

**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, 2023
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission File Number: 001-39049

EXAGEN INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

1261 Liberty Way
Vista, California
(Address of Principal Executive Offices)

20-0434866
(I.R.S. Employer
Identification No.)

92081
(Zip Code)

(760) 560-1501

(Registrant's Telephone Number, Including Area Code)

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, par value \$0.001 per share	XGN	The Nasdaq Global Market

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 such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

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

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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

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

Total shares of common stock outstanding as of the close of business on November 10, 2023 was 17,045,827.

TABLE OF CONTENTS

	Page	
Part I.	Financial Information	
Item 1.	Unaudited Condensed Financial Statements	1
	Unaudited Condensed Balance Sheets as of September 30, 2023 and December 31, 2022	1
	Unaudited Condensed Statements of Operations for the Three and Nine Months ended September 30, 2023 and 2022	2
	Unaudited Condensed Statements of Stockholders' Equity for the Three and Nine Months ended September 30, 2023 and 2022	3
	Unaudited Condensed Statements of Cash Flows for the Nine Months ended September 30, 2023 and 2022	5
	Notes to Unaudited Condensed Financial Statements	6
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations	19
Item 3.	Quantitative and Qualitative Disclosures About Market Risk	28
Item 4.	Controls and Procedures	29
Part II.	Other Information	
Item 1.	Legal Proceedings	31
Item 1A.	Risk Factors	31
Item 5.	Other Information	34
Item 6.	Exhibits	35
	Signatures	37

Part I. Financial Information
Item 1. Unaudited Condensed Financial Statements
Exagen Inc.

Unaudited Condensed Balance Sheets
(in thousands, except share and per share data)

	September 30, 2023	December 31, 2022
Assets		
Current assets:		
Cash and cash equivalents	\$ 28,448	\$ 62,391
Accounts receivable, net	17,044	6,077
Prepaid expenses and other current assets	3,416	4,143
Total current assets	48,908	72,611
Property and equipment, net	7,214	8,197
Operating lease right-of-use assets	4,168	4,885
Other assets	638	528
Total assets	\$ 60,928	\$ 86,221
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 1,657	\$ 3,046
Accrued and other current liabilities	7,063	5,347
Operating lease liabilities	1,138	1,040
Borrowings-current portion	261	190
Total current liabilities	10,119	9,623
Borrowings-non-current portion, net of discounts and debt issuance costs	19,193	28,778
Non-current operating lease liabilities	3,628	4,493
Other non-current liabilities	484	867
Total liabilities	33,424	43,761
Commitments and contingencies (Note 5)		
Stockholders' equity:		
Preferred stock, \$0.001 par value per share; 10,000,000 shares authorized, no shares issued or outstanding as of September 30, 2023 and December 31, 2022	—	—
Common stock, \$0.001 par value per share; 200,000,000 shares authorized as of September 30, 2023 and December 31, 2022; 16,931,894 and 16,549,984 shares issued and outstanding as of September 30, 2023 and December 31, 2022, respectively	17	17
Additional paid-in capital	301,130	297,970
Accumulated deficit	(273,643)	(255,527)
Total stockholders' equity	27,504	42,460
Total liabilities and stockholders' equity	\$ 60,928	\$ 86,221

The accompanying notes are an integral part of these condensed financial statements

Exagen Inc.

Unaudited Condensed Statements of Operations
(in thousands, except share and per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenue	\$ 13,416	\$ 14,726	\$ 38,783	\$ 32,726
Operating expenses:				
Costs of revenue	5,710	6,010	17,472	17,905
Selling, general and administrative expenses	11,375	14,151	35,212	39,206
Research and development expenses	1,400	2,382	3,789	7,175
Total operating expenses	18,485	22,543	56,473	64,286
Loss from operations	(5,069)	(7,817)	(17,690)	(31,560)
Interest expense	(557)	(618)	(1,769)	(1,822)
Other income, net	211	339	1,343	349
Net loss	\$ (5,415)	\$ (8,096)	\$ (18,116)	\$ (33,033)
Net loss per share, basic and diluted	\$ (0.31)	\$ (0.47)	\$ (1.03)	\$ (1.94)
Weighted-average number of shares used to compute net loss per share, basic and diluted	17,692,603	17,080,959	17,626,686	17,044,623

The accompanying notes are an integral part of these condensed financial statements

Exagen Inc.
Unaudited Condensed Statements of Stockholders' Equity
(in thousands, except share data)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balances as of December 31, 2022	16,549,984	\$ 17	\$ 297,970	\$ (255,527)	\$ 42,460
Issuance of stock from vested restricted stock units	113,378	—	—	—	—
Issuance of stock under Employee Stock Purchase Plan	70,317	—	152	—	152
Exercise of stock options	93,335	—	27	—	27
Stock-based compensation	—	—	986	—	986
Net loss	—	—	—	(7,688)	(7,688)
Balances as of March 31, 2023	16,827,014	17	299,135	(263,215)	35,937
Issuance of stock from vested restricted stock units	31,180	—	—	—	—
Stock-based compensation	—	—	978	—	978
Net loss	—	—	—	(5,013)	(5,013)
Balances as of June 30, 2023	16,858,194	17	300,113	(268,228)	31,902
Issuance of stock from vested restricted stock units	14,424	—	—	—	—
Issuance of stock under Employee Stock Purchase Plan	59,276	—	127	—	127
Stock-based compensation	—	—	890	—	890
Net loss	—	—	—	(5,415)	(5,415)
Balances as of September 30, 2023	16,931,894	\$ 17	\$ 301,130	\$ (273,643)	\$ 27,504

The accompanying notes are an integral part of these condensed financial statements

Exagen Inc.
Unaudited Condensed Statements of Stockholders' Equity
(in thousands, except share data)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balances as of December 31, 2021	16,164,994	\$ 16	\$ 293,060	\$ (208,140)	\$ 84,936
Issuance of stock from vested restricted stock units and payment of employees' taxes	30,523	—	(115)	—	(115)
Issuance of stock under Employee Stock Purchase Plan	35,681	—	231	—	231
Stock-based compensation	—	—	1,376	—	1,376
Net loss	—	—	—	(10,272)	(10,272)
Balances as of March 31, 2022	16,231,198	16	294,552	(218,412)	76,156
Issuance of stock from vested restricted stock units and payment of employees' taxes	27,609	—	(107)	—	(107)
Stock-based compensation	—	—	1,440	—	1,440
Net loss	—	—	—	(14,665)	(14,665)
Balances as of June 30, 2022	16,258,807	16	295,885	(233,077)	62,824
Issuance of stock from vested restricted stock units and payment of employees' taxes	5,336	—	(2)	—	(2)
Exercise of stock options	1,273	—	—	—	—
Issuance of stock under Employee Stock Purchase Plan	40,059	—	154	—	154
Stock-based compensation	—	—	1,306	—	1,306
Net loss	—	—	—	(8,096)	(8,096)
Balances as of September 30, 2022	16,305,475	\$ 16	\$ 297,343	\$ (241,173)	\$ 56,186

The accompanying notes are an integral part of these condensed financial statements

Exagen Inc.
Unaudited Condensed Statements of Cash Flows
(in thousands)

	Nine Months Ended September 30,	
	2023	2022
Cash flows from operating activities:		
Net loss	\$ (18,116)	\$ (33,033)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,661	1,037
Amortization of debt discount and debt issuance costs	119	119
Non-cash interest expense	294	411
Loss on disposal of assets	209	—
Non-cash lease expense	717	738
Stock-based compensation	2,854	4,122
Other	—	33
Changes in assets and liabilities:		
Accounts receivable, net	(10,967)	(985)
Prepaid expenses and other current assets	727	921
Other assets	(120)	(100)
Operating lease liabilities	(767)	(613)
Accounts payable	(1,422)	1,061
Accrued and other current liabilities	2,000	(121)
Net cash used in operating activities	(22,811)	(26,410)
Cash flows from investing activities:		
Purchases of property and equipment	(722)	(3,912)
Proceeds from disposal of property and equipment	2	—
Net cash used in investing activities	(720)	(3,912)
Cash flows from financing activities:		
Proceeds from exercise of stock options	27	—
Payments of taxes withheld on vested restricted stock units	—	(224)
Proceeds from common stock issued under Employee Stock Purchase Plan	279	385
Principal payments on finance lease obligations	(541)	(477)
Principal payment on note payable obligations	(177)	—
Principal payment on long-term debt	(10,000)	—
Net cash used in financing activities	(10,412)	(316)
Net change in cash, cash equivalents and restricted cash	(33,943)	(30,638)
Cash, cash equivalents and restricted cash, beginning of period	62,591	99,542
Cash, cash equivalents and restricted cash, end of period	\$ 28,648	\$ 68,904
Supplemental disclosure of cash flow information:		
Cash paid for interest	\$ 1,336	\$ 1,297
Supplemental disclosure of non-cash items:		
Equipment purchased under finance lease obligations	\$ —	\$ 709
Equipment purchased under notes payable obligations	\$ 250	\$ —
Costs incurred, but not paid, in connection with capital expenditures	\$ 81	\$ 645

The accompanying notes are an integral part of these condensed financial statements

Exagen Inc.

Notes to Unaudited Interim Condensed Financial Statements

Note 1. Organization

Description of Business

Exagen Inc. (the Company) is a commercial-stage diagnostics company which exists to provide clarity in autoimmune disease decision making with the goal of improving patients' clinical outcomes.

Liquidity

The Company has incurred recurring losses and negative cash flows from operating activities since inception. The Company anticipates that it will continue to incur net losses into the foreseeable future. As of September 30, 2023, the Company had cash and cash equivalents of \$28.4 million and had an accumulated deficit of \$273.6 million. Since inception, the Company has financed its operations primarily through a combination of equity financings, debt financing arrangements, and revenue from sales of the Company's products. Based on the Company's current business plan, management believes that its existing capital resources will be sufficient to fund the Company's obligations for at least twelve months following the issuance of these condensed financial statements.

To execute its business plans, the Company may need additional funding to support its continuing operations and pursue its growth strategy. Until such time as the Company can achieve significant cash flows from operations, if ever, it expects to finance its operations through the sale of its stock, debt financings or other strategic transactions. Although the Company has been successful in raising capital in the past, there is no assurance that it will be successful in obtaining such additional financing on terms acceptable to the Company, if at all. The terms of any financing may adversely affect the holdings or the rights of the Company's stockholders. If the Company is unable to obtain funding, the Company could be forced to delay, reduce or eliminate some or all of its programs, product portfolio expansion plans or commercialization efforts, which could have a material adverse effect on the Company's business, operating results and financial condition and the Company's ability to achieve its intended business objectives.

Note 2. Summary of Significant Accounting Policies

Basis of Presentation and Use of Estimates

The accompanying interim condensed balance sheet as of September 30, 2023, condensed statements of operations and stockholders' equity for the three and nine months ended September 30, 2023 and 2022, cash flows for the nine months ended September 30, 2023 and 2022 and the related footnote disclosures are unaudited and have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission (SEC), and with accounting principles generally accepted in the United States (GAAP) applicable to interim financial statements. These unaudited condensed financial statements and related footnote disclosures should be read in conjunction with the Company's audited financial statements for the fiscal year ended December 31, 2022, included in its Annual Report on Form 10-K filed with the SEC on March 20, 2023. In management's opinion, the unaudited interim condensed financial statements have been prepared on the same basis as the audited financial statements and include all normal adjustments, necessary for the fair presentation of the Company's financial position as of September 30, 2023 and its results of operations for the periods presented. The results for the three and nine months ended September 30, 2023 are not necessarily indicative of the results expected for the full fiscal year or any other interim period. The year-end condensed balance sheet data was derived from audited financial statements, but does not include all disclosures required by GAAP.

The preparation of the accompanying condensed financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities as of the date of the condensed financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results could materially differ from those estimates.

Significant estimates and assumptions made in the accompanying condensed financial statements include, but are not limited to revenue recognition, the recoverability of its long-lived assets and net deferred tax assets (and related valuation allowance). The Company evaluates its estimates and assumptions on an ongoing basis using historical experience and other factors and adjusts those estimates and assumptions when facts and circumstances dictate. Actual results could materially differ from those estimates.

Concentration of Credit Risk and Other Risk and Uncertainties

Financial instruments that potentially subject the Company to credit risk consist principally of cash, cash equivalents and accounts receivable. Substantially all the Company's cash and cash equivalents are held at one financial institution that management believes is of high credit quality. Such deposits may, at times, exceed federally insured limits. The Company has not experienced any losses on its cash or cash equivalents.

Significant payors and customers are those which represent more than 10% of the Company's total revenue or accounts receivable balance at each respective balance sheet date. For each significant payor and customer, revenue as a percentage of total revenue and accounts receivable as a percentage of total accounts receivable are as follows:

	Revenue			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Medicare	37 %	62 %	35 %	37 %
Medicare Advantage	15 %	12 %	17 %	15 %

	Accounts Receivable, Net	
	September 30, 2023	December 31, 2022
Medicare	65 %	21 %
Medicare Advantage	*	13 %

* Less than 10%.

For the three months ended September 30, 2023 and 2022, approximately 89% and 87%, respectively, of the Company's revenue was related to the AVISE[®] CTD test. Revenue related to the AVISE[®] CTD test for the nine months ended September 30, 2023 and 2022 was approximately 88% and 84%, respectively.

The Company is dependent on key suppliers for certain laboratory materials. For the three months ended September 30, 2023 and 2022, approximately 98% and 97%, respectively, of the Company's diagnostic testing supplies were purchased from two suppliers. For each of the nine months ended September 30, 2023 and 2022, approximately 97% of the Company's diagnostic testing supplies were purchased from two suppliers. An interruption in the supply of these materials would impact the Company's ability to perform testing services.

Disaggregation of Revenue

The following table includes the Company's revenues as disaggregated by payor and customer category (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Revenue:				
Commercial	\$ 6,090	\$ 3,216	\$ 17,789	\$ 14,259
Government	4,955	9,228	13,570	12,242
Client(1)	2,319	2,046	6,999	5,496
Other(2)	52	236	425	729
Total revenue	\$ 13,416	\$ 14,726	\$ 38,783	\$ 32,726

(1) Includes hospitals, other laboratories, etc.

(2) Includes patient self-pay.

Fair Value Measurements

The carrying value of the Company's cash, cash equivalents and restricted cash, accounts receivable, prepaid expenses and other current assets, accounts payable and accrued and other current liabilities approximate their fair values due to their short-term nature, which are determined to be a Level 1 measurement. The estimated fair value of the Company's long-term borrowings is determined by Level 2 inputs and based primarily on quoted market prices for the same or similar issues. As of September 30, 2023, the 2017 Term Loan (as defined below) had a carrying value of \$18.6 million and a fair value of \$19.0 million. As of December 31, 2022, the 2017 Term Loan (as defined below) had a carrying value of \$28.3 million and a fair value of \$26.9 million. The estimated fair value of the 2017 Term Loan was determined based on a discounted cash flow approach using available market information on discount and borrowing rates with similar terms, maturities, and credit ratings. The carrying value of the Company's other long-term borrowing at September 30, 2023 and December 31, 2022 was \$0.9 million and \$0.8 million, respectively, and approximated its fair value.

Cash, Cash Equivalents and Restricted Cash

The Company considers all highly-liquid investments purchased with a remaining maturity date of three months or less upon acquisition to be cash equivalents. These investments are stated at cost, which approximates fair value.

The Company has an arrangement with a financial institution with which it has an existing banking relationship, whereby in exchange for the issuance of corporate credit cards, the Company agreed to obtain a certificate of deposit with this financial institution in the amount of \$0.2 million as collateral for the balances borrowed on these cards. The Company has classified the value of this certificate of deposit (including all interest earned thereon) within other assets in the accompanying balance sheets. The Company has the right to terminate the credit card program at any time. Upon termination of the credit card program and repayment of all outstanding balances owed, the Company may redeem the certificate of deposit (and all interest earned thereon).

Cash, cash equivalents, and restricted cash presented in the accompanying statements of cash flows consist of the following (in thousands):

	September 30, 2023	December 31, 2022
Cash and cash equivalents	\$ 28,448	\$ 62,391
Restricted cash	200	200
	\$ 28,648	\$ 62,591

Long-lived Assets

The Company's long-lived assets are comprised principally of its property and equipment and operating lease assets. The Company amortizes all finite lived intangible assets over their respective estimated useful lives. Operating lease assets are amortized over the term of the leases. In considering whether long-lived assets are impaired, the company combines its intangible assets and other long-lived assets, into groupings, a determination which is made principally on the basis of whether the assets are specific to a particular test offered or technology being developed. If the Company identifies a change in the circumstances related to its long-lived assets that indicates the carrying value of any such asset may not be recoverable, the Company will perform an impairment

analysis. A long-lived asset is deemed to be impaired when the undiscounted cash flows expected to be generated by the asset (or asset group) are less than the asset's carrying amount. Management's estimates of future cash flows are impacted by projected test volume and levels of reimbursement, as well as expectations related to the future cost structure of the entity. Any required impairment loss would be measured as the amount by which the asset's carrying value exceeds its fair value, and would be recorded as a reduction in the carrying value of the related asset and a charge to operating expense.

Revenue Recognition

Substantially all of the Company's revenue has been derived from sales of its testing products and is primarily comprised of a high volume of relatively low-dollar transactions. The Company primarily markets its testing products to rheumatologists and their physician assistants in the United States. The healthcare professionals who order the Company's testing products and to whom test results are reported are generally not responsible for payment for these products. The parties that pay for these services (each, a payor) consist of commercial payors (healthcare insurers), government payors (primarily Medicare and Medicaid), client payors (i.e., hospitals, other laboratories, etc.) and patient self-pay. The Company's service is a single performance obligation that is completed upon the delivery of test results to the prescribing physician which triggers revenue recognition.

Payors are billed at the Company's list price. Net revenues recognized consist of amounts billed net of allowances for differences between amounts billed and the estimated consideration the Company expects to receive from such payors. The process for estimating revenues and the ultimate collection of accounts receivable involves significant judgment and estimation. The Company follows a standard process, which considers historical denial and collection experience, insurance reimbursement policies and other factors, to estimate allowances and implicit price concessions. Adjustments are recorded in the current period as changes in estimates occur. Further adjustments to the allowances, based on actual receipts, are recorded upon settlement. Included in revenues for the three months ended September 30, 2023 and 2022 was a \$2.5 million net revenue increase and a \$3.7 million net revenue increase, respectively, associated with changes in estimated variable consideration related to performance obligations satisfied in previous periods. Included in revenues for the nine months ended September 30, 2023 and 2022 was a \$2.6 million net revenue increase and a \$2.5 million net revenue decrease, respectively, associated with changes in estimated variable consideration related to performance obligations satisfied in previous periods. The transaction price is estimated using an expected value method on a portfolio basis.

Variable consideration is included in the transaction price only to the extent it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainties with respect to the amount are resolved. The Company's portfolios are grouped per payor (i.e. each individual commercial payor, Medicare, Medicaid, client payors, patient self-pay, etc.) and per test. Consideration may be constrained and excluded from the transaction price in situations where there is no contractually agreed upon reimbursement coverage or in absence of a predictable pattern and history of collectability with a payor. Accordingly, in such situations revenues are recognized on the basis of actual cash collections. Additionally, from time to time, the Company may issue refunds to payors for overpayments or amounts billed in error. Any refunds are accounted for as reductions in revenues in the statement of operations as an element of variable consideration. The estimated expected refunds are accrued as a liability on the Company's balance sheet.

Collection of the Company's net revenues from payors is normally a function of providing complete and correct billing information and any requested medical or other claims-related information to the healthcare insurers and generally occurs within 30 to 90 days of billing. However, the amount and timing of any reimbursements or collections for our billed tests may vary by payor and other circumstances. Contracts do not contain significant financing components based on the typical period of time between performance of services and collection of consideration.

Accounts Receivable and Allowance for Credit Losses

We accrue an allowance for credit losses against our accounts receivable based on management's current estimate of amounts that will not be collected. Management's estimates are typically based on historical loss information adjusted for current conditions. We generally do not perform evaluations of the financial condition of our customers and generally do not require collateral. The allowance for credit losses was zero as of September 30, 2023. Adjustments for implicit price concessions attributable to variable consideration, as discussed above, are incorporated into the measurement of the accounts receivable balances and are not part of the allowance for credit losses.

Research and Development

Costs associated with research and development activities are expensed as incurred and include, but are not limited to, personnel-related expenses, including stock-based compensation expense, materials, laboratory supplies, consulting costs, costs associated with setting up and conducting clinical studies and allocated overhead including rent and utilities.

Advertising and Marketing Costs

Costs associated with advertising and marketing activities are expensed as incurred. Total advertising and marketing costs were approximately \$0.5 million and \$1.3 million for the three months ended September 30, 2023 and 2022, respectively. For the nine months ended September 30, 2023 and 2022, total advertising and marketing costs were approximately \$1.2 million and \$2.2 million, respectively. These costs are included in selling, general and administrative expenses in the accompanying condensed statements of operations.

Shipping and Handling Costs

Costs incurred for shipping and handling are included in costs of revenue in the accompanying condensed statements of operations and totaled approximately \$0.6 million and \$0.7 million for the three months ended September 30, 2023 and 2022, respectively. For the nine months ended September 30, 2023 and 2022, shipping and handling costs were approximately \$1.9 million and \$2.1 million, respectively.

Stock-Based Compensation

The Company recognizes compensation expense for all stock-based awards to employees and directors based on the grant-date estimated fair values over the requisite service period of the awards (usually the vesting period) on a straight-line basis. The fair value of stock options and purchases under the Company's 2019 Employee Stock Purchase Plan (ESPP) rights is determined using the Black-Scholes-Merton (BSM) option pricing model, which requires management to make certain assumptions regarding a number of complex and subjective variables. Equity award forfeitures are recorded as they occur.

The BSM option pricing model incorporates various inputs, including the fair value of the Company's common stock, expected volatility, expected term and risk-free interest rates. Volatility is based on the Company's historical calculated volatility since being publicly traded. The weighted-average expected term of options was calculated using the simplified method. The risk-free interest rate for periods within the contractual term of the option is based on the U.S. Treasury yield in effect at the time of grant. The dividend yield is zero, as the Company has never declared or paid dividends and has no plans to do so in the foreseeable future.

The fair value of each restricted stock unit is determined on the grant date using the closing price of the Company's common stock on that date. The Company's restricted stock units generally vest in equal annual installments over four years from the date of grant or, for grants to new hires, date of hire. Vesting of restricted stock units is subject to the holder's continued service with the Company. The Company issues new shares to satisfy restricted stock units upon vesting.

Comprehensive Loss

Comprehensive loss is defined as a change in equity of a business enterprise during a period, resulting from transactions from nonowner sources. There have been no items qualifying as other comprehensive loss and, therefore, for all periods presented, the Company's comprehensive loss was the same as its reported net loss.

Net Loss Per Share

Basic net loss per share attributable to common stockholders is calculated by dividing the net loss attributable to common stockholders by the weighted-average number of common shares outstanding during the period. Diluted net loss per share attributable to common stockholders is computed by dividing the net loss attributable to common stockholders by the weighted-average number of common stock equivalents outstanding for the period determined using the treasury-stock and if-converted methods. The weighted-average number of shares used to compute basic and diluted shares includes shares issuable upon the exercise of pre-funded warrants at a nominal price. Potentially dilutive common stock equivalents are comprised of warrants for the purchase of common stock, stock options, restricted stock units outstanding under the Company's 2019 Incentive Award Plan (the 2019 Plan) and shares of

the Company's common stock pursuant to the ESPP. For the three and nine months ended September 30, 2023 and 2022, there is no difference in the number of shares used to calculate basic and diluted shares outstanding, as the inclusion of the potentially dilutive securities would be antidilutive.

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

	September 30, 2023	September 30, 2022
Warrants to purchase common stock	409,108	409,108
Common stock options	1,004,855	1,820,555
Restricted stock units	1,568,112	805,496
Employee stock purchase plan	12,542	17,204
Total	<u>2,994,617</u>	<u>3,052,363</u>

Segment Reporting

Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision-maker in making decisions regarding resource allocation and assessing performance. The Company views its operations as, and manages its business in, one operating segment.

Recent Accounting Pronouncements

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board (FASB), or other standard setting bodies and adopted by the Company as of the specified effective date. Under the Jumpstart Our Business Startups Act of 2012 (JOBS Act), the Company meets the definition of an emerging growth company. The Company has elected to use the extended transition period for complying with new or revised accounting standards pursuant to Section 107(b) of the JOBS Act. Unless otherwise discussed, the impact of recently issued standards that are not yet effective will not have a material impact on the Company's financial position or results of operations upon adoption.

Recently Adopted Accounting Standards

In June 2016, the FASB issued Accounting Standards Update (ASU) 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which requires the measurement of expected credit losses (based on historical experience, current conditions and reasonable forecasts) for financial instruments (such as accounts receivable) held at the reporting date which are carried at amortized cost. The main objective of this ASU is to provide financial statement users with more decision-useful information about the expected credit losses on financial instruments and other commitments to extend credit held by a reporting entity at each reporting date. In November 2018, the FASB issued ASU 2018-19, *Codification Improvements to Topic 326, Financing Instruments-Credit Losses*, which included an amendment of the effective date for nonpublic entities. For emerging growth companies, ASU 2016-13 is effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The Company adopted this pronouncement on January 1, 2023. The adoption did not have an impact on its condensed financial statements.

In August 2020, the FASB issued ASU 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40)*. ASU 2020-06 eliminates the beneficial conversion and cash conversion accounting models for convertible instruments. It also amends the accounting for certain contracts in an entity's own equity that are currently accounted for as derivatives because of specific settlement provisions. In addition, ASU 2020-06 modifies how particular convertible instruments and certain contracts that may be settled in cash or shares impact the diluted EPS computation. The amendments in ASU 2020-06 are effective for smaller reporting companies as defined by the SEC for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years. The Company early adopted ASU 2020-06 as of January 1, 2023. The adoption did not have an impact on its condensed financial statements.

Note 3. Other Financial Information

Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consist of the following (in thousands):

	September 30, 2023	December 31, 2022
Diagnostic testing supplies	\$ 2,239	\$ 1,795
Prepaid product royalties	38	40
Prepaid maintenance and insurance contracts	1,120	2,072
Other prepaid expenses and other current assets	19	236
Prepaid expenses and other current assets	<u>\$ 3,416</u>	<u>\$ 4,143</u>

Property and Equipment

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

	September 30, 2023	December 31, 2022
Furniture and fixtures	\$ 98	\$ 98
Laboratory equipment	6,140	5,136
Computer equipment and software	1,793	1,482
Leasehold improvements	5,254	5,223
Construction in progress	415	1,382
Total property and equipment	<u>13,700</u>	<u>13,321</u>
Less: accumulated depreciation and amortization	<u>(6,486)</u>	<u>(5,124)</u>
Property and equipment, net	<u>\$ 7,214</u>	<u>\$ 8,197</u>

Depreciation and amortization expense for the three months ended September 30, 2023 and 2022 was approximately \$0.6 million and \$0.4 million, respectively. For the nine months ended September 30, 2023 and 2022, depreciation and amortization expense was approximately \$1.7 million and \$1.0 million, respectively.

Accrued and Other Current Liabilities

Accrued and other current liabilities consist of the following (in thousands):

	September 30, 2023	December 31, 2022
Accrued payroll and related expenses	\$ 3,666	\$ 2,355
Accrued interest	—	142
Accrued purchases of goods and services	589	803
Accrued royalties	281	514
Accrued clinical study activity	118	162
Finance lease obligations, current portion	535	700
Legal accrual	700	—
Refund liability	302	445
Other accrued liabilities	872	226
Accrued and other current liabilities	<u>\$ 7,063</u>	<u>\$ 5,347</u>

Note 4. Borrowings

2017 Term Loan

In September 2017, the Company executed a term loan agreement (the 2017 Term Loan) with Innovatus Life Sciences Lending Fund I, LP (Innovatus), as amended (the Amended Loan Agreement), pursuant to which the

Company borrowed \$25.0 million. As of September 30, 2023, no additional amounts remained available to borrow under the 2017 Term Loan.

On April 28, 2023, the Company entered into the Third Loan Amendment to the 2017 Term Loan (the Third Loan Amendment). The Third Loan Amendment was treated as a modification. Pursuant to the Third Loan Amendment, the interest rate on all borrowings under the Amended Loan Agreement is the sum (the Basic Rate) of (a) the greater of 8.0% or The Wall Street Journal prime rate (the Prime Rate), plus (b) 2.0%. Under the Amended Loan Agreement, an amount equal to 1.5% of the Basic Rate will be payable in-kind and capitalized to the principal amount of the outstanding term loan on a monthly basis until April 1, 2026, after which interest is scheduled to accrue at the Basic Rate. The maturity date of the loan was extended to December 31, 2026. As of September 30, 2023, the Company estimated the effective interest rate of this loan to be approximately 11.0%. Accrued interest is due and payable monthly, unless the Company elects to pay paid-in-kind interest. The outstanding principal and accrued interest under the Amended Loan Agreement is to be repaid in ten equal monthly installments commencing in April 2026. Upon repayment of the final installment under the Amended Loan Agreement, the Company is required to pay an additional fee of \$1.0 million. This obligation is being accreted into interest expense over the term of the loan using the effective interest method. For each of the three months ended September 30, 2023 and 2022, the Company issued payment-in-kind (PIK) Loans totaling \$0.1 million. For the nine months ended September 30, 2023 and 2022, the Company issued PIK Loans totaling \$0.3 million and \$0.4 million, respectively.

The Amended Loan Agreement requires a prepayment premium of 2% of the aggregate outstanding principal and decreases by 1% on each of November 1, 2023 and 2024. However, this fee was waived on April 28, 2023, at which time the Company prepaid \$10.0 million of principal (the Term Loan Prepayment).

The Amended Loan Agreement is collateralized by a first priority security interest in substantially all of the Company's assets, including intellectual property. The affirmative covenants of the Amended Loan Agreement require that the Company timely file taxes, maintain good standing and government compliance, maintain liability and other insurance, provide prompt notification of significant corporate events, and furnish audited financial statements within 150 days of fiscal year end without qualification as to the scope of the audit or as to going concern and without any other similar qualification.

The affirmative covenants require that the Company achieve a specified level of revenue, as measured quarterly on a rolling twelve-month basis, however the Company is not required to comply with the revenue covenant for any quarter during which it maintains a minimum aggregate cash balance equal to fifty percent of the aggregate principal amount of the 2017 Term Loan (excluding any capitalized interest paid-in-kind) at all times during such quarter. The consequences of failing to achieve the performance covenants, when applicable, will be cured if, (i) within thirty days of failing to achieve the performance covenant, the Company submits a new Board approved financial plan to Innovatus under which the Company is expected to break even on a cash flow basis prior to the maturity date, and (ii) within thirty days of the submission of such financial plan, the Company issues additional equity securities or subordinated debt with net proceeds sufficient to fund any cash flow deficiency generated from operations, as defined in the Amended Loan Agreement. The Amended Loan Agreement requires that the Company maintain certain levels of minimum liquidity and maintains an unrestricted cash balance of \$2.0 million.

The negative covenants provide, among other things, that without the prior consent of Innovatus, subject to certain exceptions, the Company may not dispose of certain assets, engage in certain business combinations or acquisitions, incur additional indebtedness or encumber any of the Company's property, pay dividends on the Company's capital stock or make prohibited investments. The Amended Loan Agreement provides that an event of default will occur if, among other triggers, (i) the Company defaults in the payment of any amount payable under the agreement when due, (ii) there occurs any circumstance(s) that could reasonably be expected to result in a material adverse effect on the Company's business, operations or condition, or on the Company's ability to perform its obligations under the agreement, (iii) the Company becomes insolvent, (iv) the Company undergoes a change in control or (v) the Company breaches any negative covenants or certain affirmative covenants in the agreement or, subject to a cure period, otherwise neglects to perform or observe any material item in the agreement.

As of September 30, 2023, the Company was in compliance with all covenants of the Amended Loan Agreement.

Upon an event of default in any of the Amended Loan Agreement covenants, the repayment of the 2017 Term Loan may be accelerated, and the applicable interest rate will be increased by 4.0% until the default is cured. Although repayment of the 2017 Term Loan can be accelerated under certain circumstances, the Company believes acceleration of this loan is not probable as of the date of these condensed financial statements. Accordingly, the

Company has reflected the amounts of the Third Loan Amendment due beyond twelve months of the balance sheet date as non-current.

2022 Equipment Notes Payable

In May 2022, the Company purchased laboratory equipment using notes payable. At September 30, 2023, the total notes payable balance related to this financed equipment was \$0.9 million, with \$0.3 million classified within borrowings-current portion and \$0.6 million within borrowings-non-current portion, net of discounts and debt issuance costs in the accompanying balance sheets. The financed equipment is subject to a 5.28% effective interest rate and will mature on October 1, 2026.

Future Minimum Payments on the Outstanding Borrowings

As of September 30, 2023, future minimum aggregate payments, including interest, for outstanding borrowings are as follows (in thousands):

2023 (remaining)	\$	487
2024		1,954
2025		1,974
2026		21,239
Total		25,654
Less:		
Unamortized debt discount and issuance costs		(124)
Interest		(6,076)
Total borrowings, net of discounts and debt issuance costs		19,454
Less: Borrowings-current portion		(261)
Borrowings-non-current portion, net of discounts and debt issuance costs	\$	19,193

Note 5. Commitments and Contingencies

Acquisition-related liabilities

In connection with the acquisition of the medical diagnostics division of Royalty Pharma Collection Trust (Royalty Pharma) (formerly known as Cypress Bioscience, Inc.) in 2010, the Company has ongoing royalty payment obligations of 2.5% on net sales of products which incorporate certain acquired technologies. Future royalties payable under these arrangements are limited to the lesser of (i) an aggregate of \$1.2 million (including an upfront payment of \$0.1 million) and (ii) the total royalties earned through January 1, 2024.

Licensing Agreements

The Company has licensed technology for use in its diagnostic tests. In addition to the milestone payments required by these agreements, individual license agreements generally provide for ongoing royalty payments ranging from 1.5% to 7.0% on net sales of products which incorporate licensed technology, as defined in such agreements. Royalties are accrued when incurred and recorded in costs of revenue in the accompanying condensed statements of operations.

Collaboration Obligations

In May 2021, the Company entered into a master research collaboration agreement with Allegheny Health Network Research Institute (AHN), pursuant to which the Company is required to pay AHN a collaboration fee of \$0.4 million for each year during the initial term of the agreement. Collaboration expenses under the master research collaboration agreement were \$0.1 million for each of the three months ended September 30, 2023 and 2022. For each of the nine months ended September 30, 2023 and 2022, collaboration expenses were \$0.3 million. Collaboration expenses under the AHN collaboration are included in research and development expenses.

Supply Agreements

In December 2021, the Company amended a supply agreement with one supplier for reagents which includes minimum annual purchase commitments of \$6.9 million, \$8.0 million and \$9.2 million for the years ending December 31, 2023, 2024 and 2025, respectively.

Contingencies

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnifications; including for subpoenas and other civil investigative demands, from governmental agencies, Medicare or Medicaid and managed care organizations reviewing billing practices or requesting comment on allegations of billing irregularities that are brought to their attention through billing audits or third parties. The Company's exposure under these agreements is unknown because it involves claims that may be made against the Company in the future, but have not yet been made or that the Company believes to be immaterial. The Company accrues a liability for such matters when it is probable that future expenditures will be made and such expenditures can be reasonably estimated.

Litigation

From time to time, the Company may be subject to various legal proceedings that arise in the ordinary course of business activities. The Company does not believe the outcome of any such matters will have a material effect on its financial position or results of operations.

The Company has completed and executed a settlement agreement (the Settlement Agreement) with the U.S. Department of Justice (DOJ) and has received the final approval of the Office of Inspector General-HHS and the United States District Court for the Commonwealth of Massachusetts. The Settlement Agreement grants to the Company a dismissal with prejudice to the United States and whistleblower for the covered conduct and without prejudice to the United States as to all other claims in connection with the previously disclosed DOJ investigation, which has been pending since February of 2022. Pursuant to the Settlement Agreement, the Company made a single lump-sum remittance to the government in the amount of \$0.7 million plus interest in October 2023. The Company has agreed to the settlement amount without admission of wrongdoing in order to resolve the allegations and to avoid the uncertainty and expense of protracted litigation. In connection with the settlement, the Company will not be required to enter into a corporate integrity agreement with the Office of Inspector General-HHS.

The Company's participation in federal healthcare programs is not affected by the Settlement Agreement.

Note 6. Fair Value Measurements

Fair value is defined as the exchange price that would be received for an asset or an exit price paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs.

The three-levels of the valuation hierarchy for disclosure of fair value measurements are defined as follows:

Level 1 - Unadjusted quoted prices in active markets for identical assets or liabilities;

Level 2 - Inputs other than quoted prices included within Level I that are observable, unadjusted 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 related assets or liabilities; and

Level 3 - Unobservable inputs that are supported by little or no market activity for the related assets or liabilities.

The categorization of a financial instrument within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The following table sets forth the Company's financial instruments that were measured at fair value on a recurring basis within the fair value hierarchy (in thousands):

	September 30, 2023			
	Total	Level 1	Level 2	Level 3
Assets:				
Money market funds, included in cash and cash equivalents	\$ 14,199	\$ 14,199	\$ —	\$ —

	December 31, 2022			
	Total	Level 1	Level 2	Level 3
Assets:				
Money market funds, included in cash and cash equivalents	\$ 29,438	\$ 29,438	\$ —	\$ —
Certificate of deposit, included in cash and cash equivalents	30,100	30,100	—	—
Total	\$ 59,538	\$ 59,538	\$ —	\$ —

The fair value of the Company's money market funds is based on quoted market prices.

Note 7. Stockholders' Equity

Common Stock

At The Market Sales Agreement

On September 15, 2022, the Company entered into a sales agreement (the Sales Agreement) with Cowen and Company, LLC, pursuant to which the Company may offer and sell, from time to time, shares of Company common stock having an aggregate offering price of up to \$50.0 million. The Company is not obligated to sell any shares of Company common stock in the offering. As of September 30, 2023, the Company has not sold any shares of its common stock pursuant to the Sales Agreement.

Outstanding Warrants

The following equity classified warrants to purchase common stock were outstanding as of September 30, 2023:

	Shares	Exercise Price	Issuance date	Expiration date
Common stock warrants	237,169	\$ 1.84	January 19, 2016	January 19, 2026
Common stock warrants	67,086	\$ 1.84	March 31, 2016	March 31, 2026
Common stock warrants	131	\$ 1.84	April 1, 2016	April 1, 2026
Common stock warrants	83,778	\$ 14.32	September 7, 2017	September 7, 2024
Common stock warrants	20,944	\$ 14.32	December 7, 2018	December 7, 2025
Common stock warrants	804,951	\$ 0.001	June 22, 2021	None
	1,214,059			

During the three and nine months ended September 30, 2023, no warrants to purchase common stock were exercised.

Note 8. Stock Option Plan

2019 Incentive Award Plan

In September 2019, the Board of Directors adopted, and the Company's stockholders approved, the 2019 Plan. Under the 2019 Plan, which expires in September 2029, the Company may grant stock options, stock appreciation rights, restricted stock, restricted stock units and other awards to individuals who are then employees, officers, non-employee directors or consultants of the Company or its subsidiaries. The options generally expire ten years after the date of grant and are exercisable to the extent vested. Vesting is established by the Board of Directors and is generally four years from the date of grant or, for grants to new hires, date of hire. The 2019 Plan contains an "evergreen provision" that allows annual increases in the number of shares available for issuance on the first day of each calendar year through January 1, 2029 in an amount equal to the lesser of: (i) 4% of the outstanding capital

stock on each December 31st, or (ii) such lesser amount determined by the Board of Directors. As of September 30, 2023, 1,746,478 shares of common stock remained available for future awards under the 2019 Plan.

2019 Employee Stock Purchase Plan

In September 2019, the Board of Directors adopted, and the Company's stockholders approved, the ESPP. The ESPP became effective on the day the ESPP was adopted by the Company's Board of Directors. The ESPP permits participants to purchase common stock through payroll deductions of up to 20% of their eligible compensation. The number of shares of common stock available for issuance under the ESPP will be annually increased on the first day of each calendar year during the term of the ESPP through January 1, 2029 in an amount equal to the lesser of (i) 1% of the outstanding capital stock on each December 31st, or (ii) such lesser amount determined by the Board of Directors. As of September 30, 2023, 449,332 shares of common stock remained available for issuance under the ESPP.

Stock Options

Stock option activity under the Company's 2019 Plan is set forth below:

	Number of Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding, December 31, 2022	1,421,235	\$ 12.94	7.09	\$ 483
Granted	73,500	\$ 3.04		
Exercised	(93,335)	\$ 0.26		
Forfeited	(34,450)	\$ 14.25		
Expired	(362,095)	\$ 17.00		
Outstanding, September 30, 2023	1,004,855	\$ 11.88	6.69	\$ 286
Vested and expected to vest, September 30, 2023	1,004,855	\$ 11.88	6.69	\$ 286
Options exercisable, September 30, 2023	862,667	\$ 12.37	6.41	\$ 286

The intrinsic value is calculated as the difference between the fair value of the Company's common stock and the exercise price of the stock options. The aggregate intrinsic value of options exercised during the nine months ended September 30, 2023 was \$0.2 million. There were no options exercised during the nine months ended September 30, 2022. As of September 30, 2023, total unrecognized compensation cost related to option awards was \$0.6 million, which is expected to be recognized over a remaining weighted-average vesting period of 0.97 years.

Restricted Stock Units

Restricted stock unit activity under the Company's 2019 Plan is set forth below:

	Number of Shares	Weighted-Average Grant Date Fair Value	Aggregate Intrinsic Value (in thousands)
Outstanding, December 31, 2022	1,036,208	\$ 7.28	\$ 2,487
Awards granted	831,700	\$ 2.42	
Awards released	(159,272)	\$ 11.63	
Awards canceled	(140,524)	\$ 7.80	
Outstanding, September 30, 2023	1,568,112	\$ 4.21	\$ 3,795

As of September 30, 2023, all of the outstanding restricted stock units were unvested. The fair value of restricted stock units vested in the nine months ended September 30, 2023 and 2022 was \$0.4 million and \$0.7 million, respectively. The weighted average grant date fair value for restricted stock units granted in the nine months ended September 30, 2023 and 2022 was \$2.42 and \$8.61, respectively. As of September 30, 2023, total unrecognized compensation cost related to restricted stock units was \$5.3 million, which is expected to be recognized over a remaining weighted-average vesting period of 3.1 years.

Stock-Based Compensation Expense

Total non-cash stock-based compensation expense recorded related to options granted, restricted stock units granted and stock purchase rights granted under the ESPP in the condensed statements of operations is as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Costs of revenue	\$ 45	\$ 56	\$ 161	\$ 159
Selling, general and administrative	792	1,085	2,497	3,406
Research and development	53	165	196	557
Total	\$ 890	\$ 1,306	\$ 2,854	\$ 4,122

Note 9. Subsequent Events

Building Lease Assignment

On October 24, 2023, the Company entered into an assignment and assumption of the Company's previously executed lease agreement with Liberty Vista, LP (formerly known as Geiger Court, LLC) and Mindera Corporation (Mindera), pursuant to which the Company assigned to Mindera the lease of the property located at 1221 Liberty Way, Vista, CA 92081, which is located adjacent to the Company's headquarters (the Assignment and Assumption Agreement). At September 30, 2023, there was \$0.9 million in payments remaining on the lease due through April 2027. Under the terms of the Assignment and Assumption Agreement, the Company will continue to pay rent and its proportional share of expenses under the lease until October 31, 2023, after which Mindera will assume those obligations.

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

You should read the following discussion of our financial condition and results of operations in conjunction with the unaudited condensed financial statements and the notes thereto included elsewhere in this Quarterly Report on Form 10-Q and with our audited financial statements and notes thereto for the year ended December 31, 2022 included in our Annual Report on Form 10-K for the year ended December 31, 2022.

Forward Looking Statements

The following discussion and other parts of this quarterly report contain forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (Exchange Act). All statements other than statements of historical facts contained in this quarterly report, including statements regarding our future results of operations and financial position, business strategy, current and future product offerings, reimbursement and coverage, the expected benefits from our partnership or promotion arrangements with third parties, research and development costs, timing and likelihood of success and plans and objectives of management for future operations, are forward-looking statements. These statements are often identified by the use of words such as "may," "will," "expect," "believe," "anticipate," "intend," "could," "should," "estimate," or "continue," and similar expressions or variations. The forward-looking statements in this quarterly report are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, operating results, business strategy, and short-term and long-term business operations and objectives. These forward-looking statements speak only as of the date of this quarterly report and are subject to a number of risks, uncertainties and assumptions, including those described in Part II, Item 1A, "Risk Factors." The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, changed circumstances or otherwise.

Overview

We exist to provide clarity in autoimmune disease decision making with the goal of improving patients' clinical outcomes. We have developed and are commercializing a portfolio of innovative testing products under our AVISE[®] brand which demonstrate excellent quality and performance. We believe our focus on and experience in the field of rheumatology, combined with our commitment to excellent customer service and support, position us very well to respond to the needs of rheumatologists and the patients they serve.

Marketed under our AVISE[®] brand, our testing products allow for the differential diagnosis, prognosis and monitoring of complex autoimmune and autoimmune-related diseases, including systemic lupus erythematosus (SLE) and rheumatoid arthritis (RA). We commercially launched our lead testing product, AVISE[®] CTD, in 2012. AVISE[®] CTD enables differential diagnosis for patients presenting with symptoms indicative of a wide variety of connective tissue diseases (CTDs) and other related diseases with overlapping symptoms. Revenue from this product comprised 88% and 84% of our revenue for the nine months ended September 30, 2023 and 2022, respectively. There is an unmet need for rheumatologists to add clarity in their CTD clinical evaluation, and we believe there is a significant opportunity for our tests that enable the differential diagnosis of these diseases, particularly for potentially life-threatening diseases such as SLE.

We perform all of our AVISE[®] tests in our approximately 13,000 square-foot laboratory located in Vista, California, which is certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and accredited by the College of American Pathologists (CAP). Our laboratory is certified for performance of high-complexity testing by the Centers for Medicare & Medicaid Services (CMS) in accordance with CLIA and is licensed by all states requiring out-of-state licensure. Our clinical laboratory typically reports all AVISE[®] testing product results within five business days.

Reimbursement for our testing services comes from several sources, including commercial payors (such as insurance companies and health maintenance organizations), government payors (such as Medicare and Medicaid), and patients. Reimbursement rates vary by product and payor.

Since inception we have devoted substantially all of our efforts to developing and marketing products for the diagnosis, prognosis and monitoring of autoimmune diseases. For the nine months ended September 30, 2023 and 2022, we incurred net losses of \$18.1 million and \$33.0 million, respectively, and we expect to continue to incur operating losses in the near term. Our operations have been funded primarily through equity financings, debt financings and revenue from product sales. We have never been profitable and, as of September 30, 2023, we had \$28.4 million of cash and cash equivalents and an accumulated deficit of \$273.6 million.

Our initial public offering (IPO) was completed in September 2019, raising net proceeds of approximately \$50.4 million. In March 2021, we completed a secondary public offering of common stock for net proceeds of approximately \$64.7 million.

On September 15, 2022, the Company entered into a sales agreement (the Sales Agreement) with Cowen and Company, LLC, as sales agent, pursuant to which the Company may offer and sell, from time to time, shares of our common stock having an aggregate offering price of up to \$50.0 million. The Company is not obligated to sell any shares of common stock in the offering and, as of September 30, 2023, the Company had not sold any shares of its common stock pursuant to the Sales Agreement.

Recent Developments

During the quarter ended June 30, 2023 and in connection with our previously announced revenue cycle management initiatives, we began releasing claims previously withheld from prior periods. Our ongoing revenue cycle management initiatives aim to optimize our appeals process and the potential for cash collections. The implementation of these initiatives contributed to increased accounts receivables for the three and nine months ended September 30, 2023.

During the quarter ended June 30, 2023, we began releasing claims for both commercial and government payors previously held from prior periods, principally from the quarters ending June 30, 2023 and March 31, 2023. As of September 30, 2023, payments related to these claims are being received consistently, in accordance with our expected collection rates.

In April 2023, we discontinued development of our AVISE[®] RADR platform, including the associated clinical trials.

Factors Affecting Our Performance

We believe there are several important factors that have impacted, and that we expect will impact, our operating performance and results of operations, including:

- **Reimbursement for Our Testing Products.** Our revenue depends on achieving broad coverage and reimbursement for our tests from third-party payors, including both commercial payors and government payors. Payment from third-party payors differs depending on whether we are considered a "participating provider" (have entered into a contract with the payor) or a "non-participating provider" (do not have a contract with the payor). Payors will often reimburse non-participating providers at a lower amount than participating providers, if at all. We have received a substantial portion of our revenue from a limited number of commercial payors, most of which have not contracted with us to be a participating provider. In addition to the challenges described under the heading "Overview - Recent Developments" in this Quarterly Report on Form 10-Q, historically, we have experienced situations where commercial payors proactively reduced the amounts they were willing to reimburse for our tests, and in other situations, commercial payors have determined that the amounts they previously paid were too high and have sought to recover those perceived excess payments by deducting such amounts from payments otherwise being made. When we contract to serve as a participating provider, reimbursements are made pursuant to a negotiated fee schedule and are limited to only covered indications. If we are not able to obtain or maintain coverage and adequate reimbursement from third-party payors, we may not be able to effectively increase our testing volume and revenue as expected. Additionally, changes in our estimated reimbursements for tests performed in prior periods can positively or negatively impact our revenue in the current period and cause our financial results to fluctuate.
- **Continued Growth of Our Testing Products.** Since the launch of AVISE[®] CTD in 2012 and through September 30, 2023, we have delivered approximately 857,000 of these tests. During the third quarter of 2023, 32,618 AVISE[®] CTD tests were delivered, representing a decline of approximately 8% over the same

period in 2022. Revenue growth for our testing products will depend, in part, on our ability to continue to expand our base of ordering healthcare providers and increase our penetration with existing healthcare providers.

- **Development of Additional Testing Products.** We rely on sales of our AVISE® CTD test to generate the significant majority of our revenue. We expect to continue to invest in research and development in order to develop additional testing products. Our success in developing new testing products will be important in our efforts to grow our business by expanding the potential market for our products and diversifying our sources of revenue.
- **Maintain Meaningful Margin.** We seek to maintain meaningful margin through a continued focus on increasing operating leverage through the implementation of certain internal initiatives, such as leveraging validation, utility and reimbursement oriented clinical studies to facilitate payor coverage of our testing products. We plan to center our efforts around long-term reimbursement and average sales price (ASP) growth and seek to improve our per-test costs by focusing on profitable, core test offerings and limiting fixed costs and overhead.
- **Timing of Our Research and Development Expenses.** We conduct clinical studies to validate our new testing products, as well as ongoing clinical and outcome studies to further expand the published evidence to support our commercialized AVISE® testing products. We also expend funds to secure clinical samples that can be used in discovery, product development, clinical validation, utility and outcome studies. Our spending on experiments and clinical studies may vary substantially from quarter to quarter, as the timing of these research and development activities is difficult to predict. If a substantial number of clinical samples are obtained in a given quarter or if a high-cost experiment is conducted in one quarter versus the next, the timing of these expenses will affect our financial results.
- **How We Recognize Revenue.** We record revenue on an accrual basis, using an estimate of the amount that we will ultimately realize, as determined based on a historical analysis of amounts collected by test and by payor, among other factors. Changes to such estimates may increase or decrease revenue recognized in future periods.

While each of these areas present significant opportunities for us, they also pose significant risks and challenges that we must address. We discuss many of these risks, uncertainties and other factors in the section entitled "*Risk Factors*" in this Quarterly Report on Form 10-Q, as well as in our Annual Report on Form 10-K for the year ended December 31, 2022, filed with the SEC on March 20, 2023.

Seasonality

Based on our experience to date, we expect some seasonal variations in our financial results due to a variety of factors, such as the year-end holiday period and other major holidays, vacation patterns of both patients and healthcare providers (including medical conferences), climate and weather conditions in our markets (for example, excess sun exposure can cause flares in SLE), seasonal conditions that may affect medical practices and provider activity (for example, influenza outbreaks that may reduce the percentage of patients that can be seen), and other factors relating to the timing of patient benefit changes, as well as patient deductibles and co-insurance limits.

Inflationary Environment

The current inflationary environment has resulted in higher prices, which have impacted our costs incurred to generate revenue from our laboratory testing services, costs to attract and retain personnel, and other operating costs. The severity and duration of the current inflationary environment remains uncertain and may continue to impact our financial condition and results of operations.

Financial Overview

Revenue

We recognize revenue in accordance with the provisions of ASC Topic 606, *Revenue from Contracts with Customers*. We record revenue on an accrual basis, using an estimate of the amount we will ultimately receive, as

determined based on a historical analysis of amounts collected by test and by payor, among other factors. These assessments require significant judgment by management.

To date, we have derived nearly all of our revenue from the sale of our testing products, most of which is attributable to our AVISE[®] CTD test. We primarily market our testing products to rheumatologists in the United States. The rheumatologists who order our testing products, and to whom results are reported, are generally not responsible for payment for these products. The parties that pay for these services (payors) consist of commercial payors (e.g. insurance companies, health maintenance organizations, etc.), government payors (primarily Medicare and Medicaid), client payors (e.g. hospitals, other laboratories, etc.), and patient self-pay. Our service is completed upon the delivery of test results to the prescribing rheumatologists which triggers billing for the service.

Our ability to increase our revenue will depend on our ability to further penetrate the market for our current and future testing products and increase our reimbursement and collection rates for tests delivered.

In the quarter ended March 31, 2022, CMS agreed, effective April 1, 2022, to recognize a new Proprietary Laboratory Code (PLA) code for our protein-based test, AVISE[®] Lupus. Noridian, our Medicare Administrative Contractor, priced this PLA code at \$1,085 per test. To determine pricing beyond 2022, CMS recommended crosswalking AVISE[®] Lupus (0312U) to Vectra (81490) at a rate of \$840.65 per test. This pricing was finalized on the 2023 Clinical Laboratory Fee Schedule and is effective from January 1, 2023 through December 31, 2025. The process for obtaining and maintaining consistent reimbursement for new tests can be uncertain, lengthy and time consuming. A pricing determination is not synonymous with a coverage determination. Having a price associated with the PLA code for any particular test does not secure coverage or reimbursement for that PLA code from Medicare or any other third-party payor.

In an effort to improve transparency regarding Medicare support of AVISE[®] Lupus, on July 29, 2022, we submitted a formal request to Noridian for coverage of our AVISE[®] Lupus test under the new PLA Code. On September 27, 2022, we received notice that Noridian has deemed our application for a Local Coverage Determination (LCD) to be valid. Ultimately receiving a favorable LCD is uncertain and may be time-consuming, resource intensive and require multiple quarterly or annual periods to complete. In the meantime, we have continued to submit Medicare claims for AVISE[®] Lupus, appeal denials and respond to requests for additional information.

We face challenges relating to commercial payor claim processing and revenue. Now that we are billing under our PLA code, we are experiencing denials due to unfavorable medical policy with certain plans, and we expect this situation to persist.

In July 2023, we implemented increases to our patient payment rates. We have experienced a moderate decline in test volume, as rheumatologists and patients adjust to these changes.

Operating Expenses

Costs of Revenue

Costs of revenue represents the expenses associated with obtaining and testing patient specimens. The components of our costs of revenue include materials costs, direct labor, equipment, infrastructure expenses, shipping charges to transport specimens, blood specimen collections fees, royalties, depreciation and allocated overhead (including rent and utilities).

Each payor, whether commercial, government, or individual, reimburses us at different amounts. These differences can be significant. As a result, our costs of revenue as a percentage of revenue may vary significantly from period to period due to the composition of payors for each period's billings.

We expect that our costs of revenue will increase year-over-year in the near-term as test volume increases.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist of personnel costs (including stock-based compensation expense), direct marketing expenses, accounting and legal expenses, consulting costs and allocated overhead (including rent, information technology, depreciation and utilities).

We expect that our selling, general and administrative expenses will increase year-over-year in the near-term as a result of expected additions to headcount and associated increases for personnel costs, including stock-based compensation.

Research and Development Expenses

Research and development expenses include costs incurred to develop our technology, test products and product candidates, in addition to costs incurred to collect clinical specimens and conduct clinical studies to develop and support those products and product candidates. These costs consist of personnel costs (including stock-based compensation expense), materials, laboratory supplies, consulting costs, costs associated with setting up and conducting clinical studies and allocated overhead (including rent and utilities). We expense all research and development costs in the periods in which they are incurred.

We expect that our research and development expenses will increase year-over-year in the near-term as a result of product development initiatives.

Interest Expense

Interest expense consists of cash and non-cash interest expense associated with our financing arrangements, including the borrowings under our amended loan and security agreement with Innovatus.

Other Income

Other income primarily consists of interest income earned on our cash and cash equivalents.

Results of Operations

Comparison of the Three Months Ended September 30, 2023 and 2022 (in thousands):

	Three Months Ended September 30,		Change
	2023	2022	
Revenue	\$ 13,416	\$ 14,726	\$ (1,310)
Operating expenses:			
Costs of revenue	5,710	6,010	(300)
Selling, general and administrative expenses	11,375	14,151	(2,776)
Research and development expenses	1,400	2,382	(982)
Total operating expenses	18,485	22,543	(4,058)
Loss from operations	(5,069)	(7,817)	2,748
Interest expense	(557)	(618)	61
Other income, net	211	339	(128)
Net loss	\$ (5,415)	\$ (8,096)	\$ 2,681

Revenue

Revenue decreased \$1.3 million, or 8.9%, for the three months ended September 30, 2023 compared to the three months ended September 30, 2022, primarily due to decreased test volume and decreased Medicare ASP, in addition to an increase of \$3.7 million for the three months ended September 30, 2022 from the reassessment of the constraint on variable consideration related to AVISE® Lupus Medicare claims from the second quarter of 2022, partially offset by increased commercial payor ASP and increased cash collections from tests performed in prior periods. The number of AVISE® CTD tests delivered, which accounted for 89% of revenue and 87% of revenue in the three months ended September 30, 2023 and 2022, respectively, decreased to 32,618 tests delivered in the three months ended September 30, 2023, compared to 35,569 tests delivered in the same 2022 period.

Costs of Revenue

Costs of revenue decreased \$0.3 million, or 5.0%, for the three months ended September 30, 2023 compared to the three months ended September 30, 2022. This decrease was primarily due to decreases of \$0.3 million in materials and supplies, \$0.2 million in shipping and handling costs and \$0.1 million in labor, partially offset by increases of \$0.2 million in royalty expense. Gross margin as a percentage of revenue decreased to 57.4% for the three months ended September 30, 2023, compared to 59.2% for the three months ended September 30, 2022.

Selling, General and Administrative Expenses

Selling, general and administrative expenses decreased \$2.8 million, or 19.6%, for the three months ended September 30, 2023 compared to the three months ended September 30, 2022. This decrease was primarily due to decreases of \$1.5 million in employee-related expenses (including salaries, benefits and stock-based compensation), \$0.8 million in marketing expenses, \$0.4 million in commissions, \$0.1 million in third-party billing expenses and \$0.1 million in professional services, partially offset by increases of \$0.2 million in allocated overhead.

Research and Development Expenses

Research and development expenses decreased \$1.0 million, or 41.2%, for the three months ended September 30, 2023 compared to the three months ended September 30, 2022. This decrease was primarily due to decreases of \$0.6 million in employee-related expenses (including salaries, benefits and stock-based compensation) and \$0.4 million in laboratory expenses.

Interest Expense

Interest expense remained substantially consistent for the three months ended September 30, 2023 compared to the three months ended September 30, 2022.

Other Income

Other income decreased by \$0.1 million for the three months ended September 30, 2023 compared to the three months ended September 30, 2022, primarily due to lower cash balances.

Comparison of the Nine Months Ended September 30, 2023 and 2022 (in thousands):

	Nine Months Ended September 30,		Change
	2023	2022	
Revenue	\$ 38,783	\$ 32,726	\$ 6,057
Operating expenses:			
Costs of revenue	17,472	17,905	(433)
Selling, general and administrative expenses	35,212	39,206	(3,994)
Research and development expenses	3,789	7,175	(3,386)
Total operating expenses	56,473	64,286	(7,813)
Loss from operations	(17,690)	(31,560)	13,870
Interest expense	(1,769)	(1,822)	53
Other income, net	1,343	349	994
Net loss	\$ (18,116)	\$ (33,033)	\$ 14,917

Revenue

Revenue increased \$6.1 million, or 18.5%, for the nine months ended September 30, 2023 compared to the nine months ended September 30, 2022, primarily due to increased test volume, increased Medicare accrual rates and increased cash collections on tests performed in prior periods, partially offset by decreased commercial payor accrual rates. The number of AVISE[®] CTD tests delivered, which accounted for 88% of revenue and 84% of revenue in the nine months ended September 30, 2023 and 2022, respectively, increased to 107,679 tests delivered in the nine months ended September 30, 2023 compared to 101,391 tests delivered in the same 2022 period.

Costs of Revenue

Costs of revenue decreased \$0.4 million, or 2.4%, for the nine months ended September 30, 2023 compared to the nine months ended September 30, 2022. This decrease was primarily due to decreases of \$0.6 million in materials and supplies and \$0.2 million in shipping and handling costs, partially offset by an increase of \$0.2 million in labor costs and \$0.2 million in royalty expense. Gross margin as a percentage of revenue increased to 54.9% for the nine months ended September 30, 2023, compared to 45.3% for the nine months ended September 30, 2022.

Selling, General and Administrative Expenses

Selling, general and administrative expenses decreased \$4.0 million, or 10.2%, for the nine months ended September 30, 2023 compared to the nine months ended September 30, 2022. This decrease was primarily due to decreases of \$3.7 million in employee related expenses (including salaries, benefits and stock-based compensation), \$1.0 million in marketing expenses, \$0.2 million in professional services and \$0.2 million in third-party billing expenses, partially offset by increases of \$0.5 million in allocated overhead, \$0.4 million in legal expenses and \$0.2 million in audit expenses.

Research and Development Expenses

Research and development expenses decreased \$3.4 million, or 47.2%, for the nine months ended September 30, 2023 compared to the nine months ended September 30, 2022. This decrease was primarily due to decreases of \$2.1 million in employee-related expenses (including salaries, benefits and stock based compensation), \$0.8 million in laboratory expenses, \$0.3 million in collaboration expenses, \$0.1 million in professional services and \$0.1 million in clinical trial expenses.

Interest Expense

Interest expense remained substantially consistent for the nine months ended September 30, 2023 compared to the nine months ended September 30, 2022.

Other Income

Other income increased by \$1.0 million for the nine months ended September 30, 2023 compared to the nine months ended September 30, 2022, primarily due to higher interest rates earned on invested cash and cash equivalents.

Liquidity and Capital Resources

We have incurred net losses since our inception. For the nine months ended September 30, 2023 and 2022, we incurred a net loss of \$18.1 million and \$33.0 million, respectively, and we expect to incur additional losses and increased operating expenses in future periods. To date, we have generated only limited revenue, and we may never achieve revenue sufficient to offset our expenses. As of September 30, 2023, we had an accumulated deficit of \$273.6 million and cash and cash equivalents of \$28.4 million. Cash in excess of immediate requirements is invested in accordance with our investment policy, primarily with a view to liquidity and capital preservation. Currently, our funds are held in cash and money market funds.

Since becoming a public company, our primary sources of capital have been cash inflows from product sales, sales of our common stock and, to a lesser extent, borrowings under our 2017 Term Loan. In April 2023, we further amended the 2017 Term Loan, pursuant to which we prepaid \$10.0 million of principal and amended additional terms of the agreement. See Note 4 to the unaudited condensed financial statements included in this Quarterly Report on Form 10-Q for additional information.

Our obligations under the Amended Loan Agreement are secured by a security interest in substantially all of our assets, including our intellectual property. The Amended Loan Agreement contains customary conditions to borrowing, events of default, and covenants, including covenants requiring us to maintain minimum liquidity of \$2.0 million, covenants to achieve certain minimum amounts of revenue, and covenants limiting our ability to dispose of assets, undergo a change in control, merge with or acquire other entities, incur debt, incur liens, pay dividends or other distributions to holders of our capital stock, repurchase stock and make investments, in each case subject to certain exceptions. Per the Amended Loan Agreement, we are not required to comply with the

revenue covenant for any quarter during which we maintain a minimum aggregate cash balance equal to fifty percent of the aggregate principal amount of the 2017 Term Loan funded (excluding any capitalized interest paid-in-kind) at all times during such quarter. The consequences of failing to achieve the performance covenants, when applicable, will be cured if, (i) within thirty days of failing to achieve the performance covenant, we submit a new Board approved financial plan to Innovatus under which we are expected to break even on a cash flow basis prior to the maturity date, and (ii) within thirty days of the submission of such financial plan, we issue additional equity securities or subordinated debt with net proceeds sufficient to fund any cash flow deficiency generated from operations, as defined in the Amended Loan Agreement. As of September 30, 2023, we were in compliance with all covenants of the Amended Loan Agreement with Innovatus. In addition, upon the occurrence of an event of default, Innovatus, among other things, can declare all indebtedness due and payable immediately, which would adversely impact our liquidity and reduce the availability of our cash flows to fund working capital needs, capital expenditures and other general corporate purposes.

On September 15, 2022, the Company entered into the Sales Agreement, pursuant to which the Company may offer and sell, from time to time, shares of Company common stock having an aggregate offering price of up to \$50.0 million. The Company is not obligated to sell any shares of Company common stock in the offering. As of September 30, 2023, the Company has not sold any shares of its common stock pursuant to the Sales Agreement.

On November 10, 2020, we filed a registration statement on Form S-3 (Shelf Registration Statement) covering the offering, from time to time, of up to \$150.0 million of common stock, preferred stock, debt securities, warrants and units. In March 2021, we completed a public offering of shares of our common stock, which shares were sold under the Shelf Registration Statement. Net proceeds from the offering were approximately \$64.7 million.

Funding Requirements

Our primary use of cash is to fund our operations as we continue to grow our business. We expect to continue to incur operating losses in the near term. In the short-term, we expect costs of revenue to increase year-over-year as test volume increases. We expect selling, general and administrative expenses to increase year-over-year as a result of expected additions to headcount and associated increases for personnel costs, including stock-based compensation. Research and development expenses are expected to increase year-over-year as a result of product development initiatives. We believe we have sufficient laboratory capacity to support increased test volume. Cash used to fund operating expenses is impacted by the timing of when we pay expenses, as reflected in the change in our outstanding accounts payable and accrued expenses.

We expect that our near- and longer-term liquidity requirements will consist of working capital and general corporate expenses associated with the growth of our business, including payments we may be required to make upon the achievement of previously negotiated milestones associated with intellectual property we have licensed, payments related to non-cancelable purchase obligations for reagents, payments related to our principal and interest under our long term borrowing arrangements, payments for operating leases related to our office and laboratory space in Vista, California and our office space in Carlsbad, California, payments for finance leases related to our laboratory equipment and costs associated with legal proceedings and government investigations. Based on our current business plan, we believe that our existing cash and cash equivalents and our anticipated future revenue, will be sufficient to meet our anticipated cash requirements for at least the next 12 months from the date of this filing.

Our estimate of the period of time through which our financial resources will be adequate to support our operations is a forward-looking statement and involves risks and uncertainties. Actual results could vary as a result of a number of factors, including:

- our ability to achieve sufficient market acceptance, coverage and adequate reimbursement from third-party payors and adequate market share and revenue for our testing products;
- our ability to maintain and grow sales of our AVISE® testing products, as well as the costs associated with conducting clinical studies to demonstrate the utility of our products and support reimbursement efforts;
- fluctuations in working capital;
- the costs of developing our product pipeline, including the costs associated with conducting our ongoing and future validation, utility and outcome studies as well as the success of our development efforts; and
- the extent to which we establish additional partnerships or in-license, acquire or invest in complementary businesses or products as well as the success of our existing partnerships and/or in-licenses.

Until such time, if ever, as we can generate revenue to support our costs structure, we expect to finance our operations through equity offerings, debt financings or other capital sources, including potentially collaborations, licenses and other similar arrangements. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends. To the extent that we raise additional capital through the sale of equity or convertible debt securities, the ownership interest of our stockholders may be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect the rights of our common stockholders. If additional funding is required or desired, there can be no assurance that additional funds will be available to us on acceptable terms on a timely basis, if at all, or that we will generate sufficient cash from operations to adequately fund our operating needs or achieve or sustain profitability. If we are unable to raise additional capital or generate sufficient cash from operations to adequately fund our operations, we will need to delay, reduce or eliminate some or all of our research and development programs, product portfolio expansion plans or commercialization efforts. Doing so will likely have an unfavorable effect on our ability to execute on our business plan and could have a negative impact on our commercial and strategic relationships. If we cannot expand our operations or otherwise capitalize on our business opportunities because we lack sufficient capital, our business, financial condition, and results of operations could be adversely affected.

Cash Flows

The following table summarizes our cash flows for the periods indicated:

	Nine Months Ended September 30,	
	2023	2022
(in thousands)		
Net cash used in:		
Operating activities	\$ (22,811)	\$ (26,410)
Investing activities	(720)	(3,912)
Financing activities	(10,412)	(316)
Net change in cash, cash equivalents and restricted cash	<u>\$ (33,943)</u>	<u>\$ (30,638)</u>

Cash Flows from Operating Activities

Net cash used in operating activities for the nine months ended September 30, 2023 was \$22.8 million, primarily resulting from (i) our net loss of \$18.1 million adjusted for non-cash charges of \$5.9 million primarily related to stock-based compensation, depreciation, amortization, non-cash lease expense and non-cash interest and (ii) changes in our net operating assets of \$10.5 million primarily related to net increases in accounts receivable and accrued and other current liabilities, partially offset by net decreases in accounts payable, prepaid expenses, other current assets and operating lease liabilities. The increase in accounts receivable was primarily due to delays in claim submission as part of our revenue cycle management initiatives and delayed claim processing by Medicare due to a request for medical records on submitted claims.

Net cash used in operating activities for the nine months ended September 30, 2022 was \$26.4 million and primarily resulted from (i) our net loss of \$33.0 million adjusted for non-cash charges of \$6.4 million related to stock-based compensation, depreciation, amortization, non-cash lease expense and non-cash interest and (ii) changes in our net operating assets of \$0.2 million primarily related to net decreases in accrued and other current liabilities and operating lease liabilities, partially offset by net increases in accounts payable and net decreases in prepaid expenses and other current assets.

Cash Flows from Investing Activities

Net cash used in investing activities for the nine months ended September 30, 2023 and 2022 was \$0.7 million and \$3.9 million, respectively, due to net purchases of property and equipment.

Cash Flows from Financing Activities

Net cash used in financing activities for the nine months ended September 30, 2023 was \$10.4 million, primarily resulting from the Term Loan Prepayment of \$10.0 million.

Net cash used in financing activities for the nine months ended September 30, 2022 was \$0.3 million and primarily resulted from payment on finance lease obligations and payment of taxes withheld on vested restricted stock units, partially offset by proceeds from ESPP purchases.

Critical Accounting Policies and Significant Management Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our condensed financial statements, which have been prepared in accordance with GAAP. The year-end condensed balance sheets data was derived from audited financial statements, but does not include all disclosures required by GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenue generated and expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions, and any such differences may be material.

For a description of our critical accounting policies, please see the section entitled "*Management's Discussion and Analysis of Financial Condition and Results of Operations - Critical Accounting Estimates*" contained in our Annual Report on Form 10-K for the year ended December 31, 2022 filed with the Securities and Exchange Commission (SEC) on March 20, 2023. There have been no significant changes in our critical accounting policies and estimates during the nine months ended September 30, 2023 as compared to the critical accounting policies and estimates disclosed in the Management's Discussion and Analysis of Financial Condition and Operations included in our Annual Report on Form 10-K for the year ended December 31, 2022 filed with the SEC on March 20, 2023.

Recent Accounting Pronouncements

Please see Note 2 to the unaudited condensed financial statements included in this Quarterly Report on Form 10-Q for a summary of changes in significant accounting policies.

JOBS Act Accounting Election

The Jumpstart Our Business Startups Act of 2012 (the JOBS Act), contains provisions that, among other things, reduce certain reporting requirements for an "emerging growth company." The JOBS Act permits an "emerging growth company" such as us to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We have elected to use this extended transition period under the JOBS Act until the earlier of the date we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our audited financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of public company effective dates.

We will remain an emerging growth company until the last day of our fiscal year following the fifth anniversary of the date of the first sale of our common equity securities pursuant to an effective registration statement under the Securities Act of 1933, as amended (the Securities Act), which will occur in 2024. However, if certain events occur prior to the end of this five-year period, including if we become a "large accelerated filer" as defined in Rule 12b-2 under the Exchange Act, our annual gross revenues exceed \$1.235 billion or we issue more than \$1.0 billion of non-convertible debt in any three-year period, we will cease to be an emerging growth company prior to this anniversary.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 4. Controls and Procedures

Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that the information we are required to disclose in such reports is accumulated and communicated to our management, including our principal executive officer and principal financial officer or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure.

Our management, with the participation of our principal executive officer and our principal financial officer, evaluated, as of the end of the period covered by this Quarterly Report on Form 10-Q, the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based on that evaluation, our principal executive officer and principal financial officer have concluded that as of September 30, 2023, our disclosure controls and procedures were not effective at a reasonable level of assurance, to ensure that the information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, due to the material weakness in our internal control over financial reporting described below.

Material Weakness

On November 13, 2022, management and the audit committee of our Board of Directors (the Audit Committee) determined that we made certain errors in revenue resulting from erroneous and duplicate billings related to changes in billing practices. The errors were due to the inadequate design, implementation and precision of internal controls and procedures to evaluate and monitor the accounting for revenue recognition. As a result, revenue and accounts receivable were overstated and other liabilities were understated for the quarter and year to date periods ended June 30, 2022.

We concluded that these were material errors in the financial statements requiring a restatement of the Form 10-Q for the three and six months ended June 30, 2022.

Accordingly, management has determined that this control deficiency constituted a material weakness and, as a result, management has concluded that, as of September 30, 2023, our internal control over financial reporting was not effective based on the criteria in Internal Control Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO Criteria).

Remediation Plan to Address the Material Weaknesses

Management has prepared and implemented the following remediation plan to address the material weakness as described below:

- Evaluated the staffing level, skills and qualification of accounting department personnel and hired additional personnel in our accounting department;
- Enhanced our existing control structure and processes for revenue recognition; and
- Improved the detailed review process of our revenue recognition models.

The elements of our remediation plan can only be accomplished over time, and we can offer no assurance that these initiatives will ultimately have the intended effects. The Company is committed to remediating the material weaknesses and is making progress in that effort. The actions the Company is taking are subject to ongoing senior management review, as well as oversight from the Audit Committee. When fully implemented and operational, the Company believes the measures described above will remediate the underlying causes of the control deficiencies that gave rise to the material weaknesses and strengthen the Company's internal control over financial reporting. These remediation efforts are in process as of the fiscal quarter ended September 30, 2023. The weakness will not be considered remediated, however, until the applicable controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively.

Changes in Internal Control Over Financial Reporting

There have been no changes in our internal control over financial reporting during the three months ended September 30, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls and Procedures

Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and our management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Part II. Other Information

Item 1. Legal Proceedings

From time to time, we may be involved in legal proceedings or subject to claims incident to the ordinary course of business. Regardless of the outcome, such proceedings or claims can have an adverse impact on our business resulting from defense and settlement costs, diversion of resources and other factors. There can be no assurances that favorable outcomes will be obtained.

We have completed and executed a settlement agreement (the Settlement Agreement) with the U.S. Department of Justice (DOJ) and have received the final approval of the Office of Inspector General-HHS and the United States District Court for the Commonwealth of Massachusetts. The Settlement Agreement grants us a dismissal with prejudice to the United States and whistleblower for the covered conduct and without prejudice to the United States as to all other claims in connection with the previously disclosed DOJ investigation, which has been pending since February of 2022. Pursuant to the Settlement Agreement, we made a single lump-sum remittance to the government in the amount of \$0.7 million plus interest in October 2023. We have agreed to the settlement amount without admission of wrongdoing in order to resolve the allegations and to avoid the uncertainty and expense of protracted litigation. In connection with the settlement, we will not be required to enter into a corporate integrity agreement with the Office of Inspector General-HHS.

Our participation in federal healthcare programs is not affected by the Settlement Agreement.

Item 1A. Risk Factors

There have been no material changes to the risk factors disclosed in Part I, Item 1A, "Risk Factors" of our Annual Report on Form 10-K for the year ended December 31, 2022, other than those set forth below:

We have identified a material weakness in our internal control over financial reporting and determined that our disclosure controls and procedures were ineffective as of September 30, 2023, in connection with the restatement of our financial statements as of and for the three and six months ended June 30, 2022. In the future, we may identify additional material weaknesses or otherwise fail to maintain an effective system of internal control over financial reporting or adequate disclosure controls and procedures, which may result in material errors in our financial statements or cause us to fail to meet our period reporting obligations.

Our management, with the participation of our principal executive officer and principal financial officer, evaluated the effectiveness of our disclosure controls and procedures. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports that we file or submit under the Exchange Act, is recorded, processed, summarized and reported within the time period specified in the SEC's rules and forms, and that the information required to be disclosed by us in such reports is accumulated and communicated to our management, including our principal executive officer and principal financial officer or persons performing similar functions, as appropriate, to allow 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 provide only reasonable and not absolute assurance of achieving the desired control objectives. In reaching a reasonable level of assurance, management necessarily is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. In addition, the design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, control may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate.

On November 13, 2022, management and the Audit Committee determined that we made certain errors in revenue resulting from erroneous and duplicate billings related to changes in billing practices. The errors were due to the inadequate design, implementation and precision of internal controls and procedures to evaluate and monitor the accounting for revenue recognition. As a result, revenue and accounts receivable were overstated and other liabilities was understated for the quarter and year to date periods ended June 30, 2022. We then determined that

there were material errors in the financial statements requiring a restatement of the Form 10-Q for the three and six months ended June 30, 2022.

Accordingly, management has determined that this control deficiency constituted a material weakness and, as a result, management has concluded that, as of September 30, 2023, our internal control over financial reporting was not effective based on the COSO criteria.

Management has implemented remediation efforts to address the material weakness. These efforts include: (i) evaluating the staffing level, skills, and qualification of accounting department personnel and hiring additional personnel in our accounting department, (ii) enhancement of our existing control structure and processes for revenue recognition, and (iii) improving the detailed review process of our revenue recognition models. The elements of our remediation plan can only be accomplished over time, and we can offer no assurance that these initiatives will ultimately have the intended effects.

If we are not able to comply with the applicable requirements of the Sarbanes-Oxley Act of 2002 or if we are unable to maintain effective internal control over financial reporting, we may not be able to produce timely and accurate financial statements or guarantee that information required to be disclosed by us in the reports that we file with the SEC, is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms. Any failure of our internal control over financial reporting or disclosure controls and procedures could cause our investors to lose confidence in our publicly reported information, cause the market price of our stock to decline, expose us to sanctions or investigations by the SEC or other regulatory authorities, or impact our results of operations.

The Food and Drug Administration (FDA) may finalize its rulemaking to regulate laboratory-developed tests (LDTs), or Congress may take action to reform the current legal requirements applicable to LDTs. In either case we may become subject to extensive regulatory requirements and may be required to conduct additional clinical trials prior to continuing to sell our existing tests or launching any other tests we may develop, which may increase the cost of conducting, or otherwise harm, our business.

We currently market our AVISE® tests as LDTs and may, in the future, market other tests as LDTs. Although historically the FDA has applied a policy of enforcement discretion with respect to LDTs whereby the FDA does not generally actively enforce its regulatory requirements for such tests, in October 2023, the FDA issued a proposed rule to regulate LDTs under the current medical device framework. The agency's proposal also includes a plan to phase out its current enforcement discretion policy over several years. This FDA rulemaking was initiated after years of failed congressional attempts to harmonize the regulatory paradigms applicable to LDTs and other *in vitro* diagnostic tests, as discussed further below. The likelihood of the FDA finalizing the proposed rule following a public comment period, as well as potential litigation challenging its authority to take such action, is uncertain at this time as stakeholders continue to press for a comprehensive legislative solution instead of administrative agency action.

If there are changes in FDA regulations or legislative authorities such that the agency begins to exercise oversight over LDTs, or if the FDA disagrees that our marketed tests are within the scope of its criteria used for defining LDTs, we may become subject to extensive regulatory requirements and may be required to stop selling our existing tests or launching any other tests we may develop and to conduct additional clinical trials or take other actions prior to continuing to market our tests. If the FDA allows our tests to remain on the market but there is uncertainty about our tests, if they are labeled investigational by the FDA or if labeling claims the FDA allows us to make do not include the claims necessary or desirable for successful commercialization, orders from healthcare providers or reimbursement for our tests may decline.

In addition, as noted above, Congress had been working on legislation to create an LDT and IVD regulatory framework that would be separate and distinct from the existing medical device regulatory framework. Reform legislation called the Verifying Accurate Leading-edge IVCT Development Act of 2022 (the VALID Act) garnered bipartisan and bicameral support in recent years but failed to move out of committee during the last congressional session. As drafted and re-introduced for consideration by the current Congress, the VALID Act would codify the term "in vitro clinical tests" (IVCT) to create a new medical product category separate from medical devices to include products currently regulated as IVDs as well as LDTs, among other provisions. The VALID Act would also create a new system for laboratories to use to submit their tests electronically to the FDA for approval, which is aimed at reducing the amount of time it would take for the agency to approve such tests and establish a new program to expedite the development of diagnostic tests that can be used to address a current unmet need for patients. The FDA's October 2023 publication of an LDT proposed rule that would apply the existing medical device framework to laboratory-developed products has renewed stakeholder calls for a more targeted approach to

modernizing the federal government's oversight of clinical diagnostic tests. It remains possible that congressional action in this area could displace the need for the FDA to complete its recently proposed rulemaking.

If Congress were to pass the VALID Act or any other legislation applicable to the FDA's regulation of LDTs, or if the FDA were to successfully promulgate new regulations for such products through the recently initiated notice-and-comment rulemaking or a future rulemaking proceeding, we will likely be subject to increased regulatory burdens such as registration and listing requirements, adverse event reporting requirements and quality control requirements. Any legislation or formal FDA regulatory framework affecting LDTs is also likely to have premarket application requirements prohibiting commercialization without FDA authorization and controls regarding modification to the tests that may require further FDA submissions. The premarket review process can be lengthy, expensive, time-consuming and unpredictable. Further, obtaining premarket clearance may involve, among other things, successfully completing clinical trials, which require significant time and cash resources and are subject to a high degree of risk, including risks of experiencing delays, failing to complete the trial or obtaining unexpected or negative results. If we are required to obtain premarket clearance or approval and/or conduct premarket clinical trials, our development costs could significantly increase, marketing of any new tests we may develop may be delayed, and sales of our existing tests could be interrupted or stopped. Any of these outcomes could reduce our revenue or increase our costs and materially adversely affect our business, prospects, results of operations or financial condition.

The outcome and ultimate impact on our business of any changes to the federal government's regulation of LDTs is difficult to predict. Failure to comply with any applicable FDA requirements could trigger a range of enforcement actions, including warning letters, fines, penalties, suspension of operations, product recalls or seizures, denial of applications for clearance or approval, injunctions and other civil or criminal sanctions, which could have a material and adverse effect upon our business, operating results and financial condition.

Furthermore, should it be required in the future, we cannot be sure that our AVISE® tests, or any new tests that we may develop, will be reviewed and authorized for marketing by the FDA in a timely or cost-effective manner, if authorized at all. Even if such tests are authorized for marketing by the FDA, the agency could limit the test's indications for use, which may significantly limit the market for that product and may adversely affect our business and financial condition.

We may, and with respect to certain matters are likely to, be required to modify our business practices, pay fines, incur significant expenses or experience losses due to litigation or governmental investigations.

From time to time and in the ordinary course of our business, we have been and may be subject to litigation or governmental investigation on a variety of matters in the United States or foreign jurisdictions, including, without limitation, regulatory, intellectual property, product liability, antitrust, consumer, false claims, whistleblower, Qui Tam, privacy, anti-kickback, anti-bribery, environmental, commercial, securities and employment litigation and claims and other legal proceedings that may arise from the conduct of our business. Our activities relating to our products and services are subject to extensive regulation in the United States and foreign jurisdictions. Like many companies in our industry, we have in the ordinary course of business received inquiries, subpoenas, civil investigative demands, and other types of information requests from government authorities. In addition, any litigation or government investigation generally, diverts the attention of our management team and resources from our core business and limits the time and attention of our management team otherwise available to devote to our business. Government investigation and litigation in general may cause us to incur significant expenses (for example, pursuant to the Settlement Agreement, we made a single lump-sum remittance to the government in the amount of \$0.7 million plus interest in October 2023), to experience significant losses, and, as a result of such matters, we may also be required to materially alter the conduct of our operations or pay significant penalties. Any of these circumstances may adversely affect our business, prospects, reputation and results of operations.

Item 5. Other Information

On November 13, 2023 our Board of Directors approved and adopted the Exagen Inc. Clawback Policy (the Clawback Policy), which was established in accordance with the listing requirements of the Nasdaq Stock Market LLC. The Clawback Policy provides for the recovery or “clawback” of certain erroneously awarded incentive-based compensation in the event that the Company is required to prepare an accounting restatement. The Clawback Policy is effective as of October 2, 2023. The foregoing description of the material terms of the Clawback Policy is qualified in its entirety by reference to the full text of the Clawback Policy, which is filed as Exhibit 10.2 to this Quarterly Report on Form 10-Q and incorporated herein by reference.

Item 6. Exhibits

Exhibit Number	Exhibit Description	Incorporated by Reference			Exhibit Filing Date	Filed/Furnished Herewith
		Form	File No.	Exhibit		
3.1	Amended and Restated Certificate of Incorporation.	8-K	001-39049	3.1	9/23/2019	
3.2	Amended and Restated Bylaws.	8-K	001-39049	3.1	3/22/2021	
3.3	Amendment to Amended and Restated Bylaws, dated January 19, 2023	8-K	001-39049	3.1	1/23/2023	
4.1	Specimen stock certificate evidencing the shares of common stock.	S-1/A	333-233446	4.1	9/9/2019	
4.2	Amended and Restated Investors' Rights Agreement, dated July 12, 2019, by and among the Company and certain of its stockholders.	S-1/A	333-233446	4.2	9/9/2019	
4.3	Amended and Restated Stockholders' Agreement, dated July 12, 2019, by and among the Company and certain of its stockholders.	S-1/A	333-233446	4.3	9/9/2019	
4.4	Form of Common Stock Purchase Warrant issued to investors by the Company in connection with private placement financings.	S-1/A	333-233446	4.4	9/9/2019	
4.5	Form of Common Stock Purchase Warrant to purchase common stock issued to investors by the Company in 2016.	S-1/A	333-233446	4.8	9/9/2019	
4.6	Form of Exchange Warrant	10-Q	001-39049	4.5	8/9/2021	
10.1	Assignment and Assumption Agreement, by and among Liberty Vista, L.P., Mindera Corporation and the Company.					X
10.2#	Exagen Inc. Clawback Policy.					X
31.1	Certificate of Principal Executive Officer, pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
31.2	Certificate of Principal Financial Officer, pursuant to Rule 13a-14(a)/15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
32.1*	Certifications Pursuant to U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Public Company Accounting Reform and Investor Protection Act of 2002.					X
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.					X
101.SCH	Inline XBRL Taxonomy Extension Schema Document.					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.					X
101.LAB	Inline XBRL Taxonomy Extension Labels Linkbase Document.					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.					X
104	The cover page from the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2023, has been formatted in Inline XBRL.					X

* This certification is deemed not filed for purpose of section 18 of the Exchange Act or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act.

Indicates management contract or compensatory plan.

Signatures

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

EXAGEN INC.

Date: November 13, 2023

by: /s/ John Aballi
John Aballi
President and Chief Executive Officer
(Principal Executive Officer)

Date: November 13, 2023

by: /s/ Kamal Adawi
Kamal Adawi
Chief Financial Officer
(Principal Financial and Accounting Officer)



ASSIGNMENT AND ASSUMPTION OF LEASE AND CONSENT OF LESSOR

1. ASSIGNMENT OF LEASE

For valuable consideration, the receipt and adequacy of which are hereby acknowledged, Exagen Diagnostics, Inc., a Delaware corporation ("ASSIGNOR") hereby assigns and transfers to Mindera Corporation dba Mindera Health ("ASSIGNEE") all of ASSIGNOR's right, title and interest in and to that certain Lease dated October 11, 2021, by and between ASSIGNOR and Liberty Vista, a California limited partnership, as Lessor, covering those certain Premises located at (street address, city, state, zip) 1221 Liberty Way, Vista, CA 92081 and as is more particularly described in such Lease.

This Assignment shall be effective: November 1, 2023. Signatures to this Assignment accomplished by means of electronic signature or similar technology shall be legal and binding.

In addition, ASSIGNOR hereby transfers to ASSIGNEE all of ASSIGNOR's interest in and to any security or other deposits paid to Lessor under the terms of such Lease.

Dated: 2023-Oct-20

Exagen Diagnostics, Inc., a Delaware corporation

DocuSigned by:

By: _____
Name Printed: John Abatti
Title: CEO

By: _____
Name Printed: _____
Title: _____
Assignor

2. ASSUMPTION OF LEASE

Assignee acknowledges that it has inspected the Premises and reviewed the Lease and Assignee hereby accepts the foregoing Assignment and assumes and agrees to be bound by and perform all obligations of the Lessee pursuant to the Lease arising on or after the date of this Assignment and to abide by all of the terms, provisions, covenants and conditions of the Lease.

Dated: 10/19/2023

Mindera Corporation dba Mindera Health

DocuSigned by:

By: _____
Name Printed: Robin Dickerson
Title: Chief Scientific Officer & Co-founder

By: _____
Name Printed: _____
Title: _____
Assignee

3. CONSENT TO ASSIGNMENT

Lessor hereby consents to the foregoing Assignment and Assumption of the Lease. It is understood and agreed, however, that the foregoing consent is not a waiver of Lessor's right to consent to or impose restrictions upon any future assignment or subletting. In addition, this assignment ~~does not~~ release S Assignor from liability for ~~all any~~ of the obligations of the Lessee under the Lease.

Dated: 10/24/2023

Liberty Vista, a California limited partnership

DocuSigned by:

By: _____
Name Printed: Brendan Thiessen
Title: President

INITIALS

INITIALS

By: _____
Name Printed: _____
Title: _____
Lessor

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY REAL ESTATE BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS ASSIGNMENT OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS ASSIGNMENT.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PROPERTY, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR ASSIGNEE'S INTENDED USE.

WARNING: IF THE SUBJECT PROPERTY IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE ASSIGNMENT MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED.

AIR CRE * <https://www.aircre.com> * 213-687-8777 * contracts@aircre.com
NOTICE: No part of these works may be reproduced in any form without permission in writing.



INITIALS

© 2017 AIR CRE. All Rights Reserved.

AACL-1.02, Revised 10-22-2020



INITIALS

Last Edited: 10/19/2023 11:13 AM

Page 2 of 2

LEASE ASSIGNMENT ADDENDUM

Date:

October 19, 2023

Between:

Lessor: Liberty Vista, a California limited partnership

Assignee: Mindera Corporation dba Mindera Health

Assignor: Exagen Diagnostics, Inc., a Delaware Corporation

Property Address:

1221 Liberty Way, Vista, CA 92081

Paragraph: 4-9

In the event of any conflict between the provisions of this Addendum and the printed provisions of the Lease, this Addendum shall control.

4. Early Occupancy.

Assignee shall have the right to coordinate access for Cox Communications prior to commencement for the installation of internet connectivity.

5. First (1st) Month's Rent and Security Deposit.

Upon Assignment execution, Assignee shall pay to Lessor First (1st) Month's Rent and a Security Deposit equal to 3x last months' base rent and OPEX. If Assignee is in good standing, 1x month will burn off in month 25 in the form of prepaid rent. Upon Assignment execution, Landlord shall return Assignor's security deposit in full.

6. Restoration.

Assignee shall deposit \$175,000 with the Landlord at the signing of this assignment, which shall be held on file for the purpose of restoring a portion of the lab back into warehouse when the assignee vacates, referenced in Exhibit A. Any unused funds shall be returned to the Assignee within 60 days of the assignee vacating the premises.

7. FF&E.

Assignor shall leave all fixtures, furniture, and equipment currently in the space for the Assignee to use for the duration of the sublease term and shall become Assignee's property following execution of the assignment. Refer to Exhibit B for FF&E inventory.

8. Premises Condition.

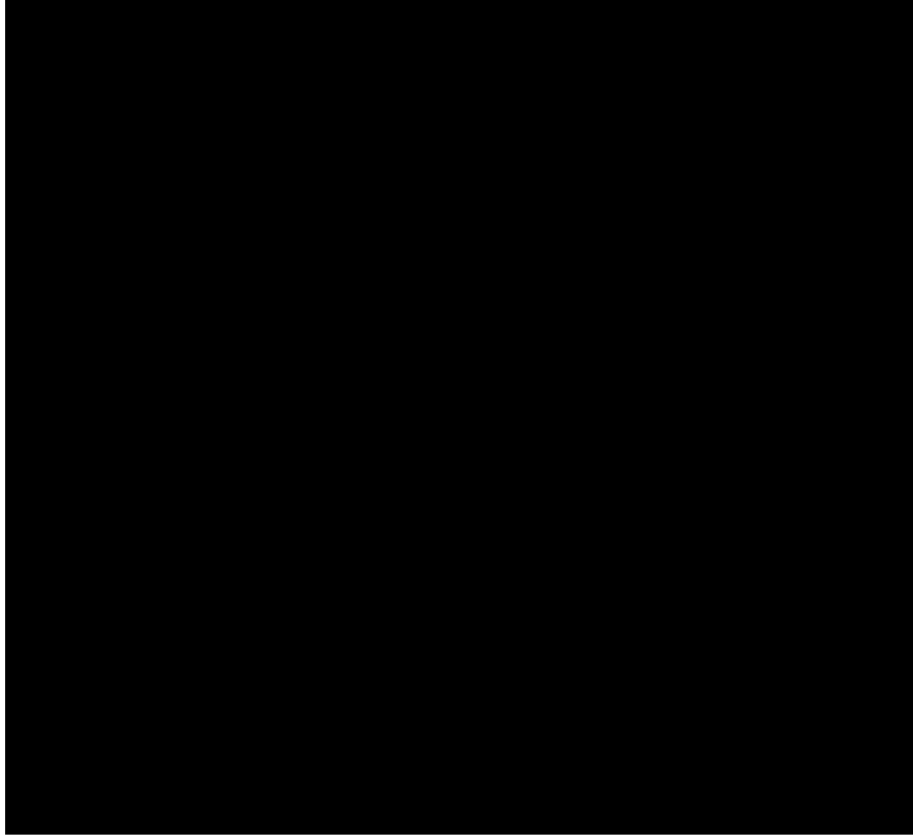
Assignor shall provide the space in broom clean but otherwise as-is condition as of the commencement of the Lease.

9. Assignor's Release from Future Liability.

The Landlord shall fully release the Assignor from all duties and obligations under the Assignor's existing lease of the Premises upon execution of the Assignment and receipt of sixty-five thousand dollars (\$65,000) in the form of an additional security deposit from the Assignor. The additional security deposit will be returned to the Assignor upon completion of the existing lease term on the condition that all of the lessee's obligations under the lease are met.



EXHIBITS TO LEASE
Exhibit A
Existing Premises



- Office
- Warehouse
- Lab


INITIALS

© 2019 AIR CRE. All Rights Reserved.
EXLS-1.00, Revised 10-22-2020


INITIALS

Last Edited: 10/19/2023 11:13 AM
Page 1 of 1



EXHIBITS TO LEASE
Exhibit B
FF&E Inventory List

A rectangular box containing a handwritten signature in blue ink, with the word "INITIALS" printed below it.

INITIALS
© 2019 AIR CRE. All Rights Reserved.
EXLS-1.00, Revised 10-22-2020

A rectangular box containing a handwritten signature in blue ink, with the word "INITIALS" printed below it.

Last Edited: 10/19/2023 11:13 AM
Page 1 of 1

Mindera Health 1221 Liberty Way Walkthrough Results
FFE Summary

CHAIRS

- 29 Ergonomic Office
- 31 Non-Ergo Office
- 43 Std. 4-Leg Cushioned
- 28 Plastic Stackable

DESKS

- 23 L Shaped
- 5 U Shaped
- 10 Std. Rectangle

APPLIANCES

- 1 Dishwasher
- 1 Refrigerator

FURNITURE

- 5 2D File Cabinet, Padded Top, Mobile
- 1 2D File Cabinet
- 2 3R Book Shelf
- 1 4R Book Shelf
- 1 6 Person Patio Dining Set
- 1 Broad Room Table
- 1 Conference Room Table
- 2 Countertop Cabinet
- 1 Cushioned Chase Chair (CSO)
- 2 Cherry Cabinet Hutch (C Suites)
- 1 Projection Screen
- 4 Office Tables, Round

LAB

- 20 Lab benches
- 6 Shelving for lab benches
- 2 Biological safety cabinets



EXHIBITS TO LEASE
Exhibit C
Master Lease

A handwritten signature in black ink, enclosed within a rectangular box.

INITIALS

© 2019 AIR CRE. All Rights Reserved.
EXLS-1.00, Revised 10-22-2020

Handwritten initials "TD" in black ink, enclosed within a rectangular box.

INITIALS

Last Edited: 10/19/2023 11:13 AM
Page 1 of 1



AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE -- NET
(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. Basic Provisions ("Basic Provisions").

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only August 15, 2014, is made by and between Geiger Court, LLC ("Lessor") and Exagen Diagnostics, Inc. ("Lessee"),

(collectively the "Parties," or individually a "Party").
1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 1221 Liberty Way, located in the County of San Diego, State of California and generally described as (describe briefly the nature of the property and, if applicable, the "Project", if the property is located within a Project) an approximately 19,504 SF freestanding industrial building ("Premises"). (See also Paragraph 2)

1.3 **Term:** 3 years and 0 months ("Original Term") commencing February 1, 2015 ("Commencement Date") and ending January 31, 2018 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing upon completion of tenant improvements ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3 and 51)

1.5 **Base Rent:** \$15,798.00 per month ("Base Rent"), payable on the first day of each month commencing February 1, 2015. (See also Paragraph 4 & 50)

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50

1.6 **Base Rent and Other Monies Paid Upon Execution:**

- (a) **Base Rent:** \$N/A for the period See Paragraph 57
- (b) **Security Deposit:** \$20,206.00 ("Security Deposit"). (See also Paragraph 5 & 55)
- (c) **Association Fees:** \$N/A for the period N/A
- (d) **Other:** \$N/A for N/A

(e) **Total Due Upon Execution of this Lease:** \$20,206.00 (see paragraph 55)

1.7 **Agreed Use:** General office and warehouse storage for a diagnostics company. (See also Paragraph 6)

1.8 **Insuring Party:** Lessor is the "Insuring Party" unless otherwise stated herein. (See also Paragraph 8)

1.9 **Real Estate Brokers:** (See also Paragraph 15 and 25)

(a) **Representation:** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- Lee & Associates - Merz/Knoke represents Lessor exclusively ("Lessor's Broker");
- Cassidy Turley - Steven Field represents Lessee exclusively ("Lessee's Broker"); or
- _____ represents both Lessor and Lessee ("Dual Agency").

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of N/A or N/A % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.10 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by N/A ("Guarantor"). (See also Paragraph 37)

1.11 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- an Addendum consisting of Paragraphs 50 through 61;
- a plot plan depicting the Premises: Exhibit A
- a current set of the Rules and Regulations;
- a Work Letter;
- a energy disclosure addendum is attached;
- other (specify): Option to Extend, Standard Lease Disclosure

INITIALS

INITIALS

2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and on all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("**Start Date**"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("**HVAC**"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "**Building**") shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 12 months as to the HVAC systems, and (ii) ~~30 days~~ 12 months as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

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

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to

investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

3. **Term.**

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

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

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

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

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

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

4.3 **Association Fees.** In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee

shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

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

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

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

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. **No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.**

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30


INITIALS


INITIALS

days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the such Requirements, without regard to whether such Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of a written request therefor. In addition, Lessee shall provide Lessor with copies of its business license, certificate of occupancy and/or any similar document within 10 days of the receipt of a written request therefor.

6.4 **Inspection; Compliance.** Lessor and Lessor's "**Lender**" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of a written request therefor.

7. **Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, roof drainage systems, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, ~~(ii) boiler, and pressure vessels,~~ (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, ~~and (vi) elevators.~~ However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b), *including the roof*, cannot be repaired other than at a cost which is in excess of ~~60~~ 25% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (ie. 1/144th of the cost per month). Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by

addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs. *Lessee shall not be responsible for claims and payments related to liens or bonds for labors or materials that are not furnished to Lessee.*

7.4 **Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. **Insurance; Indemnity.**

8.1 **Payment For Insurance.** Lessee shall pay for all insurance required under Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of \$2,000,000 per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within 10 days following receipt of an invoice.

8.2 **Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.


INITIALS


INITIALS

8.3 **Property Insurance - Building, Improvements and Rental Value.**

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss.

(b) **Rental Value.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 **Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely


INITIALS


INITIALS

difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. **Damage or Destruction.**

9.1 **Definitions.**

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "**Insured Loss**" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "**Replacement Cost**" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) "**Hazardous Substance Condition**" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires remediation.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for


INITIALS


INITIALS

which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

10.1 **Definition.** As used herein, the term "**Real Property Taxes**" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 **Payment of Taxes.** In addition to Base Rent, Lessee shall pay to Lessor an amount equal to the Real Property Tax installment due at least 20 days prior to the applicable delinquency date. If any such installment shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such installment shall be prorated. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payments shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sum as is necessary. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

10.3 **Joint Assessment.** If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

10.4 **Personal Property Taxes.** Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "**assign or assignment**") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent *and such consent shall not be reasonably withheld.*

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee *that results in a reduction of the net worth of the Lessee by an amount greater than 49%* shall constitute an assignment requiring consent. ~~The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.~~

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than ~~25~~ *49%* of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "**Net Worth of Lessee**" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted counting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base


INITIALS


INITIALS

Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to atton to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.


INITIALS


INITIALS

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested coordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time


INITIALS


INITIALS

late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided, however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees.**

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.9 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.9, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel


INITIALS


INITIALS

Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

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

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or by email shall be deemed delivered upon telephone confirmation of receipt (if by fax, a confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party


INITIALS

any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. **To the Lessee:** a. A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. **To the Lessee and the Lessor:** a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or


INITIALS


INITIALS

to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary "**For Sale**" signs at any time and ordinary "**For Lease**" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association, and each such Guarantor shall have the same obligations as Lessee under this Lease.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted any Option, as defined below, then the following provisions shall apply:

39.1 **Definition.** "**Option**" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Multiple Buildings.** If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the


INITIALS


INITIALS

care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations.

41. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. **Reservations.** Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" with 6 months shall be deemed to have waived its right to protest such payment.

44. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. **Conflict.** Any conflict between the printed provisions of this Lease and typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. **Offer.** Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

48. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

49. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease is is not attached to this Lease.

50. **Accessibility; Americans with Disabilities Act.**

(a) The Premises: have not undergone an inspection by a Certified Access Specialist (CASp). have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

(b) Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED.


INITIALS


INITIALS

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Blackhawk, NV Executed at: V1512 CA
On: 7-4-22 On: 08/22/14

By LESSOR: Geiger Court, LLC By LESSEE: Exagen Diagnostics, Inc.

By: [Signature] By: [Signature]
Name Printed: Hal Tibury Name Printed: Ron Rocca
Title: General Partner Title: CEO
By: _____ By: _____
Name Printed: _____ Name Printed: _____
Title: _____ Title: _____
Address: 2560 Anthem Village Drive, Suite 200 Address: 801 University Blvd, Ste 103
Henderson, NV 89052 Albuquerque, NM 87106
Telephone: (760) 410-9000 Telephone: ()
Facsimile: () Facsimile: ()
Email: _____ Email: _____
Federal ID No. _____ Federal ID No. _____

BROKER: Lee & Associates Commercial Real Estate **BROKER:** Cassidy Turley
Services-North San Diego County, Inc.
Attn: Peter Merz/Daniel Knoke Attn: Steven Field
Title: _____ Title: _____
Address: 1900 Wright Place, Suite 200 Address: 1000 Aviara Pkwy #100
Carlsbad, CA 92008 Carlsbad, CA 92011
Telephone: (760) 929-9700 Telephone: (760) 431-4200
Facsimile: (760) 929-9977 Facsimile: ()
Email: pmerz@lee-associates.com Email: _____
Federal ID No. _____ Federal ID No. 20-0434866
Broker/Agent BRE License #: 01269042/01215373 Broker/Agent BRE License #: 01762108

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

© Copyright 2001 - By AIR Commercial Real Estate Association. All rights reserved.
No part of these works may be reproduced in any form without permission in writing.

[Signature]
INITIALS

[Signature]
INITIALS

ADDENDUM TO LEASE DATED AUGUST 15, 2014 BY AND BETWEEN GEIGER COURT, LLC, AS LESSOR, AND EXAGEN DIAGNOSTICS, INC., AS LESSEE, FOR THE PREMISES KNOWN AS 1221 LIBERTY WAY, VISTA, CALIFORNIA 92083.

50- BASE RENT SCHEDULE:

Per Paragraph 50, Base Rent shall be as follows:

February 1, 2015 - January 31, 2016	\$15,798.00/month plus operating expenses (NNN's)*
February 1, 2016 - January 31, 2017	\$16,344.00/month plus operating expenses (NNN's)*
February 1, 2017 - January 31, 2018	\$16,910.00/month plus operating expenses (NNN's)*

* Per paragraph 58, Lessee is paying \$0.01 per SF per month for using the furniture. The base rental rate per month is \$0.80/SF per month with annual increases of 3.5%. The rental schedule includes a monthly charge of \$195.00 (\$19,504 SF x \$0.01/SF) added, after calculating annual increases, as a flat rate to each month of the lease term. Operating expenses (NNN's) are defined as all obligations of Lessee stated in the Lease in addition to Base Rent.

51- EARLY OCCUPANCY:

Lessee shall be granted early occupancy, free of base rent and operating expenses upon Lessor vacating premises and substantial completion of premises' improvements.

52- TENANT IMPROVEMENTS:

Lessor, at its sole cost shall complete the following:

- A. Professionally clean entire Premises, including warehouse.
- B. New carpet to existing carpeted office areas, color of Lessee's choice. Grade of carpet to be similar to what presently exists in the building and shall not exceed \$2.65/SF (based on estimate of high quality carpet from Tri-City Flooring in Vista).
- C. New paint to existing office area, color of Lessee's choice.
- D. Replace any stained or damaged ceiling tiles.
- E. Replace any burned out light fixtures.
- F. Lessee to otherwise accept the Premises in its current AS-IS condition, however prior to delivery of possession, Lessor and Lessee shall conduct a walk-through of the Premises to develop a punch list of any minor, miscellaneous repairs that shall be completed by Lessor at Lessor's sole cost and expense.

53- SIGNAGE:

Lessee shall be permitted to install building top and window signage at Lessee's sole cost. All signage shall conform to all zoning, CC&Rs, and reasonable Lessor approval. Lessor, at its sole cost shall remove current building signage.

54- HVAC:

Prior to Lease execution, Lessor to provide equipment list and maintenance records for Lessee's review. In the event any of the existing HVAC units are in poor condition or if the term of the lease exceeds the remaining useful life of any of the units, then Lessor shall be responsible for the repair and/or replacement at its sole cost.

55- SECURITY DEPOSIT AND MONIES PAID UPON EXECUTION:

Total security deposit shall be \$40,412.00 (2x last month's rent plus operating expenses). Upon execution of Lease, Lessee shall pay half of this security deposit (\$20,206.00). Upon waiving the termination options described in Paragraph 56, Lessee shall pay the additional \$20,206.00 balance due for the security deposit.

56- TERMINATION OPTION:

Lessee shall have the one-time Option to Terminate the Lease agreement on or before November 1, 2014 and shall pay a termination fee equal to half of the Security Deposit which shall be immediately due and payable upon Lessee's exercising such Option to Terminate. This termination option shall expire automatically after November 1, 2014.

57- PREPAID RENT:

Upon Lessee's waiver of the Termination Option, or November 1, 2014, whichever occurs sooner, Lessee will deliver to Lessor a check representing the first month's rent.

58- EXISTING FURNITURE:

Existing office furniture shall remain with the Premises for Lessee's usage, free of charge, during the Lease Term. Furniture is owned by Lessor and shall remain in the Premises at the expiration of the Lease Term. Excludes file cabinets, electronic equipment, telephone equipment, and telephones. Lessee may use furniture for \$0.01/SF per month during the Lease Term. At the end of the Lease, they may either keep the furniture or leave it in Premises at their sole option.

Lessor and Lessee shall take an inventory and mutually inspect the current condition of all furniture to remain in the Premises. Lessee agrees to keep all existing furniture in good order and repair during the lease term and shall return Lessor in such condition, less normal wear and tear.

59- STANDSTILL PERIOD:

Lessor agrees to take the Premises off the market upon Lease execution and Lessee's submittal of Security Deposit, and until Lessee's waiver of the Termination Option or November 1, whichever occurs sooner.

60- EXPIRATION:

This lease shall automatically expire if not executed by Lessee by 5:00pm on Monday, August 25, 2016.

IN, WITNESS WHEREOF, Lessor and Lessee have executed this Addendum concurrently with the Lease of even date herewith.

"LESSOR"

GEIGER COURT, LLC

By: 
Hil Tilbury

Its: General Partner

Date: 9.4.2014

"LESSEE"

EXAGEN DIAGNOSTICS, INC.

By: 
Ron Rocca

Its: CEO

Date: 08/22/14



OPTION(S) TO EXTEND STANDARD LEASE ADDENDUM

Dated August 15, 2014

By and Between (Lessor) Geiger Court, LLC

By and Between (Lessee) Exagen Diagnostics, Inc.

Address of Premises: 1221 Liberty Way
Vista, CA

Paragraph 60

A. OPTION(S) TO EXTEND:

Lessor hereby grants to Lessee the option to extend the term of this Lease for one (1) additional twenty-four (24) month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 90 but not more than 180 months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.

(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:
(Check Method(s) to be Used and Fill in Appropriately)

I. **Cost of Living Adjustment(s) (COLA)**

a. On (Fill in COLA Dates): _____

the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): CPI W (Urban Wage Earners and Clerical Workers) or CPI U (All Urban Consumers), for (Fill in Urban Area): _____

All Items (1982-1984 = 100), herein referred to as "CPI".

b. The monthly Base Rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or "Fill in Other "Base Month": _____

The sum so calculated shall constitute the new monthly Base Rent hereunder, but in no event, shall any such new monthly Base Rent be less than the Base Rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

II. **Market Rental Value Adjustment(s) (MRV)**

a. On (Fill in MRV Adjustment Date(s)) February 1, 2018

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in

INITIALS

INITIALS

writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an appraiser or broker ("**Consultant**" - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie. the one that is NOT the closest to the actual MRV.

2) When determining MRV, the Lessor, Lessee and Consultants shall consider the terms of comparable market transactions which shall include, but no limited to, rent, rental adjustments, abated rent, lease term and financial condition of tenants.

3) Notwithstanding the foregoing, the new Base Rent shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):

The New Base Rent shall be:

IV. Initial Term Adjustments.

The formula used to calculate adjustments to the Base Rate during the original Term of the Lease shall continue to be used during the extended term.

B. NOTICE:

Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:

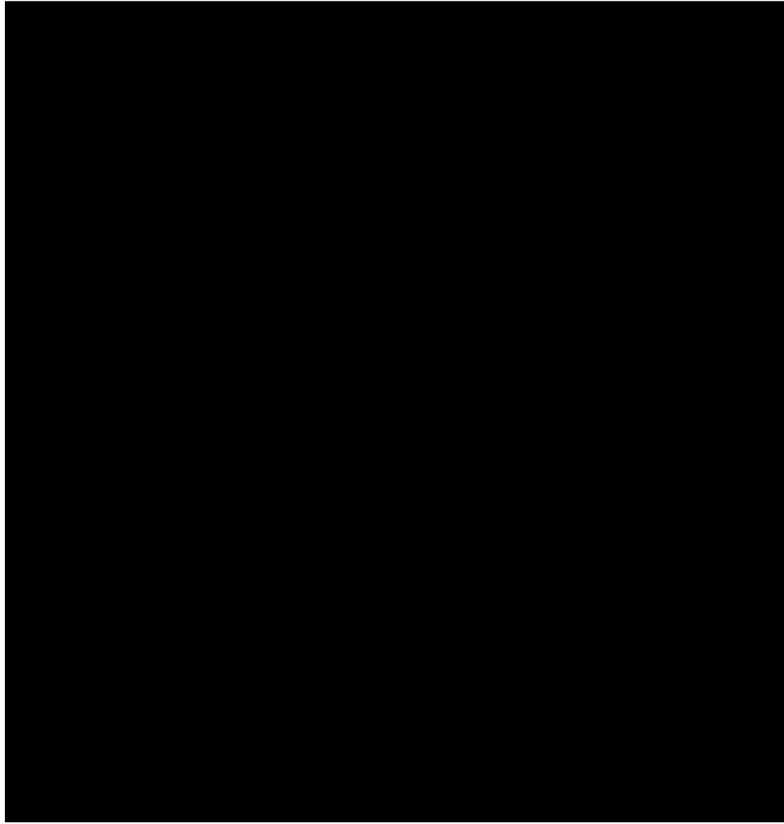
The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease or if applicable, paragraph 9 of the Sublease.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.


INITIALS


INITIALS

EXHIBIT A - PREMISES



**1221 LIBERTY WAY
VISTA, CA**



STANDARD LEASE DISCLOSURE STATEMENT

1. **LEGAL EFFECT.** Upon acceptance of a binding Lease ("Lease"), Lessor and Lessee (defined in the attached letter) both intend to have a binding legal agreement for the leasing of the Premises (defined in the attached letter) on the terms and conditions set forth therein. Lessor and Lessee acknowledge that Lee & Associates®, Inc. – NSDC (hereinafter referenced as Broker) is not qualified to practice law or authorized to give legal advice or counsel as to any legal matters affecting the Lease. Broker hereby advises Lessor and Lessee to consult with their respective attorneys in connection with any questions each may have as to legal ramifications or effects of the Lease, prior to its execution.
2. **FORM OF LEASE.** Lessor and Lessee each acknowledge that Broker does not assume any responsibility for the accuracy, completeness or form of the lease document. Lessor and Lessee each acknowledge and understand that in delivering the lease agreement, Broker has acted to expedite this transaction on behalf of Lessor and/or Lessee and has functioned within the scope of professional ethics by doing so.
3. **CONCURRENT OFFERS.** Lessee and Lessor acknowledge and consent that Broker may represent concurrent and/or competing offers with regard to the purchase or lease of the Premises from one or more prospective buyers or lessees without further notice.
4. **NO INDEPENDENT INVESTIGATION.** Lessor and Lessee acknowledge and understand that any financial statements, information, reports or written materials of any nature whatsoever, as provided by the parties to Broker, and thereafter submitted by Broker to either Lessor and/or Lessee, are so provided without any Independent Investigation by Broker, and as such Broker assumes no responsibility or liability for the accuracy or validity of the same. Any verification of such submitted documents is solely and completely the responsibility of the party to whom such documents have been submitted.
5. **NO WARRANTY.** Lessor and Lessee acknowledge and understand that no warranties, recommendations or representations are or will be made by Broker as to the accuracy, the legal sufficiency, the legal effect or the tax consequences of any of the documents submitted by Broker to Lessor and/or Lessee, or of the legal sufficiency, legal effect or tax consequences of the transactions contemplated thereby. Furthermore, Lessor and Lessee acknowledge and agree that Broker has made no representations or warranties concerning the ability of the Lessee to use the Premises as intended, the sufficiency or adequacy of the Premises for the intended use or any other matter regarding the Premises, and the parties are relying solely on their own investigations in executing the Lease.
6. **NOTICE REGARDING HAZARDOUS WASTES OR SUBSTANCES AND UNDERGROUND STORAGE TANKS.** Although Broker will disclose any actual knowledge it possesses with respect to the existence of any hazardous wastes, substances or underground storage tanks at the Premises, Broker has not made any independent investigations or obtained reports with respect thereto, except as may be described in a separate written document signed by Broker. All parties hereto acknowledge and understand that Broker makes no representations or warranties regarding the existence or nonexistence of hazardous wastes, substances or underground storage tanks at the Premises. Lessor and Lessee acknowledge that Broker has recommended that they should each contact one or more professionals, such as a civil engineer, geologist, industrial hygienist or other environmental consultants, for advice concerning the existence of hazardous wastes, substances or underground storage tanks.
7. **DISCLOSURE RESPECTING AMERICANS WITH DISABILITIES ACT.** The Americans with Disabilities Act, as well as certain state and local laws, are intended to make many business establishments equally accessible to persons with a variety of disabilities; modifications to real property may be required by such laws. Broker is not qualified to advise you as to what, if any, changes may be required now or in the future. The undersigned acknowledge that Broker has recommended that they consult attorneys and qualified design professionals for information regarding whether the Premises are in compliance with applicable law and/or whether modifications and changes are required.
8. **CORPORATE SIGNATURES.** Although there is a presumption under California law that the signature of a corporate president is adequate to bind the corporation, a California Court of Appeals in a 1998 case allowed a party to rebut the normal presumption. Therefore, if either of the parties to the Lease is a corporation, it is advisable: (i) that the Lease be signed by two officers of the corporation, i.e. the president or vice president and the secretary or chief financial officer (note: one individual signing in both the capacity of president and as secretary may not be sufficient), or (ii) that the corporation provide a duly executed corporate resolution authorizing the transaction.
9. **USE AND OCCUPANCY DISCLOSURE.** Broker recommends that Lessee hire qualified contractor(s), consultant(s) or other professional(s) to confirm and verify that the physical characteristics of the Property (including, but not limited to, building, office and land sizes, fire sprinkler capacity, electrical power and all utilities, ceiling clear height, loading door sizes and quantity, railroad service, parking spaces, heating/cooling systems, type of construction, restroom(s) number and size, year built of improvements) are to Lessee's satisfaction and permitted, and that they are adequate to accommodate Lessee's intended use. Broker also recommends that Lessee hire qualified professionals to confirm with applicable governmental agencies that the use and the zoning of the Property are acceptable for Lessee's intended use, and that Lessee will be able to obtain all permits, licenses and other approvals necessary for the intended use.
10. **SEISMIC REINFORCEMENT DISCLOSURE.** Some cities and counties have established or may be establishing minimum standards for structural seismic resistance for certain buildings constructed prior to 1933, 1976 and possibly other dates. Some structures will be required to comply with various standards set forth by the appropriate governmental agencies. Broker is not qualified to advise you as to what, if any, changes may be required now or in the future. The undersigned acknowledge that Broker has recommended that they consult a qualified architect, attorney or other consultant for information regarding this matter.
11. **MOLD DISCLOSURE.** Toxic or other molds may be present within a property in concentrations that may pose a threat to the health of humans. Toxic or other dangerous molds may or may not be visible or apparent to a potential user of the Premises. In order to ascertain the nature and extent of toxic or other molds present in a Premises, it is necessary to conduct testing using qualified environmental expert specializing in mold inspection and analysis. Broker advises Lessee to retain the services of an environmental testing expert for this purpose.
12. **DISCLOSURE REGARDING CITY ORDINANCES.** Some cities enact ordinances, which provide, among other matters, for car and truck parking restrictions and regulations, truck loading area requirements and maximum building sizes that can be utilized for a particular use. Additionally, some cities impose special taxes for different uses. All of these restrictions and/or regulations are varied from city to city, and they are constantly changing. Broker is not qualified to advise you whether the Premises (and/or any related property) or the proposed use thereof complies with any or all city ordinances, or whether the Premises (and/or any related property) might in the future violate these, or any other ordinances, nor is Broker qualified to advise you as to the impact thereof. Broker recommends that each party carefully review all applicable codes, regulations and ordinances affecting the Premises, and consult with their attorneys, consultants, engineers and contractors to determine whether the Premises (and/or any related property) and the proposed use, is and in the future will be in compliance with same.
13. **DISCLOSURES REGARDING THE NATURE OF A REAL ESTATE AGENCY RELATIONSHIP.**

The Lessor and Lessee ("Parties") and Brokers agree that their relationship(s) shall be governed by the principles set forth in the applicable sections of the California Civil Code, as summarized hereafter:

When entering into a discussion with a real estate agent regarding a real estate transaction, the Parties should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. The Parties acknowledge being advised by the Brokers in this transaction, as follows:

 - (a) **LESSOR'S AGENT.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: (1) To the Seller. A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. (2) To the Parties. a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the Premises that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party

which does not involve the affirmative duties set forth above.

(b) **LESSEE'S AGENT.** A Leasing agent can, with a Lessee's consent, agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. (1) To the Lessee. A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. (2) To the Parties. a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the Premises that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(c) **AGENT REPRESENTING BOTH LESSOR AND LESSEE.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. (1) In a dual agency situation, the agent has the following affirmative obligations to the Parties: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in their respective sections (a) or (b) (2) In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept a price less than the listing price or that the Lessee will pay a price greater than the price offered. (3) The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(d) **FURTHER DISCLOSURES.** Throughout this transaction Lessor and Lessee may receive more than one disclosure depending upon the number of agents assisting in the transaction. Lessor and Lessee should each read its contents each time it is presented, considering the relationship between them and the real estate agent in this transaction and that disclosure. Brokers have no responsibility with respect to any default or breach hereof by either Party. The liability (including court costs and attorneys' fees), of any Broker with respect to any breach of duty, error or omission relating to this Lease shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

Confidential Information: Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

Understood & Agreed:

Dated: 9-4-14

Signed: [Signature] Geiger Court, LLC (Hal Hilbury)

Dated: _____

Signed: [Signature] Exagen Diagnostics, Inc (Ron Rocca)



FIRST ADDENDUM TO STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE – NET DATED AUGUST 15, 2014 BY AND BETWEEN GEIGER COURT, LLC, AS LESSOR AND EXAGEN DIAGNOSTICS, INC., AS LESSEE, FOR THE PREMISES LOCATED AT 1221 LIBERTY WAY, VISTA, CALIFORNIA.

Lessor and Lessee mutually agree to amend the lease as follows:

Paragraph 1.3 (Term):

The Lease Term will be extended to the new Expiration Date of January 31, 2021

Paragraph 50 (Rent Schedule):

Base Rent shall be as follows:

<u>Dates</u>	<u>Base Rent</u>
February 1, 2018 – January 31, 2019	\$19,308.96 per month
February 1, 2019 – January 31, 2020	\$19,888.23 per month
February 1, 2020 – January 31, 2021	\$20,484.88 per month

Paragraph 58 (Existing Furniture):

Replace “Lessee may use furniture for \$0.01/SF per month during the Lease Term” with “Lessee may use furniture for no charge during the Lease Term”.

Building Improvements:

Landlord will replace outdated thermostats in building with new advanced thermostats. Landlord will replace manual rocker light switches in offices, conference rooms, copy room and break room with motion sensing automatic on and off switches. Tenant will coordinate the installation of these improvements remit direct costs to Landlord for reimbursement.

1. Landlord to pay initial \$2,500. Tenant to pay next \$2,500. Cost to be split 50/50 over \$5,000.
2. Landlord cost capped at no higher than \$5,000.
3. All work to be completed prior to end of 2017.

All other terms and conditions of the existing Lease shall remain in full force and effect.

AGREED AND ACCEPTED:

LESSOR:

Geiger Court, LLC

By: Hal T. Harvey

By: Hal T. Harvey

Date: 8-2-17

LESSEE:

Exagen Diagnostics, Inc.

By: Ron Rocca
Ron Rocca

Title: _____
CEO

Date: 8/2/17

EXTENSION OF LEASE

This Extension of Lease is made on February 25, 2020, between Liberty Vista, a California limited partnership, ("Lessor"), whose address is 1000 Pioneer Way, El Cajon, CA 92020, and Exagen Diagnostics, Inc., ("Lessee"), with reference to 1221 Liberty Way, San Diego, CA 92083 who agree as follows:

1. **Recitals.** This Extension of Lease is made with reference to the following facts and objectives:
 - a. Lessor and Lessee entered into a written Lease dated August 15, 2014, as extended February 1, 2018 ("the Lease") in which Lessor leased to Lessee, and Lessee leased from Lessor, premises located in the City of San Diego, County of San Diego, California, commonly known as 1221 Liberty Way, San Diego, CA 92083, consisting of approximately 19,504 square feet ("Premises").
 - b. The term of the Lease expires on January 31, 2021.
 - c. The parties desire to extend the term of the Lease for an additional period of five (5) years beginning February 1, 2021.
2. **Extension of Term.** The term of the Lease shall be extended for an additional period of five (5) years from and after February 1, 2021, so that the term of the Lease shall extend to and include January 31, 2026.
3. **Base Monthly Rent.** Base monthly rent for the extended term shall be as follows:


February 1, 2021 through January 31, 2022	\$19,000.00 Payable Monthly
February 1, 2022 through January 31, 2023	\$19,600.00 Payable Monthly
February 1, 2023 through January 31, 2024	\$20,200.00 Payable Monthly
February 1, 2024 through January 31, 2025	\$20,800.00 Payable Monthly
February 1, 2025 through January 31, 2026	\$21,400.00 Payable Monthly
4. **Rent Abatement.** Base Monthly Rent shall be 50% abated commencing the first full month after execution of this Extension and continuing for a total of ten (10) months thereafter. Rent Abatement is contingent upon this Extension being executed by Lessee no later than March 6, 2020 at 4pm PST. If the Extension is executed after this time the abated rent shall be nine (9) months and decline at a rate of one (1) month of rent abatement for each one (1) week delay in executing the Extension.
5. **Signage.** Lessee will be permitted to install reasonable and appropriate signage, subject to applicable laws and regulations and Lessors prior written consent.
6. **Condition of Premise.** The property will be delivered in its "as-is" condition upon lease extension execution.
7. **Tenant Improvement Allowance.** Lessor hereby grants to Lessee a tenant improvement allowance of Seventy-Five Thousand Dollars (\$75,000.00) (the "Allowance"). If the Tenant Improvement costs exceeds the Allowance, Lessee agrees to pay for such excess using its funds or the Lessor provided "Additional Allowance" of up to Fifty Thousand Dollars (\$50,000.00). Any portion of the Additional Allowance used by Lessee shall be amortized over the remaining term of the lease at 7% annual increase and paid monthly as additional Base Rent. The Allowance and Additional Allowance (collectively the "Allowances") are to be used for the payment of the cost of preparing all plans and specifications, the payment of plan check, permit and fees relating to construction of the tenant improvements, and construction of the tenant improvements. Lessor shall not charge a construction management or supervision fee for its oversight of the Tenant Improvements. The cost of the Tenant Improvements shall be charged against the Allowances. In no event will the Allowances be used to pay for Lessee's furniture, artifacts, equipment, telephone systems or any other items of personal property or Lessee. All tenant improvements must be approved by Lessor and permitted with the local governing authority prior to construction. Any unused portion of the Allowances as of January 31, 2021 will not be refunded to Lessee or be available to Lessee as a credit against any obligations of Lessee under the Lease. Lessor shall reimburse Lessee for approved expenses upon receipt of copies of paid invoices and appropriate lien releases from outside contractors.


Lessee inherited improvements from the previous tenant and has continued to make capital improvements to the Premises; therefore, Lessee shall not be responsible for any restoration of improvements completed prior to this extension agreement.
8. **ADA Compliance.** Lessor warrants that to the best of its knowledge the exterior improvements meet applicable ADA requirements. If the exterior improvements do not comply with said warranty, Lessor shall, except as otherwise provided in the Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of non-compliance with this warranty by January 31, 2021, correction of that non-compliance shall be the obligation of the Lessee at Lessee's sole cost and expense.
9. **Lessor's Work.** Lessor shall be responsible for delivering all exterior building lights in good operating condition and removing the four (4) dead trees at the entrance of the building (subject to Lessors review of specific trees) within 60 days of a fully executed lease Extension.

10. **Maintenance and Operating Costs and Obligations.** Lessor will arrange for the management of the property and arrange and supervise the maintenance of the landscaping, parking lot, roof, HVAC equipment, building exterior. Lessee will reimburse Landlord for the appropriate costs and appropriate reserves.
11. **Governmental Regulations.** Lessor will be responsible for any binding governmental order pertaining to the property that is not related to Lessee's use, occupancy or alteration of the property. Lessee will be responsible for any governmental order pertaining to the property that is related to its use, occupancy or alteration of the property.
12. **Option.** Lessor hereby grants to Lessee the option to extend the term of this Lease for one (1) five (5) year period at Fair Market Value, commencing when the prior term expires. In order to exercise an option to extend, Lessee must give written notice of such election to Lessor at least nine (9) months prior to the date that the option period would commence. The Base Rent during the first year of the option period shall be at the then prevailing fare market rate, but not less than the Base Rent in effect immediately prior to the commencement of the extended term. Thereafter, on each anniversary of the commencement of the extended term, the Base Rent will increase by 3%.
13. **Utilities.** Lessee will be responsible for all utilities serving the property.
14. **FF&E.** Lessee has the right, at its sole cost and expense, to repair, replace, or dispose of all existing furniture in the building. Lessor shall have no further rights to said furniture.
15. **Security Deposit:** Lessee's Security Deposit shall be \$22,000.00. Lessor currently holds a Security Deposit of \$40,412.00 and will return to Lessee \$18,412.00 within 30 days of executing this Extension.
16. **Lessor Ownership Assignment.** The Lessor of the premises was assigned from Oak Properties, a California general partnership to: Liberty Vista, a California limited partnership.
17. **Effectiveness of Lease.** Except as set forth in this Extension of Lease, all the provisions of the Lease shall remain unchanged and in full force and effect.

LESSOR:
Liberty Vista
A California Limited Partnership
By: Hamann Property Management, Inc.
Authorized Agent

LESSEE:
Exagen Diagnostics, Inc.

By: 

By: 
Fortunato Ron Rocca, President & CEO

Date: 3/12/2020

Date: 03/06/20

SECOND AMENDMENT OF LEASE

This Second Amendment of Lease is made on October 11, 2021, between Liberty Vista, a California limited partnership, ("Lessor"), whose address is 1000 Pioneer Way, El Cajon, CA 92020, and Exagen Diagnostics, Inc., a Delaware corporation, ("Lessee"), with reference to 1221 Liberty Way, San Diego, CA 92083 who agree as follows:


1. **Recitals.** This Second Amendment of Lease is made with reference to the following facts and objectives:
 - a. Lessor and Lessee entered into a written Lease dated August 15, 2014, as extended February 1, 2018, February 25, 2020, as amended December 30, 2020 ("the Lease") in which Lessor leased to Lessee, and Lessee leased from Lessor, premises located in the City of Vista, County of San Diego, California, commonly known as 1221 Liberty Way, Vista, CA 92083, consisting of approximately 19,504 square feet ("Premises").
 - b. The term of the Lease expires on January 31, 2026.
 - c. The parties desire to amend the Lease in the following respect:
2. **Extension of Term.** The term of the Lease shall be extended for an additional period of one (1) year and three (3) months from and after February 1, 2026, so that the term of the Lease shall extend to and include April 30, 2027.
3. **Base Monthly Rent Schedule.** Base monthly rent for the current and extended term shall be as follows:

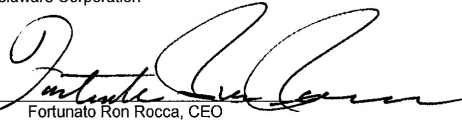
Term	Base Rent	Additional Base Rent (Amortized TIA)	Total Base Rent
February 1, 2021 through January 31, 2022	\$19,000.00	\$990.00	\$19,990.00
February 1, 2022 through January 31, 2023	\$19,600.00	\$990.00	\$20,590.00
February 1, 2023 through January 31, 2024	\$20,200.00	\$990.00	\$21,190.00
February 1, 2024 through January 31, 2025	\$20,800.00	\$990.00	\$21,790.00
February 1, 2025 through January 31, 2026	\$21,400.00	\$990.00	\$22,390.00
February 1, 2026 through January 31, 2027	\$22,470.00	\$0.00	\$22,470.00
February 1, 2027 through April 30, 2027	\$23,594.00	\$0.00	\$23,594.00

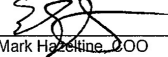
4. **Lessor Ownership Correction.** The Lessor of the premises erroneously appeared as "Liberty Vista, a California limited partnership". The correct Lessor name is "Liberty Vista, LP, a California limited partnership". The Lessor name is hereby corrected throughout the Lease.
5. **Lessee Name Change.** The Lessee's name shall change from Exagen Diagnostics, Inc., a California corporation to Exagen Inc. a California corporation.
6. **Counterparts.** The Amendment may be signed by the parties in different counterparts and the signature pages combined shall create a single document binding on all parties. This Amendment may be executed and delivered by the exchange of .pdf or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology), and such signed electronic record shall be valid and bind the party so signing as a such party's hand-written signature for all purposes.
7. **Effectiveness of Lease.** Except as set forth in this Second Amendment of Lease, all the provisions of the Lease shall remain unchanged and in full force and effect.

LESSOR:
 Liberty Vista, LP
 A California Limited Partnership
 By Hamann Property Management, Inc.
 Its Authorized Agent

LESSEE:
 Exagen Inc.
 A Delaware Corporation

DocuSigned by:

 By: Brendan Thiessen
 President 10/13/2021
 Date: _____

By: 
 Fortunato Ron Rocca, CEO
 Date: 10/12/21

By: 
 Mark Hazekine, COO
 Date: 10/12/21

EXAGEN INC.
CLAWBACK POLICY**I. Introduction**

The Compensation Committee of the Board of Directors (the “**Committee**”) of Exagen Inc. (the “**Company**”) believes that it is in the best interests of the Company and its shareholders to create and maintain a culture that emphasizes integrity and accountability and that reinforces the Company’s pay-for-performance compensation philosophy. The Committee has therefore adopted this policy which provides for the recoupment of certain executive compensation in the event of an accounting restatement resulting from material noncompliance with financial reporting requirements under the federal securities laws (the “**Policy**”). This Policy is designed to comply with Section 10D of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) and final rules and amendments adopted by the Securities and Exchange Commission (the “**SEC**”) to implement the aforementioned legislation.

II. Administration

This Policy shall be administered by the Committee. Any determinations made by the Committee shall be final and binding on all affected individuals.

III. Covered Executives

This Policy applies to the Company’s current and former executive officers, as determined by the Committee in accordance with the requirements of Section 10D of the Exchange Act and any applicable rules or standards adopted by the SEC and any national securities exchange on which the Company’s securities are listed, and such other employees who may from time to time be deemed subject to the Policy by the Committee (“**Covered Executives**”).

IV. Incentive-Based Compensation

For purposes of this Policy, incentive-based compensation (“**Incentive-Based Compensation**”) includes any compensation that is granted, earned, or vested based wholly or in part upon the attainment of any financial reporting measures that are determined and presented in accordance with the accounting principles (“**GAAP Measures**”) used in preparing the Company’s financial statements and any measures derived wholly or in part from such measures, as well as non-GAAP Measures, stock price, and total shareholder return (collectively, “**Financial Reporting Measures**”); however, it does not include: (i) base salaries; (ii) discretionary cash bonuses; (iii) awards (either cash or equity) that are solely based upon subjective, strategic or operational standards or standards unrelated to Financial Reporting Measures, and (iv) equity awards that vest solely on completion of a specified employment period or without any performance condition. Incentive-Based Compensation is considered received in the fiscal period during which the applicable reporting measure is attained, even if the payment or grant of such award occurs after the end of that period. If an award is subject to both time-based and performance-based vesting conditions, the award is considered received upon satisfaction of the performance-based conditions, even if such an award continues to be subject to the time-based vesting conditions.

For the purposes of this Policy, Incentive-Based Compensation may include, among other things, any of the following:

- Annual bonuses and other short- and long-term cash incentives.
- Stock options.
- Stock appreciation rights.
- Restricted stock or restricted stock units.
- Performance shares or performance units.

For purposes of this Policy, Financial Reporting Measures may include, among other things, any of the following:

- Company stock price.
- Total shareholder return.
- Revenues.
- Net income.
- Earnings before interest, taxes, depreciation, and amortization (“**EBITDA**”).
- Funds from operations.
- Liquidity measures such as working capital or operating cash flow.
- Return measures such as return on invested capital or return on assets.
- Earnings measures such as earnings per share.

V. Recoupment; Accounting Restatement

In the event the Company is required to prepare an accounting restatement of its financial statements due to the Company's material noncompliance with any financial reporting requirement under U.S. securities laws, including any required accounting restatement to correct an error in previously issued financial statements that (i) is material to the previously issued financial statements or (ii) is not material to previously issued financial statements, but that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period, the Committee will require reimbursement or forfeiture of any excess Incentive-Based Compensation received by any Covered Executive during the three completed fiscal years immediately preceding the date on which the Company is required to prepare the accounting restatement (the "**Look-Back Period**"). For the purposes of this Policy, the date on which the Company is required to prepare an accounting restatement is the earlier of (i) the date the Committee concludes or reasonably should have concluded that the Company is required to prepare a restatement to correct a material error, and (ii) the date a court, regulator, or other legally authorized body directs the Company to restate its previously issued financial statements to correct a material error. The Company's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.

Recovery of the Incentive-Based Compensation is only required when the excess award is received by a Covered Executive (i) after the beginning of their service as a Covered Executive, (ii) who served as an executive officer at any time during the performance period for that Incentive-Based Compensation, (iii) while the Company has a class of securities listed on a national securities exchange or a national securities association, and (iv) during the Look-Back Period immediately preceding the date on which the Company is required to prepare an accounting restatement.

VI. Excess Incentive Compensation: Amount Subject to Recovery

The amount of Incentive-Based Compensation subject to recovery is the amount the Covered Executive received in excess of the amount of Incentive-Based Compensation that would have been paid to the Covered Executive had it been based on the restated financial statements, as determined by the Committee. The amount subject to recovery will be calculated on a pre-tax basis.

For Incentive-Based Compensation received as cash awards, the erroneously awarded compensation is the difference between the amount of the cash award that was received (whether payable in a lump sum or over time) and the amount that should have been received applying the restated Financial Reporting Measure. For cash awards paid from bonus pools, the erroneously awarded Incentive-Based Compensation is the pro rata portion of any deficiency that results from the aggregate bonus pool that is reduced based on applying the restated Financial Reporting Measure.

For Incentive-Based Compensation received as equity awards that are still held at the time of recovery, the amount subject to recovery is the number of shares or other equity awards received or vested in excess of the number that should have been received or vested applying the restated Financial Reporting Measure. If the equity award has been exercised, but the underlying shares have not been sold, the erroneously awarded compensation is the number of shares underlying the award.

In instances where the Company is not able to determine the amount of erroneously awarded Incentive-Based Compensation directly from the information in the accounting restatement, the amount will be based on the Company's reasonable estimate of the effect of the accounting restatement on the applicable measure. In such instances, the Company will maintain documentation of the determination of that reasonable estimate.

VII. Method of Recoupment

The Committee will determine, in its sole discretion, subject to applicable law, the method for recouping Incentive-Based Compensation hereunder, which may include, without limitation:

- requiring reimbursement of cash Incentive-Based Compensation previously paid;
- seeking recovery of any gain realized on the vesting, exercise, settlement, sale, transfer, or other disposition of any equity-based awards;
- offsetting the recouped amount from any compensation otherwise owed by the Company to the Covered Executive;
- cancelling outstanding vested or unvested equity awards; and/or
- taking any other remedial and recovery action permitted by law, as determined by the Committee.

VIII. No Indemnification; Successors

The Company shall not indemnify any Covered Executives against the loss of any incorrectly awarded Incentive-Based Compensation. This Policy shall be binding and enforceable against all Covered Executives and their beneficiaries, heirs, executors, administrators or other legal representatives.

IX. Exception to Enforcement

The Committee shall recover any excess Incentive-Based Compensation in accordance with this Policy unless such recovery would be impracticable, as determined by the Committee in accordance with Rule 10D-1 of the Exchange Act and any applicable rules or standards adopted by the SEC and the listing standards of any national securities exchange on which the Company's securities are listed.

X. Interpretation

The Committee is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate, or advisable for the administration of this Policy. It is intended that this Policy be interpreted in a manner that is consistent with the requirements of Section 10D of the Exchange Act and any applicable rules or standards adopted by the SEC and any national securities exchange on which the Company's securities are listed.

XI. Effective Date

This Policy shall be effective as of October 2, 2023 (the "**Effective Date**") and shall apply to Incentive-Based Compensation that is received by a Covered Executive on or after that date, as determined by the Committee in accordance with applicable rules or standards adopted by the SEC and the listing standards of any national securities exchange on which the Company's securities are listed.

XII. Amendment; Termination

The Committee may amend this Policy from time to time in its discretion and shall amend this Policy as it deems necessary to comply with any rules or standards adopted by the SEC and the listing standards of any national securities exchange on which the Company's securities are listed. The Committee may terminate this Policy at any time.

XIII. Other Recoupment Rights

Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company pursuant to the terms of any similar policy in any employment agreement, equity award agreement, or similar agreement and any other legal remedies available to the Company.

EXAGEN INC.
CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, John Aballi, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Exagen Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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.
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.

Date: November 13, 2023

/s/ John Aballi

John Aballi

President and Chief Executive Officer

(Principal Executive Officer)

EXAGEN INC.
CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Kamal Adawi, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Exagen Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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.
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.

Date: November 13, 2023

/s/ Kamal Adawi

Kamal Adawi

Chief Financial Officer

(Principal Financial and Accounting Officer)

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Exagen Inc. (the "Company") hereby certifies, to such officer's knowledge, that:

1. The accompanying quarterly report on Form 10-Q of the Company for the quarterly period ended September 30, 2023 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein.

Dated: November 13, 2023

/s/ John Aballi

John Aballi

President and Chief Executive Officer
(Principal Executive Officer)

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. Section 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

CERTIFICATION OF CHIEF FINANCIAL OFFICER

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Exagen Inc. (the "Company") hereby certifies, to such officer's knowledge, that:

1. The accompanying quarterly report on Form 10-Q of the Company for the quarterly period ended September 30, 2023 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein.

Dated: November 13, 2023

/s/ Kamal Adawi

Kamal Adawi

Chief Financial Officer

(Principal Financial and Accounting Officer)

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. Section 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.