party or any judgment entered by any court in respect thereof may be brought initially in the federal or

state courts in Houston, Texas or in the courts of its own corporate domicile and irrevocably submits to the non-exclusive jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment. This **Section 7** is for the benefit of Lenders only and, as a result, no Lender shall be prevented from taking proceedings in any other courts with jurisdiction. To the extent allowed by applicable Laws, Lenders may take concurrent proceedings in any number of jurisdictions.

(c) **Waiver of Jury Trial**. Each Obligor and each Lender hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any suit, action or proceeding arising out of or relating to this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby.

SECTION 8. No Actions, Claims, Etc. Each Obligor acknowledges and confirms that it has no knowledge of any actions, causes of action, claims, demands, damages or liabilities of whatever kind or nature, in law or in equity, against any Secured Party, in any case, arising from any action or failure of any Secured Party to act under any Loan Document on or prior to the date hereof, or of any offset right, counterclaim or defense of any kind against any of its respective obligations, indebtedness or liabilities to Secured Party under any Loan Document. Each Obligor unconditionally releases, waives and forever discharges (i) any and all liabilities, obligations, duties, promises or indebtedness of any kind of Agent or any Lender to such Obligor, except the obligations required to be performed by Agent or any Lender under the Loan Documents on or after the date hereof, and (ii) all claims, offsets, causes of action, suits or defenses of any kind whatsoever (if any), whether arising at law or in equity, whether known or unknown, which such Obligor might otherwise have against any Secured Party in connection with the Loan Documents or the transactions contemplated thereby, in the case of each of clauses (i) and (ii), on account of any past or presently existing condition, act, omission, event, contract, liability, obligation, indebtedness, claim, cause of action, defense, circumstance or matter of any kind. Each Obligor acknowledges that it may discover facts or law different from, or in addition to, the facts or law that it knows or believes to be true with respect to the claims released in this **Section 8** and agrees, nonetheless, that this release shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery of them. Each Obligor expressly acknowledges and agrees that all rights under Section 1542 of the California Civil Code are expressly waived. That section provides:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

SECTION 9. Miscellaneous.

(a) **No Waiver**. Nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Transaction Documents or any of the other Loan Documents or constitute a course of conduct or dealing among the parties. Except as expressly stated herein, Lenders reserve all rights, privileges and remedies under the Loan Documents (including, without limitation, all such rights, privileges and remedies with respect to any Default, Event of Default or Material Adverse Effect, whether or not communicated to

Lenders or Agent). Except as amended hereby, the Transaction Documents and other Loan Documents remain unmodified and in full force and effect.

(b) **Severability**. In case any provision of or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(c) **Headings**. Headings and captions used in this Agreement (including the Exhibits, Schedules and Annexes hereto, if any) are included for convenience of reference only and shall not be given any substantive effect.

(d) **Integration**. This Agreement constitutes a Loan Document and, together with the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

(e) **Counterparts**. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

(f) **Controlling Provisions**. In the event of any inconsistencies between the provisions of this Agreement and the provisions of any other Loan Document, the provisions of this Agreement shall govern and prevail.

(g) **Loan Document**. This Agreement is a Loan Document.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER

DYNAVAX TECHNOLOGIES CORPORATION

By /s/ Ryan Spencer
Name: Ryan Spencer
Title: SVP, Commercial

LENDERS

CRG PARTNERS III L.P.
By CRG PARTNERS III GP L.P., its General Partner
By CRG PARTNERS III GP LLC, its General Partner

By /s/ Nathan Hukill
Nathan Hukill
Authorized Signatory

CRG PARTNERS III–PARALLEL FUND "A" L.P.,
By CRG PARTNERS III – PARALLEL FUND "A" GP L.P., its General Partner
By CRG PARTNERS III – PARALLEL FUND "A" GP LLC, its General Partner

By /s/ Nathan Hukill
Nathan Hukill
Authorized Signatory

AGENT

CRG SERVICING LLC, as Agent

By /s/ Nathan Hukill
Nathan Hukill
Authorized Signatory

Exhibit 31.1

Rule 13a-14(a) Certification of Co-Principal Executive Officer

CERTIFICATIONS

I, David Novack, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Dynavax Technologies Corporation (the "registrant");

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 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 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.

By: /s/ DAVID NOVACK

David Novack
Co-President, Senior Vice President, Operations
(Co-Principal Executive Officer)

Date: November 7, 2019

Exhibit 31.2

Rule 13a-14(a) Certification of Co-Principal Executive Officer

CERTIFICATIONS

I, Ryan Spencer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Dynavax Technologies Corporation (the "registrant");

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 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 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.

By: /s/ RYAN SPENCER

Ryan Spencer
Co-President, Senior Vice President, Commercial
(Co-Principal Executive Officer)

Date: November 7, 2019

Exhibit 31.3

Rule 13a-14(a) Certification of Principal Financial Officer

CERTIFICATIONS

I, Michael Ostrach, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Dynavax Technologies Corporation (the "registrant");

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 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 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.

By: /s/ MICHAEL OSTRACH

Michael Ostrach
Chief Financial Officer
(Principal Financial Officer)

Date: November 7, 2019

Exhibit 32.1

Certification Pursuant to Section 1350 of Chapter 63
of Title 18 of the United States Code

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), I, David Novack, Co-President and Senior Vice President, Operations of Dynavax Technologies Corporation (the "Company"), hereby certify that, to the best of my knowledge:

(i) The Company's Quarterly Report on Form 10-Q for the period ended September 30, 2019 (the "Periodic Report"), to which this Certificate is attached as Exhibit 32.1, fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and

(ii) The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

In Witness Whereof, the undersigned has set his hand hereto as of the 7th day of November, 2019.

By: /s/ DAVID NOVACK

David Novack
Co-President, Senior Vice President, Operations
(Co-Principal Executive Officer)

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Dynavax Technologies Corporation under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.

Exhibit 32.2

Certification Pursuant to Section 1350 of Chapter 63
of Title 18 of the United States Code

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), I, Ryan Spencer, Co-President and Senior Vice President, Commercial of Dynavax Technologies Corporation (the "Company"), hereby certify that, to the best of my knowledge:

(i) The Company's Quarterly Report on Form 10-Q for the period ended September 30, 2019 (the "Periodic Report"), to which this Certificate is attached as Exhibit 32.2, fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and

(ii) The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

In Witness Whereof, the undersigned has set his hand hereto as of the 7th day of November, 2019.

By: /s/ RYAN SPENCER

Ryan Spencer
Co-President, Senior Vice President, Commercial
(Co-Principal Executive Officer)

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Dynavax Technologies Corporation under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.

Exhibit 32.3

Certification Pursuant to Section 1350 of Chapter 63
of Title 18 of the United States Code

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), I, Michael Ostrach, Chief Financial Officer of Dynavax Technologies Corporation (the "Company"), hereby certify that, to the best of my knowledge:

(i) The Company's Quarterly Report on Form 10-Q for the period ended September 30, 2019 (the "Periodic Report"), to which this Certificate is attached as Exhibit 32.3, fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and

(ii) The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

In Witness Whereof, the undersigned has set his hand hereto as of the 7th day of November, 2019.

By: /s/ MICHAEL OSTRACH

Michael Ostrach
Chief Financial Officer
(Principal Financial Officer)

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Dynavax Technologies Corporation under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.

Exhibit 4.3

SEE REVERSE SIDE FOR RESTRICTIVE LEGEND(S)

Number PB-[__] **[_____] Shares**
Series B Convertible Preferred Stock

DYNAVAX TECHNOLOGIES CORPORATION
A Delaware Corporation

THIS CERTIFIES THAT [_____] is the record holder of [_____] (_____) shares of **Series B Convertible Preferred Stock** of **Dynavax Technologies Corporation** transferable only on the books of the Corporation by the holder, in person, or by duly authorized attorney, upon surrender of this certificate properly endorsed or assigned.

This certificate and the shares represented hereby are issued and shall be held subject to all the provisions of the Certificate of Incorporation and the Bylaws of the Corporation and any amendments thereto, a copy of each of which is on file at the office of the Corporation and made a part hereof as fully as though the provisions of the Certificate of Incorporation and Bylaws were imprinted in full on this Certificate, to all of which the holder of this certificate, by acceptance hereof, assents.

The Corporation will furnish without charge to each stockholder who so requests, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be signed by its duly authorized officers this [__] day of [_____], 20[__].

ECIMEN**** ***SPECIMEN***

_____ _____

David Novack, Co-President Ryan Spencer, Co-President

FOR VALUE RECEIVED _____ HEREBY SELLS, ASSIGNS AND TRANSFERS UNTO _____ _____ SHARES REPRESENTED BY THE WITHIN CERTIFICATE AND DOES HEREBY IRREVOCABLY CONSTITUTE AND APPOINT _____ ATTORNEY TO TRANSFER THE SAID SHARES ON THE SHARE REGISTER OF THE WITHIN NAMED CORPORATION WITH FULL POWER OF SUBSTITUTION IN THE PREMISES.

DATED _____

e)

NOTICE: THE SIGNATURE ON THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THIS CERTIFICATE, IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATEVER.