

VMWARE, INC.

FORM 10-Q (Quarterly Report)

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**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 June 30, 2011

OR

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

For transition period from _____ to _____

Commission File Number 001-33622

VMWARE, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

**3401 Hillview Avenue
Palo Alto, CA**

(Address of principal executive offices)

94-3292913

(I.R.S. Employer
Identification Number)

94304

(Zip Code)

(650) 427-5000

(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

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

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Smaller reporting company ☐

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

As of July 22, 2011, the number of shares of common stock, par value \$0.01 per share, of the registrant outstanding was 422,295,602, of which 122,295,602 shares were Class A common stock and 300,000,000 were Class B common stock.

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**PART I
FINANCIAL INFORMATION**

ITEM 1. FINANCIAL STATEMENTS

**VMware, Inc.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)**

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2011	2010	2011	2010
Operating activities:				
Net income	\$ 220,158	\$ 74,538	\$ 345,970	\$ 152,959
Adjustments to reconcile net income to net cash provided by operating activities:				
Depreciation and amortization	74,709	58,556	155,658	112,344
Stock-based compensation, excluding amounts capitalized	85,442	67,836	166,015	131,533
Excess tax benefits from stock-based compensation	(101,256)	(64,583)	(151,264)	(88,501)
Gain on sale of Terremark investment	(56,000)	—	(56,000)	—
Other	2,864	4,442	3,826	5,859
Changes in assets and liabilities, net of acquisitions:				
Accounts receivable	(54,757)	(77,543)	26,583	107,688
Other assets	(16,133)	(23,406)	(34,053)	(24,251)
Due to/from EMC, net	(35,265)	(23,474)	25,435	2,302
Accounts payable	(11,105)	9,207	(1,707)	6,560
Accrued expenses	102,780	78,098	34,211	26,896
Income taxes receivable from EMC	141,000	2,508	176,444	2,508
Income taxes payable	4,674	16,759	37,601	31,124
Deferred income taxes, net	11,119	(126)	(958)	(4,347)
Unearned revenue	94,566	93,311	212,952	108,401
Net cash provided by operating activities	<u>462,796</u>	<u>216,123</u>	<u>940,713</u>	<u>571,075</u>
Investing activities:				
Additions to property and equipment	(95,186)	(28,996)	(122,232)	(60,108)
Purchase of leasehold interest (see Note G)	(173,126)	—	(173,126)	—
Capitalized software development costs	(25,437)	(19,310)	(52,859)	(41,171)
Purchases of available-for-sale securities	(529,038)	(660,051)	(1,127,805)	(660,051)
Sales of available-for-sale securities	223,491	—	376,588	—
Maturities of available-for-sale securities	277,390	—	492,969	—
Purchase of strategic investments	(8,000)	—	(22,000)	—
Sale of strategic investments	76,000	—	78,513	—
Business acquisitions, net of cash acquired	(189,138)	(60,600)	(204,088)	(167,150)
Transfer of net assets under common control	(7,973)	(175,000)	(20,463)	(175,000)
Decrease (increase) in restricted cash	39,858	17,054	(5,142)	206
Net cash used in investing activities	<u>(411,159)</u>	<u>(926,903)</u>	<u>(779,645)</u>	<u>(1,103,274)</u>
Financing activities:				
Proceeds from issuance of common stock	110,543	106,132	200,714	215,907
Repurchase of common stock	(132,660)	(113,152)	(280,389)	(144,500)
Excess tax benefits from stock-based compensation	101,256	64,583	151,264	88,501
Shares repurchased for tax withholdings on vesting of restricted stock	(48,666)	(34,677)	(70,578)	(45,583)
Net cash provided by financing activities	<u>30,473</u>	<u>22,886</u>	<u>1,011</u>	<u>114,325</u>
Net increase (decrease) in cash and cash equivalents	82,110	(687,894)	162,079	(417,874)
Cash and cash equivalents at beginning of the period	1,708,934	2,756,481	1,628,965	2,486,461
Cash and cash equivalents at end of the period	<u>\$1,791,044</u>	<u>\$2,068,587</u>	<u>\$ 1,791,044</u>	<u>\$ 2,068,587</u>
Non-cash items:				
Changes in capital additions, accrued but not paid	\$ (985)	\$ 3,902	\$ 6,221	\$ 1,835
Changes in tax withholdings on vesting of restricted stock, accrued but not paid	3,656	—	2,938	—

The accompanying notes are an integral part of the consolidated financial statements.

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VMware, Inc.
CONSOLIDATED STATEMENTS OF INCOME
(in thousands, except per share amounts)
(unaudited)

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2011	2010	2011	2010
Revenues:				
License	\$ 464,806	\$ 323,665	\$ 883,805	\$ 635,842
Services	456,404	350,239	881,126	671,595
	921,210	673,904	1,764,931	1,307,437
Operating expenses (1):				
Cost of license revenues	48,928	40,269	104,946	80,390
Cost of services revenues	103,547	77,883	197,426	146,412
Research and development	189,241	161,756	358,404	299,868
Sales and marketing	314,560	231,662	617,484	448,491
General and administrative	78,042	61,153	146,277	128,909
Operating income	186,892	101,181	340,394	203,367
Investment income	3,715	995	7,121	1,680
Interest expense with EMC	(972)	(957)	(1,931)	(1,858)
Other income (expense), net	56,639	(4,275)	56,804	(8,606)
Income before income taxes	246,274	96,944	402,388	194,583
Income tax provision	26,116	22,406	56,418	41,624
Net income	<u>\$ 220,158</u>	<u>\$ 74,538</u>	<u>\$ 345,970</u>	<u>\$ 152,959</u>
Net income per weighted-average share, basic for Class A and Class B	\$ 0.52	\$ 0.18	\$ 0.83	\$ 0.38
Net income per weighted-average share, diluted for Class A and Class B	\$ 0.51	\$ 0.18	\$ 0.80	\$ 0.37
Weighted-average shares, basic for Class A and Class B	419,657	407,931	418,557	405,089
Weighted-average shares, diluted for Class A and Class B	430,473	422,333	429,984	418,476

(1) Includes stock-based compensation as follows:

Cost of license revenues	\$ 438	\$ 390	\$ 904	\$ 775
Cost of services revenues	5,740	4,057	11,328	8,214
Research and development	46,074	39,445	87,958	74,168
Sales and marketing	23,264	15,452	45,787	31,499
General and administrative	9,926	8,492	20,038	16,877

The accompanying notes are an integral part of the consolidated financial statements.

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VMware, Inc.
CONSOLIDATED BALANCE SHEETS
(in thousands, except per share amounts)
(unaudited)

	June 30, 2011	December 31, 2010
ASSETS		
Current assets:		
Cash and cash equivalents	\$1,791,044	\$1,628,965
Short-term investments	1,912,109	1,694,675
Accounts receivable, net of allowance for doubtful accounts of \$3,581 and \$4,519	592,322	614,726
Due from EMC, net	29,994	55,481
Deferred tax asset	124,595	100,689
Other current assets	175,584	203,119
Total current assets	4,625,648	4,297,655
Property and equipment, net	485,950	419,065
Capitalized software development costs, net and other	169,876	151,945
Deferred tax asset	116,917	149,126
Intangible assets, net	429,182	210,928
Goodwill	1,714,984	1,568,600
Total assets	<u>\$7,542,557</u>	<u>\$6,797,319</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 61,705	\$ 58,913
Accrued expenses and other	541,428	459,813
Unearned revenues	1,358,225	1,270,426
Total current liabilities	1,961,358	1,789,152
Note payable to EMC	450,000	450,000
Unearned revenues	719,931	589,668
Deferred tax liability	5,378	30,096
Other liabilities	105,455	129,960
Total liabilities	3,242,122	2,988,876
Commitments and contingencies (see Note K)		
Stockholders' equity:		
Class A common stock, par value \$.01; authorized 2,500,000 shares; issued and outstanding 121,588 and 116,701 shares	1,216	1,167
Class B convertible common stock, par value \$.01; authorized 1,000,000 shares; issued and outstanding 300,000 shares	3,000	3,000
Additional paid-in capital	3,119,331	2,955,971
Accumulated other comprehensive income	2,248	19,635
Retained earnings	1,174,640	828,670
Total stockholders' equity	4,300,435	3,808,443
Total liabilities and stockholders' equity	<u>\$7,542,557</u>	<u>\$6,797,319</u>

The accompanying notes are an integral part of the consolidated financial statements.

VMware, Inc.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

A. Overview and Basis of Presentation***Company and Background***

VMware, Inc. (“VMware” or the “Company”) is the leading provider of virtualization and virtualization-based cloud infrastructure solutions. VMware’s virtualization infrastructure software solutions run on industry-standard desktop computers and servers and support a wide range of operating system and application environments, as well as networking and storage infrastructures.

Accounting Principles

The financial statements and accompanying notes are prepared in accordance with accounting principles generally accepted in the United States of America.

Unaudited Interim Financial Information

These accompanying unaudited consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (the “SEC”) for interim financial reporting. In the opinion of management, these unaudited consolidated financial statements include all adjustments, consisting of normal recurring adjustments and accruals, for a fair statement of VMware’s consolidated cash flows, results of operations and financial condition for the periods presented. Results of operations are not necessarily indicative of the results that may be expected for the full year 2011. Certain information and footnote disclosures typically included in annual consolidated financial statements have been condensed or omitted. Accordingly, these unaudited interim consolidated financial statements should be read in conjunction with the consolidated financial statements and related notes included in VMware’s 2010 Annual Report on Form 10-K.

VMware was incorporated as a Delaware corporation in 1998 and continues to operate in large measure as a stand-alone company following the Company’s acquisition by EMC Corporation (“EMC”) in 2004 and following VMware’s initial public offering of VMware’s Class A common stock in August 2007. As of June 30, 2011, EMC holds 79.3% of VMware’s outstanding common stock, including 34.1 million shares of VMware’s Class A common stock and all of VMware’s Class B common stock. VMware is considered a “controlled company” under the rules of the New York Stock Exchange. VMware historically has received, and continues to receive, certain administrative services from EMC, and VMware and EMC engage in certain intercompany transactions. Costs incurred by EMC for the direct benefit of VMware, such as salaries and benefits, travel and rent, plus a mark-up intended to approximate third-party costs, are included in VMware’s consolidated financial statements. In addition, beginning in the three months ended June 30, 2011, VMware incurs costs to operate the Mozy service on behalf of EMC. These costs, plus a mark-up intended to approximate third party costs, are reimbursed to VMware by EMC and recorded as a reduction to the costs VMware incurred on the consolidated statements of income.

Management believes the assumptions underlying the consolidated financial statements are reasonable. However, the amounts recorded for VMware’s intercompany transactions with EMC would not be considered arm’s length with an unrelated third party by nature of EMC’s majority ownership of VMware. Therefore, the financial statements included herein may not necessarily reflect the cash flows, results of operations and financial condition had VMware engaged in such transactions with an unrelated third party during all periods presented. Accordingly, VMware’s historical financial information is not necessarily indicative of what the Company’s cash flows, results of operations and financial condition will be in the future if and when VMware contracts at arm’s length with unrelated third parties for services the Company receives from and provides to EMC.

Principles of Consolidation

The consolidated financial statements include the accounts of VMware and its subsidiaries. All intercompany transactions and balances between VMware and its subsidiaries have been eliminated. All intercompany transactions with EMC in the consolidated statements of cash flows will be settled in cash, and changes in the intercompany balances are presented as a component of cash flows from operating activities.

Use of Accounting Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the reported amounts of revenues and expenses during the reporting periods, and the disclosure of contingent liabilities at the date of the financial statements. Estimates are used for, but not limited to, capitalized software development costs, trade receivable valuation, certain accrued liabilities, useful lives of fixed assets and intangible assets, valuation of acquired intangibles, revenue reserves, income taxes, stock-based compensation and contingencies. Actual results could differ from those estimates.

VMware, Inc.**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)**
(unaudited)***New Accounting Pronouncements***

In June 2011, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update No. 2011-05, *Presentation of Comprehensive Income* (“ASU 2011-05”). ASU 2011-05 eliminates the current option to report other comprehensive income and its components in the statement of changes in equity. Comprehensive income will either have to be presented in one continuous statement of comprehensive income or two separate consecutive statements. ASU 2011-05 is effective as of the beginning of each reporting entity’s first annual reporting period that begins after December 15, 2011. VMware plans to adopt ASU 2011-05 on January 1, 2012 and will present comprehensive income in accordance with the requirements of the standard.

B. Research and Development and Capitalized Software Development Costs

Costs related to research and development (“R&D”) are generally charged to expense as incurred. Capitalization of development costs of software to be sold, leased, or otherwise marketed are subject to capitalization beginning when technological feasibility has been established and ending when the product is available for general release. Judgment is required in determining when technological feasibility is established. Changes in judgment as to when technological feasibility is established, or changes in VMware’s business, including go-to-market strategy, would likely materially impact the amount of costs capitalized. For example, if the length of time between technological feasibility and general availability declines in the future, the amount of costs capitalized would likely decrease with a corresponding increase in R&D expense. In addition, VMware’s R&D expenses and amounts capitalized as software development costs may not be comparable to VMware’s peer companies due to differences in judgment as to when technological feasibility has been reached or differences in judgment regarding when the product is available for general release. Generally accepted accounting principles require annual amortization expense of capitalized software development costs to be the greater of the amounts computed using the ratio of current gross revenue to a product’s total current and anticipated revenues, or the straight-line method over the product’s remaining estimated economic life. To date, VMware has amortized these costs using the straight-line method as it is the greater of the two amounts. The costs are amortized over periods ranging from 18 to 24 months, which represent the product’s estimated economic life. The ongoing assessment of the recoverability of these costs requires considerable judgment by management with respect to certain external factors such as anticipated future revenue, estimated economic life, and changes in software and hardware technologies. Material differences in amortization amounts could occur as a result of changes in the periods over which VMware actually generates revenues or the amounts of revenues generated.

Unamortized software development costs were \$116.9 million and \$103.3 million as of June 30, 2011 and December 31, 2010, respectively, and are included in capitalized software development costs, net and other on the consolidated balance sheets.

In the three months ended June 30, 2011 and 2010, VMware capitalized \$29.6 million (including \$4.2 million of stock-based compensation) and \$20.3 million (including \$2.7 million of stock-based compensation), respectively, of costs incurred for the development of software products. In the six months ended June 30, 2011 and 2010, VMware capitalized \$61.9 million (including \$9.0 million of stock-based compensation) and \$46.4 million (including \$6.9 million of stock-based compensation), respectively, of costs incurred for the development of software products. These amounts have been excluded from R&D expenses on the accompanying consolidated statements of income. Amortization expense from capitalized amounts was \$19.8 million and \$21.2 million for the three months ended June 30, 2011 and 2010, respectively. Amortization expense from capitalized amounts was \$48.3 million and \$44.9 million for the six months ended June 30, 2011 and 2010, respectively. Amortization expense is included in cost of license revenues on the consolidated statements of income.

C. Earnings per Share

Basic net income per share is computed by dividing net income by the weighted-average number of common shares outstanding during the period. Diluted net income per share is computed by dividing net income by the weighted-average number of common shares outstanding and potentially dilutive securities outstanding during the period, as calculated using the treasury stock method. Potentially dilutive securities include stock options, unvested restricted stock units, unvested restricted stock awards, other unvested restricted stock, and purchase options under VMware’s employee stock purchase plan. Securities are excluded from the computations of diluted net income per share if their effect would be anti-dilutive. As of June 30, 2011, VMware had 121.3 million shares of Class A common stock and 300.0 million shares of Class B common stock outstanding that were included in the calculation of basic earnings per share. VMware uses the two-class method to calculate earnings per share as both classes share the same rights in dividends, therefore basic and diluted earnings per share are the same for both classes.

VMware, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)
(unaudited)

The following table sets forth the computations of basic and diluted net income per share for the three and six months ended June 30, 2011 and 2010 (table in thousands, except per share data):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2011	2010	2011	2010
Net income	\$ 220,158	\$ 74,538	\$ 345,970	\$ 152,959
Weighted-average shares, basic for Class A and Class B	419,657	407,931	418,557	405,089
Effect of dilutive securities	10,816	14,402	11,427	13,387
Weighted-average shares, diluted for Class A and Class B	430,473	422,333	429,984	418,476
Net income per weighted-average share, basic for Class A and Class B	\$ 0.52	\$ 0.18	\$ 0.83	\$ 0.38
Net income per weighted-average share, diluted for Class A and Class B	\$ 0.51	\$ 0.18	\$ 0.80	\$ 0.37

For the three months ended June 30, 2011 and 2010, stock options to purchase 0.9 million and 1.8 million shares, respectively, of VMware Class A common stock were excluded from the diluted earnings per share calculations because their effect would have been anti-dilutive. For the six months ended June 30, 2011 and 2010, stock options to purchase 1.2 million and 4.2 million shares, respectively, of VMware Class A common stock were excluded from the diluted earnings per share calculations because their effect would have been anti-dilutive.

For the three months ended June 30, 2011 there were no shares of restricted stock that were excluded from the diluted earnings per share calculations because their effect would have been anti-dilutive. For the three months ended June 30, 2010, 0.3 million shares of restricted stock were excluded from the diluted earnings per share calculations because their effect would have been anti-dilutive. For the six months ended June 30, 2011 and 2010, 0.4 million and 0.2 million shares of restricted stock, respectively, were excluded from the diluted earnings per share calculations because their effect would have been anti-dilutive.

D. Investments

Investments as of June 30, 2011 and December 31, 2010 consisted of the following (tables in thousands):

	June 30, 2011			
	Cost or Amortized Cost	Unrealized Gains	Unrealized Losses	Aggregate Fair Value
U.S. government and agency obligations	\$ 405,940	\$ 1,620	\$ (80)	\$ 407,480
U.S. and foreign corporate debt securities	770,349	1,779	(158)	771,970
Foreign governments and multi-national agency obligations	62,186	77	(14)	62,249
Municipal obligations	621,868	903	(322)	622,449
Asset-backed securities	28,324	18	(6)	28,336
Mortgage-backed securities	19,695	63	(133)	19,625
Total investments	\$1,908,362	\$ 4,460	\$ (713)	\$1,912,109

	December 31, 2010			
	Cost or Amortized Cost	Unrealized Gains	Unrealized Losses	Aggregate Fair Value
U.S. government and agency obligations	\$ 379,288	\$ 326	\$ (310)	\$ 379,304
U.S. and foreign corporate debt securities	522,677	724	(286)	523,115
Foreign governments and multi-national agency obligations	63,101	72	(13)	63,160
Municipal obligations	660,138	111	(762)	659,487
Asset-backed securities	17,800	9	—	17,809
Total fixed income securities	1,643,004	1,242	(1,371)	1,642,875
Equity securities	20,000	31,800	—	51,800
Total investments	\$1,663,004	\$ 33,042	\$ (1,371)	\$1,694,675

During the three months ended June 30, 2011, a realized gain of \$56.0 million was recorded in other income (expense), net on the consolidated income statement for the sale of VMware's investment in Terremark Worldwide, Inc., which was acquired by Verizon in a cash transaction. All other realized gains and realized losses on investments were not material for the three and six months ended June 30, 2011 and 2010.

VMware, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)
(unaudited)

As of June 30, 2011 and December 31, 2010, VMware had no material investments that were in a continuous unrealized loss position for twelve months or greater. Unrealized losses on investments as of June 30, 2011, and December 31, 2010, which have been in a net loss position for less than twelve months were classified by investment category as follows (table in thousands):

	June 30, 2011		December 31, 2010	
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses
U.S. government and agency obligations	\$ 36,091	\$ (80)	\$109,932	\$ (310)
U.S. and foreign corporate debt securities	159,702	(158)	149,831	(286)
Foreign governments and multi-national agency obligations	13,021	(14)	26,415	(13)
Municipal obligations	188,943	(322)	412,882	(762)
Asset-backed securities	2,060	(6)	—	—
Mortgage-backed securities	11,061	(133)	—	—
Total investments	<u>\$410,878</u>	<u>\$ (713)</u>	<u>\$699,060</u>	<u>\$ (1,371)</u>

VMware evaluated its investments in fixed income securities as of June 30, 2011 and determined that there were no unrealized losses that indicated an other-than-temporary impairment.

Contractual Maturities

The contractual maturities of investments held at June 30, 2011 consisted of the following (table in thousands):

	Amortized Cost Basis	Aggregate Fair Value
Due within one year	\$ 810,860	\$ 811,399
Due after 1 year through 5 years	974,736	978,013
Due after 5 years	122,766	122,697
Total	<u>\$1,908,362</u>	<u>\$1,912,109</u>

E. Fair Value Measurements and Derivative Instruments

Fair Value Measurements

Generally accepted accounting principles provide that fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that is determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, generally accepted accounting principles established a three-tier value hierarchy, which prioritizes the inputs used in measuring fair value as follows: (Level 1) inputs are quoted prices in active markets for identical assets or liabilities; (Level 2) inputs other than the quoted prices included within Level 1 that are observable for the assets or liabilities, either directly or indirectly; and (Level 3) unobservable inputs for the assets or liabilities in which there is little or no market data, which requires VMware to develop its own assumptions.

VMware's Level 1 classification of the fair value hierarchy includes money market funds, available-for-sale equity securities and certain available-for-sale fixed income securities because these securities are valued using quoted prices in active markets for identical assets. VMware's Level 2 classification includes the remainder of the available-for-sale fixed income securities because these securities are priced using quoted market prices for similar instruments and non-binding market prices that are corroborated by observable market data. VMware does not have any material assets or liabilities that fall into Level 3 of the fair value hierarchy.

VMware, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)
(unaudited)

The following tables set forth the fair value hierarchy of VMware's money market funds and available-for-sale securities, including those securities classified within cash and cash equivalents on the consolidated balance sheet, that were required to be measured at fair value as of June 30, 2011 and December 31, 2010, (tables in thousands):

	June 30, 2011		
	Level 1	Level 2	Total
Money-market funds	\$1,617,954	\$ —	\$1,617,954
U.S. government and agency obligations	177,308	243,990	421,298
U.S. and foreign corporate debt securities	—	786,613	786,613
Foreign governments and multi-national agency obligations	—	62,249	62,249
Municipal obligations	—	622,449	622,449
Asset-backed securities	—	28,336	28,336
Mortgage-backed securities	—	19,625	19,625
Total cash equivalents and investments	<u>\$1,795,262</u>	<u>\$1,763,262</u>	<u>\$3,558,524</u>

	December 31, 2010		
	Level 1	Level 2	Total
Money-market funds	\$1,436,319	\$ —	\$1,436,319
U.S. government and agency obligations	66,762	312,543	379,305
U.S. and foreign corporate debt securities	—	537,544	537,544
Foreign governments and multi-national agency obligations	—	63,161	63,161
Municipal obligations	—	659,487	659,487
Asset-backed securities	—	55,749	55,749
Equity securities	51,800	—	51,800
Total cash equivalents and investments	<u>\$1,554,881</u>	<u>\$1,628,484</u>	<u>\$3,183,365</u>

VMware's valuation inputs for foreign currency forward contracts are based on quoted prices and quoted pricing intervals from public data sources. These contracts are typically classified within Level 2 of the fair value hierarchy and are discussed below in the derivative instruments section.

Derivative Instruments

In order to manage exposure to foreign currency fluctuations, VMware enters into foreign currency forward contracts to hedge a portion of its net outstanding monetary assets and liabilities against movements in certain foreign exchange rates. These forward contracts are not designated as hedging instruments under applicable accounting guidance, and therefore all changes in the fair value of the forward contracts are reported in other income (expense), net in the consolidated statements of income. The gains and losses on VMware's foreign currency forward contracts generally offset the majority of the gains and losses associated with the underlying foreign-currency denominated assets and liabilities that VMware hedges. VMware does not enter into speculative foreign exchange contracts for trading purposes.

VMware's foreign currency forward contracts are generally traded on a monthly basis with a typical contractual term of one month. As of June 30, 2011, VMware had outstanding forward contracts with a total notional value of \$226.1 million. The fair value of these forward contracts was immaterial as of June 30, 2011 and therefore excluded from the table above. The fair value was measured under Level 2 sources as discussed above.

F. Business Combinations, Goodwill and Intangible Assets, Net

Business Combinations

The results of operations of the acquired businesses mentioned below have been included in VMware's consolidated financial statements from the date of purchase. Pro forma results of operations have not been presented as the results of the acquired businesses were not material to VMware's consolidated results of operations in the three and six months ended June 30, 2011 and 2010.

VMware, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)
(unaudited)

In the six months ended June 30, 2011, VMware acquired four companies. The aggregate consideration for these acquisitions was \$204.7 million, net of cash acquired, and includes cash of \$204.1 million and the fair value of equity awards assumed attributed to pre-combination services of \$0.6 million. The following table summarizes the allocation of the consideration to the fair value of the tangible and intangible assets acquired in the six months ended June 30, 2011, (table in thousands):

Other current assets	\$ 3,492
Intangible assets	66,800
Goodwill	144,150
Deferred tax assets	8,270
Other assets	89
Total tangible and intangible assets acquired	222,801
Unearned revenues	(5,110)
Deferred tax liabilities	(8,751)
Accrued liabilities and other	(4,218)
Total liabilities assumed	(18,079)
Fair value of tangible and intangible assets acquired and liabilities assumed	<u>\$204,722</u>

Intangible Assets, Net

The following table summarizes the fair value of the intangible assets acquired by VMware through both business combinations and asset purchases in the six months ended June 30, 2011, (table in thousands):

	Weighted-Average Useful Lives (in years)	Fair Value Amount
Purchased technology	6.0	\$ 60,400
Customer relationships and customer lists	6.6	18,700
Total intangible assets, net, excluding goodwill		<u>\$ 79,100</u>

Goodwill

Changes in the carrying amount of goodwill for the six months ended June 30, 2011 consisted of the following (table in thousands):

Balance, January 1, 2011	\$1,568,600
Increase in goodwill related to business combinations	144,150
Deferred tax adjustments to purchase price allocations on previous acquisitions	2,645
Other adjustments to purchase price allocations on previous acquisitions	(411)
Balance, June 30, 2011	<u>\$1,714,984</u>

G. Property and Equipment, Net

Property and equipment, net, as of June 30, 2011 and December 31, 2010 consisted of the following (table in thousands):

	June 30, 2011	December 31, 2010
Equipment and software	\$ 486,722	\$ 438,384
Buildings and improvements	283,882	270,786
Furniture and fixtures	54,733	52,613
Construction in progress	66,846	3,082
Total property and equipment	892,183	764,865
Accumulated depreciation	(406,233)	(345,800)
Total property and equipment, net	<u>\$ 485,950</u>	<u>\$ 419,065</u>

VMware, Inc.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)
(unaudited)

Depreciation expense was \$31.3 million and \$28.2 million in the three months ended June 30, 2011 and 2010, respectively and \$62.0 million and \$53.7 million in the six months ended June 30, 2011 and 2010, respectively.

In the three months ended June 30, 2011, VMware closed an agreement to purchase all of the right, title and interest in a ground lease covering the property and improvements adjacent to VMware's Palo Alto, California campus for \$225.0 million. VMware paid the seller \$45.0 million in the three months ended March 31, 2011 as a good faith deposit and in the three months ended June 30, 2011, VMware paid the remaining \$180.0 million. Based upon the respective fair values, \$51.9 million of the purchase price was recorded to property and equipment, net on the consolidated balance sheet for the fair value of the buildings and site improvements. As of June 30, 2011, \$40.9 million of this amount was classified in construction in progress as the buildings had not yet been placed into service. The remaining \$173.1 million of the purchase price was recorded to intangible assets, net on the consolidated balance sheet for the fair value of the ground lease and the right to develop additional square footage on the parcel. Concurrent with the closing of the transaction, VMware entered into an amended and restated ground lease for the property with the Board of Trustees of the Leland Stanford Junior University ("Stanford"), the lessor of both the new property and VMware's existing campus. VMware will possess the title to the interest and buildings during the duration of the lease. Upon termination of the lease, all title will revert to Stanford. The \$51.9 million of buildings and site improvements will be depreciated from the date they are placed into service through the term of the Amended and Restated Ground Lease. Amortization of the \$173.1 million of intangible assets began in the three months ended June 30, 2011 and will continue through 2046. At the closing, VMware also entered into an amendment to the ground lease for its existing campus so that the terms of both leases will be 34 years and 11 months from the closing of the purchase agreement.

Annual rent payments to Stanford for the new property will initially be approximately \$6.8 million, and will increase by 3% annually. VMware is also responsible for paying all taxes, insurance and other expenses necessary to operate the parcel. Additional rent of approximately \$1.1 million per year will become payable in connection with the effectiveness of a right to construct additional improvements on the parcel, which is currently expected to begin no earlier than January 1, 2014. Such additional rent would subsequently increase by 2% annually.

H. Accrued Expenses and Other

Accrued expenses and other as of June 30, 2011 and December 31, 2010 consisted of the following (table in thousands):

	June 30, 2011	December 31, 2010
Salaries, commissions, bonuses, and benefits	\$257,785	\$ 242,180
Accrued partner liabilities	99,177	94,676
Other	184,466	122,957
Total	<u>\$541,428</u>	<u>\$ 459,813</u>

Accrued partner liabilities relate to rebates and marketing development fund accruals for channel partners, system vendors and systems integrators, as well as accrued royalties.

I. Note Payable to EMC

In April 2007, VMware declared an \$800.0 million dividend to EMC paid in the form of a note payable, with interest payable quarterly in arrears and originally due April 2012, of which \$450.0 million remained outstanding as of June 30, 2011. In June 2011, VMware and EMC amended and restated the note to extend the maturity date of the note to April 16, 2015 and to modify the principal amount of the note to reflect the outstanding balance of \$450.0 million. The interest rate continues to reset quarterly and bears an interest rate of the 90-day LIBOR plus 55 basis points. For both the three months ended June 30, 2011 and 2010, \$1.0 million, respectively, of interest expense were recorded related to the note payable. For both the six months ended June 30, 2011 and 2010, \$1.9 million, respectively, of interest expense was recorded related to the note payable. The note may be repaid prior to the maturity date without penalty. No repayments of principal were made during the three months ended June 30, 2011.

J. Income Taxes

Although VMware files a consolidated federal tax return with EMC, VMware calculates its income tax provision on a stand-alone basis. The Company's effective tax rate in the periods presented is the result of the mix of income earned in various tax jurisdictions that apply a broad range of income tax rates. The rate at which the provision for income taxes is calculated differs from the U.S. federal statutory income tax rate primarily due to different tax rates in foreign jurisdictions where income is earned and considered to be indefinitely reinvested.

VMware, Inc.**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)
(unaudited)**

VMware's effective income tax rate was 10.6% and 23.1% for the three months ended June 30, 2011 and 2010, respectively. The effective income tax rate was 14.0% and 21.4%, respectively, for the six months ended June 30, 2011 and 2010. The lower effective rate for the three and six months ended June 30, 2011, compared with the three and six months ended June 30, 2010, was primarily attributable to the following items: an increase in tax benefits from the federal R&D tax credit relative to income before tax, resulting from the reenactment of the federal R&D tax credit which occurred during the fourth quarter of 2010; the release of uncertain tax positions primarily attributable to the closure of a tax audit; and a decrease in unrecognized tax benefits from uncertain tax positions as a percentage of income before tax. These were partially offset by a jurisdictional shift of income from lower-tax non-U.S. jurisdictions to the United States.

VMware's rate of taxation in foreign jurisdictions is lower than the U.S. tax rate. VMware's international income is primarily earned by VMware's subsidiaries in Ireland. Management does not believe that any recent or currently expected developments in non-U.S. tax jurisdictions are reasonably likely to have a material impact on VMware's effective rate. As of June 30, 2011, VMware's total cash, cash equivalents, and short-term investments were \$3,703.1 million, of which \$1,721.2 million was held outside the U.S. If these overseas funds are needed for its operations in the U.S., VMware would be required to accrue and pay U.S. taxes on related undistributed earnings to repatriate these funds. However, VMware's intent is to indefinitely reinvest its non-U.S. earnings in its foreign operations and VMware's current plans do not demonstrate a need to repatriate them to fund its U.S. operations. VMware will meet its U.S. liquidity needs through ongoing cash flows, external borrowings, or both. VMware utilizes a variety of tax planning and financing strategies in an effort to ensure that its worldwide cash is available in the locations in which it is needed. All income earned abroad, except for previously taxed income for U.S. tax purposes, is considered indefinitely reinvested in VMware's foreign operations and no provision for U.S. taxes has been provided with respect thereto.

As of June 30, 2011, VMware had \$76.7 million of gross unrecognized tax benefits, which excludes \$6.3 million of offsetting tax benefits not recognized on the consolidated balance sheets. VMware's net unrecognized tax benefits of \$78.4 million as of June 30, 2011, if recognized, would benefit VMware's effective income tax rate. It is reasonably possible that VMware may pay an immaterial amount of the \$78.4 million of net unrecognized tax benefits within the next 12 months. The \$78.4 million of net unrecognized tax benefits was classified as a non-current liability on the consolidated balance sheet. It is reasonably possible within the next 12 months that audit resolutions could potentially reduce total unrecognized tax benefits by between approximately \$10 million and \$12 million. Audit outcomes and the timing of audit settlements are subject to significant uncertainty. Due to the closure of a tax audit in the three months ended June 30, 2011, approximately \$20.8 million of unrecognized tax benefits were released, which were offset by approximately \$3.5 million in additional tax provision resulting from the audit.

VMware recognizes interest expense and penalties related to income tax matters in the income tax provision. VMware recognized approximately \$0.4 million in interest and penalties for the three months ended June 30, 2011 and accrued \$5.3 million of interest and penalties as of June 30, 2011, associated with the net unrecognized tax benefits. These amounts are included as components of the \$78.4 million of net unrecognized tax benefits as of June 30, 2011.

K. Commitments and Contingencies***Litigation***

From time to time, VMware is subject to legal, administrative and regulatory proceedings, claims, demands and investigations in the ordinary course of business, including claims with respect to intellectual property, contracts, employment and other matters. VMware accrues for a liability when it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated. Significant judgment is required in both the determination of probability and the determination as to whether a loss is reasonably estimable. These accruals are reviewed at least quarterly and adjusted to reflect the impacts of negotiations, settlements, rulings, advice of legal counsel and other information and events pertaining to a particular matter. To the extent there is a reasonable possibility that the losses could exceed the amounts already accrued, management believes that the amount of any such additional loss would be immaterial to VMware's consolidated financial position and results of operation.

VMware, Inc.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)
(unaudited)

Operating Lease Commitments

VMware leases office facilities and equipment under various operating leases. Facility leases generally include renewal options. VMware's future lease commitments at June 30, 2011 were as follows (table in thousands):

2011	\$ 25,866
2012	46,341
2013	40,905
2014	33,457
2015	26,576
Thereafter	571,797
Total minimum lease payments	<u>\$744,942</u>

The amount of the future lease commitments after 2015 is primarily for the ground lease on VMware's Palo Alto, California headquarter facilities and the ground lease for the campus expansion, which both expire in 2046. As several of VMware's operating leases are payable in foreign currencies, the operating lease payments may fluctuate in response to changes in the exchange rate between the U.S. Dollar and the foreign currencies in which the commitments are payable.

L. Stockholders' Equity

VMware Stock Repurchase Programs

In February 2011, a committee of VMware's Board of Directors authorized the repurchase of up to an additional \$550.0 million of VMware's Class A common stock through the end of 2012. From time to time, stock repurchases may be made pursuant to the February 2011 authorization in open market transactions or privately negotiated transactions as permitted by securities laws and other legal requirements. Purchases under the March 2010 authorization were completed in March 2011.

In the three months ended June 30, 2011, VMware repurchased and retired 1.4 million shares of its Class A common stock at a weighted-average price of \$91.60 per share for an aggregate purchase price of \$132.7 million, including commissions. In the six months ended June 30, 2011, VMware repurchased and retired 3.2 million shares of its Class A common stock at a weighted-average price of \$88.50 per share for an aggregate purchase price of \$280.4 million, including commissions. The amount of repurchased shares was classified as a reduction to additional paid-in capital. VMware is not obligated to purchase any shares under its stock repurchase programs. The timing of any repurchases and the actual number of shares repurchased will depend on a variety of factors, including VMware's stock price, corporate and regulatory requirements and other market and economic conditions. Purchases can be discontinued at any time that VMware feels additional purchases are not warranted. As of June 30, 2011, the authorized amount remaining for repurchase was \$331.1 million.

VMware Restricted Stock

VMware restricted stock primarily consists of restricted stock units granted to employees and also includes restricted stock awards and other restricted stock. The following table summarizes restricted stock activity since January 1, 2011 (shares in thousands):

	Number of Shares	Weighted- Average Grant Date Fair Value (per share)
Outstanding, January 1, 2011	9,752	\$ 54.17
Granted	3,852	91.19
Vested	(2,230)	47.86
Forfeited	(437)	57.70
Outstanding, June 30, 2011	<u>10,937</u>	<u>68.35</u>

The total fair value of VMware restricted stock-based awards that vested in the six months ended June 30, 2011 was \$204.5 million. As of June 30, 2011, restricted stock unit awards and other restricted stock representing 10.9 million shares of VMware were outstanding, with an aggregate intrinsic value of \$1.1 billion based on the closing share price as of June 30, 2011. Shares underlying restricted stock unit awards are not issued until the restricted stock units vest. These shares are scheduled to vest through 2015.

VMware, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)
(unaudited)

VMware Employee Stock Purchase Plan

In June 2007, VMware adopted its 2007 Employee Stock Purchase Plan (the “ESPP”), which is intended to be qualified under Section 423 of the Internal Revenue Code. A total of 6.4 million shares of VMware Class A common stock were reserved for future issuance. Under the ESPP, eligible VMware employees are granted options to purchase shares at the lower of 85% of the fair market value of the stock at the time of grant or 85% of the fair market value at the time of exercise. Options to purchase shares are generally granted on February 1 and August 1 and exercisable on the succeeding July 31 and January 31, respectively, of each year.

For the purchase period ended January 31, 2011, 0.4 million shares of Class A common stock were purchased under the ESPP at a weighted-average purchase price per share of \$65.90. For the purchase period ended January 31, 2010, 0.9 million shares of Class A common stock were purchased under the ESPP at a weighted-average purchase price per share of \$24.45. The total cash proceeds from the purchases of these shares under the ESPP were \$26.8 million and \$22.8 million, respectively. As of June 30, 2011, \$29.0 million of ESPP withholdings were recorded as a liability on the consolidated balance sheet for the next purchase in July 2011.

VMware Shares Repurchased for Tax Withholdings

During the three months ended June 30, 2011 and 2010, VMware repurchased or withheld and retired 0.6 million and 0.5 million shares of Class A common stock for \$52.3 million and \$34.7 million, respectively, to cover tax withholding obligations. During the six months ended June 30, 2011 and 2010, VMware repurchased or withheld and retired 0.8 million shares and 0.8 million shares of Class A common stock for \$73.5 million and \$45.6 million, respectively. As of June 30, 2011, \$3.6 million of tax withholding obligations were recorded as a liability on the consolidated balance sheet. Pursuant to the respective award agreements, these shares were repurchased or withheld in conjunction with the net share settlement upon the vesting of restricted stock and restricted stock units during the period. The value of the repurchased or withheld shares, including restricted stock units, was classified as a reduction to additional paid-in capital as of June 30, 2011 and 2010, respectively.

M. Comprehensive Income

The following table sets forth the components of comprehensive income for the three and six months ended June 30, 2011 and 2010, respectively (table in thousands):

	For the three months ended June 30,		For the six months ended June 30,	
	2011	2010	2011	2010
Net income	\$ 220,158	\$ 74,538	\$345,970	\$152,959
Other comprehensive income:				
Unrealized gains (losses) on available-for-sale securities, net of taxes of \$1,352, \$1,246, \$1,196 and \$1,504	2,029	2,019	1,794	2,441
Reclassification of (gains) losses on available-for-sale securities recognized during the period, net of taxes of \$(22,494), \$0, \$(12,788) and \$0	(33,742)	—	(19,181)	—
Total other comprehensive income	(31,713)	2,019	(17,387)	2,441
Total comprehensive income, net of taxes	<u>\$ 188,445</u>	<u>\$ 76,557</u>	<u>\$328,583</u>	<u>\$155,400</u>

In each period presented on VMware’s consolidated balance sheets, accumulated other comprehensive income consisted of unrealized gains and losses on available-for-sale securities, net of taxes.

In the three months ended June 30, 2011, VMware realized a gross gain of \$56.0 million from the sale of its investment in Terremark Worldwide, Inc., which was acquired by Verizon in a cash transaction. The gain was recorded to other income (expense), net on the consolidated statements of income.

N. Related Party Transactions

In April 2011, VMware acquired certain assets relating to EMC’s Mozy cloud-based data storage and data center services, including certain data center assets and a license to certain intellectual property, for approximately \$8.0 million. VMware also entered into an operational support agreement with EMC pursuant to which VMware took over responsibility to operate the Mozy service on behalf of EMC. VMware hired more than 300 Mozy employees and, pursuant to the support agreement, costs incurred by VMware to support EMC’s Mozy services, plus a mark-up intended to approximate third-party costs, are reimbursed to VMware by EMC. On the consolidated statements of income, such amounts were approximately \$12.2 million in the three months ended June 30, 2011 and were recorded as a reduction to the costs VMware incurred. EMC retained ownership of the Mozy business and its remaining assets. EMC

VMware, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)
(unaudited)

continues to be responsible to Mozy customers for Mozy products and services, and continues to recognize revenue from such products and services. As such, the assets acquired from EMC did not constitute a business and were accounted for as an asset purchase between entities under common control pursuant to generally accepted accounting principles. Accordingly, VMware included the carrying value of the transferred assets as of the date of transfer in its consolidated financial statements.

In April 2010, VMware acquired certain software product technology and expertise from EMC's Ionix IT management business for cash consideration of \$175.0 million. EMC retained the Ionix brand and will continue to offer customers the products acquired by VMware, pursuant to the ongoing reseller agreement between EMC and VMware. No contingent amounts were paid to EMC in the three months ended June 30, 2011. In the six months ended June 30, 2011, \$12.5 million of contingent amounts were paid to EMC in accordance with the asset purchase agreement. This amount was recorded as a reduction to the capital contribution from EMC. See VMware's Annual Report on Form 10-K for the fiscal year ended December 31, 2010 for further information.

Pursuant to the ongoing reseller arrangement with EMC that commenced in 2009, EMC bundles VMware's products and services with EMC's hardware and sells them to end-users. In the three months ended June 30, 2011 and 2010, VMware recognized revenues of \$14.2 million and \$10.4 million, respectively, from products and services sold pursuant to VMware's reseller arrangement with EMC. In the six months ended June 30, 2011 and 2010, VMware recognized revenues of \$34.2 million and \$17.0 million, respectively, from products sold pursuant to VMware's reseller arrangement with EMC. As of June 30, 2011, \$63.2 million of revenues from products and services sold under the reseller arrangement were included in unearned revenues.

In the three months ended June 30, 2011 and 2010, VMware recognized professional services revenues of \$16.4 million and \$12.9 million, respectively, for services provided to EMC's customers pursuant to VMware's contractual agreements with EMC. In the six months ended June 30, 2011 and 2010, VMware recognized professional services revenues of \$30.8 million and \$22.0 million, respectively, from such contractual arrangements with EMC. As of June 30, 2011, \$5.4 million of revenues from professional services to EMC customers were included in unearned revenues.

In the three months ended June 30, 2011 and 2010, VMware recognized revenues of \$0.5 million and \$0.8 million, respectively, from server and desktop products and services purchased by EMC for internal use pursuant to VMware's contractual agreements with EMC. In the six months ended June 30, 2011 and 2010, VMware recognized \$1.0 million and \$2.2 million, respectively, from such contractual arrangements with EMC. As of June 30, 2011, \$18.4 million of revenues from server and desktop products and services purchased by EMC for internal use were included in unearned revenues.

VMware purchased storage systems and software, as well as consulting services, from EMC for \$7.5 million and \$2.1 million in the three months ended June 30, 2011 and 2010, respectively, and for \$13.3 million and \$6.4 million in the six months ended June 30, 2011 and 2010, respectively.

In certain geographic regions where VMware does not have an established legal entity, VMware contracts with EMC subsidiaries for support services and EMC employees who are managed by VMware's personnel. The costs incurred by EMC on VMware's behalf related to these employees are passed on to VMware and VMware is charged a mark-up intended to approximate costs that would have been charged had VMware contracted for such services with an unrelated third party. These costs are included as expenses in VMware's consolidated statements of income and primarily include salaries and benefits, travel and rent. Additionally, from time to time, EMC incurs certain administrative costs on VMware's behalf in the U.S. The total cost of the services provided to VMware by EMC as described above was \$18.0 million and \$14.2 million in the three months ended June 30, 2011 and 2010, respectively, and \$42.7 million and \$31.8 million in the six months ended June 30, 2011 and 2010, respectively.

As calculated under VMware's tax sharing agreement with EMC, EMC paid VMware \$141.0 million and \$176.4 million in the three and six months ended June 30, 2011, respectively, resulting from VMware's stand-alone federal taxable loss estimated for both fiscal year 2010 and the three months ended March 31, 2011, as well as a refund of VMware's overpayment related to fiscal year 2009. Under the tax sharing agreement, EMC paid VMware \$2.5 million for the three and six months ended June 30, 2010, resulting from VMware's stand-alone federal and state taxable losses for 2008. VMware paid \$5.1 million to EMC in the six months ended June 30, 2010 for VMware's portion of EMC's 2009 consolidated federal income taxes. No payments were made to EMC by VMware in the three and six months ended June 30, 2011 and in three months ended June 30, 2010. The amounts that VMware pays to EMC for its portion of federal income taxes on EMC's consolidated tax return differ from the amounts VMware would owe on a stand-alone basis and the difference is presented as a component of stockholders' equity. For all periods presented the difference was not material.

In both the three months ended June 30, 2011 and 2010, \$1.0 million, respectively, of interest expense was recorded related to the note payable to EMC and included in interest expense with EMC on VMware's consolidated statements of income. In both the six months ended June 30, 2011 and 2010, \$1.9 million, respectively, of interest expense was recorded related to the note payable. VMware's interest expense as a separate, stand-alone company may be higher or lower than the amounts reflected in the consolidated financial statements. In June 2011, VMware and EMC amended the note to extend its maturity date from April 16, 2012 to April 16, 2015.

VMware, Inc.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (continued)
(unaudited)

As of June 30, 2011, VMware had \$30.0 million due from EMC, which consisted of \$50.9 million due from EMC, partially offset by \$20.9 million due to EMC. These amounts resulted from the related party transactions described above. In addition to the \$30.0 million due from EMC as of June 30, 2011, VMware had \$95.4 million of income taxes receivable due from EMC, which is included in other current assets and \$15.3 million of income taxes payable, which was included in accrued expenses and other, on VMware's consolidated balance sheets. The income tax receivable is related to 2011 federal income taxes and is expected to be received from EMC in the third quarter of 2011. Balances due to or from EMC which are unrelated to tax obligations are generally settled in cash within 60 days of each quarter-end. The timing of the tax payments due to and from EMC is governed by the tax sharing agreement with EMC.

O. Segment Information

VMware operates in one reportable segment. Operating segments are defined as components of an enterprise about which separate financial information is evaluated regularly by the chief operating decision maker in deciding how to allocate resources and assessing performance. Since VMware operates in one operating segment, all required financial segment information can be found in the consolidated financial statements.

Revenues by geographic area for the three and six months ended June 30, 2011 and 2010 were as follows (table in thousands):

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2011	2010	2011	2010
United States	\$ 450,327	\$ 333,717	\$ 849,877	\$ 650,915
International	470,883	340,187	915,054	656,522
Total	<u>\$ 921,210</u>	<u>\$ 673,904</u>	<u>\$1,764,931</u>	<u>\$1,307,437</u>

No country other than the United States had material revenues for the three months ended June 30, 2011 or 2010.

Long-lived assets by geographic area, which primarily include property and equipment, net, as of June 30, 2011 and December 31, 2010 were as follows (table in thousands):

	June 30, 2011	December 31, 2010
United States	\$372,438	\$ 306,182
International	44,484	43,363
Total	<u>\$416,922</u>	<u>\$ 349,545</u>

No country other than the United States accounted for 10% or more of these assets at June 30, 2011 or December 31, 2010, respectively.

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

All dollar amounts expressed as numbers in this MD&A (except per share amounts) are in millions.

Overview

Our primary source of revenues is the licensing of virtualization and cloud infrastructure solutions and related support and services for use by businesses and organizations of all sizes and across numerous industries in their information technology (“IT”) infrastructure. Our virtualization solutions reflect a pioneering approach to computing that separates application software from the underlying hardware to achieve significant improvements in efficiency, agility, availability, flexibility and manageability. Our broad and proven suite of virtualization solutions addresses a range of complex IT problems that include cost and operational inefficiencies, facilitating access to “cloud computing” capacity, business continuity, software lifecycle management and corporate end-user computing device management. Our solutions run on industry-standard servers and desktop computers and support a wide range of operating system and application environments, as well as networking and storage infrastructures. Our solutions enable organizations to aggregate multiple servers, storage infrastructure and networks together into shared pools of capacity that can be allocated dynamically, securely and reliably to applications as needed, increasing hardware utilization and reducing spending. The benefits to our customers include substantially lower IT costs, cost-effective high availability across a wide range of applications, and a more automated and resilient systems infrastructure capable of responding dynamically to variable business demands. With our latest platform, VMware vSphere, we are helping companies along the path of cloud computing by providing compatible IT infrastructures for both businesses and cloud service providers.

Although we believe we are currently the leading provider of virtualization infrastructure software solutions, we face competitive threats to our leadership position from a number of companies, some of which have significantly greater resources than we do, which could result in increased pressure to reduce prices on our offerings. As a result, we believe it is important to continue to invest in strategic initiatives related to product research and development, market expansion and associated support functions to expand our industry leadership. We believe that we will be able to continue to meet our product development objectives through continued investment in our existing infrastructure, supplemented with strategic hires and acquisitions, funded through the operating cash flows generated from the sale of our products and services. We believe this is the appropriate priority for the long-term health and growth of our business.

Our current financial focus is on long-term revenue growth to generate free cash flows¹ to fund our expansion of industry segment share and to evolve our virtualization-based products for data centers, desktop computers and cloud computing through a combination of internal development and acquisitions. We expect to grow our business by broadening our virtualization infrastructure software solutions technology and product portfolio, increasing product awareness, promoting the adoption of virtualization and building long-term relationships with our customers through the adoption of enterprise license agreements (“ELAs”). Since the introduction in 2009 of VMware vSphere and VMware View 4, we have introduced more products that build on the vSphere foundation. In the third quarter of 2011, we announced that we expect to release VMware vSphere 5 and a comprehensive suite of cloud infrastructure technologies during the third quarter. We plan to continue to introduce additional products in the future. Additionally, we have made, and expect to continue to make, acquisitions designed to strengthen our product offerings and/or extend our strategy to deliver solutions that can be hosted at customer data centers or at service providers.

In evaluating our results, we also focus on operating margin excluding certain expenses which are included in our total operating expenses calculated in accordance with GAAP. The expenses excluded are stock-based compensation, the net effect of the amortization and capitalization of software development costs and certain other expenses consisting of employer payroll taxes on employee stock transactions, amortization of intangible assets and acquisition-related items. We believe this measure reflects our ongoing business in a manner that allows meaningful period-to-period comparisons. We are not currently focused on short-term operating margin expansion, but rather on investing at appropriate rates to support our growth and future product offerings in what may be a substantially more competitive environment.

As a consequence of the timing differences in the recognition of license revenues and software maintenance revenues, variability in operating margin can result from differences in when we quote and contract for our services and when the cost is incurred. Variability in operating margin can also result when we recognize previously unearned foreign denominated software maintenance and license revenues in future periods. Due to our use of the U.S. Dollar as our functional currency, unearned revenue remains at its historical rate when recognized into revenue while our operating expenses in future periods are based upon the foreign exchange rates at that time.

¹ Free cash flows, a non-GAAP financial measure, is defined as net cash provided by operating activities plus the excess tax benefits from stock-based compensation, less capital expenditures and capitalized software development costs. Each adjusting item is separately presented on our consolidated statements of cash flows. See “Non-GAAP Financial Measures” for further information.

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We have developed a multi-channel distribution model to expand our presence and to reach various segments of the industry. In the second quarter and first half of 2011, we derived over 85% of our sales from our channel partners, which include distributors, resellers, system vendors and systems integrators. Sales to our channel partners often involve three tiers of distribution: a distributor, a reseller and an end-user customer. Our sales force works collaboratively with our channel partners to introduce them to customers and new sales opportunities. As we expand geographically, we expect to continue to add additional channel partners. The remainder of our sales is primarily derived from purchases made directly by end-user customers.

In the second quarter and first half of 2011, we benefited from strong demand across all regions. Our customers continued to adopt our product platform as a strategic investment that improves efficiency and flexibility for their business and enables substantial cost savings. While the overall macroeconomic environment has improved since the first quarter of 2010, we remain cautious about the macroeconomic environment and the volatility that we are observing in the global economy. We expect to continue to manage our resources prudently, while making key investments in support of our long-term growth objectives.

Income Statement Presentation

As we operate our business in one operating segment, our revenues and operating expenses are presented and discussed at the consolidated level.

Sources of Revenues

License revenues

Our license revenues consist of revenues earned from the licensing of our software products. These products are generally licensed on a perpetual basis. Pricing models have generally been based upon the physical infrastructure, such as the number of physical desktop computers or server processors, on which our software runs. License revenues are recognized when the elements of revenue recognition for the licensed software are complete, generally upon electronic shipment of the software. The revenues allocated to the software license included in multiple-element contracts represent the residual amount of the contract after the fair value of the other elements has been determined. Certain products are licensed on a subscription basis.

We have recently begun to partially base pricing for certain of our products on virtual, rather than purely physical, entitlements, while continuing to license such products on a perpetual basis. We believe that this new pricing model better aligns with the shift to virtual and cloud-based IT environments by enabling customers to align cost with actual use and value derived, rather than purely with hardware configurations and capacity. Effective in September 2010, we began pricing certain of our management solutions on a per-virtual-machine basis. In July 2011, we announced that we will revise the pricing model for VMware vSphere 5 effective with its general availability, expected in the third quarter of 2011. VMware vSphere 5 will continue to be licensed perpetually on a per processor basis. However, two physical constraints, core and physical RAM, will be eliminated and replaced with a single virtualization-based entitlement of virtual memory, or vRAM, which can be shared across a large pool of servers.

Software maintenance revenues

Software maintenance revenues are recognized ratably over the contract period. Our contract periods typically range from one to five years and include renewals of software maintenance sold after the initial software maintenance period expires. Vendor-specific objective evidence ("VSOE") of fair value for software maintenance services is established by the rates charged in stand-alone sales of software maintenance contracts or the stated renewal rate for software maintenance included in the license agreement. Customers receive various types of technical support based on the level of support purchased. Customers who are party to software maintenance agreements with us are entitled to receive product updates and upgrades on a when-and-if-available basis.

Professional services revenues

Professional services include design, implementation and training. Professional services are not considered essential to the functionality of our products, as these services do not alter the product capabilities and may be performed by our customers or by other vendors. Professional services engagements performed for a fixed fee, for which we are able to make reasonably dependable estimates of progress toward completion, are recognized on a proportional performance basis based on hours incurred and estimated hours of completion. Professional services engagements that are on a time and materials basis are recognized based on hours incurred. Revenues on all other professional services engagements are recognized upon completion. Our professional services may be sold with software products or on a stand-alone basis. VSOE of fair value for professional services is based upon the standard rates we charge for such services when sold separately.

Operating Expenses

Cost of license revenues

Our cost of license revenues principally consists of the amortization of capitalized software development costs and of intangibles, as well as royalty costs in connection with technology licensed from third-party providers and the cost of fulfillment of our software. The cost of fulfillment of our software includes product packaging, personnel costs and related overhead associated with the physical and electronic delivery of our software products.

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Cost of services revenues

Our cost of services revenues includes the costs of personnel and related overhead to deliver technical support for our products and to provide our professional services.

Research and development expenses

Our research and development (“R&D”) expenses include the personnel and related overhead associated with the R&D of new product offerings and the enhancement of our existing software offerings, net of amounts capitalized.

Sales and marketing expenses

Our sales and marketing expenses include personnel costs, sales commissions and related overhead associated with the sale and marketing of our license and services offerings, as well as the cost of product launches and certain marketing initiatives, including our annual VMworld conferences in the U.S. and Europe. Sales commissions are generally earned and expensed when a firm order is received from the customer and may be expensed in a period different than the period in which the related revenue is recognized.

General and administrative expenses

Our general and administrative expenses include personnel and related overhead costs to support the overall business. These expenses include the costs associated with our facilities, finance, human resources, IT infrastructure and legal departments, as well as expenses related to corporate costs and initiatives.

Results of Operations

Revenues

Our revenues for the second quarter and first half of 2011 and 2010 were as follows:

	For the Three Months Ended June 30,			For the Six Months Ended June 30,		
	2011	2010	% Change	2011	2010	% Change
Revenues:						
License	\$ 464.8	\$ 323.7	44%	\$ 883.8	\$ 635.8	39%
Services:						
Software maintenance	386.3	290.4	33	750.1	557.7	35
Professional services	70.1	59.8	17	131.0	113.9	15
Total services	456.4	350.2	30	881.1	671.6	31
	<u>\$ 921.2</u>	<u>\$ 673.9</u>	37	<u>\$ 1,764.9</u>	<u>\$ 1,307.4</u>	35
Revenues:						
United States	\$ 450.3	\$ 333.7	35%	\$ 849.9	\$ 650.9	31%
International	470.9	340.2	38	915.0	656.5	39
	<u>\$ 921.2</u>	<u>\$ 673.9</u>	37	<u>\$ 1,764.9</u>	<u>\$ 1,307.4</u>	35

Total revenues increased by \$247.3 or 37% to \$921.2 in the second quarter of 2011 compared with \$673.9 in the second quarter of 2010. Total revenues increased by \$457.5 or 35% to \$1,764.9 in the first half of 2011 compared with \$1,307.4 in the first half of 2010. The revenue mix in the second quarter and first half of 2011 reflected increases in both license revenues and services revenues, as compared with the second quarter and first half of 2010.

License Revenues

Software license revenues increased by \$141.1 or 44% to \$464.8 in the second quarter of 2011 compared with \$323.7 in the second quarter of 2010. Software license revenues increased by \$248.0 or 39% to \$883.8 in the first half of 2011 compared with \$635.8 in the first half of 2010. We believe license revenues benefited in the second quarter and first half of 2011 from the improved macroeconomic environment compared to the same periods in 2010, resulting in strong demand for vSphere across all geographies. In the second quarter and first half of 2011, we observed an increase in the volume of our ELAs as compared with the second quarter and first half of 2010, due to growing customer interest across geographies as well as the improving economic environment. We have promoted the adoption of virtualization and built long-term relationships with our customers through the adoption of ELAs. ELAs continue to be an important component of our revenue growth and are offered both directly by us and through certain channel partners. ELAs are core to our strategy to build long-term relationships with customers as they commit to our virtualization infrastructure software solutions in their data centers. ELAs provide a base from which to sell additional products, such as our application platform

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products, our end-user computing products, and virtualization and cloud management products. Under a typical ELA, a portion of the revenues is attributed to the license and recognized immediately and the remainder is deferred and primarily recognized as software maintenance revenues in future periods. In addition, ELAs typically include an initial maintenance period that is longer than other types of license sales.

Services Revenues

Services revenues increased by \$106.2 or 30% to \$456.4 in the second quarter of 2011 compared with \$350.2 in the second quarter of 2010. Services revenues increased by \$209.5 or 31% to \$881.1 in first half of 2011 compared with \$671.6 in the first half of 2010. The increase in services revenues during the second quarter and first half of 2011 was primarily attributable to growth in our software maintenance revenues.

Software maintenance revenues increased by \$95.9 or 33% to \$386.3 in the second quarter of 2011 compared with \$290.4 in the second quarter 2010. Software maintenance revenues increased by \$192.5 or 35% to \$750.1 in the first half of 2011 compared with \$557.7 in the first half of 2010. In the second quarter and first half of 2011, software maintenance revenues benefited from strong renewals, multi-year software maintenance contracts sold in previous periods, and additional maintenance contracts sold in conjunction with new software license sales. In the second quarter and first half of 2011, customers continued to buy, on average, more than 24 months of support and maintenance with each new license purchased, which we believe illustrates our customers' commitment to VMware as a core element of their data center architecture and hybrid cloud strategy.

Professional services revenues increased by \$10.3 or 17% to \$70.1 in the second quarter of 2011 compared with \$59.8 in the second quarter of 2010. Professional services revenues increased by \$17.1 or 15% to \$131.0 in the first half of 2011 compared with \$113.9 in the first half of 2010. Professional services revenues increased as growth in our license sales and installed-base led to additional demand for our professional services, including consulting and customer training, as well as an increase in our professional services sold in connection with ELAs. As we continue to invest in our partners and expand our eco-system of third-party professionals with expertise in our solutions to independently provide professional services to our customers, we do not expect our professional services revenues to constitute an increasing component of our revenue mix. As a result of this strategy, our professional services revenue can vary based on the delivery channels used in any given period as well as the timing of engagements.

Revenue Growth in Constant Currency

We have invoiced and collected in the Euro, the British Pound, the Japanese Yen, and the Australian Dollar in their respective regions since May 2009. As a result, our total revenues are affected by changes in the value of the U.S. Dollar against these currencies. In order to provide a comparable framework for assessing how our business performed excluding the effect of foreign currency fluctuations, management analyzes year-over-year revenue growth on a constant currency basis. Since all of our entities operate with the U.S. Dollar as their functional currency, revenues for orders booked in currencies other than U.S. Dollars are converted into unearned revenue at the exchange rate in effect for the month in which each order is booked. We calculate constant currency on license revenues recognized during the current period that were originally booked in currencies other than U.S. Dollars by comparing the exchange rates at which the revenue was recognized against the exchange rate that was used in the comparable period. We do not calculate constant currency on services revenues, which include software maintenance revenues and professional services revenues.

For the second quarter of 2011, the year-over-year growth in license revenues measured on a constant currency basis was 40% compared with 44% as reported, and was 38% compared with 39% as reported year-over-year in the first half of 2011. The year-over-year growth in total revenues in the second quarter of 2011 measured on a constant currency basis was 35% compared with 37% as reported. For the first half of 2011, year-over-year growth in total revenues was 35% measured both on a constant currency basis and as reported.

Unearned Revenues

Our unearned revenues as of June 30, 2011 and December 31, 2010 were as follows:

	June 30, 2011	December 31, 2010
Unearned license revenues	\$ 240.1	\$ 267.1
Unearned software maintenance revenues	1,686.0	1,461.3
Unearned professional services revenues	152.1	131.7
Total unearned revenues	<u>\$2,078.2</u>	<u>\$ 1,860.1</u>

The complexity of our unearned revenues has increased over time as a result of acquisitions, an expanded product portfolio and a broader range of pricing and packaging alternatives. As of June 30, 2011, total unearned revenues increased by \$218.1 or 12% to \$2,078.2 compared with \$1,860.1 from December 31, 2010. This increase was primarily due to growth in unearned software maintenance revenues, attributable to our growing base of maintenance contracts. Unearned software maintenance revenues are

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recognized ratably over terms from one to five years with a weighted average remaining term at June 30, 2011 of approximately 1.8 years. Unearned license revenues are recognized either ratably or upon the delivery of either existing or future products or services. Future products include, in some cases, emerging products that are offered as part of product promotions where the purchaser of an existing product is entitled to receive a promotional product at no additional charge. We regularly offer product promotions, generally as a strategy to build awareness of our emerging products. To the extent promotional products are not yet available or VSOE of fair value cannot be established, the revenue for the entire order is deferred until such time as all product obligations have been fulfilled. Unearned professional services revenues result from prepaid professional services, including training, and will be recognized as the services are delivered. We believe our overall unearned revenue balance improves predictability of future revenues and that it is a key indicator of the health and growth of our business.

Operating Expenses

Information about our operating expenses for the second quarter and first half of 2011 and 2010 is as follows:

	For the Three Months Ended June 30, 2011				
	Core Operating Expenses (1)	Stock- Based Compen- sation	Capitalized Software Development Costs, net	Other Expenses	Total Operating Expenses
Cost of license revenues	\$ 17.5	\$ 0.4	\$ 19.8	\$ 11.2	\$ 48.9
Cost of services revenues	96.1	5.7	—	1.7	103.5
Research and development	164.0	46.1	(25.4)	4.5	189.2
Sales and marketing	286.6	23.3	—	4.7	314.6
General and administrative	66.3	9.9	—	1.9	78.1
Total operating expenses	<u>\$ 630.5</u>	<u>\$ 85.4</u>	<u>\$ (5.6)</u>	<u>\$ 24.0</u>	<u>\$ 734.3</u>
Operating income					\$ 186.9
Operating margin					20.3%

	For the Three Months Ended June 30, 2010				
	Core Operating Expenses (1)	Stock- Based Compen- sation	Capitalized Software Development Costs, net	Other Expenses	Total Operating Expenses
Cost of license revenues	\$ 13.0	\$ 0.4	\$ 21.2	\$ 5.7	\$ 40.3
Cost of services revenues	72.2	4.1	—	1.6	77.9
Research and development	135.9	39.4	(15.9)	2.3	161.7
Sales and marketing	214.9	15.5	—	1.3	231.7
General and administrative	51.4	8.5	—	1.3	61.2
Total operating expenses	<u>\$ 487.4</u>	<u>\$ 67.9</u>	<u>\$ 5.3</u>	<u>\$ 12.2</u>	<u>\$ 572.8</u>
Operating income					\$ 101.2
Operating margin					15.0%

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For the Six Months Ended June 30, 2011

	Core Operating Expenses ⁽¹⁾	Stock- Based Compen- sation	Capitalized Software Development Costs, net	Other Expenses	Total Operating Expenses
Cost of license revenues	\$ 35.6	\$ 0.9	\$ 48.3	\$ 20.1	\$ 104.9
Cost of services revenues	182.7	11.3	—	3.4	197.4
Research and development	315.9	88.0	(52.9)	7.4	358.4
Sales and marketing	563.9	45.8	—	7.8	617.5
General and administrative	123.9	20.0	—	2.4	146.3
Total operating expenses	<u>\$ 1,222.0</u>	<u>\$ 166.0</u>	<u>\$ (4.6)</u>	<u>\$ 41.1</u>	<u>\$1,424.5</u>
Operating income					\$ 340.4
Operating margin					19.3%

For the Six Months Ended June 30, 2010

	Core Operating Expenses ⁽¹⁾	Stock- Based Compen- sation	Capitalized Software Development Costs, net	Other Expenses	Total Operating Expenses
Cost of license revenues	\$ 25.9	\$ 0.8	\$ 44.9	\$ 8.8	\$ 80.4
Cost of services revenues	136.3	8.2	—	1.9	146.4
Research and development	259.7	74.2	(37.7)	3.7	299.9
Sales and marketing	414.9	31.5	—	2.1	448.5
General and administrative	109.2	16.9	—	2.8	128.9
Total operating expenses	<u>\$ 946.0</u>	<u>\$ 131.6</u>	<u>\$ 7.2</u>	<u>\$ 19.3</u>	<u>\$1,104.1</u>
Operating income					\$ 203.4
Operating margin					15.6%

- (1) Core operating expenses is a non-GAAP financial measure that excludes stock-based compensation, the net effect of the amortization and capitalization of software development costs and certain other expenses from our total operating expenses calculated in accordance with GAAP. The other expenses excluded are employer payroll taxes on employee stock transactions, amortization of intangible assets and acquisition-related items. See “Non-GAAP Financial Measures” below for further information.

Operating margins increased from 15.0% in the second quarter of 2010 to 20.3% in the second quarter of 2011. Operating margins increased from 15.6% in the first half of 2010 to 19.3% in the first half of 2011. The increase in our operating margin in the second quarter and first half of 2011 compared with the second quarter and first half of 2010 primarily relates to the increase in our revenues, which outpaced the increase in our expenses. In evaluating our results, we generally focus on core operating expenses. We believe that our core operating expenses reflect our business in a manner that allows meaningful period-to-period comparisons. Our core operating expenses are reconciled to the most comparable GAAP measure, “total operating expenses,” in the table above.

Core Operating Expenses

The following discussion of our core operating expenses and the components comprising our core operating expenses highlights the factors that we focus upon in evaluating our operating margin and operating expenses. The increases or decreases in operating expenses discussed in this section do not include changes relating to stock-based compensation, the net effect of the amortization and capitalization of software development costs and certain other expenses, which consist of employer payroll taxes on employee stock transactions, amortization of intangible assets and acquisition-related items set forth above.

Core operating expenses increased by \$143.1 or 29% in the second quarter of 2011 compared with the second quarter of 2010. Core operating expenses increased by \$275.9 or 29% in first half of 2011 compared with the first half of 2010. As quantified below, these increases were primarily due to increases in employee-related expenses, which include salaries and benefits, bonuses, commissions, and recruiting and training. The increase in employee-related expenses was largely a result of incremental headcount from strategic hiring, business growth and business acquisitions.

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A portion of our core operating expenses, primarily the cost of personnel to deliver technical support on our products and professional services, marketing, and research and development, are denominated in foreign currencies, and are thus exposed to foreign exchange rate fluctuations. Core operating expenses were negatively impacted by \$18.3 and \$24.1, respectively, in the second quarter and first half of 2011, as compared with the second quarter and first half of 2010, due to the effect of fluctuations in the exchange rates between the U.S. Dollar and foreign currencies.

Cost of License Revenues

Core operating expenses in cost of license revenues increased by \$4.5 or 35% in the second quarter of 2011 compared with the second quarter of 2010, and by \$9.6 or 37% in the first half of 2011 as compared to the first half of 2010. The increases were primarily due to increases of \$2.7 and \$5.8 in the second quarter and first half of 2011, respectively, in royalty and licensing costs for technology licensed from third-party providers that is used in our products.

Cost of Services Revenues

Core operating expenses in cost of services revenues increased by \$23.8 or 33% in the second quarter of 2011 compared with the second quarter of 2010, and by \$46.4 or 34% in the first half of 2011 compared with the first half of 2010. The increases were primarily due to growth in employee-related expenses of \$11.7 and \$23.2 in the second quarter and first half of 2011, respectively, which was largely driven by incremental growth in headcount, as well as an increase in IT costs of \$3.3 and \$8.7 for certain development initiatives undertaken to enhance our internal customer support tools in support of our growing customer base. Additionally, we had increased third-party professional services costs of \$3.2 and \$6.4, respectively, to provide technical support and professional services primarily associated with increased services revenues. Fluctuations in the exchange rate between the U.S. Dollar and foreign currencies also contributed \$3.6 and \$4.8, respectively, to the overall increase in costs of services revenues.

Research and Development Expenses

Core operating expenses for R&D increased by \$28.2 or 21% in the second quarter of 2011 compared with the second quarter of 2010, and by \$56.2 or 22% in the first half of 2011 compared with the first half of 2010. The increases were primarily due to growth in employee-related expenses of \$22.9 and \$41.3 in the second quarter and first half of 2011, respectively, which were primarily driven by incremental growth in headcount from strategic hiring and business acquisitions.

Sales and Marketing Expenses

Core operating expenses for sales and marketing increased by \$71.7 or 33% in the second quarter of 2011 compared with the second quarter of 2010, and by \$149.0 or 36% in the first half of 2011 compared with the first half of 2010. The increases were primarily due to growth in employee-related expenses of \$45.0 and \$84.9 in the second quarter and first half of 2011, respectively, driven by incremental growth in headcount. The negative impact of \$11.3 and \$15.0, respectively, from fluctuations in the exchange rate between the U.S. Dollar and foreign currencies further contributed to the increases. Additionally, the costs of marketing programs increased by \$7.6 and \$19.1, respectively, in support of our expanding markets and sales efforts, and travel and entertainment expense increased by \$5.6 and \$15.7 in response to growing headcount and our 2011 sales kick-off meeting, which had been cancelled in the prior year due to austerity measures.

General and Administrative Expenses

Core operating expenses for general and administrative increased by \$14.9 or 29% in the second quarter of 2011 compared with the second quarter of 2010, and by \$14.7 or 13% in the first half of 2011 compared with the first half of 2010. The increases were primarily due to increases of \$8.0 and \$12.5 in the second quarter and first half of 2011, respectively, related to employee-related expenses due to incremental growth in headcount and annual merit increases. Additionally, contractor expenses increased by \$2.8 and \$3.7, respectively, in support of the growth of our business.

Stock-Based Compensation Expense

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2011	2010	2011	2010
Stock-based compensation, excluding amounts capitalized	\$ 85.4	\$ 67.8	\$ 166.0	\$ 131.5
Stock-based compensation capitalized	4.2	2.7	9.0	6.9
Stock-based compensation, including amounts capitalized	<u>\$ 89.6</u>	<u>\$ 70.5</u>	<u>\$ 175.0</u>	<u>\$ 138.4</u>

Stock-based compensation expense increased by \$19.1 and \$36.7 in the second quarter and first half of 2011 compared to the second quarter and first half of 2010 primarily due to increases of \$18.4 and \$34.7, respectively, from new awards issued to our existing employees primarily in the second half of 2010, as well as \$10.2 and \$19.8 for awards made to new employees in the last year. These increases were partially offset by decreases of \$9.1 and \$15.9 in the second quarter and first half of 2011, respectively, primarily related to forfeitures, fully vested grants, and an increase to our forfeiture rate assumption.

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Stock-based compensation is recorded to each operating expense category based upon the function of the employee to whom the stock-based compensation relates and fluctuates based upon the value and number of awards granted. Compensation philosophy varies by function, resulting in different weightings of cash incentives versus equity incentives. As a result, functions with larger cash-based components, such as commissions, will have comparatively lower stock-based compensation expense than other functions.

As of June 30, 2011, the total unamortized fair value of our outstanding equity-based awards held by our employees was approximately \$736.5 and is expected to be recognized over a weighted-average period of approximately 2.5 years.

In future quarters, we expect our total stock-based compensation expense to increase as a result of additional equity grants we have made as well as grants we expect to make. Stock-based compensation expense reported in our accompanying consolidated statements of income is reduced by the amount of stock-based compensation that may be capitalized for the development of new software products and the amount of awards that are forfeited.

Capitalized Software Development Costs, Net

Development costs of software to be sold, leased, or otherwise marketed are subject to capitalization beginning when the products' technological feasibility has been established and ending when the product is available for general release. The R&D expenses and amounts that we capitalize as software development costs may not be comparable to our peer companies due to differences in a variety of factors, including multiple areas of judgment inherent in the assessment of these costs.

In the second quarter of 2011, we capitalized \$29.6 (including \$4.2 of stock-based compensation) of costs incurred for the development of software products compared with \$20.3 (including \$2.7 of stock-based compensation) in the second quarter of 2010. In the first half of 2011, we capitalized \$61.9 (including \$9.0 of stock-based compensation) of costs incurred for the development of software products compared with \$46.4 (including \$6.9 of stock-based compensation) in the first half of 2010. These amounts have been excluded from R&D expense on our accompanying consolidated statements of income.

The year-over-year increases in capitalized software development costs of \$9.3 and \$15.5 in the second quarter and first half of 2011, respectively, were primarily due to increases of \$13.2 and \$23.5, respectively, in costs capitalized for the development of VMware vSphere 5 over prior versions. Additionally, both the second quarter and first half of 2011 had an increase in capitalized software development costs of \$3.5 related to the timing of when products reached technological feasibility. These increases in capitalized costs were partially offset by reductions of \$9.1 and \$11.4, in the second quarter of 2011 and first half of 2011, respectively, relating to capitalization ceasing on other products due to their general release. As a result of the planned release of VMware vSphere 5 in the third quarter of 2011, we expect our capitalized software development costs to significantly decline for the remainder of 2011.

In the second quarter of 2011, amortization expense from capitalized software development costs decreased \$1.4 to \$19.8 as compared with \$21.2 in the second quarter of 2010. In the first half of 2011, amortization expense from capitalized software development costs increased \$3.4 to \$48.3 as compared with \$44.9 in the first half of 2010. These amounts are included in cost of license revenues on our accompanying consolidated statements of income.

Other Operating Expenses

Other operating expenses consist of employer payroll tax on employee stock transactions and intangible amortization, which are recorded to each individual line of operating expense on our accompanying consolidated statements of income. Additionally, other operating expenses include acquisition-related items, which are recorded to general and administrative expense on our income statement. Other operating expenses increased by \$11.8 to \$24.0 in the second quarter of 2011 as compared with \$12.2 in the second quarter of 2010, and increased by \$21.8 to \$41.1 in the first half of 2011 as compared with \$19.3 in the first half of 2010. The increase in the second quarter and first half of 2011 was primarily due to additional intangible amortization of \$7.3 and \$16.1, respectively, primarily resulting from new acquisitions, of which \$5.5 and \$11.4 of the increase was recorded to costs of license revenues on our income statement. In addition, for the second quarter and first half of 2011, there was an increase of \$4.2 and \$6.4, respectively, in employer payroll taxes on employee stock transactions, which was driven by the increase in the market value of our stock and the number of awards exercised, sold or vested.

Investment Income

Investment income was \$3.7 in the second quarter of 2011 and \$1.0 in the second quarter of 2010. Investment income was \$7.1 in the first half of 2011 and \$1.7 in the first half of 2010. Investment income primarily consists of interest earned on cash, cash equivalents and short-term investment balances partially offset by the amortization of premiums paid on fixed income securities. Investment income increased in the second quarter and first half of 2011, as compared with the second quarter and first half of 2010 primarily due to an increasing shift from a cash and cash equivalents portfolio primarily invested in money market funds to a short-term investment portfolio of fixed income securities.

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Interest Expense with EMC

Interest expense with EMC was \$1.0 in both the second quarter of 2011 and 2010, respectively, and \$1.9 in both the first halves of 2011 and 2010, respectively. Interest expense with EMC consists of interest expense incurred on the note issued to EMC in April 2007 and further amended in June 2011. The interest rate on the note payable resets quarterly and is determined using the 90-day LIBOR rate plus 55 basis points, two business days prior to the first day of each fiscal quarter. For the second quarter of 2011 and 2010, the weighted-average rate was 0.85% and 0.84%, respectively.

Other Income (Expense), Net

Other income, net of \$56.6 in the second quarter of 2011 changed by \$60.9 compared with other expense, net of \$4.3 in the second quarter of 2010. Other income, net of \$56.8 in the first half of 2011 changed by \$65.4 compared with other expense, net of \$8.6 in the first half of 2010. The change in both periods was primarily due to a \$56.0 gain recognized on the sale in the second quarter of 2011 of our investment in Terremark Worldwide, Inc., which was acquired by Verizon in a cash transaction.

Income Tax Provision

Our effective income tax rate was 10.6% for the second quarter of 2011 as compared with 23.1% for the second quarter of 2010. The effective income tax rate was 14.0% and 21.4%, respectively, for the first half of 2011 and 2010. The lower effective rate for the second quarter and first half of 2011, as compared with the second quarter and first half of 2010, was primarily attributable to the following items: an increase in tax benefits from the federal R&D tax credit relative to income before tax, due to the reenactment of the federal R&D tax credit which occurred during the fourth quarter of 2010; the release of uncertain tax positions primarily attributable to the closure of a tax audit; and to a decrease in unrecognized tax benefits from uncertain tax positions as a percentage of income before tax. These were offset by a jurisdictional shift of income from lower-tax non-U.S. jurisdictions to the United States.

Our rate of taxation in foreign jurisdictions is lower than our U.S. tax rate. Our international income is primarily earned by our subsidiaries in Ireland. We do not believe that any recent or currently expected developments in non-U.S. tax jurisdictions are reasonably likely to have a material impact on our effective rate. As of June 30, 2011, our total cash, cash equivalents, and short-term investments were \$3,703.1, of which \$1,721.2 was held outside the U.S. If these overseas funds are needed for our operations in the U.S., we would be required to accrue and pay U.S. taxes on related undistributed earnings to repatriate these funds. However, our intent is to indefinitely reinvest our non-U.S. earnings in our foreign operations and our current plans do not demonstrate a need to repatriate them to fund our U.S. operations. We will meet our U.S. liquidity needs through ongoing cash flows generated from our U.S. operations, external borrowings, or both. We utilize a variety of tax planning and financing strategies in an effort to ensure that our worldwide cash is available in the locations in which it is needed. All income earned abroad, except for previously taxed income for U.S. tax purposes, is considered indefinitely reinvested in our foreign operations and no provision for U.S. taxes has been provided with respect thereto.

Although we file a federal consolidated tax return with EMC, we calculate our income tax provision on a stand-alone basis. Our effective tax rate in the periods presented is the result of the mix of income earned in various tax jurisdictions that apply a broad range of income tax rates. The rate at which the provision for income taxes is calculated differs from the U.S. federal statutory income tax rate primarily due to different tax rates in foreign jurisdictions where income is earned and considered to be indefinitely reinvested.

We have been included in the EMC consolidated group for U.S. federal income tax purposes, and expect to continue to be included in such consolidated group for periods in which EMC owns at least 80% of the total voting power and value of our outstanding stock as calculated for U.S. federal income tax purposes. The percentage of voting power and value calculated for U.S. federal income tax purposes may differ from the percentage of outstanding shares beneficially owned by EMC due to the greater voting power of our Class B common stock as compared to our Class A common stock and other factors. Each member of a consolidated group during any part of a consolidated return year is jointly and severally liable for tax on the consolidated return of such year and for any subsequently determined deficiency thereon. Should EMC's ownership fall below 80% of the total voting power or value of our outstanding stock in any period, then we would no longer be included in the EMC consolidated group for U.S. federal income tax purposes, and thus no longer be liable in the event that any income tax liability was incurred, but not discharged, by any other member of the EMC consolidated group. Additionally, our U.S. federal income tax would be reported separately from that of the EMC consolidated group.

Our effective tax rate for the remainder of 2011 may be affected by such factors as changes in tax laws, regulations or rates, changing interpretation of existing laws or regulations, the impact of accounting for stock-based compensation, the impact of accounting for business combinations, changes in our international organization, shifts in the amount of income before tax earned in the U.S. as compared with other regions in the world, and changes in overall levels of income before tax.

Our Relationship with EMC

As of June 30, 2011, EMC owned 34,127,000 shares of Class A common stock and all 300,000,000 shares of Class B common stock, representing 79.3% of our total outstanding shares of common stock and 97.2% of the combined voting power of our outstanding common stock.

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In April 2011, we acquired certain assets relating to EMC's Mozy cloud-based data storage and data center services, including certain data center assets and a license to certain intellectual property, for approximately \$8.0. We also entered into an operational support agreement with EMC pursuant to which we took over responsibility to operate the Mozy service on behalf of EMC. We hired more than 300 Mozy employees and, pursuant to the support agreement, costs incurred by us to support EMC's Mozy services, plus a mark-up intended to approximate third-party costs, are reimbursed to us by EMC. On the consolidated statements of income, such amounts were approximately \$12.2 in the second quarter of 2011 and were recorded as a reduction to the costs we incur. EMC retained ownership of the Mozy business and its remaining assets. EMC continues to be responsible to Mozy customers for Mozy products and services, and continues to recognize revenue from such products and services. As such, the assets acquired from EMC did not constitute a business and were accounted for as an asset purchase between entities under common control pursuant to generally accepted accounting principles. Accordingly, we included the carrying value of the transferred assets as of the date of transfer in our consolidated financial statements.

In April 2010, we acquired certain software product technology and expertise from EMC's Ionix IT management business for cash consideration of \$175.0. EMC retained the Ionix brand and will continue to offer customers the products acquired by us, pursuant to the ongoing reseller agreement between EMC and us. No contingent amounts were paid to EMC in the second quarter of 2011. In the first half of 2011, \$12.5 of contingent amounts were paid to EMC in accordance with the asset purchase agreement. This amount was recorded as a reduction to the capital contribution from EMC. See our Annual Report on Form 10-K for the fiscal year ended December 31, 2010 for further information.

Pursuant to the ongoing reseller arrangement with EMC that commenced in 2009, EMC bundles our products and services with EMC's hardware and sells them to end-users. In the second quarter of 2011 and 2010, we recognized revenues of \$14.2 and \$10.4, respectively, from products and services sold pursuant to our reseller arrangement with EMC. In the first half of 2011 and 2010, we recognized revenues of \$34.2 and \$17.0, respectively, from products sold pursuant to our reseller arrangement with EMC. As of June 30, 2011, \$63.2 of revenues from products and services sold under the reseller arrangement were included in unearned revenues.

In the second quarter of 2011 and 2010, we recognized professional services revenues of \$16.4 and \$12.9, respectively, for services provided to EMC's customers pursuant to our contractual agreements with EMC. In the first half of 2011 and 2010, we recognized professional services revenues of \$30.8 and \$22.0, respectively, from such contractual arrangements with EMC. As of June 30, 2011, \$5.4 of revenues from professional services to EMC customers were included in unearned revenues.

In the second quarter of 2011 and 2010, we recognized revenues of \$0.5 and \$0.8, respectively, from server and desktop products and services purchased by EMC for internal use pursuant to our contractual agreements with EMC. In the first half of 2011 and 2010, we recognized \$1.0 and \$2.2, respectively, from such contractual arrangements with EMC. As of June 30, 2011, \$18.4 of revenues from server and desktop products and services purchased by EMC for internal use were included in unearned revenues.

We purchased storage systems and software, as well as consulting services, from EMC for \$7.5 and \$2.1 in the second quarter of 2011 and 2010, respectively, and for \$13.3 and \$6.4 in the first half of 2011 and 2010, respectively.

In certain geographic regions where we do not have an established legal entity, we contract with EMC subsidiaries for support services and EMC employees who are managed by our personnel. The costs incurred by EMC on our behalf related to these employees are passed on to us and we are charged a mark-up intended to approximate costs that would have been charged had we contracted for such services with an unrelated third party. These costs are included as expenses in our consolidated statements of income and primarily include salaries and benefits, travel and rent. Additionally, from time to time, EMC incurs certain administrative costs on our behalf in the U.S. The total cost of the services provided to us by EMC as described above was \$18.0 and \$14.2 in the second quarter 2011 and 2010, respectively, and \$42.7 and \$31.8 in the first half of 2011 and 2010, respectively.

As calculated under our tax sharing agreement with EMC, EMC paid us \$141.0 and \$176.4 in the second quarter and first half of 2011, respectively, resulting from our stand-alone federal taxable loss estimated for both fiscal year 2010 and the first quarter of 2011, as well as a refund of our overpayment related to fiscal year 2009. Under the tax sharing agreement, EMC paid us \$2.5 for the second quarter and first half of 2010, resulting from our stand-alone federal and state taxable losses for 2008. We paid \$5.1 to EMC in the second half of 2010 for our portion of EMC's 2009 consolidated federal income taxes. No payments were made to EMC by us in the second quarter and first half of 2011 and in the second quarter of 2010. The amounts that we pay to EMC for our portion of federal income taxes on EMC's consolidated tax return differ from the amounts we would owe on a stand-alone basis and the difference is presented as a component of stockholders' equity. For all periods presented the difference was not material.

In both the second quarter of 2011 and 2010, \$1.0, respectively, of interest expense was recorded related to the note payable to EMC and included in interest expense with EMC on our consolidated statements of income. In both the first half of 2011 and 2010, \$1.9, respectively, of interest expense was recorded related to the note payable. Our interest expense as a separate, stand-alone company may be higher or lower than the amounts reflected in the consolidated financial statements. In June 2011, we and EMC amended the note to extend its maturity date from April 16, 2012 to April 16, 2015.

As of June 30, 2011, we had \$30.0 due from EMC, which consisted of \$50.9 due from EMC, partially offset by \$20.9 due to EMC. These amounts resulted from the related party transactions described above. In addition to the \$30.0 due from EMC as of June 30, 2011, we had \$95.4 of income taxes receivable due from EMC, which is included in other current assets and \$15.3 of income taxes payable, which was included in accrued expenses and other, on our consolidated balance sheets. The income tax receivable is

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related to 2011 federal income taxes and is expected to be received from EMC in the third quarter of 2011. Balances due to or from EMC which are unrelated to tax obligations are generally settled in cash within 60 days of each quarter-end. The timing of the tax payments due to and from EMC is governed by the tax sharing agreement with EMC.

By nature of EMC's majority ownership of us, the amounts we recorded for our intercompany transactions with EMC would not be considered arm's length with an unrelated third party. Therefore the financial statements included herein may not necessarily reflect our financial condition, results of operations and cash flows had we engaged in such transactions with an unrelated third party during all periods presented. Accordingly, our historical results should not be relied upon as an indicator of our future performance as a stand-alone company.

Liquidity and Capital Resources

During the second quarter of 2010, we began investing in fixed income securities, which drove a shift from cash and cash equivalents to short-term investments. Our fixed income investment portfolio is denominated in U.S. Dollars and consists of various holdings, types and maturities. Our primary objective for holding fixed income securities is to achieve an appropriate investment return consistent with preserving principal and managing risk.

	June 30,	
	2011	2010
Cash and cash equivalents	\$1,791.0	\$2,068.6
Short-term investments	1,912.1	711.2
Total cash, cash equivalents and short-term investments	<u>\$3,703.1</u>	<u>\$2,779.8</u>

Our operating activities in the second quarter and first half of 2011 and 2010, respectively, generated sufficient cash to meet our operating needs. Our cash flows for the second quarter and first half of 2011 and 2010 were as follows:

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2011	2010	2011	2010
Net cash provided by (used in):				
Operating activities	\$ 462.8	\$ 216.1	\$ 940.7	\$ 571.1
Investing activities	(411.2)	(926.9)	(779.6)	(1,103.3)
Financing activities	30.5	22.9	1.0	114.3
Net increase (decrease) in cash and cash equivalents	<u>\$ 82.1</u>	<u>\$ (687.9)</u>	<u>\$ 162.1</u>	<u>\$ (417.9)</u>

In evaluating our liquidity internally, we focus on long-term, sustainable growth in free cash flows and in non-GAAP cash flows from operating activities ("non-GAAP operating cash flows"). We define non-GAAP operating cash flows as net cash provided by operating activities less capitalized software development costs plus the excess tax benefits from stock-based compensation. We define free cash flows, also a non-GAAP financial measure, as non-GAAP operating cash flows less capital expenditures. See "Non-GAAP Financial Measures" for additional information.

Our non-GAAP operating cash flows and free cash flows for the three months and trailing twelve months ended June 30, 2011 and 2010 were as follows:

	For the Three Months Ended June 30,		For the Trailing Twelve Months Ended June 30,	
	2011	2010	2011	2010
Net cash provided by operating activities	\$ 462.8	\$ 216.1	\$ 1,544.0	\$ 1,054.1
Capitalized software development costs	(25.4)	(19.3)	(75.8)	(65.1)
Excess tax benefits from stock-based compensation	101.3	64.6	286.2	110.2
Non-GAAP operating cash flows	538.7	261.4	1,754.4	1,099.2
Capital expenditures	(95.2)	(29.0)	(193.8)	(97.8)
Free cash flows	<u>\$ 443.5</u>	<u>\$ 232.4</u>	<u>\$ 1,560.6</u>	<u>\$ 1,001.4</u>

Free cash flows increased by \$559.2 or 56% to \$1,560.6 for the trailing twelve months ended June 30, 2011, compared with \$1,001.4 for the trailing twelve months ended June 30, 2010. The increase was primarily due to increased sales and related cash collections.

Historically, we have invested excess cash predominantly in money market securities that are liquid and of high quality investment grade. The fair value for money market securities is determined based on quoted market prices as of the valuation date. We limit the amount of our domestic and international investments with any single issuer and any single financial institution, and also

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monitor the diversity of the portfolio, thereby diversifying the credit risk. In the second quarter of 2010, we began investing in fixed income securities. As of June 30, 2011, we held a diversified portfolio of money market funds and fixed income securities, which primarily consisted of highly liquid debt instruments of the U.S. government and its agencies, U.S. municipal obligations, and U.S. and foreign corporate debt securities.

As of June 30, 2011, our total cash, cash equivalents, and short-term investments were \$3,703.1, of which \$1,721.2 was held outside the U.S. If these overseas funds are needed for our operations in the U.S., we would be required to accrue and pay U.S. taxes on related undistributed earnings to repatriate these funds. However, our intent is to indefinitely reinvest our non-U.S. earnings in our foreign operations and our current plans do not demonstrate a need to repatriate them to fund our U.S. operations.

We expect to continue to generate positive cash flows from operations in 2011 and to use cash generated by operations as our primary source of liquidity. We believe that existing cash and cash equivalents, together with any cash generated from operations will be sufficient to meet normal operating requirements including strategic acquisitions and capital expenditures for at least the next twelve months.

Operating Activities

Cash provided by operating activities is driven by our net income, adjusted for non-cash items and changes in assets and liabilities. Non-cash adjustments include depreciation, amortization of intangible assets, amortization of premiums paid upon purchase of investments in our fixed income portfolio, stock-based compensation expense, deferred income taxes, excess tax benefits from stock-based compensation and other adjustments. Net changes in assets and liabilities were impacted by increases in unearned revenues in the periods presented, and we expect this trend to continue in the future.

Cash provided by operating activities increased by \$246.7 to \$462.8 in the second quarter of 2011, as compared with \$216.1 in the second quarter of 2010. Cash provided by operating activities increased by \$369.6 to \$940.7 in the first half of 2011, as compared with \$571.1 in the first half of 2010. The increase in both periods was the result of an increase in cash collections from customers driven by strong sales volume. In addition, in the second quarter and first half of 2011, we benefited from the collection of \$141.0 and \$176.4, respectively, on the income tax receivable from EMC. Under the tax sharing agreement, EMC is obligated to pay to us an amount equal to the tax benefit that EMC will realize from our loss on its consolidated tax return. The increase in cash collections and the benefit from the collection of the income tax receivable was partially offset by increases in our core operating expenses, primarily related to incremental headcount from strategic hiring and business acquisitions, as well as an increase in the excess tax benefit from stock-based compensation due to the increase in market value of our stock.

Investing Activities

Cash used in investing activities is primarily attributable to the purchase of fixed income securities, business acquisitions, capital expenditures and capitalized software development costs. Cash provided by investing activities is primarily attributable to the sales or maturities of fixed income securities and the sale of strategic investments.

In addition, in the second quarter of 2011, we closed an agreement to purchase all of the right, title and interest in a ground lease covering the property and improvements located adjacent to our existing Palo Alto, California campus for \$225.0. We paid the seller \$45.0 in the first quarter of 2011 as a good faith deposit, and in the second quarter of 2011, we paid the remaining \$180.0. Based upon the respective fair values, \$51.9 of the purchase price was recorded to property and equipment and the remaining \$173.1 was recorded to intangible assets on the consolidated balance sheet. Refer to Note G for further information. On the consolidated statement of cash flows for the second quarter and first half of 2011, the \$51.9 paid for the property is included within additions to property and equipment and the \$173.1 paid for the intangible assets is separately disclosed within cash used in investing activities. In the second half of 2011, we expect to spend approximately \$50.0 for design and renovation work related to the campus expansion. Our renovation of the new property will be a multi-year project with capital investment extending into future periods.

We began investing in fixed income securities during the second quarter of 2010 to achieve our objective of an appropriate investment return consistent with the preservation of principal and management of risk. Total fixed income securities of \$529.0 and \$1,127.8, respectively, were purchased in the second quarter and first half of 2011. In the second quarter and first half of 2010, we purchased \$660.1 of fixed income securities. All purchases of fixed income securities are classified as cash outflows from investing activities. We classify these investments as short-term investments on our consolidated balance sheets based upon the nature of the security and their availability for use in current operations or for other purposes, such as business acquisitions and strategic investments. These cash outflows were partially offset by cash inflows of \$500.9 and \$869.6 in the second quarter and first half of 2011, respectively, as a result of the sales and maturities of fixed income securities. There were no sales or maturities of fixed income securities in the second quarter or first half of 2010.

In the second quarter of 2011, we sold our investment in Terremark Worldwide, Inc., which was acquired by Verizon in a cash transaction, for \$76.0.

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In the second quarter and first half of 2011, we paid \$189.1 and \$204.1, respectively, for business acquisitions as compared with \$60.6 and \$167.2, respectively, paid for various business acquisitions in the second quarter and first half of 2010. Business acquisitions are an important element in our industry and we expect to continue to consider additional strategic business acquisitions in the future. Refer to Note F for further information.

In the second quarter of 2010, we paid \$175.0 to EMC to acquire certain software product technology and expertise from their Ionix IT management business. The net assets and expertise acquired from EMC constituted a business and were accounted for as a business combination between entities under common control. Refer to Note N for further information.

Financing Activities

Proceeds from the issuance of our Class A common stock from the exercise of stock options were \$110.5 and \$106.1 in the second quarter of 2011 and 2010, respectively. Proceeds from the issuance of our Class A common stock from the exercise of stock options and the purchase of shares under the VMware Employee Stock Purchase Plan (“ESPP”) were \$200.7 and \$215.9 in the first half of 2011 and 2010, respectively.

In the second quarter and first half of 2011, the cash inflows were partially offset by cash outflows of \$132.7 and \$280.4 respectively, to repurchase shares of our Class A common stock as part of our stock repurchase programs. In February 2011, a committee of our Board of Directors authorized the repurchase of up to \$550.0 of our Class A common stock through the end of 2012. From time-to-time, stock repurchases may be made pursuant to the February 2011 authorization in open market transactions or privately negotiated transactions as permitted by securities laws and other legal requirements. In the second quarter and first half of 2010, we paid \$113.2 and \$144.5, respectively, to repurchase shares of our Class A common stock under the prior stock repurchase program approved in March 2010. Purchases under the March 2010 authorization were completed in March 2011.

In the second quarter and first half of 2011, we repurchased and retired 1.4 million and 3.2 million shares, respectively, of our Class A common stock at a weighted-average price of \$91.60 and \$88.50 per share, respectively, for an aggregate purchase price of \$132.7 and \$280.4, respectively, including commissions. We are not obligated to purchase any shares under our stock repurchase programs. The timing of any repurchases and the actual number of shares repurchased will depend on a variety of factors, including our stock price, corporate and regulatory requirements and other market and economic conditions. Purchases can be discontinued at any time that we feel that additional purchases are not warranted. As of June 30, 2011, the authorized amount remaining for repurchase was \$331.1.

There were additional cash outflows of \$48.7 and \$34.7 in the second quarter of 2011 and 2010, respectively, and \$70.6 and \$45.6 in the first half of 2011 and 2010, respectively, to cover tax withholding obligations in conjunction with the net share settlement upon the vesting of restricted stock units and restricted stock. Additionally, the excess tax benefit from stock-based compensation was \$101.3 and \$64.6 in the second quarter of 2011 and 2010, respectively, and \$151.3 and \$88.5 in the first half of 2011 and 2010, respectively, and is shown as a reduction to cash flows from operating activities and an increase to cash flows from financing activities. The year-over-year changes in the repurchase of shares and the excess tax benefit from stock-based compensation in the second quarter and first half of 2011 were primarily due to the increases in the market value of our stock and the number of awards exercised, sold or vested.

Future cash proceeds from issuances of common stock and the excess tax benefit from stock-based compensation and future cash outflows to repurchase our shares to cover tax withholding obligations will depend upon, and could fluctuate significantly from period-to-period based on the market value of our stock, the number of awards exercised, sold or vested, the tax benefit realized and the tax-affected compensation recognized.

Note Payable to EMC

As of June 30, 2011, \$450.0 remained outstanding on a note payable to EMC, with interest payable quarterly in arrears. In June 2011, we and EMC amended and restated the note to extend the maturity date of the note to April 16, 2015 and to modify the principal amount of the note to reflect the outstanding balance of \$450.0. The interest rate continues to reset quarterly and bears an interest rate of the 90-day LIBOR plus 55 basis points.

Non-GAAP Financial Measures

Regulation S-K Item 10(e), “Use of Non-GAAP Financial Measures in Commission Filings,” defines and prescribes the conditions for use of non-GAAP financial information. Our measures of core operating expenses, non-GAAP operating cash flows and free cash flows each meet the definition of a non-GAAP financial measure.

Core Operating Expenses

Management uses the non-GAAP measure of core operating expenses to understand and compare operating results across accounting periods, for internal budgeting and forecasting purposes, for short- and long-term operating plans, to calculate bonus payments and to evaluate our financial performance, the performance of its individual functional groups and the ability of operations to generate cash. Management believes that core operating expenses reflect our business in a manner that allows for meaningful period-to-period comparisons and analysis of trends in our business, as they exclude certain expenses that are not reflective of our operating results.

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We define core operating expenses as our total operating expenses excluding the following components, which we believe are not reflective of our operational expenses. In each case, for the reasons set forth below, management believes that excluding the component provides useful information to investors and others in understanding and evaluating our operating results and future prospects in the same manner as management, in comparing financial results across accounting periods and to those of peer companies and to better understand the long-term performance of our core business.

- *Stock-based compensation*. Stock-based compensation expense is generally fixed at the time the stock-based instrument is granted and amortized over a period of several years. Although stock-based compensation is an important aspect of the compensation of our employees and executives, determining the fair value of the stock-based instruments can involve a high degree of judgment and estimation and the expense recorded may bear little resemblance to the actual value realized by the grantee. Furthermore, unlike cash compensation, the value of stock-based compensation is subject to varying valuation methodologies and subjective assumptions related to different award types and incorporates certain factors, such as market volatility, that are beyond our control.
- *Amortization and capitalization of software development costs*. Amortization and capitalization of software development costs can vary significantly depending upon the timing of products reaching technological feasibility and being made generally available.
- *Other expenses*. Other expenses excluded are employer payroll taxes on employee stock transactions, amortization of intangible assets and acquisition-related items. The amount of employer payroll taxes on stock-based compensation is dependent on our stock price and other factors that are beyond our control and do not correlate to the operation of the business. Regarding the amortization of intangible assets, a portion of the purchase price of our acquisitions is generally allocated to intangible assets, such as intellectual property, and is subject to amortization. Additionally, the amount of an acquisition's purchase price allocated to intangible assets and the term of its related amortization can vary significantly and are unique to each acquisition. Acquisition-related items include direct costs of acquisitions, such as transaction fees, which vary significantly and are unique to each acquisition. However, we do not acquire businesses on a predictable cycle.

Non-GAAP operating cash flows and free cash flows

We define non-GAAP operating cash flows as net cash provided by operating activities less capitalized software development costs plus the excess tax benefits from stock-based compensation. We define free cash flows as non-GAAP operating cash flows less capital expenditures. Management uses non-GAAP operating cash flows as another measure of cash flows from operations because this measure offers a perspective of our operating cash flows that aligns with how management internally views our overall and individual functional group operating results. When viewing operating results for evaluating our past performance and for planning purposes, management excludes certain items, including the effect of capitalizing and amortizing software development costs and items related to stock-based compensation, which are also excluded in the non-GAAP operating cash flows measure. Management uses free cash flows as a measure of financial progress in our business, as it balances operating results, cash management and capital efficiency. In addition to quarterly free cash flows, management also focuses on trailing twelve month free cash flows, as free cash flows can be volatile in the short-term.

We believe that our measures of non-GAAP operating cash flows and free cash flows provide useful information to investors and others, as they allow for meaningful period-to-period comparisons of our operating cash flows for analysis of trends in our business. Additionally, we believe that information regarding non-GAAP operating cash flows and free cash flows provides investors and others with an important perspective on cash that we may choose to make available for strategic acquisitions and investments, the repurchase of shares, operations and other capital expenditures.

We deduct capitalization of software development costs from both measures because these costs are considered to be a necessary component of our operations and the amount capitalized under GAAP can vary significantly from period-to-period depending upon the timing of products reaching technological feasibility and being made generally available. Consequently, software development costs paid out during a period that are capitalized under GAAP and do not impact GAAP operating cash flows for that period do result in a decrease to our measures of non-GAAP operating cash flows and non-GAAP free cash flows, thereby providing management with useful measures of cash flows generated from operations during the period. We add back the excess income tax benefits from stock-based compensation to our measures of non-GAAP operating cash flows and free cash flows as management internally views cash flows arising from income taxes as similar to operating cash flows rather than as financing cash flows as required under GAAP. Furthermore, we exclude capital expenditures on property and equipment from free cash flows because these expenditures are also considered to be a necessary component of our operations.

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Limitations on the use of Non-GAAP financial measures

A limitation of our non-GAAP financial measures of core operating expenses, non-GAAP operating cash flows and free cash flows is that they do not have uniform definitions. Our definitions will likely differ from the definitions used by other companies, including peer companies, and therefore comparability may be limited. Thus, our non-GAAP measures of core operating expenses, non-GAAP operating cash flows and free cash flows should be considered in addition to, not as a substitute for, or in isolation from, measures prepared in accordance with GAAP. Additionally, in the case of stock-based compensation, if we did not pay out a portion of compensation in the form of stock-based compensation and related employer payroll taxes, the cash salary expense included in costs of revenues and operating expenses would be higher which would affect our cash position. Further, the non-GAAP measure of core operating expenses has certain limitations because it does not reflect all items of income and expense that affect our operations and are reflected in the GAAP measure of total operating expenses.

We compensate for these limitations by reconciling core operating expenses to the most comparable GAAP financial measure. Management encourages investors and others to review our financial information in its entirety, not to rely on any single financial measure and to view our non-GAAP financial measures in conjunction with the most comparable GAAP financial measures.

See “Results of Operations—Operating Expenses” for a reconciliation of the non-GAAP financial measure of core operating expenses to the most comparable GAAP measure, “total operating expenses,” for the quarters and six months ended June 30, 2011 and 2010.

See “Liquidity and Capital Resources” for a reconciliation of non-GAAP operating cash flows and free cash flows to the most comparable GAAP measure, “net cash provided by operating activities,” for the quarters and six months ended June 30, 2011 and 2010.

Off-Balance Sheet Arrangements, Contractual Obligations, Contingent Liabilities and Commitments

There were no substantial changes to our guarantee and indemnification obligations or our contractual commitments in the second quarter of 2011.

Critical Accounting Policies

Our consolidated financial statements are based on the selection and application of accounting principles generally accepted in the United States of America that require us to make estimates and assumptions about future events that affect the amounts reported in our financial statements and the accompanying notes. Future events and their effects cannot be determined with certainty. Therefore, the determination of estimates requires the exercise of judgment. Actual results could differ from those estimates, and any such differences may be material to our financial statements. We believe that the critical accounting policies set forth within Item 7 of our 2010 Annual Report on Form 10-K may involve a higher degree of judgment and complexity in their application than our other significant accounting policies and represent the critical accounting policies used in the preparation of our financial statements. If different assumptions or conditions were to prevail, the results could be materially different from our reported results.

Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements, including, without limitation, statements regarding: the potential role of our products in cloud computing and other shifts in computing infrastructures; expectations of, and our plans for, achieving future business growth; macroeconomic conditions; future product offerings; plans for future acquisitions; our view of the competitive landscape and our plans for maintaining our leadership position, funding expansion of our industry segment share and developing long term relationships with our customers; our plans for geographic expansion; our relationship with EMC; our plans for meeting product development objectives and introducing new products; our revenue outlook and mix; customer demand for our products; trends in enterprise license agreement (“ELA”) size and renewals and information technology (“IT”) spending in general; projections of, and expectations for, stock-based compensation expense; the delivery of professional services to our customers; the sufficiency of our liquidity and capital reserves to fund our operations and business strategy; continuation of our stock repurchase program; factors affecting our tax position; expected expenditures to improve the real estate parcel adjacent to our headquarters that we recently purchased, our plans regarding cash, cash equivalents and short-term investments held in non-U.S. accounts, our belief that the resolution of pending claims, legal proceedings and investigations will not have a material adverse effect on us and the expectation for general availability of vSphere 5 and implementation of new pricing models.

These forward-looking statements involve risks and uncertainties and the cautionary statements set forth above and those contained in the section of this report and our Annual Report on Form 10-K for the fiscal year ended December 31, 2010 entitled “Risk Factors” identify important factors that could cause actual results to differ materially from those predicted in any such forward-looking statements. We assume no obligation to, and do not currently intend to, update these forward-looking statements.

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New Accounting Pronouncements

In June 2011, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update No. 2011-05, *Presentation of Comprehensive Income* (“ASU 2011-05”). ASU 2011-05 eliminates the current option to report other comprehensive income and its components in the statement of changes in equity. ASU 2011-05 is effective as of the beginning of each reporting entity’s first annual reporting period that begins after December 15, 2011. We plan to adopt ASU 2011-05 on January 1, 2012 and will present comprehensive income in accordance with the requirements of the standard.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Foreign Exchange Risk

We operate in foreign countries, which expose us to market risk associated with foreign currency exchange rate fluctuations between the U.S. Dollar and various foreign currencies, the most significant of which is the Euro.

International revenues as a percentage of total revenues were 51.1% and 50.5% in the second quarter of 2011 and 2010, respectively, and 51.8% and 50.2% in the first half of 2011 and 2010, respectively. Historically, our revenue contracts were primarily denominated in U.S. Dollars. In May 2009, we began to invoice and collect in the Euro, the British Pound, the Japanese Yen and the Australian Dollar in their respective regions. Additionally, a portion of our operating expenses, primarily the cost of personnel to deliver technical support on our products and professional services, sales and sales support and research and development, are denominated in foreign currencies, primarily those foreign currencies in which we also invoice and collect. Revenues resulting from selling in local currencies and costs incurred in local currencies are exposed to foreign exchange rate fluctuations which can affect our operating income. As exchange rates vary, operating margins may differ materially from expectations.

Operating expenses were negatively impacted by \$18.3 million and \$24.1 million in the second quarter and first half of 2011, respectively, due to fluctuations in the exchange rates between the U.S. Dollar and foreign currencies as compared with the same periods in the prior year.

To manage the risk associated with fluctuations in foreign currency exchange rates, we utilize derivative financial instruments, such as foreign currency forward contracts. We enter into foreign currency forward contracts to hedge a portion of our net outstanding monetary assets and liabilities against movements in certain foreign exchange rates. Our foreign currency forward contracts are generally traded on a monthly basis with a typical contractual term of one month. As of June 30, 2011, we had outstanding forward contracts with a total notional value of \$226.1 million. The fair value of these forward contracts was immaterial as of June 30, 2011. There can be no assurance that our hedging activities will adequately protect us against the risks associated with foreign currency fluctuations. A hypothetical adverse foreign currency exchange rate movement of 10% would have resulted in a potential loss in fair value of our foreign currency forward contracts of \$22.6 million as of June 30, 2011. This sensitivity analysis disregards any potentially offsetting gain that may be associated with the underlying foreign-currency denominated assets and liabilities that we hedge. This analysis also assumes a parallel adverse shift of all foreign currency exchange rates against the U.S. Dollar; however, foreign currency exchange rates do not always move in such a manner and actual results may differ materially. We do not enter into speculative foreign exchange contracts for trading purposes. See Note E to the consolidated financial statements for further information.

Interest Rate Risk

Fixed Income Securities

During the second quarter of 2010, we began investing in fixed income securities. Our fixed income investment portfolio is denominated in U.S. Dollars and consists of various holdings, types and maturities.

Our primary objective for holding fixed income securities is to achieve an appropriate investment return consistent with preserving principal and managing risk. At any time, a sharp rise in interest rates or credit spreads could have a material adverse impact on the fair value of our fixed income investment portfolio. Hypothetical changes in interest rates of 50 basis points and 100 basis points would have changed the fair value of our fixed income investment portfolio as of June 30, 2011 by \$8.9 million and \$17.7 million, respectively. This sensitivity analysis assumes a parallel shift of all interest rates, however, interest rates do not always move in such a manner and actual results may differ materially. We monitor our interest rate and credit risk, including our credit exposures to specific rating categories and to individual issuers. There were no impairment charges on our cash equivalents and fixed income securities during the second quarter of 2011. These instruments are not leveraged and we do not enter into speculative securities for trading purposes. See Notes D and E to the consolidated financial statements for further information.

Note Payable to EMC

As of June 30, 2011, \$450.0 million was outstanding on our consolidated balance sheet in relation to the note payable to EMC. The interest rate on the note payable was 0.85% as of June 30, 2011 and 0.84% as of June 30, 2010. In the second quarter of 2011 and 2010, \$1.0 million, respectively, of interest expense was recorded in each period related to the note payable. In the first half of 2011 and 2010, \$1.9 million, respectively, of interest expense was recorded in each period related to the note payable.

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The note may be repaid, without penalty, at any time. In June 2011, we and EMC amended and restated the note to extend the maturity date of the note to April 16, 2015 and to modify the principal amount of the note to reflect the outstanding balance of \$450.0 million. The amended agreement continues to bear an interest rate of the 90-day LIBOR plus 55 basis points, with interest payable quarterly in arrears. The interest rate on the note resets quarterly and is determined on the two business days prior to the first day of each fiscal quarter. If the interest rate on the note payable were to change 100 basis points from the June 30, 2011 rate, and assuming no additional repayments on the principal were made, our annual interest expense would change by \$4.5 million.

Equity Price Risk

During the second quarter of 2011, we sold our investment in Terremark Worldwide, Inc., which was acquired by Verizon in a cash transaction. As a result, we no longer have investments in equity securities that expose us to market risk associated with publicly traded equity securities.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We carried out an evaluation required by the Exchange Act, under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rule 13a-15(e) of the Exchange Act, as of the end of the period covered by this report. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosures.

Changes in Internal Controls Over Financial Reporting

There were no changes in our internal control over financial reporting during the fiscal quarter ended June 30, 2011 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on Controls

Our disclosure controls and procedures and internal control over financial reporting are designed to provide reasonable assurance of achieving their objectives as specified above. Management does not expect, however, that our disclosure controls and procedures or our internal control over financial reporting will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

**PART II
OTHER INFORMATION**

ITEM 1. LEGAL PROCEEDINGS

See Note K to the Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for a description of legal proceedings. See also the risk factors entitled “We may become involved in litigation that may adversely affect us” in Part II Item 1A of this Quarterly Report on Form 10-Q for a discussion of potential risks to our results of operations and financial condition that may arise from legal proceedings.

ITEM 1A. RISK FACTORS

The risk factors that appear below could materially affect our business, financial condition and results of operations. The risks and uncertainties described below are not the only risks and uncertainties facing us. Our business is also subject to general risks and uncertainties that affect many other companies.

Risks Related to Our Business

The virtualization and cloud computing products and services we sell are now increasingly targeted at emerging applications and therefore the potential market for our products remains uncertain.

Our products and services are based on computer virtualization and related technologies that have primarily been used for virtualizing on-premises data centers. We are also designing our products and services for use in emerging applications as a platform for cloud computing and end-user computing. Cloud computing applications for our products and services include infrastructure-as-a-service, or “IaaS,” platform-as-a-service, or “PaaS,” and software-as-a-service, or “SaaS”. Our success depends on organizations and customers perceiving technological and operational benefits and cost savings associated with the increasing adoption of virtual infrastructure solutions for on-premises data centers as well as for cloud computing and end-user computing. Although the use of virtualization technologies on servers and in on-premises data centers has gained acceptance for enterprise-level applications, the extent to which adoption of virtualization for cloud computing and end-user computing remains uncertain. As the markets for our products mature and the scale of our business increases, the rate of growth in our product sales will likely be lower than those we have experienced in earlier periods. In addition, to the extent that virtualization infrastructure solutions are adopted more slowly or less comprehensively than we expect, our revenue growth rates may slow materially or our revenue may decline substantially.

We expect to face increasing competition that could result in a loss of customers, reduced revenues or decreased operating margins.

The virtualization, cloud computing, and end-user computing markets are inter-related and rapidly evolving, and we expect competition to significantly intensify in the future. For example, Microsoft continues to make incremental improvements to its virtual infrastructure and virtual management products. Microsoft also has cloud-based computing offerings. We also face competition from other companies that have announced a number of new product initiatives, alliances and consolidation efforts. For example, Citrix Systems continues to enhance its end-user and server virtualization offerings and now has a client hypervisor in the market. IBM, Google and Amazon have existing cloud computing offerings and announced new cloud computing initiatives. Red Hat has also released commercial versions of Linux that have virtualization capabilities as part of the Linux kernel (“KVM”) and has also announced plans for cloud computing products. Other companies have also indicated their intention to expand offerings of virtual management and cloud computing solutions.

We believe that the key competitive factors in the virtualization and cloud computing markets include:

- the level of reliability and new functionality of product offerings;
- the ability to provide comprehensive solutions, including management capabilities;
- the ability to provide end-users access to their applications and data from multiple devices and through multiple content delivery mechanisms;
- the ability to offer products that support multiple hardware platforms and operating systems;
- the proven track record of formulating and delivering a roadmap of virtualization and cloud computing capabilities;
- competitive pricing of products, individually and in bundles;
- the ability to attract and preserve a large installed base of customers;
- the ability to attract and preserve a large number of application developers to develop to a given cloud ecosystem;
- the ability to create and maintain partnering opportunities with hardware vendors, infrastructure software vendors and cloud service providers;

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- the ability to develop robust indirect sales channels; and
- the ability to attract and retain cloud, virtualization and systems experts as key employees.

Existing and future competitors may introduce products in the same markets we serve or intend to serve, and competing products may have better performance, lower prices, better functionality and broader acceptance than our products. Our competitors may also add features to their virtualization, end-user and cloud computing products similar to features that presently differentiate our product offerings from theirs. Many of our current or potential competitors also have longer operating histories, greater name recognition, larger customer bases and significantly greater financial, technical, sales, marketing and other resources than we do. This competition could result in increased pricing pressure and sales and marketing expenses, thereby materially reducing our operating margins, and could harm our ability to increase, or cause us to lose, market share. Increased competition also may prevent us from entering into or renewing service contracts on terms similar to those that we currently offer and may cause the length of our sales cycle to increase. Some of our competitors and potential competitors supply a wide variety of products to, and have well-established relationships with, our current and prospective end-users. For example, small to medium sized businesses and companies in emerging markets that are evaluating the adoption of virtualization-based technologies and solutions may be inclined to consider Microsoft solutions because of their existing use of Windows and Office products. Some of these competitors have in the past and may in the future take advantage of their existing relationships to engage in business practices that make our products less attractive to our end-users. Other competitors have limited or denied support for their applications running in VMware virtualization environments. These distribution, licensing and support restrictions, as well as other business practices that may be adopted in the future by our competitors, could materially impact our prospects regardless of the merits of our products. In addition, competitors with existing relationships with our current or prospective end-users could in the future integrate competitive capabilities into their existing products and make them available without additional charge. For example, Oracle provides free server virtualization software intended to support Oracle and non-Oracle applications, and Microsoft offers its own server virtualization software packaged with its Windows Server product and may offer built-in virtualization for future releases of the client version of Windows. Competitors may also leverage open source technologies to offer zero or low cost products capable of putting pricing pressure on our own product offerings. By engaging in such business practices, our competitors can diminish competitive advantages we may possess by incentivizing end-users to choose products that lack some of the technical advantages of our own offerings.

We also face potential competition from our partners. For example, third parties currently selling our products could build and market their own competing products and services or market competing products and services of third parties. If we are unable to compete effectively, our growth and our ability to sell products at profitable margins could be materially and adversely affected.

Ongoing uncertainty regarding global economic conditions and the stability of regional financial markets may reduce information technology spending below current expectations and therefore adversely impact our revenues, impede end-user adoption of new products and product upgrades and adversely impact our competitive position.

Our business depends on the overall demand for information technology and on the economic health of our current and prospective customers. The purchase of our products is often discretionary and may involve a significant commitment of capital and other resources. Weak economic conditions or significant uncertainty regarding the stability of financial markets could adversely impact our business, financial condition and results of operations in a number of ways, including by lengthening sales cycles, affecting the size of enterprise license agreements (“ELAs”) that customers will commit to, lowering prices for our products and services, reducing unit sales, reducing the rate of adoption of our products by new customers and the willingness of current customers to purchase upgrades to our existing products.

Ongoing economic uncertainty has also resulted in general and ongoing tightening in the credit markets, lower levels of liquidity, increases in the rates of default and bankruptcy and significant volatility in the credit, equity and fixed income markets. As a result, current or potential customers may be unable to fund software purchases, which could cause them to delay, decrease or cancel purchases of our products and services. Even if customers are willing to purchase our products and services, if they do not meet our credit requirements, we may not be able to record accounts receivable or unearned revenue or recognize revenues from these customers until we receive payment, which could adversely affect the amount of revenues we are able to recognize in a particular period.

In addition, although we plan to continue making strategic investments in our business, many of our competitors have significantly greater financial, technical and other resources than we do, and if the economic recovery is anemic or not sustained, they may be better positioned to continue investment in competitive technologies.

Industry alliances or consolidation may result in increased competition.

Some of our competitors have made acquisitions or entered into partnerships or other strategic relationships to offer more comprehensive virtualization and cloud computing solutions than they individually had offered. For example, in 2010, Red Hat acquired Makara, a developer of PaaS solutions, and Citrix acquired VMLogix, a developer of lab management solutions that can be applied to cloud computing. Citrix Systems continues to work in close collaboration with Microsoft in the desktop virtualization market. Moreover, information technology companies are increasingly seeking to deliver top-to-bottom IT solutions to end-users that

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combine enterprise-level hardware and software solutions to provide an alternative to our virtualization platform. For example, in early 2010, Oracle completed its acquisition of Sun Microsystems, which was both a hardware vendor and a provider of virtualization technology, and Microsoft and Hewlett-Packard announced a collaboration based on Microsoft's cloud computing and virtualization platforms. In 2011, Citrix announced its acquisition of Cloud.com, which offers a PaaS cloud services solution. We expect these trends to continue as companies attempt to strengthen or maintain their market positions in the evolving virtualization infrastructure and enterprise IT solutions industry. Many of the companies driving this trend have significantly greater financial, technical and other resources than we do and may be better positioned to acquire and offer complementary products and technologies. The companies and alliances resulting from these possible combinations may create more compelling product offerings and be able to offer greater pricing flexibility than we can or may engage in business practices that make it more difficult for us to compete effectively, including on the basis of price, sales and marketing programs (such as providing greater incentives to our channel partners to sell a competitor's product), technology or product functionality. This competition could result in a substantial loss of customers or a reduction in our revenues.

Our operating results may fluctuate significantly, which makes our future results difficult to predict and may result in our operating results falling below expectations or our guidance, which could cause the price of our Class A common stock to decline.

Our operating results may fluctuate due to a variety of factors, many of which are outside of our control. As a result, comparing our operating results on a period-to-period basis may not be meaningful. Our past results should not be relied upon as an indication of our future performance. In addition, a significant portion of our quarterly sales typically occurs during the last month of the quarter, which we believe generally reflects customer buying patterns for enterprise technology. As a result, our quarterly operating results are difficult to predict even in the near term. If our revenues or operating results fall below the expectations of investors or securities analysts or below any guidance we may provide to the market, the price of our Class A common stock would likely decline substantially.

In addition, factors that may affect our operating results include, among others:

- general economic conditions in our domestic and international markets and the effect that these conditions have on our customers' capital budgets and the availability of funding for software purchases;
- fluctuations in demand, adoption rates, sales cycles and pricing levels for our products and services;
- fluctuations in foreign currency exchange rates;
- changes in customers' budgets for information technology purchases and in the timing of their purchasing decisions;
- the timing of recognizing revenues in any given quarter, which, as a result of software revenue recognition policies, can be affected by a number of factors, including product announcements, beta programs and product promotions that can cause revenue recognition of certain orders to be deferred until future products to which customers are entitled become available;
- the sale of our products in the time frames we anticipate, including the number and size of orders in each quarter;
- our ability to develop, introduce and ship in a timely manner new products and product enhancements that meet customer demand, certification requirements and technical requirements;
- the introduction of new pricing and packaging models for our product offerings;
- the timing of the announcement or release of upgrades or new products by us or by our competitors;
- our ability to maintain scalable internal systems for reporting, order processing, license fulfillment, product delivery, purchasing, billing and general accounting, among other functions;
- our ability to control costs, including our operating expenses;
- changes to our effective tax rate;
- the increasing scale of our business and its effect on our ability to maintain historical rates of growth;
- our ability to attract and retain highly skilled employees, particularly those with relevant experience in software development and sales;
- our ability to conform to emerging industry standards and to technological developments by our competitors and customers;
- renewal rates for ELAs as original ELA terms expire;
- the timing and amount of software development costs that are capitalized beginning when technological feasibility has been established and ending when the product is available for general release;
- unplanned events that could affect market perception of the quality or cost-effectiveness of our products and solutions; and

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- the recoverability of benefits from goodwill and intangible assets and the potential impairment of these assets.

If operating system and hardware vendors do not cooperate with us or we are unable to obtain early access to their new products, or access to certain information about their new products to ensure that our solutions interoperate with those products, our product development efforts may be delayed or foreclosed.

Our products interoperate with Windows, Linux and other operating systems and the hardware devices of numerous manufacturers. Developing products that interoperate properly requires substantial partnering, capital investment and employee resources, as well as the cooperation of the vendors or developers of the operating systems and hardware. Operating system and hardware vendors may not provide us with early access to their technology and products, assist us in these development efforts or share with or sell to us any application programming interfaces, or APIs, formats, or protocols we may need. If they do not provide us with the necessary early access, assistance or proprietary technology on a timely basis, we may experience product development delays or be unable to expand our products into other areas. To the extent that software or hardware vendors develop products that compete with ours or those of our controlling stockholder, EMC, they may have an incentive to withhold their cooperation, decline to share access or sell to us their proprietary APIs, protocols or formats or engage in practices to actively limit the functionality, or compatibility, and certification of our products. To the extent that we enter into collaborations or joint development and marketing arrangements with certain hardware and software vendors, vendors who compete with our collaborative partners may similarly choose to limit their cooperation with us. In addition, hardware or operating system vendors may fail to certify or support or continue to certify or support our products for their systems. If any of the foregoing occurs, our product development efforts may be delayed or foreclosed and our business and results of operations may be adversely affected.

Our new product and technology initiatives subject us to additional business, legal and competitive risks.

Over the last several years, we have introduced new product and technology initiatives that aim to leverage our virtualization infrastructure software products into the emerging areas of cloud computing and end-user computing as alternatives to the provisioning of physical computing resources. In connection with our September 2009 acquisition of SpringSource, we announced our intention to use SpringSource solutions to extend VMware's strategy to deliver solutions in the emerging PaaS market and have since, also acquired GemFire, RabbitMQ, SlideRocket and SocialCast as part of VMware's overall PaaS strategy. Additionally, SpringSource's current offerings and their underlying open source technology position us in the enterprise and web application development and management markets. Our February 2010 acquisition of Zimbra extended our footprint to cloud-based email and collaboration services – a part of VMware's strategy to extend into the emerging SaaS market. In 2010, we also announced our vCenter family of products to more fully manage virtualized and cloud environments, which may cause us to compete with other virtualization management vendors. In April 2011, we announced CloudFoundry, a VMware-operated developer cloud service and a new open source PaaS project. In the second quarter of 2011, we acquired SocialCast and SlideRocket, which provide applications directed toward the collaborative development and sharing of user-generated content within the enterprise.

These initiatives may present new and difficult technology challenges, end-users may choose not to adopt our new product or service offerings, and we may be subject to claims if customers of these offerings experience service disruptions or failures, security breaches or other quality issues. Further, the success of these new offerings depends upon the cooperation of hardware, software and cloud hosting vendors to ensure interoperability with our products and offer compatible products and services to end-users. We will also need to develop and implement appropriate go-to-market strategies and train our sales force in order to effectively market offerings in product categories in which we may have less experience than our competitors.

The cloud computing and end-user computing markets are in early stages of development. Other companies seeking to enter and develop competing standards for the cloud computing market, such as Microsoft, IBM, Oracle, Google and Amazon, and the end-user computing market, such as Citrix and Microsoft, have introduced or are likely to introduce their own initiatives that may compete with or not be compatible with our cloud and end-user computing initiatives which could limit the degree to which other vendors develop products and services around our offerings and end-users adopt our platforms. Additionally, our operating margins in our newer initiatives may be lower than those we have achieved in the markets we currently serve, we will need to develop appropriate pricing strategies for our new product initiatives, and we may not be successful enough in these newer activities to recoup our investments in them. If any of this were to occur, it could damage our reputation, limit our growth and negatively affect our operating results.

We rely on distributors, resellers, system vendors and systems integrators to sell our products, and our failure to effectively develop, manage or prevent disruptions to our distribution channels and the processes and procedures that support them could cause a reduction in the number of end-users of our products.

Our future success is highly dependent upon maintaining and increasing the number of our relationships with distributors, resellers, system vendors and systems integrators. Because we rely on distributors, resellers, system vendors and systems integrators, we may have little or no contact with the ultimate users of our products, thereby making it more difficult for us to establish brand awareness, ensure proper delivery and installation of our products, service ongoing customer requirements, estimate end-user demand and respond to evolving customer needs.

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Recruiting and retaining qualified channel partners and training them in the use of our technology and product offerings requires significant time and resources. In order to develop and expand our distribution channel, we must continue to expand and improve our processes and procedures that support our channel, including our investment in systems and training, and those processes and procedures may become increasingly complex and difficult to manage. The time and expense required for sales and marketing organizations of our channel partners to become familiar with our product offerings, including our new product developments, may make it more difficult to introduce those products to end-users and delay end-user adoption of our product offerings.

We generally do not have long-term contracts or minimum purchase commitments with our distributors, resellers, system vendors and systems integrators, and our contracts with these channel partners do not prohibit them from offering products or services that compete with ours. Our competitors may be effective in providing incentives to existing and potential channel partners to favor products of our competitors or to prevent or reduce sales of our products. Certain system vendors now offer competing virtualization products preinstalled on their server products. Additionally, our competitors could attempt to require key distributors to enter into exclusivity arrangements with them or otherwise apply their pricing or marketing leverage to discourage distributors from offering our products. Accordingly, our channel partners may choose not to offer our products exclusively or at all. Our failure to maintain and increase the number of relationships with channel partners would likely lead to a loss of end-users of our products which would result in us receiving lower revenues from our channel partners. Three of our distributors each accounted for more than 10% of revenues in the first six months of 2011 and in fiscal year 2010, and we have experienced similar concentrations in prior periods. Our agreements with distributors are typically terminable by either party upon 90 days' prior written notice to the other party, and neither party has any obligation to purchase or sell any products under the agreements. While we believe that we have in place, or would have in place by the date of any such termination, agreements with replacement distributors sufficient to maintain our revenues from distribution, if we were to lose the distribution services of a significant distributor, such loss could have a negative impact on our results of operations until such time as we arrange to replace these distribution services with the services of existing or new distributors.

The concentration of our product sales among a limited number of distributors and the weakness in credit markets increases our potential credit risk. Additionally, weakness in credit markets could affect the ability of our distributors, resellers and customers to comply with the terms of credit we provide in the ordinary course of business. Accordingly, if our distributors, resellers and customers find it difficult to obtain credit or comply with the terms of their credit obligations, it could cause significant fluctuations or declines in our product revenues.

Three of our distributors each accounted for more than 10% of revenues in the first six months of 2011 and in fiscal year 2010, and we have experienced similar concentrations in prior periods. We anticipate that sales of our products to a limited number of distributors will continue to account for a significant portion of our total product revenues for the foreseeable future. The concentration of product sales among certain distributors increases our potential credit risks. For example, approximately 49% of our total accounts receivable as of June 30, 2011 was from three distributors. Some of our distributors may experience financial difficulties, which could adversely impact our collection of accounts receivable. One or more of these distributors could delay payments or default on credit extended to them. Our exposure to credit risks of our distributors may increase if our distributors and their customers are adversely affected by global or regional economic conditions. Additionally, we provide credit to distributors, resellers, and certain end-user customers in the normal course of business. Credit is generally extended to new customers based upon a credit evaluation. Credit is extended to existing customers based on ongoing credit evaluations, prior payment history, and demonstrated financial stability. Any significant delay or default in the collection of significant accounts receivable could result in an increased need for us to obtain working capital from other sources, possibly on worse terms than we could have negotiated if we had established such working capital resources prior to such delays or defaults. Any significant default could result in a negative impact on our results of operations.

The large majority of our revenues have come from our data center virtualization products including our flagship VMware vSphere product line. Decreases in demand for our data center virtualization products could adversely affect our results of operations and financial condition.

In fiscal year 2010, approximately 80% of our license revenues were from our data center virtualization and infrastructure solutions with the balance from our other solutions. Although we are continuing to develop other applications for our virtualization technology such as our cloud computing and end-user computing products, we expect that our data center virtualization products and related enhancements and upgrades will constitute a majority of our revenue for the foreseeable future. Declines and variability in demand for our data center virtualization products could occur as a result of:

- improved products or product versions being offered by competitors in our markets;
- competitive pricing pressures;
- failure to release new or enhanced versions of our data center virtualization products on a timely basis, or at all;
- technological change that we are unable to address with our data center virtualization products or that changes the way enterprises utilize our products; or

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- general economic conditions.

Also, as more and more businesses achieve the virtualization of their data centers and other IT functions, the market for our VMware vSphere product line may become saturated. If we fail to introduce compelling new features in future upgrades to our VMware vSphere product line or develop new applications for our virtualization technology, demand for VMware vSphere may decline.

Additionally, in connection with the announcement in July 2011 of our latest update to VMware vSphere, we announced a change to its pricing structure. We expect that the new pricing model, which will begin to be implemented with the general availability of VMware vSphere 5 currently expected during the third quarter of 2011, will better align with a cloud computing approach, whereby customers can align cost with actual use and value derived, rather than purely with hardware configurations and capacity. VMware vSphere 5 will continue to be licensed perpetually on a per processor basis. However, two physical constraints, core and physical RAM, will be eliminated and replaced with a single virtualization-based entitlement of virtual memory, or vRAM, which can be shared across a large pool of servers. Although we believe that our new pricing structure is better suited to changing trends in enterprise utilization of IT resources as the industry shifts to a cloud computing model, if our customers react adversely to this pricing structure change, they may consider adopting the products of our competitors, resulting in reduced demand for our data center virtualization products. Moreover, if our modeling of the impact of this change in pricing structure on payment streams from our customers proves to be inaccurate, our revenue and operating margins could be negatively affected.

Due to our product concentration, our business, results of operations, financial condition, and cash flows would therefore be adversely affected by a decline in demand for our data center virtualization products.

Our revenues, collection of accounts receivable and financial results may be adversely impacted by fluctuation of foreign currency exchange rates. Although foreign currency hedges can offset some of the risk related to foreign currency fluctuations, we will continue to experience foreign currency gains and losses in certain instances where it is not possible or cost effective to hedge our foreign currency exposures.

Our revenues and our collection of accounts receivable may be adversely impacted as a result of fluctuations in the exchange rates between the U.S. Dollar and foreign currencies. For example, we have distributors in foreign countries that may incur higher costs in periods when the value of the U.S. Dollar strengthens against foreign currencies. One or more of these distributors could delay payments or default on credit extended to them as a result. Any significant delay or default in the collection of significant accounts receivable could result in an increased need for us to obtain working capital from other sources. If we determine that the amount of accounts receivable to be uncollectible is greater than our estimates, we would recognize an increase in bad debt expense, which would have a negative impact on our results of operations. In addition, in periods when the value of the U.S. Dollar strengthens, we may need to offer additional discounts, reduce prices or offer other incentives to mitigate the negative effect on demand.

Since the second quarter of 2009, we have invoiced and collected in certain non-U.S. Dollar denominated currencies, thereby conducting a portion of our revenue transactions in currencies other than the U.S. Dollar. Although this program may alleviate credit risk from our distributors during periods when the U.S. Dollar strengthens, it shifts the risk of currency fluctuations to us and may negatively impact our revenues, anticipated cash flows and financial results due to fluctuations in foreign currency exchange rates, particularly the Euro, the British Pound, the Japanese Yen and the Australian Dollar relative to the U.S. Dollar. While variability in operating margin may be reduced due to invoicing in certain of the local currencies in which we also recognize expenses, increased exposure to foreign currency fluctuations will introduce additional risk for variability in revenue-related components of our consolidated financial statements.

Since July 2009, we have entered into foreign currency forward contracts to hedge a portion of our net outstanding monetary assets and liabilities against movements in certain foreign exchange rates. Although we expect the gains and losses on our foreign currency forward contracts to generally offset the majority of the gains and losses associated with the underlying foreign-currency denominated assets and liabilities that we hedge, our hedging transactions may not yield the results we expect. Additionally, we expect to continue to experience foreign currency gains and losses in certain instances where it is not possible or cost effective to hedge our foreign currency exposures.

We are dependent on our management and our key development personnel, and the loss of key personnel may prevent us from implementing our business plan in a timely manner.

Our success depends largely upon the continued services of our existing management. We are also substantially dependent on the continued service of our key development personnel for product innovation. We generally do not have employment or non-compete agreements with our existing management or development personnel and, therefore, they could terminate their employment with us at any time without penalty and could pursue employment opportunities with any of our competitors. Changes to management and key employees can also lead to additional unplanned losses of key employees. The loss of key employees could seriously harm our ability to release new products on a timely basis and could significantly help our competitors.

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Because competition for our target employees is intense, we may not be able to attract and retain the highly skilled employees we need to support our planned growth, and our compensation expenses may increase.

To execute on our strategy, we must continue to attract and retain highly qualified personnel. Competition for these personnel is intense, especially for senior sales executives and engineers with high levels of experience in designing and developing software. We may not be successful in attracting and retaining qualified personnel. We have from time to time in the past experienced, and we expect to continue to experience in the future, difficulty in hiring and retaining highly skilled employees with appropriate qualifications. Many of the companies with which we compete for experienced personnel have greater resources than we have. In addition, in making employment decisions, particularly in the high-technology industry, job candidates often consider the value of the stock options, restricted stock grants or other stock-based compensation they are to receive in connection with their employment. Declines in the value of our stock could adversely affect our ability to attract or retain key employees and result in increased employee compensation expenses. If we fail to attract new personnel or fail to retain and motivate our current personnel, our business and future growth prospects could be severely harmed.

We may become involved in litigation that may materially adversely affect us.

From time to time, we are involved in various legal, administrative and regulatory proceedings, claims, demands and investigations relating to our business, which may include claims with respect to patent, commercial, product liability, employment, class action, whistleblower and other matters. Such matters can be time-consuming, divert management's attention and resources and cause us to incur significant expenses. Furthermore, because litigation is inherently unpredictable, it is possible that our business, results of operations or financial condition could be negatively affected by an unfavorable resolution of one or more of such proceedings, claims, demands or investigations.

If we are unable to protect our intellectual property rights, our competitive position could be harmed or we could be required to incur significant expenses to enforce our rights.

We depend on our ability to protect our proprietary technology. We rely on trade secret, patent, copyright and trademark laws and confidentiality agreements with employees and third parties, all of which offer only limited protection. As such, despite our efforts, the steps we have taken to protect our proprietary rights may not be adequate to preclude misappropriation of our proprietary information or infringement of our intellectual property rights, and our ability to police such misappropriation or infringement is uncertain, particularly in countries outside of the United States. Further, with respect to patent rights, we do not know whether any of our pending patent applications will result in the issuance of patents or whether the examination process will require us to narrow our claims. To the extent that additional patents are issued from our patent applications, which are not certain, they may be contested, circumvented or invalidated in the future. Moreover, the rights granted under any issued patents may not provide us with proprietary protection or competitive advantages, and, as with any technology, competitors may be able to develop similar or superior technologies to our own now or in the future. In addition, we rely on confidentiality or license agreements with third parties in connection with their use of our products and technology. There is no guarantee that such parties will abide by the terms of such agreements or that we will be able to adequately enforce our rights, in part because we rely on "click-wrap" and "shrink-wrap" licenses in some instances.

Detecting and protecting against the unauthorized use of our products, technology and proprietary rights is expensive, difficult and, in some cases, impossible. Litigation may be necessary in the future to enforce or defend our intellectual property rights, to protect our trade secrets or to determine the validity and scope of the proprietary rights of others. Such litigation could result in substantial costs and diversion of management resources, either of which could harm our business, financial condition and results of operations, and there is no guarantee that we would be successful. Furthermore, many of our current and potential competitors have the ability to dedicate substantially greater resources to protecting their technology or intellectual property rights than we do. Accordingly, despite our efforts, we may not be able to prevent third parties from infringing upon or misappropriating our intellectual property, which could result in a substantial loss of our market share.

We provide access to our hypervisor and other selected source code to partners, which creates additional risk that our competitors could develop products that are similar or better than ours.

Our success and ability to compete depend substantially upon our internally developed technology, which is incorporated in the source code for our products. We seek to protect the source code, design code, documentation and other information relating to our software, under trade secret and copyright laws. However, we have chosen to provide access to our hypervisor and other selected source code to more than 50 of our partners for co-development, as well as for open APIs, formats and protocols. Though we generally control access to our source code and other intellectual property, and enter into confidentiality or license agreements with such partners, as well as with our employees and consultants, our safeguards may be insufficient to protect our trade secrets and other rights to our technology. Our protective measures may be inadequate, especially because we may not be able to prevent our partners, employees or consultants from violating any agreements or licenses we may have in place or abusing their access granted to our source code. Improper disclosure or use of our source code could help competitors develop products similar to or better than ours.

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We are, and may in the future be, subject to claims by others that we infringe their proprietary technology which could force us to pay damages or prevent us from using certain technology in our products.

Companies in the software and technology industries own large numbers of patents, copyrights, trademarks, and trade secrets and frequently enter into litigation based on allegations of infringement or other violations of intellectual property rights. This risk may increase as the number of products and competitors in our market increases and overlaps occur. In addition, as a well known information technology company, we face a higher risk of being the subject of intellectual property infringement claims. Any claim of infringement by a third party, even one without merit, could cause us to incur substantial costs defending against the claim, and could distract our management from our business. Furthermore, a party making such a claim, if successful, could secure a judgment that requires us to pay substantial damages. A judgment could also include an injunction or other court order that could prevent us from offering our products. In addition, we might be required to seek a license for the use of such intellectual property, which may not be available on commercially reasonable terms or at all. Alternatively, we may be required to develop non-infringing technology, which could require significant effort and expense and may ultimately not be successful. Any of these events could seriously harm our business, operating results and financial condition. Third parties may also assert infringement claims against our customers and channel partners. Any of these claims could require us to initiate or defend potentially protracted and costly litigation on their behalf, regardless of the merits of these claims, because we generally indemnify our customers and channel partners from claims of infringement of proprietary rights of third parties in connection with the use of our products. If any of these claims succeed, we may be forced to pay damages on behalf of our customers or channel partners, which could negatively affect our results of operations.

Our use of “open source” software could negatively affect our ability to sell our products and subject us to possible litigation.

A significant portion of the products, technologies or services acquired, licensed, developed or offered by us may incorporate so-called “open source” software, and we may incorporate open source software into other products in the future. Additionally, open source technology underlies the offerings of SpringSource and Zimbra, businesses we have acquired since 2009, as well as our Cloud Foundry offerings that we launched in 2011. Such open source software is generally licensed by its authors or other third parties under open source licenses, including, for example, the GNU General Public License, the GNU Lesser General Public License, “Apache-style” licenses, “BSD-style” licenses and other open source licenses. We monitor our use of open source software in an effort to avoid subjecting our products to conditions we do not intend. Although we believe that we have complied with our obligations under the various applicable licenses for open source software that we use, there is little or no legal precedent governing the interpretation of many of the terms of certain of these licenses, and therefore the potential impact of these terms on our business is somewhat unknown and may result in unanticipated obligations regarding our products and technologies. For example, we may be subjected to certain conditions, including requirements that we offer our products that use the open source software for no cost, that we make available source code for modifications or derivative works we create based upon incorporating, using or distributing the open source software and/or that we license such modifications or derivative works under the terms of the particular open source license. Any of these obligations could have an adverse impact on our intellectual property rights and our ability to derive revenue from products incorporating the open source software.

If an author or other third party that distributes such open source software were to allege that we had not complied with the conditions of one or more of these licenses, we could be required to incur significant legal expenses defending against such allegations. If our defenses were not successful, we could be subject to significant damages, enjoined from the distribution of our products that contained the open source software and required to comply with the foregoing conditions, which could disrupt the distribution and sale of some of our products. In addition, if we combine our proprietary software with open source software in a certain manner, under some open source licenses we could be required to release the source code of our proprietary software, which could substantially help our competitors develop products that are similar to or better than ours.

In addition to risks related to license requirements, usage of open source software can lead to greater risks than use of third party commercial software, as open source licensors generally do not provide warranties or assurance of title or controls on origin of the software. In addition, many of the risks associated with usage of open source such as the lack of warranties or assurances of title, cannot be eliminated, and could, if not properly addressed, negatively affect our business. We have established processes to help alleviate these risks, including a review process for screening requests from our development organizations for the use of open source and conducting appropriate due diligence of the use of open source in the products developed by companies we acquire, but we cannot be sure that all open source software is submitted for approval prior to use in our products or is discovered during due diligence.

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Our SpringSource, Zimbra and Cloud Foundry product offerings rely upon and incorporate open source software technologies that subject us to additional risks and challenges, which could result in increased development expenses, delays or disruptions to the release or distribution of those software solutions, and increased competition.

In September 2009, we completed our acquisition of SpringSource and, in February 2010, we completed our acquisition of Zimbra. In April 2011, we launched our Cloud Foundry PaaS offering. Each provides product offerings that broadly use open source software solutions. Software solutions that are substantially or mostly based on open source software subject us to a number of risks and challenges:

- If open source software programmers, most of whom we do not employ, do not continue to develop and enhance open source technologies, our development expenses could be increased and our product release and upgrade schedules could be delayed.
- One of the characteristics of open source software is that anyone can modify the existing software or develop new software that competes with existing open source software. As a result, competition can develop without the degree of overhead and lead time required by traditional proprietary software companies. It is also possible for new competitors with greater resources than ours to develop their own open source solutions, potentially reducing the demand for, and putting price pressure on, our solutions.
- It is possible that a court could hold that the licenses under which our open source products and services are developed and licensed are not enforceable or that someone could assert a claim for proprietary rights in a program developed and distributed under them. Any ruling by a court that these licenses are not enforceable, or that open source components of our product or services offerings may not be liberally copied, modified or distributed, may have the effect of preventing us from distributing or developing all or a portion of our products or services. In addition, licensors of open source software employed in our offerings may, from time to time, modify the terms of their license agreements in such a manner that those license terms may no longer be compatible with other open source licenses in our offerings or our end-user license agreement or terms of service, and thus could, among other consequences, prevent us from continuing to distribute the software code subject to the modified license or terms of service.
- Actions to protect and maintain ownership and control over our intellectual property could adversely affect our standing in the open source community, which in turn could limit our ability to continue to rely on this community, upon which we are dependent, as a resource to help develop and improve our open source products and services.

If we are unable to successfully address the challenges of integrating offerings based upon open source technology into our business, our ability to realize revenues from such offerings will be negatively affected and our development costs may increase.

Our sales cycles can be long and unpredictable, our sales efforts require considerable time and expense and timing of sales is subject to changing purchasing behaviors of our customers. As a result, our sales are difficult to predict and may vary substantially from quarter to quarter, which may cause our operating results to fluctuate significantly.

The timing of our revenues is difficult to predict. Our sales efforts involve educating our customers about the use and benefit of our products, including their technical capabilities, potential cost savings to an organization and advantages compared to lower-cost products offered by our competitors. Customers typically undertake a significant evaluation process that has in the past resulted in a lengthy sales cycle which typically lasts several months, and may last a year or longer. We spend substantial time, effort and money on our sales efforts without any assurance that our efforts will produce any sales. In addition, product purchases are frequently subject to budget constraints, multiple approvals, and unplanned administrative, processing and other delays. Moreover, the greater number of competitive alternatives, as well as announcements by our competitors that they intend to introduce competitive alternatives at some point in the future, can lengthen customer procurement cycles, cause us to spend additional time and resources to educate end-users on the advantages of our product offerings and delay product sales. These factors can have a particular impact on the timing and length of our ELA sales cycles.

Additionally, our quarterly sales have historically reflected an uneven pattern in which a disproportionate percentage of a quarter's total sales occur in the last month, weeks and days of each quarter. Similarly, our yearly sales have historically reflected a disproportionate percentage of the year's sales in the fourth fiscal quarter. These patterns make prediction of revenues, earnings and working capital for each financial period especially difficult and uncertain and increase the risk of unanticipated variations in financial condition and results of operations. We believe this uneven sales pattern is a result of many factors including the following:

- the tendency of customers to wait until late in a quarter to commit to a purchase in the hope of obtaining more favorable pricing;
- the fourth quarter influence of customers spending their remaining capital budget authorization prior to new budget constraints in the first nine months of the following year; and
- seasonal influences.

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If sales expected from a specific customer for a particular quarter are not realized in that quarter or at all, our results could fall short of public expectations and our business, financial condition and results of operations could be materially adversely affected.

Our current research and development efforts may not produce significant revenues for several years, if at all.

Developing our products is expensive. Our investment in research and development may not result in marketable products or may result in products that take longer to generate revenues, or generate less revenues, than we anticipate. Our research and development expenses were over 20% of our total revenues, in the first six months of 2011 and in the fiscal year 2010. Our future plans include significant investments in software research and development and related product opportunities. We believe that we must continue to dedicate a significant amount of resources to our research and development efforts to maintain our competitive position. However, we may not receive significant revenues from these investments for several years, if at all.

We may not be able to respond to rapid technological changes with new solutions and services offerings, which could have a material adverse effect on our sales and profitability.

The markets for our software solutions are characterized by rapid technological changes, changing customer needs, frequent new software product introductions and evolving industry standards. The introduction of third-party solutions embodying new technologies and the emergence of new industry standards could make our existing and future software solutions obsolete and unmarketable. We may not be able to develop updated products that keep pace with technological developments and emerging industry standards and that address the increasingly sophisticated needs of our customers or that interoperate with new or updated operating systems and hardware devices or certify our products to work with these systems and devices. As a result, we may not be able to accurately predict the lifecycle of our software solutions, and they may become obsolete before we receive the amount of revenues that we anticipate from them. There is no assurance that any of our new offerings would be accepted in the marketplace. Significant reductions in server-related costs or the rise of more efficient infrastructure management software could also affect demand for our software solutions. As hardware and processors become more powerful, we will have to adapt our product and service offerings to take advantage of the increased capabilities. For example, while the introduction of more powerful servers presents an opportunity for us to provide better products for our customers, the migration of servers to quad-core and greater multi-core microprocessor technology also allows an end-user with a given number of licensed copies of our software to more than double the number of virtualization machines run per server socket without having to purchase additional licenses from us. If any of the foregoing events were to occur, our ability to retain or increase market share and revenues in the virtualization software market could be materially adversely affected.

Our success depends upon our ability to develop new products and services, integrate acquired products and services and enhance our existing products and services and develop appropriate business and pricing models.

If we are unable to develop new products and services, integrate acquired products and services, enhance and improve our products and support services in a timely manner or position and/or price our products and services to meet market demand, customers may not buy new software licenses from us or renew software license updates and product support. In addition, information technology standards from both consortia and formal standards-setting forums as well as de facto marketplace standards are rapidly evolving. We cannot provide any assurance that the standards on which we choose to develop new products will allow us to compete effectively for business opportunities in emerging areas such as cloud computing.

New product development and introduction involves a significant commitment of time and resources and is subject to a number of risks and challenges including:

- managing the length of the development cycle for new products and product enhancements, which has frequently been longer than we originally expected;
- managing customers' transitions to new products, which can result in delays in their purchasing decisions;
- adapting to emerging and evolving industry standards and to technological developments by our competitors and customers;
- entering into new or unproven markets with which we have limited experience;
- tailoring our business and pricing models appropriately as we enter new markets and respond to competitive pressures and technological changes;
- incorporating and integrating acquired products and technologies; and
- developing or expanding efficient sales channels.

In addition, if we cannot adapt our business models to keep pace with industry trends, our revenues could be negatively impacted. For example, if we increase our adoption of subscription-based pricing models for our products, we may fail to set pricing at levels appropriate to maintain our revenue streams or our customers may choose to deploy products from our competitors that they believe are priced more favorably.

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Our ability to sell our products is dependent on the quality of our support and services offerings, and our failure to offer high-quality support and services could have a material adverse effect on our sales and results of operations.

Once our products are integrated within our customers' hardware and software systems, our customers may depend on our support organization to resolve any issues relating to our products. A high level of support is critical for the successful marketing and sale of our products. If we or our channel partners do not effectively assist our customers in deploying our products, succeed in helping our customers quickly resolve post-deployment issues, and provide effective ongoing support, our ability to sell our products to existing customers would be adversely affected, and our reputation with potential customers could be harmed. If our customers with ELAs have a poor perception of our support and services offerings, they may choose not to renew their ELAs when they expire. In addition, as we expand our operations internationally, our support organization will face additional challenges, including those associated with delivering support, training and documentation in languages other than English. As a result, our failure to maintain high-quality support and services, or to adequately assist our channel partners in providing high-quality support and services, could result in customers choosing to use our competitors' products instead of ours in the future.

Acquisitions could disrupt our business, cause dilution to our stockholders and harm our business, financial condition and results of operations.

We have in the past and plan in the future to acquire other businesses, products or technologies. For example, since September 2009 we have completed a number of acquisitions, including acquisitions of SpringSource, Zimbra, certain assets from EMC's Ionix division and Integrien. We may not be able to find suitable acquisition candidates, and we may not be able to complete acquisitions on favorable terms, if at all. If we do complete acquisitions, we may not ultimately strengthen our competitive position or achieve our goals, or they may be viewed negatively by customers, financial markets or investors.

Acquisitions may disrupt our ongoing operations, divert management from day-to-day responsibilities, increase our expenses and adversely impact our business, financial condition and results of operations. An acquired business may not deliver the expected results. For example, an acquisition may not further our strategies or results in expected benefits, which may include benefits relating to enhanced revenues, technology, human resources, cost savings, operating efficiencies and other synergies. Acquisitions may reduce our cash available for operations and other uses and could result in an increase in amortization expense related to identifiable intangible assets acquired, potentially dilutive issuances of equity securities or the incurrence of debt.

Additionally, we have limited historical experience with the integration of acquired companies. There can be no assurance that we will be able to manage the integration of acquired businesses effectively or be able to retain and motivate key personnel from these businesses. Any difficulties we encounter in the integration process could divert management from day-to-day responsibilities, increase our expenses and have a material adverse effect on our business, financial condition and results of operations. We may also face difficulties due to the lack of experience in new markets, products or technologies or the initial dependence on unfamiliar supply or distribution partners. Other risks related to acquisitions include the assumption of the liabilities of the acquired business, including litigation-related liabilities.

In addition, we review our amortizable intangible assets annually for impairment, or more frequently, when events or changes in circumstances indicate the carrying value may not be recoverable, and we are required to test goodwill for impairment at least annually. We may be required to record a significant charge to earnings in our financial statements during the period in which any impairment of our goodwill or amortizable intangible assets resulting from an acquisition or otherwise is determined, resulting in an adverse impact on our results of operations. In addition to the risks commonly encountered in the acquisition of a business as described above, we may also experience risks relating to the challenges and costs of closing a transaction. Further, the risks described above may be exacerbated as a result of managing multiple acquisitions at the same time. We also seek to invest in businesses that offer complementary products, services or technologies. These investments are accompanied by risks similar to those encountered in an acquisition of a business.

Operating in foreign countries subjects us to additional risks that may harm our ability to increase or maintain our international sales and operations.

Revenues from customers outside the United States comprised approximately 51% of our total revenues in the first six months of 2011 and 49% in the fiscal year 2010. We have sales, administrative, research and development and technical support personnel in numerous countries worldwide. We expect to continue to add personnel in additional countries. Our international operations subject us to a variety of risks, including:

- the difficulty of managing and staffing international offices and the increased travel, infrastructure and legal compliance costs associated with multiple international locations;
- increased exposure to foreign currency exchange rate risk;
- difficulties in enforcing contracts and collecting accounts receivable, and longer payment cycles, especially in emerging markets;

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- difficulties in delivering support, training and documentation in certain foreign markets;
- tariffs and trade barriers and other regulatory or contractual limitations on our ability to sell or develop our products in certain foreign markets;
- economic or political instability and security concerns in countries that are important to our international sales and operations;
- the overlap of different tax structures or changes in international tax laws;
- reduced protection for intellectual property rights, including reduced protection from software piracy in some countries;
- difficulties in transferring funds from certain countries; and
- difficulties in maintaining appropriate controls relating to revenue recognition practices.

Additionally, as we continue to expand our business globally, we will need to maintain compliance with legal and regulatory requirements covering the foreign activities of U.S. corporations, such as export control requirements and the Foreign Corrupt Practices Act. Our success will depend, in large part, on our ability to anticipate and effectively manage these and other risks associated with our international operations. We expect a significant portion of our growth to occur in foreign countries, which can add to the difficulties in maintaining adequate management and compliance systems and internal controls over financial reporting and increase challenges in managing an organization operating in various countries.

Our failure to manage any of these risks successfully could negatively affect our reputation, harm our operations and reduce our international sales.

Our products are highly technical and may contain errors, defects or security vulnerabilities which could cause harm to our reputation and adversely affect our business.

Our products are highly technical and complex and, when deployed, have contained and may contain errors, defects or security vulnerabilities. Some errors in our products may only be discovered after a product has been installed and used by customers. Any errors, defects or security vulnerabilities discovered in our products after commercial release could result in loss of revenues or delay in revenue recognition, loss of customers and increased service and warranty cost, any of which could adversely affect our business, financial condition and results of operations. Undiscovered vulnerabilities in our products could expose them to hackers or other unscrupulous third parties who develop and deploy viruses, worms, and other malicious software programs that could attack our products. Actual or perceived security vulnerabilities in our products could harm our reputation and lead some customers to return products, to reduce or delay future purchases or use competitive products. End-users, who rely on our products and services for the interoperability of enterprise servers and applications that are critical to their information systems, may have a greater sensitivity to product errors and security vulnerabilities than customers for software products generally. Any security breaches could lead to interruptions, delays and data loss and protection concerns. In addition, we could face claims for product liability, tort or breach of warranty, including claims relating to changes to our products made by our channel partners. Our contracts with customers contain provisions relating to warranty disclaimers and liability limitations, which may not be upheld and customers and channel partners may seek indemnification from us for their losses and those of their customers. Defending a lawsuit, regardless of its merit, is costly and time-consuming and may divert management's attention and adversely affect the market's perception of us and our products. In addition, if our business liability insurance coverage proves inadequate or future coverage is unavailable on acceptable terms or at all; our business, financial condition and results of operations could be adversely impacted.

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

We have complied with Section 404 of the Sarbanes-Oxley Act of 2002 by assessing, strengthening and testing our system of internal controls. Even though we concluded our system of internal controls was effective as of December 31, 2010, we need to continue to maintain our processes and systems and adapt them to changes as our business changes and we rearrange management responsibilities and reorganize our business accordingly. We may seek to automate certain processes to improve efficiencies and better ensure ongoing compliance but such automation may itself disrupt existing internal controls and introduce unintended vulnerability to error or fraud. This continuous process of maintaining and adapting our internal controls and complying with Section 404 is expensive and time-consuming, and requires significant management attention. We cannot be certain that our internal control measures will continue to provide adequate control over our financial processes and reporting and ensure compliance with Section 404. Furthermore, as our business changes and as we expand through acquisitions of other companies, our internal controls may become more complex and we will require significantly more resources to ensure our internal controls overall remain effective. Failure to implement required new or improved controls, or difficulties encountered in their implementation, could harm our operating results or cause us to fail to meet our reporting obligations. If we or our independent registered public accounting firm identify material weaknesses, the disclosure of that fact, even if quickly remedied, could reduce the market's confidence in our financial statements and harm our stock price. In addition, if we are unable to continue to comply with Section 404, our non-compliance could subject us to a variety of administrative sanctions, including the suspension or delisting of our Class A common stock from the New York Stock Exchange and the inability of registered broker-dealers to make a market in our Class A common stock, which could reduce our stock price.

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Problems with our information systems could interfere with our business, and our data centers may be subject to intentional disruption that could adversely impact our operations.

We rely on our information systems and those of third parties for processing customer orders, delivery of products, providing services and support to our customers, billing and tracking our customers, fulfilling contractual obligations, and otherwise running our business. Any disruption in our information systems and those of the third parties upon whom we rely could have a significant impact on our business. In addition, we continuously work to enhance our information systems. The implementation of these types of enhancements is frequently disruptive to the underlying business of an enterprise, which may especially be the case for us due to the size and complexity of our business. Any disruptions relating to our systems enhancements, particularly any disruptions impacting our operations during the implementation period, could adversely affect our business in a number of respects. Even if we do not encounter these adverse effects, the implementation of these enhancements may be much more costly than we anticipated. If we are unable to successfully implement the information systems enhancements as planned, our financial position, results of operations, and cash flows could be negatively impacted.

Additionally, experienced computer programmers may attempt to penetrate our network security or the security of our website and misappropriate our proprietary information and information confidential to our customers and/or cause interruptions of our services. Because the techniques used by such computer programmers to access or sabotage networks change frequently and may not be recognized until launched against a target, we may be unable to anticipate these techniques. The theft and/or unauthorized use or publication of our trade secrets and other confidential business information as a result of such an event could adversely affect our competitive position, reputation, brand and future sales of our products and our customers may assert claims against us related to resulting losses of confidential or proprietary information. Our business could be subject to significant disruption, and we could suffer monetary and other losses and reputational harm, in the event of such incidents and claims.

If we fail to manage future growth effectively, we may not be able to meet our customers' needs or be able to meet our future reporting obligations.

We have rapidly expanded our operations since inception and anticipate further expansion in the future. This future growth, if it occurs, will place significant demands on our management, infrastructure and other resources. Additionally, further international growth may occur in regions where we presently have little or no infrastructure. To manage any future growth, we will need to hire, integrate and retain highly skilled and motivated employees. We will also need to continue to improve our financial and management controls, reporting and operational systems and procedures. If we do not effectively manage our growth, we may not be able to meet our customers' needs, thereby adversely affecting our sales, or be able to meet our future reporting obligations.

Our financial results may be adversely impacted by higher than expected tax rates, and we may have exposure to additional tax liabilities.

As a multinational corporation, we are subject to income taxes as well as non-income based taxes, in both the United States and various foreign jurisdictions. Our domestic and international tax liabilities are subject to the allocation of revenues and expenses in different jurisdictions and the timing of recognizing revenues and expenses. Additionally, the amount of income taxes paid is subject to our interpretation of applicable tax laws in the jurisdictions in which we file and changes to tax laws. Significant judgment is required in determining our worldwide provision for income taxes and other tax liabilities. From time to time, we are subject to income tax audits. While we believe we have complied with all applicable income tax laws, there can be no assurance that a governing tax authority will not have a different interpretation of the law and assess us with additional taxes. Should we be assessed with additional taxes, there could be a material adverse effect on our financial condition or results of operations.

Our future effective tax rate may be affected by such factors as changes in tax laws, regulations or rates, changing interpretation of existing laws or regulations, the impact of accounting for stock-based compensation, the impact of accounting for business combinations, changes in our international organization, and changes in overall levels of income before tax.

For example, during 2010, the IRS announced and finalized Schedule UTP, Uncertain Tax Positions Statement. This schedule is an annual disclosure of certain federal UTPs, ranked in order of magnitude, to be included in corporate tax filings for U.S. federal income tax purposes. According to the IRS, the disclosure is to include "a concise description of the tax position, including a description of the relevant facts affecting the tax treatment of the position and information that reasonably can be expected to apprise the Service of the identity of the tax position." As a result of this additional disclosure requirement, the amount of taxes paid could increase.

Also, in December 2010, H.R. 4853, Tax Relief, Unemployment Insurance Reauthorization, and the Job Creation Act of 2010, which included an extension of a number of expired tax provisions, took effect retroactively to 2010 and prospectively through 2011. Among the extended tax provisions was the U.S. federal R&D tax credit, which provides a significant reduction in our effective tax rate. The renewal of this credit beyond 2011 is uncertain.

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In addition, in the ordinary course of our global business, there are many intercompany transactions and calculations where the ultimate tax determination is uncertain. Although we believe that our tax estimates are reasonable, we cannot ensure that the final determination of tax audits or tax disputes will not be different from what is reflected in our historical income tax provisions and accruals.

We are also subject to non-income taxes, such as payroll, sales, use, value-added, net worth, property and goods and services taxes, in both the United States and various foreign jurisdictions. We are under audit from time to time by tax authorities with respect to these non-income taxes and may have exposure to additional non-income tax liabilities.

Our business is subject to the risks of earthquakes, fire, floods and other natural catastrophic events such as pandemics, and to interruption by man-made problems, such as computer viruses, unanticipated disruptions in local infrastructure or terrorism, which could result in delays or cancellations of customer orders or the deployment of our products.

Our corporate headquarters are located in the San Francisco Bay Area, a region known for seismic activity. A significant natural disaster, such as an earthquake, fire, flood or other act of God, could have a material adverse impact on our business, financial condition and results of operations. As we continue to grow internationally, increasing amounts of our business will be located in foreign countries that may be more subject to political or social instability that could disrupt operations. In addition, our servers are vulnerable to computer viruses, break-ins and similar disruptions from unauthorized tampering with our computer systems. Unanticipated disruptions in services provided through localized physical infrastructure, such as utility or telecommunication outages, can curtail the functioning of local offices as well as critical components of our information systems and adversely affect our ability to process orders, respond to customer requests and maintain local and global business continuity. Furthermore, acts of terrorism or war could cause disruptions in our or our customers' business or the economy as a whole and disease pandemics could temporarily sideline a substantial part of our or our customers' workforce at any particular time. To the extent that such disruptions result in delays or cancellations of customer orders, or the deployment of our products, our revenues would be adversely affected.

Our business is subject to a variety of U.S. and international laws regarding data protection.

Our business is subject to federal, state and international laws regarding privacy and protection of user data. We post, on our website, our privacy policies and practices concerning the use and disclosure of user data. Any failure by us to comply with our posted privacy policies or other federal, state or international privacy-related or data protection laws and regulations could result in proceedings against us by governmental entities or others which could have a material adverse effect on our business, results of operations and financial condition.

It is possible that these laws may be interpreted and applied in a manner that is inconsistent with our data practices. If so, in addition to the possibility of fines and penalties, a governmental order requiring that we change our data practices could result, which in turn could have a material adverse effect on our business. Compliance with these regulations may involve significant costs or require changes in business practices that result in reduced revenue. Noncompliance could result in penalties being imposed on us or we could be ordered to cease conducting the noncompliant activity.

Additionally, our virtualization technology is used by cloud computing vendors, and we have expanded our involvement in the delivery and provision of cloud computing through business alliances with various providers of cloud computing services and software and expect to continue to do so in the future. For example, in April 2011, we entered into an agreement with EMC to acquire certain assets relating to EMC's Mozy cloud-based data storage and data center services, including certain data center assets and a license to certain intellectual property. We also entered into an operational support agreement with EMC pursuant to which we will take over responsibility for operating the Mozy service on behalf of EMC. The application of U.S. and international data privacy laws to cloud computing vendors is uncertain, and our existing contractual provisions may prove to be inadequate to protect us from claims for data loss or regulatory noncompliance made against cloud computing providers who we may partner with. Accordingly, the failure to comply with data protection laws and regulations by our customers and business partners who provide cloud computing services could have a material adverse effect on our business.

If we fail to comply with our customer contracts or government contracting regulations, our business could be adversely affected.

Our contracts with our customers may include unique and specialized performance requirements. In particular, our contracts with federal, state, and local and non-U.S. governmental customers are subject to various procurements regulations, contract provisions and other requirements relating to their formation, administration and performance. Any failure by us to comply with provisions in our customer contracts or any violation of government contracting regulations could result in the imposition of various civil and criminal penalties, which may include termination of contracts, forfeiture of profits, suspension of payments and, in the case of our government contracts, fines and suspension from future government contracting. Further, any negative publicity related to our customer contracts or any proceedings surrounding them, regardless of its accuracy, may damage our business and affect our ability to compete for new contracts. If our customer contracts are terminated, if we are suspended from government work, or if our ability to compete for new contracts is adversely affected, we could suffer an adverse affect on our business, operating results or financial condition.

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Changes in accounting principles and guidance, or their interpretation, could result in unfavorable accounting charges or effects, including changes to our previously-filed financial statements, which could cause our stock price to decline.

We prepare our consolidated financial statements in accordance with accounting principles generally accepted in the United States of America. These principles are subject to interpretation by the SEC and various bodies formed to interpret and create appropriate accounting principles and guidance. A change in these principles or guidance, or in their interpretations, may have a significant effect on our reported results and retroactively affect previously reported results.

Risks Related to Our Relationship with EMC

As long as EMC controls us, other holders of our Class A common stock will have limited ability to influence matters requiring stockholder approval.

As of June 30, 2011, EMC owned 34,127,000 shares of our Class A common stock and all 300,000,000 shares of our Class B common stock, representing 79.3% of the total outstanding shares of common stock or 97.2% of the voting power of outstanding common stock. The holders of our Class A common stock and our Class B common stock have identical rights, preferences and privileges except with respect to voting and conversion rights, the election of directors, certain actions that require the consent of holders of Class B common stock and other protective provisions as set forth in our certificate of incorporation. Holders of our Class B common stock are entitled to 10 votes per share of Class B common stock on all matters except for the election of our Group II directors, in which case they are entitled to one vote per share, and the holders of our Class A common stock are entitled to one vote per share of Class A common stock. The holders of Class B common stock, voting separately as a class, are entitled to elect 80% of the total number of directors on our board of directors that we would have if there were no vacancies on our board of directors at the time. These are our Group I directors. Subject to any rights of any series of preferred stock to elect directors, the holders of Class A common stock and the holders of Class B common stock, voting together as a single class, are entitled to elect our remaining directors, which at no time will be less than one director—our Group II director(s). Accordingly, the holders of our Class B common stock currently are entitled to elect 7 of our 8 directors.

If EMC transfers shares of our Class B common stock to any party other than a successor-in-interest or a subsidiary of EMC prior to a distribution to its stockholders under Section 355 of the Internal Revenue Code of 1986, as amended, (a “355 distribution”), those shares will automatically convert into Class A common stock. Additionally, if, prior to a 355 distribution, EMC’s ownership falls below 20% of the outstanding shares of our common stock, all outstanding shares of Class B common stock will automatically convert to Class A common stock. Following a 355 distribution, shares of Class B common stock may convert to Class A common stock if such conversion is approved by VMware stockholders after the 355 distribution. For so long as EMC or its successor-in-interest beneficially owns shares of our common stock representing at least a majority of the votes entitled to be cast by the holders of outstanding voting stock, EMC will be able to elect all of the members of our board of directors.

In addition, until such time as EMC or its successor-in-interest beneficially owns shares of our common stock representing less than a majority of the votes entitled to be cast by the holders of outstanding voting stock, EMC will have the ability to take stockholder action without the vote of any other stockholder and without having to call a stockholder meeting, and holders of our Class A common stock will not be able to affect the outcome of any stockholder vote during this period. As a result, EMC will have the ability to control all matters affecting us, including:

- the composition of our board of directors and, through our board of directors, any determination with respect to our business plans and policies;
- any determinations with respect to mergers, acquisitions and other business combinations;
- our acquisition or disposition of assets;
- our financing activities;
- certain changes to our certificate of incorporation;
- changes to the agreements we entered into in connection with our transition to becoming a public company;
- corporate opportunities that may be suitable for us and EMC;
- determinations with respect to enforcement of rights we may have against third parties, including with respect to intellectual property rights;
- the payment of dividends on our common stock; and
- the number of shares available for issuance under our stock plans for our prospective and existing employees.

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Our certificate of incorporation and the master transaction agreement entered into between us and EMC in connection with our initial public offering (“IPO”) also contain provisions that require that as long as EMC beneficially owns at least 20% or more of the outstanding shares of our common stock, the prior affirmative vote or written consent of EMC (or its successor-in-interest) as the holder of the Class B common stock is required (subject in each case to certain exceptions) in order to authorize us to:

- consolidate or merge with any other entity;
- acquire the stock or assets of another entity in excess of \$100 million;
- issue any stock or securities except to our subsidiaries or pursuant to our employee benefit plans;
- establish the aggregate annual amount of shares we may issue in equity awards;
- dissolve, liquidate or wind us up;
- declare dividends on our stock;
- enter into any exclusive or exclusionary arrangement with a third party involving, in whole or in part, products or services that are similar to EMC’s; and
- amend, terminate or adopt any provision inconsistent with certain provisions of our certificate of incorporation or bylaws.

If EMC does not provide any requisite consent allowing us to conduct such activities when requested, we will not be able to conduct such activities and, as a result, our business and our operating results may be harmed. EMC’s voting control and its additional rights described above may discourage transactions involving a change of control of us, including transactions in which holders of our Class A common stock might otherwise receive a premium for their shares over the then-current market price. EMC is not prohibited from selling a controlling interest in us to a third party and may do so without the approval of the holders of our Class A common stock and without providing for a purchase of any shares of Class A common stock held by persons other than EMC. Accordingly, shares of Class A common stock may be worth less than they would be if EMC did not maintain voting control over us nor have the additional rights described above.

In the event EMC is acquired or otherwise undergoes a change of control, any acquirer or successor will be entitled to exercise the voting control and contractual rights of EMC, and may do so in a manner that could vary significantly from EMC’s historic practice.

By becoming a stockholder in our company, holders of our Class A common stock are deemed to have notice of and have consented to the provisions of our certificate of incorporation and the master transaction agreement with respect to the limitations that are described above.

Our business and that of EMC overlap, and EMC may compete with us, which could reduce our market share.

EMC and we are both IT infrastructure companies providing products related to storage management, back-up, disaster recovery, security, system management and automation, provisioning and resource management. There can be no assurance that EMC will not engage in increased competition with us in the future. In addition, the intellectual property agreement that we have entered into with EMC provides EMC the ability to use our source code and intellectual property, which, subject to limitations, it may use to produce certain products that compete with ours. EMC’s rights in this regard extend to its majority-owned subsidiaries, which could include joint ventures where EMC holds a majority position and one or more of our competitors hold minority positions.

EMC could assert control over us in a manner which could impede our growth or our ability to enter new markets or otherwise adversely affect our business. Further, EMC could utilize its control over us to cause us to take or refrain from taking certain actions, including entering into relationships with channel, technology and other marketing partners, enforcing our intellectual property rights or pursuing corporate opportunities or product development initiatives that could adversely affect our competitive position, including our competitive position relative to that of EMC in markets where we compete with them. In addition, EMC maintains significant partnerships with certain of our competitors, including Microsoft.

EMC’s competition in certain markets may affect our ability to build and maintain partnerships.

Our existing and potential partner relationships may be affected by our relationship with EMC. We partner with a number of companies that compete with EMC in certain markets in which EMC participates. EMC’s majority ownership in us might affect our ability to effectively partner with these companies. These companies may favor our competitors because of our relationship with EMC.

EMC competes with certain of our significant channel, technology and other marketing partners, including IBM and Hewlett-Packard. Pursuant to our certificate of incorporation and other agreements that we have with EMC, EMC may have the ability to impact our relationship with those of our partners that compete with EMC, which could have a material adverse effect on our results of operations or our ability to pursue opportunities which may otherwise be available to us.

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In order to preserve the ability for EMC to distribute its shares of our Class B common stock on a tax-free basis, we may be prevented from pursuing opportunities to raise capital, to effectuate acquisitions or to provide equity incentives to our employees, which could hurt our ability to grow.

Beneficial ownership of at least 80% of the total voting power is required in order for EMC to affect a tax-free spin-off of VMware or certain other tax-free transactions. We have agreed that for so long as EMC or its successor-in-interest continues to own greater than 50% of the voting control of our outstanding common stock, we will not knowingly take or fail to take any action that could reasonably be expected to preclude EMC's or its successor-in-interest's ability to undertake a tax-free spin-off. Additionally, under our certificate of incorporation and the master transaction agreement we entered into with EMC, we must obtain the consent of EMC or its successor-in-interest, as the holder of our Class B common stock, to issue stock or other VMware securities, excluding pursuant to employee benefit plans (provided that we obtain Class B common stockholder approval of the aggregate annual number of shares to be granted under such plans), which could cause us to forgo capital raising or acquisition opportunities that would otherwise be available to us. As a result, we may be precluded from pursuing certain growth initiatives.

Third parties may seek to hold us responsible for liabilities of EMC, which could result in a decrease in our income.

Third parties may seek to hold us responsible for EMC's liabilities. Under our master transaction agreement with EMC, EMC will indemnify us for claims and losses' relating to liabilities related to EMC's business and not related to our business. However, if those liabilities are significant and we are ultimately held liable for them, we cannot be certain that we will be able to recover the full amount of our losses from EMC.

Although we have entered into a tax sharing agreement with EMC under which our tax liabilities effectively will be determined as if we were not part of any consolidated, combined or unitary tax group of EMC Corporation and/or its subsidiaries, we nonetheless could be held liable for the tax liabilities of other members of these groups.

We have historically been included in EMC's consolidated group for U.S. federal income tax purposes, as well as in certain consolidated, combined or unitary groups that include EMC Corporation and/or certain of its subsidiaries for state and local income tax purposes. Pursuant to our tax sharing agreement with EMC, we and EMC generally will make payments to each other such that, with respect to tax returns for any taxable period in which we or any of our subsidiaries are included in EMC's consolidated group for U.S. federal income tax purposes or any other consolidated, combined or unitary group of EMC Corporation and/or its subsidiaries, the amount of taxes to be paid by us will be determined, subject to certain adjustments, as if we and each of our subsidiaries included in such consolidated, combined or unitary group filed our own consolidated, combined or unitary tax return.

We have been included in the EMC consolidated group for U.S. federal income tax purposes since our acquisition by EMC, and expect to continue to be included in such consolidated group for periods in which EMC owns at least 80% of the total voting power and value of our outstanding stock. Each member of a consolidated group during any part of a consolidated return year is jointly and severally liable for tax on the consolidated return of such year and for any subsequently determined deficiency thereon. Similarly, in some jurisdictions, each member of a consolidated, combined or unitary group for state, local or foreign income tax purposes is jointly and severally liable for the state, local or foreign income tax liability of each other member of the consolidated, combined or unitary group. Accordingly, for any period in which we are included in the EMC consolidated group for U.S. federal income tax purposes or any other consolidated, combined or unitary group of EMC Corporation and/or its subsidiaries, we could be liable in the event that any income tax liability was incurred, but not discharged, by any other member of any such group.

Any inability to resolve favorably any disputes that arise between us and EMC with respect to our past and ongoing relationships may result in a significant reduction of our revenues and earnings.

Disputes may arise between EMC and us in a number of areas relating to our ongoing relationships, including:

- labor, tax, employee benefit, indemnification and other matters arising from our separation from EMC;
- employee retention and recruiting;
- business combinations involving us;
- our ability to engage in activities with certain channel, technology or other marketing partners;
- sales or dispositions by EMC of all or any portion of its ownership interest in us;
- the nature, quality and pricing of services EMC has agreed to provide us;
- arrangements with third parties that are exclusionary to EMC;
- business opportunities that may be attractive to both EMC and us; and
- product or technology development or marketing activities or customer agreements which may require the consent of EMC.

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We may not be able to resolve any potential conflicts, and even if we do, the resolution may be less favorable than if we were dealing with an unaffiliated party.

The agreements we enter into with EMC may be amended upon agreement between the parties. While we are controlled by EMC, we may not have the leverage to negotiate amendments to these agreements if required on terms as favorable to us as those we would negotiate with an unaffiliated third party.

Some of our directors own EMC common stock, restricted shares of EMC common stock and/ or equity awards to acquire EMC common stock and hold management positions with EMC, which could cause conflicts of interests that result in our not acting on opportunities we otherwise may have.

Some of our directors own EMC common stock and/or equity awards to purchase EMC common stock. In addition, some of our directors are executive officers and/or directors of EMC, and EMC, as the sole holder of our Class B common stock, is entitled to elect 7 of our 8 directors. Ownership of EMC common stock, restricted shares of EMC common stock and equity awards to purchase EMC common stock by our directors and the presence of executive officers or directors of EMC on our board of directors could create, or appear to create, conflicts of interest with respect to matters involving both us and EMC that could have different implications for EMC than they do for us. Provisions of our certificate of incorporation and the master transaction agreement between EMC and us address corporate opportunities that are presented to our directors or officers that are also directors or officers of EMC. There can be no assurance that the provisions in our certificate of incorporation or the master transaction agreement will adequately address potential conflicts of interest or that potential conflicts of interest will be resolved in our favor or that we will be able to take advantage of corporate opportunities presented to individuals who are officers or directors of both us and EMC. As a result, we may be precluded from pursuing certain growth initiatives.

EMC's ability to control our board of directors may make it difficult for us to recruit independent directors.

So long as EMC beneficially owns shares of our common stock representing at least a majority of the votes entitled to be cast by the holders of outstanding voting stock, EMC can effectively control and direct our board of directors. Further, the interests of EMC and our other stockholders may diverge. Under these circumstances, persons who might otherwise accept our invitation to join our board of directors may decline.

We are a "controlled company" within the meaning of the New York Stock Exchange rules and, as a result, are relying on exemptions from certain corporate governance requirements that provide protection to stockholders of companies that are not "controlled companies."

EMC owns more than 50% of the total voting power of our common shares and, as a result, we are a "controlled company" under the New York Stock Exchange corporate governance standards. As a controlled company, we are exempt under the New York Stock Exchange standards from the obligation to comply with certain New York Stock Exchange corporate governance requirements, including the requirements:

- that a majority of our board of directors consists of independent directors;
- that we have a corporate governance and nominating committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities;
- that we have a compensation committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities; and
- for an annual performance evaluation of the nominating and governance committee and compensation committee.

While we have voluntarily caused our Compensation and Corporate Governance Committee to currently be composed entirely of independent directors in compliance with the requirements of the New York Stock Exchange, we are not required to maintain the independent composition of the committee. As a result of our use of the "controlled company" exemptions, holders of our Class A common stock will not have the same protection afforded to stockholders of companies that are subject to all of the New York Stock Exchange corporate governance requirements.

Our historical financial information as a business segment of EMC may not be representative of our results as an independent public company.

The historical financial information covering the periods prior to our IPO in August 2007 included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010 does not necessarily reflect what our financial position, results of operations or cash flows would have been had we been an independent entity during those historical periods. The historical costs and expenses reflected in our consolidated financial statements prior to 2008 include an allocation for certain corporate functions historically provided by EMC, including tax, accounting, treasury, legal and human resources services. Although we have transitioned most of these corporate functions to VMware personnel, in certain geographic regions where we do not have an established legal entity, we contract with EMC subsidiaries for support services and EMC employees who are managed by VMware personnel. The costs incurred by EMC on

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VMware's behalf related to these employees include a mark-up intended to approximate costs that would have been charged had we contracted for such services with an unrelated third party. These costs have been charged by EMC and are included as expenses in our consolidated statements of income. Our historical financial information is not necessarily indicative of what our financial position, results of operations or cash flows will be in the future if and when we contract at arm's-length with independent third parties for the services we have received and currently receive from EMC. For additional information, see "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our historical consolidated financial statements and notes thereto.

Risks Related to Owning Our Class A Common Stock

Our Class A common stock has only been publicly traded since August 14, 2007 and the price of our Class A common stock has fluctuated substantially since then and may fluctuate substantially in the future.

Our Class A common stock has only been publicly traded since our IPO on August 14, 2007. The trading price of our Class A common stock has fluctuated significantly since then. For example, between January 1, 2010 and June 30, 2011, the closing trading price of our Class A common stock was very volatile, ranging between \$41.58 and \$100.23 per share. Our trading price could fluctuate substantially in the future due to the factors discussed in this Risk Factors section and elsewhere in this Quarterly Report on Form 10-Q.

Substantial amounts of Class A common stock are held by our employees, EMC and Cisco, and all of the shares of our Class B common stock, which may be converted to Class A common stock upon request of the holder, are held by EMC. Shares of Class A common stock held by EMC (including shares of Class A common stock that might be issued upon the conversion of Class B common stock) are eligible for sale subject to the volume, manner of sale and other restrictions of Rule 144 of the Securities Act of 1933, as amended (the "Securities Act"), which allows the holder to sell up to the greater of 1% of our outstanding Class A common stock or our four-week average weekly trading volume during any three-month period and following the expiration of their contractual restrictions. Additionally, EMC possesses registration rights with respect to the shares of our common stock that it holds. If EMC chooses to exercise such rights, its sale of the shares that are registered would not be subject to the Rule 144 limitations. If a significant amount of the shares that become eligible for resale enter the public trading markets in a short period of time, the market price of our Class A common stock may decline.

Additionally, broad market and industry factors may decrease the market price of our Class A common stock, regardless of our actual operating performance. The stock market in general and technology companies in particular, also have often experienced extreme price and volume fluctuations. In addition, in the past, following periods of volatility in the overall market and the market price of a company's securities, securities class action litigation has often been instituted, including against us, and, if not resolved swiftly, can result in substantial costs and a diversion of management's attention and resources.

If securities or industry analysts cease publishing research or reports about us, our business or our market, or if they change their recommendations regarding our stock adversely, our stock price and trading volume could decline.

The trading market for our Class A common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. If any of the analysts who may cover us change their recommendation regarding our stock adversely, or provide more favorable relative recommendations about our competitors, our stock price would likely decline. If any analyst who may cover us were to cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

Delaware law and our certificate of incorporation and bylaws contain anti-takeover provisions that could delay or discourage takeover attempts that stockholders may consider favorable.

Provisions in our certificate of incorporation and bylaws will have the effect of delaying or preventing a change of control or changes in our management. These provisions include the following:

- the division of our board of directors into three classes, with each class serving for a staggered three-year term, which would prevent stockholders from electing an entirely new board of directors at any annual meeting;
- the right of the board of directors to elect a director to fill a vacancy created by the expansion of the board of directors;
- following a 355 distribution of Class B common stock by EMC to its stockholders, the restriction that a beneficial owner of 10% or more of our Class B common stock may not vote in any election of directors unless such person or group also owns at least an equivalent percentage of Class A common stock or obtains approval of our board of directors prior to acquiring beneficial ownership of at least 5% of Class B common stock;
- the prohibition of cumulative voting in the election of directors or any other matters, which would otherwise allow less than a majority of stockholders to elect director candidates;
- the requirement for advance notice for nominations for election to the board of directors or for proposing matters that can be acted upon at a stockholders' meeting;

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- the ability of the board of directors to issue, without stockholder approval, up to 100,000,000 shares of preferred stock with terms set by the board of directors, which rights could be senior to those of common stock; and
- in the event that EMC or its successor-in-interest no longer owns shares of our common stock representing at least a majority of the votes entitled to be cast in the election of directors, stockholders may not act by written consent and may not call special meetings of the stockholders.

Until such time as EMC or its successor-in-interest ceases to beneficially own 20% or more of the outstanding shares of our common stock, the affirmative vote or written consent of the holders of a majority of the outstanding shares of the Class B common stock will be required to:

- amend certain provisions of our bylaws or certificate of incorporation;
- make certain acquisitions or dispositions;
- declare dividends, or undertake a recapitalization or liquidation;
- adopt any stockholder rights plan, “poison pill” or other similar arrangement;
- approve any transactions that would involve a merger, consolidation, restructuring, sale of substantially all of our assets or any of our subsidiaries or otherwise result in any person or entity obtaining control of us or any of our subsidiaries; or
- undertake certain other actions.

In addition, we have elected to apply the provisions of Section 203 of the Delaware General Corporation Law. These provisions may prohibit large stockholders, in particular those owning 15% or more of our outstanding voting stock, from merging or combining with us. These provisions in our certificate of incorporation and bylaws and under Delaware law could discourage potential takeover attempts and could reduce the price that investors might be willing to pay for shares of our common stock.

Intel’s and Cisco’s relationship with us and the membership on our board of individuals initially proposed by Intel and Cisco may create actual or potential conflicts of interest.

As a result of an investment by Intel Capital in our Class A common stock in August 2007, Intel had a one-time right to designate a director acceptable to our board of directors for an initial term of service. Pursuant to that right, we appointed an Intel executive to our board of directors. Cisco, pursuant to its purchase of our Class A common stock from EMC, also has an ownership relationship with us, and we appointed an executive officer of Cisco (since retired from Cisco) proposed by Cisco as one of our directors. Neither Intel nor Cisco has an ongoing right to designate a director for our board. However, each of the directors initially proposed by them continues to serve on our board. These relationships may create actual or potential conflicts of interest and the best interests of Intel or Cisco may not reflect the best interests of other holders of our Class A common stock.

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

(a) Sales of Unregistered Securities

None.

(b) Use of Proceeds from Public Offering of Common Stock

None.

(c) Purchases of Equity Securities by the Issuer and Affiliated Purchasers

Purchases of equity securities during the quarter ended June 30, 2011:

	Total Number of Shares Purchased (1)(2)	Average Price Paid Per Share (1)(2)	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (2)(4)	Approximate Dollar Value of Shares That May Yet Be Purchased Under the Publicly Announced Plans or Programs (2)(3)(4)
April 1 – April 30, 2011	397,319	\$ 85.34	397,319	\$ 429,856,684
May 1 – May 31, 2011	576,437	93.63	488,391	384,259,501
June 1 – June 30, 2011	1,135,422	93.95	562,565	331,132,973
	<u>2,109,178</u>	<u>92.24</u>	<u>1,448,275</u>	

- (1) Includes 660,903 shares purchased by EMC in open market transactions. In the first quarter of 2010, EMC announced a stock purchase program of VMware’s Class A common stock to maintain its approximate level of ownership in VMware over the long term. Inclusion of EMC’s purchases in the above table does not indicate that EMC is deemed to be an “affiliated purchaser” with respect to the VMware stock repurchase program discussed in the following footnote. Shares purchased by EMC remain issued and outstanding.

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- (2) In February 2011, a committee of our Board of Directors authorized the repurchase of up to \$550.0 million of VMware's Class A common stock through the end of 2012 (the "VMware 2011 Repurchase Authorization"). Stock will be purchased pursuant to the VMware 2011 Repurchase Authorization, from time to time, in the open market or through private transactions, subject to market conditions. In the three months ended June 30, 2011, we repurchased in open market transactions and retired 1,448,275 shares of our Class A common stock at a weighted-average price of \$91.58 per share for an aggregate purchase price of \$132,631,137. We are not obligated to purchase any shares under our stock repurchase program. Subject to applicable laws, repurchases under our stock repurchase program may be made at such times and in such amounts as we deem appropriate. Purchases under our stock repurchase program can be discontinued at any time that we feel additional purchases are not warranted.
- (3) Represents the amounts remaining in the 2011 VMware Repurchase Authorization.
- (4) Amounts do not include potential purchases by EMC.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. REMOVED AND RESERVED

ITEM 5. OTHER INFORMATION

None.

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ITEM 6. EXHIBITS

Exhibit Number	Exhibit Description	Incorporated by Reference		
		Filed Herewith	Form/File No.	Date
3.1	Amended and Restated Certificate of Incorporation		S-1/A-2	7/9/2007
3.2	Amended and Restated Bylaws		8-K	3/8/2011
10.10	Amended and Restated Promissory Note between VMware, Inc. and EMC Corporation dated June 10, 2011	X		
10.24	Agreement of Purchase and Sale Agreement between Roche Palo Alto LLC and VMware, Inc. dated March 16, 2011	X		
10.25	Amended and Restated Ground Lease between VMware, Inc. and the Board of Trustees of the Leland Stanford Junior University dated June 13, 2011 (3431 Hillview Campus)	X		
10.26	Ground Lease between 3401 Hillview LLC. And the Board of Trustees of the Leland Stanford Junior University dated as of February 2, 2006, as amended October 1, 2007 and June 13, 2011			
31.1	Certification of Principal Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	X		
31.2	Certification of Principal Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	X		
32.1	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.	X		
32.2	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.	X		
101.INS	XBRL Instance Document	X		
101.SCH	XBRL Taxonomy Extension Schema	X		
101.CAL	XBRL Taxonomy Extension Calculation Linkbase	X		
101.DEF	XBRL Taxonomy Extension Definition Linkbase	X		
101.LAB	XBRL Taxonomy Extension Label Linkbase	X		
101.PRE	XBRL Taxonomy Extension Presentation Linkbase	X		

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SIGNATURES

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

VMWARE, INC.

Dated: August 3, 2011

By: /s/ R OBYNNE D. SISCO
Robynne D. Sisco
Chief Accounting Officer and Corporate Controller
(Principal Accounting Officer and Duly Authorized Officer)

EXHIBIT INDEX

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101.PRE	XBRL Taxonomy Extension Presentation Linkbase	X		

AMENDED AND RESTATED PROMISSORY NOTE

This is an amendment and restatement of the \$800,000,000 promissory note issued on April 16, 2007 by VMware, Inc. to EMC Corporation (the "Original Promissory Note"). Certain prepayments were made on the Original Promissory Note prior to the date hereof, such that the outstanding principal amount of this amended and restated promissory note is \$450,000,000 on the date hereof.

\$450,000,000

June 10, 2011

FOR VALUE RECEIVED, VMware, Inc., a Delaware corporation (the "Maker"), hereby promises to pay to the order of EMC Corporation, a Massachusetts corporation (the "Payee"), its successors and assigns, on or before the Maturity Date (as hereinafter defined), the principal sum of Four Hundred and Fifty Million Dollars (\$450,000,000), together with interest from the date hereof on the unpaid principal balance hereof from time to time outstanding, pursuant to the terms and conditions contained herein.

Interest shall accrue on the outstanding principal balance of this Amended and Restated Promissory Note (the "Amended and Restated Promissory Note") during each fiscal quarter of the Payee (each, a "Fiscal Quarter") at a variable rate per annum equal to the sum of the LIBOR Rate (as hereinafter defined), plus 0.55%. As used herein, "LIBOR Rate" means the applicable British Bankers' Association LIBOR rate for deposits in U.S. dollars as reported by any generally recognized financial information service for an interest period of 90 days, as of 11:00 a.m. (London time) two business days prior to the first day of each Fiscal Quarter; provided, however, that if no such British Bankers' Association LIBOR rate is available, the applicable LIBOR Rate shall instead be the rate determined by the Maker to be the rate at which Citibank, N.A., or any other major bank having principal offices located in New York, New York, offers to place deposits in U.S. dollars with first class banks in the interbank market at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Fiscal Quarter. The applicable LIBOR Rate as of the date of this amendment and restatement is 0.3045%, equal to the rate reported on March 30, 2011.

Interest shall be payable quarterly in arrears on the last business day of each Fiscal Quarter, except that the entire unpaid balance of accrued interest, if not sooner paid, shall be due and payable in full on or before the Maturity Date. Interest accrued under the Original Promissory Note but not paid as of the date hereof shall be due and payable together with interest hereunder on the last business day of the current Fiscal Quarter. Interest hereunder shall be computed on the basis of a 360-day year for the actual number of days elapsed. All payments of interest and principal under this Amended and Restated Promissory Note shall be in lawful money of the United States of America.

The principal balance evidenced by this Amended and Restated Promissory Note, together with all accrued but unpaid interest thereon, shall be due and payable in full on or before April 16, 2015 (the “Maturity Date”); provided, however, that the Maker shall have the right to prepay this Amended and Restated Promissory Note in full or in part at any time (the “Prepayment Right”). Any prepayment amount received by the Payee in connection with the Prepayment Right shall be applied first to accrued but unpaid interest thereon through the date of such prepayment, then to principal. Any such prepayment shall be due and payable without any premium or penalty of any kind.

In the event that the Maker fails to make any interest payment or any other payment as and when due and such payment remains unpaid for a period of more than sixty (60) days, the Payee may, at the Payee’s sole discretion, accelerate the maturity of all amounts due hereunder, all of which shall be immediately due and payable in full upon written demand from the Payee received by the Maker. Upon the Maker’s receipt of such written notice of acceleration from the Payee, all amounts due hereunder shall automatically and immediately be due and payable in full, without further presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Maker.

The Maker, for itself and its successors and assigns, hereby waives presentment, protest, notice of demand, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind whatsoever, except for the written notice of acceleration provided for in the immediately preceding paragraph. Any failure by the Payee to exercise any right hereunder or otherwise available at law or in equity shall not be construed as a waiver of the right to exercise the same, or any other right or remedy, at any time.

The effect of this Amended and Restated Promissory Note is to amend and restate the Original Promissory Note. This Amended and Restated Promissory Note shall constitute a renewal, extension and modification of the terms of the Original Promissory Note and evidences the same indebtedness that existed under the Original Promissory Note. To the extent that any rights, benefits or provisions in favor of Payee existed in the Original Promissory Note as of the date hereof, then such rights, benefits or provisions are acknowledged to be and to continue to be effective from and after the date of the Original Promissory Note. The Maker and the Payee agree and acknowledge that any and all rights, remedies and payment provisions under the Original Promissory Note, as hereby amended and restated, shall continue and survive the execution and delivery of this Amended and Restated Promissory Note. The Maker and the Payee further agree and acknowledge that any and all amounts owing or otherwise due under or pursuant to the Original Promissory Note immediately prior to the effectiveness of this Amended and Restated Promissory Note shall be owing and otherwise due pursuant to this Amended and Restated Promissory Note. All references to the Original Promissory Note in any agreement, instrument or document executed or delivered in connection herewith or therewith shall be deemed to refer to this Amended and Restated Promissory Note, as the same may be amended, restated, supplemented or otherwise modified from time to time.

No waiver, amendment or other modification of this Amended and Restated Promissory Note shall be binding upon either the Maker or the Payee, unless in writing and signed by a duly-authorized representative of both parties. If any provision of this Amended and Restated Promissory Note shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, and without invalidating the remainder of such provision or the remaining provisions of this Amended and Restated Promissory Note.

Payee may assign or transfer any or all of the obligations hereunder. This Amended and Restated Promissory Note shall be binding upon the Maker and its successors and assigns. This Amended and Restated Promissory Note shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

(Signature Page Follows)

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Promissory Note as of the date first written above.

MAKER:

VMWARE, INC.

By: /s/ Mark S. Peek
Printed Name: Mark S. Peek
Title: Co-President and CFO

PAYEE:

EMC CORPORATION

By: /s/ Mark H. Glenn
Printed Name: Mark H. Glenn
Title: VP, Treasury

**AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

By and Between

ROCHE PALO ALTO LLC,

a Delaware limited liability company

(“Seller”)

and

VMWARE, INC.,

a Delaware corporation

(“Buyer”)

**AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

ARTICLE 1 — SUMMARY OF BASIC TERMS

This Purchase and Sale Agreement and Joint Escrow Instructions (the “**Agreement**”), dated as of the “**Effective Date**” set forth in Section 1.1 of the Summary of Basic Terms, below, is made by and between **ROCHE PALO ALTO LLC**, a Delaware limited liability company (“**Seller**”), and **VMWARE, INC.**, a Delaware corporation (“**Buyer**”). The terms as set forth below shall have the meanings ascribed to such terms as set forth below when used in this Agreement.

SUMMARY OF BASIC TERMS

<u>TERMS</u>	<u>DESCRIPTION</u>
1.1 Effective Date:	March 16, 2011
1.2 Purchase Price:	Two Hundred Twenty-Five Million Dollars (\$225,000,000.00).
1.3 Deposit:	Forty-Five Million and No/100 Dollars (\$45,000,000.00), consisting of the following:
(a) Initial Deposit:	Five Million Six Hundred Twenty-Five Thousand and No/100 Dollars (\$5,625,000.00), together with interest thereon.
(b) Additional Deposit:	Thirty-Nine Million Three Hundred Seventy-Five Thousand and No/100 Dollars (\$39,375,000.00), together with interest thereon.
1.4 Escrow Holder:	First American Title Company Escrow Agent: Linda Tugade 1737 North First Street, Suite 500 San Jose, California 95112
1.5 Contingency Date:	The date which is sixty-five (65) days after the Effective Date.
1.6 Closing Date:	The date which is fifteen (15) business days after the Contingency Date.
1.7 Real Property:	Seller’s interest in that certain real property, together with all of the rights, title, interests,

easements, hereditaments, privileges and appurtenances which belong to or inure to the benefit of Seller or such real property, commonly known as the Roche Palo Alto Campus situated within the Stanford Research Park, with an address of 3431 Hillview Avenue, Palo Alto, California, which consists of approximately 69.505 acres improved with buildings and related improvements comprising approximately 966,087 square feet of research and development space, under and pursuant to that certain Ground Lease with The Board of Trustees of the Leland Stanford Junior University (“**Stanford**”), dated July 1, 1968 (“**Original Ground Lease**”), as amended by a Lease Amendment and Extension Agreement dated as of April 14, 2003 (“**First Amendment**”), and a Second Amendment to Ground Lease dated as of October 1, 2007 (“**Second Amendment**”). The Original Ground Lease, First Amendment and Second Amendment are attached hereto as “Exhibit A”, and are hereinafter collectively referred to as the “**Ground Lease**”. For clarity, the term “Stanford” as used herein shall mean Stanford in its capacity as the “lessor” under the Ground Lease, and not as “lessee” under the Building R6 Lease.

1.8 **Improvements:**

The buildings listed on Schedule 3.5(c), and all other structures, landscaping and other improvements owned, operated or maintained by Seller and located on the Real Property.

1.9 **Assumed Contracts:**

All right, title and interest of Seller in and to any contracts, leases and agreements in effect as of the Close of Escrow (defined in Section 2.1(d)) relating to the Property, together with any security deposits in connection therewith and either (a) set forth in Schedule 1.9, or (b) agreed to be assumed by Buyer in writing prior to the Contingency Date with the consent of Seller; provided, however, the Ground Lease shall not be considered an Assumed Contract hereunder.

1.10 Intangible Property:

All right, title and interest of Seller in and to the following, to extent assignable by Seller: any and all development rights, building, use or other land use permits, approvals, authorizations, certificates of occupancy, entitlements, licenses and consents obtained from any Authority (defined in Section 2.2(a)(2)) in connection with the development, use, operation and management of the Real Property and Improvements; all preliminary, final and “as-built” plans and specifications respecting the Real Property and Improvements; all warranties, guarantees, sureties and other rights and claims against third parties relating to the Real Property or Personal Property, including its physical condition; and any permits listed on Schedule 1.10 that Buyer agrees to assume at Closing, or any other permits that Buyer and Seller agree to be assumed by Buyer at Closing.

1.11 Personal Property:

All tangible personal property owned by Seller and related to or used in connection with the operation of the Real Property as of the Effective Date (as clarified by “ Exhibit B ”) (including, without limitation, fixtures, furniture and equipment), but excluding (a) personal property containing the confidential or proprietary information of Seller or its Affiliates, (b) the personal belongings of any of Seller’s personnel, and (c) personal property and fixtures of the type set forth in and identified to be removed in “ Exhibit B ” hereto (the “ **Removed Property** ”), which in each case shall be removed by Seller at its sole cost prior to Closing (as to the Property other than the Remainder Property (as defined in Section 3.5(c))) or the date the Closure Work is completed and each building is delivered to Buyer (as to Removed Property in the Remainder Property). Seller shall not have a requirement to restore any damage to the Real Property and Improvements as a result of such removal; however, Seller shall make the Real Property and Improvements reasonably safe and shall restore any roof or building exterior

openings, and fill any holes in the ground as a result of such removal. Prior to the Contingency Date, Buyer and Seller shall use commercially reasonable efforts to develop a more detailed, mutually acceptable list of the Removed Property and update “Exhibit B” accordingly. “Exhibit B” may also contain Personal Property that will remain. The parties may update “Exhibit B” from time to time in writing.

1.12	Property:	The Real Property, Assumed Contracts, Intangible Property, Personal Property, and all right, title and interest of Seller in and to the Improvements, collectively.
1.13	Title Company:	First American Title Company Title Officer: Linda Tugade 1737 North First Street, Suite 500 San Jose, California 95112
1.14	City:	City of Palo Alto
1.15	County:	County of Santa Clara
1.16	State:	State of California
1.17	Seller's Broker:	Cornish & Carey Commercial 245 Lytton Avenue, Suite 150 Palo Alto, California 94301 Attention: Joe Hamilton, Erik Doyle
1.18	Buyer's Broker:	None

ARTICLE 2 — PURCHASE

2.1 Purchase Price; Escrow Opening.

Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property for the sum of the Purchase Price, which shall be paid as set forth below in this Section 2.1.

(a) Initial Deposit . Within five (5) business days after the Effective Date, Buyer shall deliver to Escrow Holder the sum of the Deposit, which Escrow Holder shall invest in a federally-insured, interest bearing account. All interest which accrues on the Deposit shall be credited to the principal balance of the Deposit. The Initial Deposit portion of the Deposit shall be non-refundable to Buyer, and shall be disbursed to Seller without further instruction from Buyer or Seller, if this Agreement is terminated for any reason other than Seller's uncured material default under the terms of this Agreement or the failure of any of the conditions set forth in Section 2.6(a)-(c) or Section 2.7(b) .

(b) Additional Deposit. If Buyer elects in its sole discretion to provide the Approval Notice (defined in Section 2.3), the Additional Deposit, together with interest thereon, shall be non-refundable to Buyer, and shall be disbursed to Seller without further instruction from Buyer or Seller, if this Agreement is terminated for any reason other than (i) Seller's uncured material default under the terms of this Agreement, (ii) pursuant to Section 6, (iii) due to any failures of the conditions set forth in Section 2.6(a)-(g) or Section 2.7(b), or (iv) Buyer's failure for any reason to deliver the Approval Notice. All interest which accrues on the Additional Deposit shall be credited to the principal balance of the Additional Deposit. Upon Close of Escrow, the Deposit shall be applied toward the Purchase Price. If Buyer does not elect, in its sole discretion, to provide the Approval Notice by the Contingency Date, Escrow Holder shall, within one (1) business day after the Contingency Date, return to Buyer the Additional Deposit.

(c) Purchase Price Balance. Prior to the Closing, Buyer shall deliver the balance of the Purchase Price to Escrow Holder, plus or minus, as applicable, Buyer's share of costs, expenses and prorations. Buyer shall have no obligation to pay the balance of the Purchase Price unless it elects, in its sole discretion, to provide the Approval Notice and all other conditions to the Closing have been satisfied.

(d) Escrow Opening. Buyer and Seller shall cause the opening of "**Escrow**" (the escrow opened with Escrow Holder for the consummation of the transaction described in this Agreement) by the delivery of a fully executed original of this Agreement to Escrow Holder no later than three (3) business days after the Effective Date hereof. Escrow shall close ("**Closing**" or "**Close of Escrow**") on the Closing Date, or such earlier date as may be agreed upon by the parties in writing.

2.2 Buyer's Due Diligence

Buyer shall have the right to review and approve or disapprove, in its sole and absolute discretion, as hereafter provided, all aspects of the Property, including, without limitation (i) the Improvements, (ii) the physical and environmental condition of the Property, including, without limitation, the condition of the Improvements, the condition of the soil at the Property, the condition of the ground water at the Property, and the presence or absence of any Hazardous Materials at the Property, (iii) the financial condition of the Property, including, without limitation, the feasibility, convertibility, desirability and suitability of the Property for Buyer's intended use and purposes, (iv) the legal condition of the Property, including, without limitation, the Property's compliance or non-compliance with all statutes, ordinances, codes, regulations, decrees, orders and laws applicable to the Property, (v) the Assumed Contracts, (vi) the existence or non-existence of any governmental or quasi-governmental entitlements, if any, affecting the Property or any portion of the Property, (vii) any dimensions or specifications of the Property or any part thereof, (viii) the zoning, building and land use restrictions applicable to the Property or any portion thereof, and (ix) all other matters which Buyer deems relevant to its purchase of the Property, as follows:

(a) Physical and Governmental Inspections. Buyer and Buyer's representatives, agents, consultants and designees shall have the right to:

(1) enter upon the Property, at Buyer's sole cost, for any purpose in connection with its proposed purchase, development or operation of the Property, including, without limitation, to make such inspections, investigations and tests as Buyer may elect to make or obtain, including, without limitation, testing and inspection of structural, electrical, and mechanical systems, surveys, equipment tests, environmental tests (including groundwater, soils, soils gas, indoor air, asbestos and lead paint testing), and soils, seismic, hydrogeologic and engineering tests, analyses and studies (collectively, "**Buyer's Inspections**"), provided that : (t) Buyer will not enter the Property prior to negotiation and execution of an Access Agreement ("**Access Agreement**") by the parties (on terms mutually agreed upon between the parties); (u) all persons entering the Property on behalf of Buyer for such Buyer's Inspections shall be appropriately licensed (if required by law) and qualified, possess the appropriate permits for any proposed drilling or testing, present in advance to Seller evidence of appropriate insurance reasonably satisfactory to Seller, and enter at reasonable times and without unreasonable interference with Seller's use of the Property, and comply with Seller's reasonable site procedures and requirements, including, without limitation, being accompanied by Seller personnel during such access if required by Seller; (v) Seller shall have the right to approve the Work Plan (defined below) for any physical testing or drilling or other similar invasive testing, which right will not be unreasonably withheld, conditioned or delayed. Buyer shall submit a work plan ("**Work Plan**") for any such proposed testing or drilling, and Buyer shall not commence any such testing or drilling until Buyer has received written approval of the Work Plan from Seller; provided, however, that Seller will either respond to a proposed Work Plan within three business days of receipt thereof, or if response is delayed beyond three business days, Seller will provide Buyer a commensurate extension of the Contingency Date; (w) Buyer shall deliver to Seller, without representation or warranty, within two business days after its receipt by Buyer, copies of all physical inspection analytical data (whether or not in the form of a report) and report of sampling and analytical methodologies, physical inspection reports, geotechnical or soils reports, surveys, engineering reports, environmental feasibility studies and other inspection reports prepared by or on behalf of Buyer in connection with Buyer's Inspections ("**Due Diligence Reports**"), and provided further that (x) Buyer shall not be required to deliver to Seller any proprietary information regarding Buyer, any reports or analysis regarding the valuation or potential performance of the Property or any information protected by the attorney-client privilege; (y) Buyer shall reasonably restore the Property to substantially the same condition as it existed prior to such Buyer's Inspections; and (z) Buyer shall defend, indemnify, and hold harmless Seller, and its Affiliates, directors, officers, shareholders, employees, successors, assigns and agents from any losses, costs, claims, liabilities or damages as set forth in the Access Agreement; and

(2) subject to Section 2.2(e), and the subsequent sentences of this Section 2.2(a)(2), consult with employees and representatives of Seller and any third party, including, without limitation, (A) Stanford or (B) any governmental or quasi-governmental body or agency having jurisdiction over the Property and/or Seller with respect to the Property, including, without limitation, the State, the City and the County (the "**Authority**" or "**Authorities**") for any purpose reasonably relating to the Property. Notwithstanding the foregoing, Seller will have the sole responsibility and right of disclosure to Stanford or any Authority of any analytical data

gathered by Buyer during Buyer's Inspections (and of any data or information collected by Seller during the decommissioning/closure of certain structures under Section 3.5) regarding Hazardous Materials. Accordingly, Seller will, within ten (10) days after Buyer's submittal to Seller of such data and accompanying report, forward the data in such report to Stanford and the appropriate Authorities, with a transmittal document prepared by Seller in its sole discretion. Buyer will be copied on those and any other written communications with Stanford and the Authorities. Thereafter, Buyer will not contact either the Authority or Stanford to discuss the analytical data gathered or the decommissioning/closure of Hazardous Materials facilities or structures. However, if such communications occur (whether initiated by Seller, Stanford, or the Authority), Seller shall serve as the leader and sole spokesperson in all such communications and/or in-person or telephone discussions, provided that Buyer is given a reasonable opportunity to attend any meetings and phone discussions. In no circumstance will Buyer, or others acting in cooperation with Buyer, communicate separately with Stanford or Authorities about such environmental data, its implications, or any environmental response requested by Stanford or Authorities, nor shall they request, act or communicate in any way with Authorities or Stanford to suggest, solicit, inveigle, or entice them to make any request, or a broader or more stringent request, for environmental response for such Pre-Existing Contamination or the decommissioning/closure of Hazardous Materials facilities or structures. If Buyer wishes to have discussions with any environmental regulatory agency staff (including the city of Palo Alto regarding hazardous material closure issues) regarding the environmental condition on or under the Property other than related to data gathered during Buyer's Inspections or Seller's decommissioning/closure of Hazardous Materials as provided in Section 3.5(c), (and excluding routine regulatory file searches customary for Phase I environmental site assessments) or the regulatory requirements applicable to them, Buyer agrees to reasonably coordinate with Seller in advance to allow a joint approach to and joint discussion with the regulatory agency staff, providing Seller and its agents an opportunity to be present for all such discussions; provided, however, that Buyer may meet with such agencies without Seller if Seller is not available to meet with such agencies at the times proposed by Buyer so long as, not less than two (2) business days before the proposed meeting, Buyer proposed to Seller at least two (2) meeting times during normal business hours.

(b) Property Information Inspections Other Than Environmental. Within three (3) business days following the Effective Date, Seller shall provide and make available to Buyer, and shall continue to provide updates and make available to Buyer until the Closing, the following non-environmental documents and information concerning the Property that are in Seller's possession or reasonably within Seller's control to Seller's actual knowledge: all reports, studies, engineering and geological studies, permits (and list any updates to the list of current permits scheduled in Schedule 1.10), licenses and approvals, building plans and specifications, maintenance records and warranties, cooperation and easement agreements, tax statements, title insurance information and surveys, if any, service contracts (including utility contracts), lease and sublease files, and Personal Property inventories (collectively, the "**Property Information**"); provided, however, that Seller is not obligated under this paragraph to provide any documents consisting of communications between Seller and Seller's in-house or outside counsel or any confidential documents such as internal financial or personnel memorandum, internal financial reports, any appraisals or any offers or solicitations to purchase or lease.

(c) Environmental Document Inspection. Within five (5) business days following the Effective Date, Seller shall provide and make available to Buyer, and shall continue to provide updates and make available to Buyer until the Closing, the following documents and information concerning the environmental condition of the Property that are in the possession or reasonably within the control of Seller's Designated Representative, to Seller's actual knowledge without obligation of inquiry: all current environmental permits, licenses, consents, authorizations and regulatory approvals applicable to the Real Property (" **Environmental Permits** ") and historic Environmental Permits that could affect the value or environmental condition of the Property; letters, reports, or other environmental documents and correspondence with any Authority or Stanford about the use, decommissioning and/or closure of any underground and above-ground tanks, sumps, pits, ponds, clarifiers, wells, treatment systems, floor drains, trenches, incinerators and spill containment systems at the Property if containing Hazardous Materials (defined in Section 5.1); environmental reports addressing ACM or LBM; the analytical results of any sampling of environmental media at the Property (i.e. soil, soil gas, groundwater, surface water, or ambient outdoor air) and accompanying reports to the extent providing additional related factual information; any documents regarding Releases of Hazardous Materials into soil, groundwater, or soil gas on or beneath the Property that could affect the condition or value of the Property or adjacent properties; any currently pending or threatened notices of violation, claims, inspection or deficiency or any other document received by Seller in which an Authority or third party alleges that Seller may be in violation of any Environmental Law (defined in Section 4.1(f)(5)), and historic notices of violation, claims, inspection or deficiency alleging potential violations of Environmental Law that could affect the condition or value of the Property or adjacent properties, or alleging that Seller has released any Hazardous Materials into or on the soil or groundwater at the Property; sets of building/facility drawings and plans that depict the stormwater systems and industrial/sanitary wastewater systems at the Property; and any letter, complaint, or other document in which a third party alleges that Seller has released any Hazardous Materials into or on the soil or groundwater at the Property; provided, however, that Seller is not obligated under this paragraph to provide any documents that are privileged as an attorney client communication or under the attorney work product doctrine or confidential proprietary business information (but no such assertion of privilege or confidentiality will be made over sampling data) or to provide documents whose disclosure is not permissible under law. Documents produced by Seller pursuant to this section, including building/facility drawings and plans referenced above, may be presented by Seller as they appear in the ordinary course of business at Seller's business address at Seller's building commonly referred to as S-1 on the Roche Palo Alto campus. " **Release** " shall have the same meaning as the definition of "release" in 42 USC Section 9601(22). The foregoing documentation shall be deemed part of Property Information.

(d) Title Inspection. Buyer shall obtain the following from the Title Company (collectively, the " **Title Documents** "): (A) a preliminary title report (" **PTR** ") issued by the Title Company with respect to the Real Property as may be supplemented from time to time; and (B) copies of all documents (" **Underlying Documents** ") referred to in such PTR. Any survey required by Buyer shall be undertaken at Buyer's sole cost and expense. Buyer hereby objects to all liens evidencing deeds of trust against Seller's leasehold interest in the Real Property or Improvements, judgment liens and mechanic's liens (except that which are created by, through or on account of Buyer), and liens evidencing delinquent general real property taxes and assessments (" **Seller's Liens** "), and Seller hereby agrees to cause all such Seller's Liens to be

eliminated as exceptions to title and from the Owner's Policy prior to the Closing at Seller's expense. Buyer may notify Seller in writing (the "**Title Notice**") prior to the date that is forty-five (45) days after the Effective Date (the "**Title Review Date**") which other exceptions to title as shown on the PTR, if any, will not be accepted by Buyer. If Buyer fails to notify Seller in writing of its disapproval of any exceptions to title by the Title Review Date, Buyer shall be deemed to have approved the exceptions on the PTR, other than Seller's Liens. If Buyer notifies Seller in writing that Buyer objects to any exceptions to title, Seller shall have three (3) business days after receipt of the Title Notice to notify Buyer (a) that Seller will remove such objectionable exceptions from title on or before the Closing, provided that Seller may extend the Closing for such period as shall be required to effect such cure, but not beyond ten (10) days; or (b) that Seller elects not to cause such exceptions to be removed. If Seller fails to timely give such notice to Buyer, Seller shall be deemed to have given notice to Buyer under clause (b). Seller shall have no obligation to remove any title exceptions to which Buyer objects; provided, however, that Seller shall remove, as of the Closing, all Seller's Liens and all exceptions that Seller agreed to remove under clause (a) above. If Seller gives or is deemed to have given Buyer notice under clause (b) above, Buyer shall be deemed to have agreed to take title to the Property subject to such exceptions if Buyer provides the Approval Notice (defined below).

(e) Confidentiality. Buyer agrees to keep confidential all information which may be disclosed to or discovered by Buyer during Buyer's investigations of the Property pursuant to this Section 2.2 ("**Confidential Information**"), including, without limitation, the Due Diligence Reports and the results of all inspections, analyses, studies and similar reports relating to the Property prepared by or for Buyer, in each case as made available to Buyer prior to the Closing, provided that the term "Confidential Information" shall not include such portions of materials, documents or other information which (i) is now public knowledge, or becomes public knowledge in the future, other than through acts or omissions of Buyer or Buyer's Representatives in violation of this Section 2.2(e), (ii) was properly known to Buyer without any restriction on use or disclosure, (iii) is disclosed at any time to Buyer by a third party that had a lawful right to disclose it, or (iv) is developed by the Buyer independently of the Confidential Information received hereunder. Unless otherwise agreed to in writing by Seller, Buyer agrees: (x) to keep all Confidential Information confidential and not to disclose or reveal any Confidential Information to any person other than Buyer's agents, employees and consultants, which for purposes of this Section 2.2 shall include Buyer's current and prospective lenders, accountants and attorneys, but then only to the extent such parties need to review the Confidential Information for purposes of analyzing the proposed purchase of the Property ("**Buyer's Representatives**"); and (y) not to use Confidential Information for any purpose other than in connection with the investigation of the proposed purchase of the Property; provided, however, Buyer may disclose Confidential Information to the extent such disclosure is required to be disclosed by Buyer under the laws, rules or regulations of the U.S. Securities and Exchange Commission (the "**SEC**") or the New York Stock Exchange, including without limitation, the filing by Buyer regarding the transactions contemplated by this Agreement (and this Agreement) on Form 8-K. Buyer further agrees to cause Buyer's Representatives to agree to comply with the non-disclosure requirements set forth in subsections (x) and (y) above. In the event that Buyer is requested pursuant to, or required by, applicable law, regulation or legal process, to disclose any Confidential Information, Buyer agrees it shall provide Seller with prompt notice of such request (s) to enable Seller to seek a protective order or other appropriate remedy. If, in the

absence of a protective order or other remedy, Buyer or any of Buyer's Representatives is nonetheless legally compelled to disclose Confidential Information, Buyer or Buyer's Representatives may disclose such portion of the Confidential Information as is legally required to be disclosed. Notwithstanding the foregoing, (i) Confidential Information shall be subject to disclosure in litigation between Seller and Buyer, (ii) subject to Section 2.2(a)(2), the confidentiality covenant contained herein shall not limit Buyer from communicating with Stanford or with the City of Palo Alto or other government agencies regarding the Property, including with respect to the environmental condition of the Property; however, Confidential Information shall not be disclosed to such party absent the advance written consent of Seller, which consent may be withheld in Seller's reasonable discretion, and (iii) the confidentiality covenant contained herein shall have no further force or effect upon the acquisition by Buyer of the Property. Except with respect to a party's SEC reporting and disclosure obligations, neither Buyer nor Seller, nor any of their respective brokers, shall issue any press release or public statement regarding this Agreement or the purchase and sale described herein without the prior consent of the other party.

2.3 Contingency Date .

By the Contingency Date, Buyer shall have the right to deliver to Seller, in its sole and absolute discretion, written approval of all inspections, investigations, tests and studies with respect to the matters set forth in Section 2.2 (the "**Approval Notice**"). In the event Buyer has not provided Seller, by the Contingency Date, with the Approval Notice, Buyer's inspections, investigations, tests and studies set forth in Section 2.2 shall be deemed to be disapproved, and this Agreement shall terminate. Upon such termination, (a) each party shall promptly execute and deliver to Escrow Holder such documents as Escrow Holder may reasonably require to evidence such termination, (b) Escrow Holder shall return all documents to the respective parties who delivered such documents to Escrow, (c) Escrow Holder shall remit the Initial Deposit together with any accrued interest on such funds to Seller and the Additional Deposit together with any accrued interest on such funds to Buyer, (d) the cancellation charges required to be paid by and to Escrow Holder and the Title Company shall be borne by Seller, if any, (e) Buyer shall return to Seller all Property Information in Buyer's possession relating to the Property, and any Due Diligence Reports (subject to Section 2.2(a)(1)(x)), (f) the respective obligations of Buyer and Seller under this Agreement shall terminate and (g) each party shall bear its own costs hereunder. For clarity, the termination of this Agreement for any reason shall not terminate the parties' rights and obligations that expressly survive this Agreement, nor the parties' rights and obligations with respect to the Access Agreement or any confidentiality agreement between the parties, which shall remain in full force and effect in accordance with their terms. If Buyer provides the Approval Notice by the Contingency Date, then Buyer shall be considered to have elected to proceed with the purchase of the Property in accordance with this Agreement.

2.4 Consents. Each party hereto will use commercially reasonable efforts to cooperate with the other party hereto to obtain all consents required from third parties whose consent or approval is required pursuant to the Ground Lease, any Assumed Contracts or Intangible Property to be assigned to Buyer hereunder or otherwise required to consummate the transactions contemplated hereunder; provided, however, the form of such consents shall not contain language which materially increases any obligations of Buyer or Seller, or materially decreases the rights of Buyer or Seller thereunder. Each party agrees that the form of Stanford's

Consent (defined below) attached hereto as Schedule 2.4 is acceptable and that it will execute such form and deliver it to Escrow Holder prior to Closing. With respect to the Ground Lease, (a) Seller shall prior to the Contingency Date execute and deliver to Stanford a recordable memorandum of the second amendment to the Ground Lease and the amendment to the easement affecting the Property dated April 14, 2003 that Stanford has requested prior to the Effective Date and (b) Buyer and Seller shall send a letter to Stanford on a form approved by Buyer and Seller which is substantially similar to the letter previously submitted by the parties to Stanford for such purpose, except that the letter shall attach a copy of the Agreement. Buyer shall provide such financial assurances and parent guarantees as reasonably necessary to facilitate the assignment of Assumed Contracts to Buyer; provided, however, VMware, Inc. shall only be required to provide financial assurances, and not parent guarantees.

2.5 Estoppel Certificates. Seller will use commercially reasonable efforts to obtain an estoppel certificate from third parties to the Assumed Contracts listed on Schedule 2.5 (the “**Required Assumed Contracts**”) and Stanford with respect to the Ground Lease, in form reasonably satisfactory to Buyer and Seller. The estoppel certificates shall include, without limitation, the following: (i) a complete description of the documents and/or contracts comprising the applicable lease or Assumed Contract, and any written modifications thereto (or if oral, the substance of such oral modifications), (ii) the date of commencement and termination of the applicable lease or Assumed Contract, and (iii) a representation that such party and, to the best of the such party’s knowledge, Seller, is not in default under the applicable lease or Assumed Contract, and has no knowledge of an occurrence of any event that, with the giving of notice or the passage of time, or both, would constitute a default by such party or Seller under the applicable lease or Assumed Contract. If Seller is unable to obtain such estoppel certificates despite its commercially reasonable efforts to do so, Seller shall provide estoppel certificates as to the Required Assumed Contracts itself at Closing, only as to the matters stated in Section 2.5(i) through (iii), inclusive, as well as a Seller estoppel for the Ground Lease with respect to Section 2.5(i).

2.6 Conditions Precedent to Buyer’s Obligations.

The obligations of Buyer to consummate the transactions provided for herein are subject to and contingent upon the satisfaction of the following conditions or the waiver of same by Buyer in writing:

(a) Stanford’s Consent. Buyer and Seller shall have received the written consent of Stanford, in a form approved by Stanford, to the transactions contemplated hereby (“**Stanford’s Consent**”) and Stanford shall not have exercised its right of first refusal under the Ground Lease.

(b) Covenants of Seller. Seller shall have materially performed each and every covenant and agreement to be performed by Seller hereunder by the time and in the manner required by the terms of this Agreement (subject to any applicable notice and cure period).

(c) Representations and Warranties of Seller. Subject to Sections 7.3 and 7.4, Seller’s representations and warranties under Section 4.1 shall be true and correct in all material respects as of the date of Closing with the same force and effect as if remade by Seller in a separate certificate at that time.

(d) Owner's Policy. As of the Closing, the Title Company shall have issued or shall have committed to issue, upon the sole condition of payment of its reasonably scheduled premium, a policy of title insurance with endorsements and affirmative coverage approved by Buyer (the "**Owner's Policy**"). Buyer shall obtain, prior to the Contingency Date, the Title Company's commitment to issue the Owner's Policy at Closing, subject only to the sole conditions of: (i) payment of its reasonably scheduled premium, (ii) removal by Seller of the Seller's Liens, and (iii) Seller's delivery to Escrow of Seller's deliveries required under Section 3.2, as well as any evidence of good standing or corporate authority required by Escrow Holder to close the transaction contemplated herein. At its option, Buyer may elect to obtain a Lender's Policy of title insurance and/or additional endorsements to the Owner's Policy, however, the Closing shall be conditioned only on the Title Company being prepared to issue the Owner's Policy committed to be issued by the Title Company prior to the Contingency Date.

(e) Assumed Contract Consents. Seller shall have delivered to Buyer the written consent to the purchase and sale contemplated by this Agreement from the other parties to each of the Required Assumed Contracts, to the extent the consent of such parties is required pursuant to the terms of such Assumed Contracts (the "**Required Consents**"); provided, however, Seller may (but shall not be obligated to) satisfy this obligation as to the PPA (defined in Schedule 1.9) by terminating the PPA without liability to Buyer (in which case the PPA would not be assumed by Buyer and Seller shall have the obligation to remove the PPA installations from the Real Property prior to delivery of such building to Buyer).

(f) Estoppel Certificates. Buyer shall have received estoppel certificates required by Section 2.5 hereof (the "**Required Estoppels**").

(g) Not Used.

(h) Restated Ground Lease. Buyer and Stanford shall have executed an amendment and restatement of the Ground Lease in form acceptable to Stanford and Buyer in their sole discretion.

(i) VMware Board of Director Approval. Buyer shall have received the approval of the transaction contemplated in this Agreement from the VMware Board of Directors on or before May 16, 2011.

2.7 Conditions Precedent to Seller's Obligations.

The obligations of Seller to consummate the transactions provided for herein are subject to and contingent upon the satisfaction of the following conditions or the waiver of same by Seller in writing:

(a) Stanford's Consent. Buyer and Seller shall have received Stanford's Consent, and Stanford shall not have exercised its right of first refusal under the Ground Lease.

(b) Approval by Roche Board of Directors. Seller shall have received the approval of the transaction contemplated in this Agreement from the Roche Board of Directors on or before May 16, 2011. The transaction contemplated by this Agreement is subject to the condition precedent that Seller shall have received the approval of the transaction from the Board of Directors of F. Hoffmann-La Roche Ltd (“Roche Board of Directors”). Seller shall initially submit the transaction to the Roche Corporate Executive Committee (CEC) on or about March 22, 2011 for a request for approval of the transaction. If the transaction is approved by the CEC, Genentech’s Chief Executive Officer will recommend the transaction to the Roche Board of Directors for approval, and Seller shall thereafter submit the transaction to the Secretary of the Roche Board of Directors for a request for approval of the transaction by written consent. In the event that the Secretary of the Roche Board of Directors requires that the transaction be submitted at a regular meeting of the Roche Board of Directors, Seller shall submit the transaction to the Roche Board of Directors for a request for approval of the transaction at the next meeting of the board.

(c) Covenants of Buyer. Buyer shall have materially performed each and every covenant and agreement to be performed by Buyer hereunder by the time and in the manner required by the terms of this Agreement (subject to any applicable notice and cure period).

(d) Representations and Warranties of Buyer. Subject to Section 7.4, Buyer’s representations and warranties under Section 4.2 shall be true and correct in all respects as of the date of Closing with the same force and effect as if remade by Buyer in a separate certificate at that time.

2.8 Failure of Conditions to Close of Escrow or Board of Directors Approval.

If (i) by the Closing Date any of the conditions set forth in Sections 2.6 or 2.7 are not satisfied or waived, or (ii) by May 16, 2011 Buyer or Seller shall not have received the approval of their respective Board of Directors in accordance with Section 2.6(i) or 2.7(b), then in either case (unless otherwise agreed between the parties to extend the Closing Date or the date for Board of Director approval, as applicable): Each party shall promptly execute and deliver to Escrow Holder such documents as Escrow Holder may reasonably require to evidence the termination of the Escrow, and upon such termination, (a) Escrow Holder shall return all documents to the respective parties who delivered such documents to Escrow, (b) the cancellation charges required to be paid by and to Escrow Holder and the Title Company shall be borne by Seller, if any, (c) Buyer shall return to Seller all Property Information in Buyer’s possession relating to the Property, and any Due Diligence Reports (subject to Section 2.2(a)(1)(x)), (d) the respective obligations of Buyer and Seller under this Agreement shall terminate (except as to matters which expressly survive this Agreement and as provided in Section 7 if a condition is not satisfied due to the default by Buyer or Seller), and (e) Escrow Holder shall remit the Deposit together with any accrued interest on such funds as provided in Section 2.

ARTICLE 3 — CLOSING

3.1 Escrow.

Upon the execution of this Agreement by Buyer and Seller, and delivery of the executed Agreement to Escrow Holder, this Agreement shall constitute the joint escrow instructions of Buyer and Seller to Escrow Holder to open Escrow for the consummation of the sale of the Property to Buyer pursuant to the terms of this Agreement. Buyer and Seller may each submit separate escrow instructions and shall execute further escrow instructions as Escrow Holder may reasonably require (subject to the approval of their respective counsel) that are not inconsistent herewith; provided, however, that if there is any conflict or inconsistency between such escrow instructions and this Agreement, this Agreement shall control. Upon the Close of Escrow, Escrow Holder shall pay any sum owed to Seller or Buyer with immediately available federal funds.

3.2 Deliveries to Escrow Holder.

(a) Seller's Deliveries to Escrow Holder. Prior to the Closing, Seller shall deliver to Escrow Holder:

(1) Three (3) counterparts of the assignment of the Ground Lease duly executed by Seller substantially in the form attached hereto as “ Exhibit E ” attached hereto (the “ **Ground Lease Assignment** ”);

(2) Three (3) counterparts of the Memorandum of Ground Lease Assignment, duly executed and acknowledged by Seller, substantially in the form attached hereto as “ Exhibit F ” (the “ **Memorandum** ”);

(3) If Stanford requires that Seller sign the Stanford Consent, one (1) original or copy of Stanford's Consent, with the original signature of Seller;

(4) Two (2) counterparts of a bill of sale, duly executed by Seller, substantially in the form of “ Exhibit C ” attached hereto (“ **Bill of Sale** ”);

(5) Two (2) counterparts of an assignment and assumption, duly executed by Seller, substantially in the form of “ Exhibit D ” attached hereto (“ **Assignment and Assumption** ”);

(6) Two (2) counterparts of the post-closing agreement, duly executed by Seller, substantially in the form of “ Exhibit H ” attached hereto (“ **Post-Closing Agreement** ”);

(7) Any owner's statements or affidavits as may be reasonably requested by the Title Company or the Escrow Holder to consummate the transactions contemplated hereby, including, without limitation, any evidence of good standing and authority of Seller to convey the Property to Buyer, and a FIRPTA statement completed and executed by Roche Holdings, Inc. pursuant to Section 1.1445-2(b)(2) of the Treasury Regulations, certifying that Seller is not a “foreign person” within the meaning of Section 1445 of the Internal Revenue Code, as Seller is treated as a disregarded entity for U.S. federal income tax purposes, and Roche Holdings, Inc. is treated as the owner of the Seller for such purposes, and a California Franchise Tax Board Form 590 signed by Seller or Roche Holdings, Inc., as appropriate.

(8) One (1) original guaranty of Seller's obligations under this Agreement by Roche Holdings, Inc., substantially in the form attached hereto as "Exhibit G"; and

(9) One (1) original of each of the Required Consents and the Required Estoppels received by Seller, duly executed by the other parties to such contracts, and one (1) original of each Required Estoppel as to which the third parties to such contracts refused to provide estoppel certificates, duly executed by Seller.

(b) Buyer's Deliveries to Escrow Holder. Prior to the Closing, Buyer shall deliver to Escrow Holder the following instruments and documents:

(1) The balance of the Purchase Price plus or minus as applicable, Buyer's share of costs, expenses and prorations set forth in Section 2.1(c) in immediately available funds;

(2) Three (3) counterparts of the Ground Lease Assignment, duly executed by Buyer;

(3) Three (3) counterparts of the Memorandum, duly executed and acknowledged by Buyer;

(4) If Stanford requires that Buyer sign the Stanford Consent, one (1) original or copy of Stanford's Consent, with the original signature of Buyer;

(5) Two (2) counterparts of the Assignment and Assumption, duly executed by Buyer;

(6) Two (2) counterparts of the Post-Closing Agreement, duly executed by Buyer; and

(7) Any statements or affidavits as may be reasonably requested by the Title Company or the Escrow Holder to consummate the transactions contemplated hereby.

3.3 Costs and Expenses/Disbursements.

(a) Costs and Expenses. Upon the Close of Escrow: (i) Subject to subsection (ii)(G), below, Seller shall pay (A) all county documentary transfer taxes, (B) one-half (1/2) of all city transfer taxes, (C) all Escrow fees, (D) Seller's share of prorations, (E) real estate commissions payable to Seller's Broker, (F) Stanford's legal and administrative charges and costs, if any, payable to Stanford under the Ground Lease to consummate the transaction contemplated hereby (provided, however, for clarity, Seller shall not be obligated to pay legal or any other costs of Stanford or Buyer related to or arising out of Stanford's and Buyer's negotiations of a restated or amended Ground Lease), and (G) the premium for the Owner's Policy (exclusive of any endorsements or non-standard coverage) and (ii) Buyer shall pay

(A) one-half (1/2) of all city transfer taxes, (B) all document recording charges, (C) the cost of any endorsements not included in the Owner's Policy addressed in subsection (i)(G) above, (D) Buyer's share of prorations, (F) real estate commissions payable to Buyer's Broker, if any, pursuant to Section 8.2, and (G) any county documentary transfer taxes or city transfer taxes triggered by any restatement or amendment to the Ground Lease, and (iii) at or after the Closing, Buyer and Seller shall each pay all legal and professional fees and fees of other consultants incurred by them, respectively. All other escrow fees, costs and expenses shall be allocated between Buyer and Seller in accordance with the customary practice in the County. Escrow Holder shall notify Buyer and Seller in writing of their respective shares of such costs at least three (3) business days prior to the Closing.

(b) Disbursements and Other Actions by Escrow Holder. Upon the Closing, Escrow Holder shall (A) direct the Title Company to issue the Owner's Policy to Buyer, (B) record the Memorandum in the Office of the County Recorder, (C) disburse the Purchase Price, after adjustment pursuant to the terms of this Agreement for expenses and prorations and less the amount of the Building Materials Holdback and the Closure Holdback (as defined below), to Seller, and deliver the balance of the funds, if any, to Buyer, and (D) disburse to Buyer and Seller an original executed counterpart of Stanford's Consent, Bill of Sale, Assignment and Assumption, Ground Lease Assignment, Memorandum, and any other documents (or copies thereof) deposited into Escrow by Buyer or Seller pursuant hereto.

(c) Building Materials Holdback. Notwithstanding any provision to the contrary in this Agreement, a portion of the Purchase Price in the amount of Two Million Dollars (\$2,000,000) (the "**Building Materials Holdback**") will be retained by the Escrow Agent at Closing in a separate account until three years after the Closing (the "**Building Materials Payout Date**"). Escrow Holder shall invest the Building Materials Holdback in a federally-insured, interest bearing account, and all interest which accrues on the Building Materials Holdback shall be credited to the principal balance of the Building Materials Holdback. The Escrow Agent shall, within ten (10) business days of a request by Buyer made at any time and from time to time prior to the Building Materials Payout Date but not more often than monthly, disburse funds out of the Building Materials Holdback to Buyer with the consent of Seller (not to be unreasonably withheld, conditioned or delayed, however, if a consent or objection thereto by Seller is not delivered to Escrow Holder within five (5) business days after receipt of the same by Seller's representatives identified below, Escrow Holder shall disburse the funds to Buyer without the consent of Seller) to pay Buyer's reasonable costs, fees and expenses arising from any increased costs by reason of the removal, transportation, and disposal of ACM, transite pipe and LBM (as such terms are defined below) from the Property (collectively, the "**Building Materials Work**") as set forth in a reasonably detailed invoice delivered by Buyer to the Escrow Agent, together with a certification from Buyer that the requested amounts were properly incurred for the Building Materials Work. All payments by the Escrow Agent to Buyer hereunder will be by wire transfer or intrabank transfer of immediately available funds to the account of Buyer. On the Building Materials Payout Date, the Escrow Holder will disburse to Seller the unclaimed balance of the remaining Building Materials Holdback. During the three-year Building Materials Holdback period, Seller will sign all manifests as the generator of any Hazardous Material that is disposed of in connection with the Building Materials Work, unless Buyer during that time obtains its own hazardous waste generator ID number for the Property

precluding Seller from thereafter using its generator ID number for the Building Materials Work, in which case Buyer will sign all manifests as the generator of any Hazardous Material that is disposed of in connection with the Building Materials Work. Buyer shall send to Seller (c/o Keith Sonberg with a copy to Genentech's in-house environmental counsel (or other persons designated by Seller from time to time in writing)) copies of all disbursement requests made to Escrow Holder with respect to the Building Materials Holdback with substantiating documentation, and Seller shall promptly sign all documents reasonably required by Escrow Holder to make the required disbursements. Seller shall be responsible for all costs and fees of Escrow Holder in connection with the Escrow Holdback. Notwithstanding any provision herein to the contrary, the Building Materials Holdback is the exclusive remedy of Buyer for all Claims (third party or otherwise) associated with the ACM, LBM and transite pipe in any building and/or construction materials, or in or around pipes, in, on or under the Real Property or the Improvements (the "Building Materials") except as provided under Section 5.1(iv) or this Section 3.3(c) or when the Claim is caused by Seller failure to comply with the covenants or other provisions of this Agreement regarding environmental matters or the Post-Closing Agreement. For the avoidance of doubt, "Building Materials" shall not include lead in soil.

(d) Closure Holdback . Notwithstanding any provision to the contrary in this Agreement, a portion of the Purchase Price in the amount of Ten Million Dollars (\$10,000,000.00) (the "**Closure Holdback**") will be retained by the Escrow Agent at Closing in a separate account until the Final Closure Delivery. Escrow Holder shall invest the Closure Holdback in a federally-insured, interest bearing account, and all interest which accrues on the Closure Holdback shall be credited to the principal balance of the Closure Holdback. The Escrow Holder shall hold the Closure Holdback in Escrow in a separate account until the date on which the Seller delivers the final building on the Property to Buyer with all Closure Work on the Property complete (the "**Final Closure Delivery**"). Seller and Buyer shall jointly notify Escrow Holder that the Final Closure Delivery has occurred. Promptly after the Final Closure Delivery Date, the Escrow Holder shall disburse to Seller the entire Closure Holdback. In no case shall Buyer be entitled to any of Closure Holdback funds. Such payments by the Escrow Holder to Seller or Buyer hereunder will be by wire transfer or intrabank transfer of immediately available funds to the account of Seller or Buyer, as applicable, as directed by Seller or Buyer. Seller shall be responsible for all costs and fees of Escrow Holder in connection with the Closure Holdback.

3.4 Prorations and Adjustments .

Subject to the terms of this Section 3.4 , income, if any, from the Property, and real property taxes and operating expenses, if any, affecting the Property shall be prorated as of midnight on the day preceding the Closing. For purposes of calculating prorations, Buyer shall be deemed to be in title to the Property, and therefore entitled to the income and responsible for the expenses, for the entire day upon which the Closing occurs.

(a) Taxes and Assessments . Except to the extent the same are paid directly by tenants or licensees, all non-delinquent real estate taxes and current installments of assessments affecting the Property which are payable by Seller shall be prorated as of the Closing based on the actual current tax bill. All delinquent taxes and assessments, if any, affecting the Property which are payable by Seller shall be paid at the Closing from funds accruing to Seller. Any

refunds of real estate taxes and assessments attributable to the period prior to the Closing shall be paid to Seller upon receipt, whether such receipt occurs before or after the Closing. Buyer acknowledges that the Closing of the sale of the Property pursuant to this Agreement may result in reassessment under Proposition 13 of the Property for property tax purposes based upon the "change in ownership" of the Property under this transaction, and Buyer waives and releases Seller from and hereby agrees to indemnify and hold Seller harmless from and against all claims that Seller may be liable for as a result of any increase in property taxes resulting from the "change in ownership" of the Property under this transaction.

(b) Operating Expenses . Except to the extent the same are paid directly by tenants or licensees, all utility service charges for electricity, heat and air conditioning service, other utilities, common area maintenance, taxes (other than real estate taxes and income taxes) such as rental taxes, and other expenses affecting the Property (other than expenses under any contracts to be terminated as of the Closing) and any other costs incurred in the ordinary course of ownership of the Property (other than expenses under any contracts to be terminated as of the Closing) shall be prorated on an accrual basis. Alternatively, with respect to utilities, Buyer or Seller may cause any utility company to transfer billings to Buyer upon the Closing. Seller shall pay all such expenses that accrue prior to the Closing and Buyer shall pay all such expenses accruing on the day of the Closing and thereafter. To the extent possible, Seller and Buyer shall obtain billings and meter readings as of the Closing to aid in such prorations. Notwithstanding the foregoing, Buyer shall have no responsibility for any contracts that are not Assumed Contracts. Seller shall terminate as of the Closing any contracts that would be binding on Buyer following the Closing that are not Assumed Contracts.

(c) New Leases, Rent . From the Effective Date until the earlier to occur of the Closing or termination of this Agreement, Seller shall not enter into any new lease or other material agreement affecting the Property, or modify, extend or terminate any material agreement affecting the Property that Buyer intends to assume, or waive or release any material obligation of Stanford, without first obtaining Buyer's written approval thereof, not to be unreasonably withheld, conditioned or delayed. If Buyer fails to give Seller notice of its approval or disapproval of any such proposed action within five (5) business days after Seller notifies Buyer in writing of Seller's desire to take such action and has provided Buyer with copies of the applicable documents, then Buyer shall be deemed to have approved such action. Rents, revenues and other income from the Property, shall be prorated through Escrow as of the Closing with Seller entitled to the prorated portion of such items attributable to the period prior to such date and time and Buyer entitled to the prorated portion of such items following such date and time. Any prepaid rent paid by a tenant or licensee of the Property shall be credited to Buyer. Seller and Buyer agree that all rent received by Seller or Buyer following Closing shall be applied first to current rent, if any, and then to delinquent rent.

(d) Security Deposits . Buyer shall be credited and Seller shall be debited with an amount equal to all unapplied security deposits actually being held by Seller under the Site Services Lease, Building R6 Lease, the T-Mobile Site License and the PCS Site License (as such terms are defined in Schedule 1.9 and collectively referred to herein as the "**Leases** ").

(e) Utility Deposits . Seller shall be credited and Buyer shall be debited with an amount equal to all refundable deposits, retentions, and holdbacks then being held by any utility company where such account is transferred to Buyer at Closing, or any other third party under any Assumed Contract.

(f) Method of Proration. Buyer and Seller each agree to prepare a schedule of tentative prorations under this Section 3.4 and exchange such schedules not later than five (5) business days prior to the Closing. Such prorations, if and to the extent known and agreed upon as of the Closing, shall be paid by Buyer to Seller (if the prorations result in a net credit to the Seller) or by Seller to Buyer (if the prorations result in a net credit to the Buyer) by increasing or reducing the cash to be deposited by Buyer in Escrow on or before the Closing. Any such prorations not determined or not agreed upon as of the Closing, each party acting in good faith, shall be paid by Buyer to Seller, or by Seller to Buyer, as the case may be, in cash as soon as practicable following the Closing. A copy of the schedule of prorations as agreed upon by Buyer and Seller shall be delivered to Escrow Holder at least two (2) business day prior to the Closing. The amount of such prorations shall be subject to adjustment in cash after the Closing outside of escrow as and when complete and accurate information becomes available, if such information is not available at the Closing. Seller and Buyer shall cooperate and use their best efforts to make such adjustments no later than sixty (60) days after the Closing.

(g) Assessment Liens. If and to the extent there exist any improvement assessment liens, bond payments or other similar assessments which encumber the Property, the bond payments or assessment liens for the current payable period shall be prorated in accordance with Section 3.4. Seller shall have no obligation to pay off the remaining principal amount of any of such assessments or bonds, and the lien of such assessments shall continue to burden the Property after the Closing.

3.5 Physical Condition.

(a) Condition. Except as expressly set forth in this Agreement, including in Sections 3.5(b) and (c), Buyer agrees to accept the Property in "AS IS" condition as of the Closing with respect to the Buildings Vacated at Closing, and upon completion of the Closure Work with respect each building in the Remainder Property, provided, however, that (with the exception of the building leased under the Site Services Lease (the "**Site Services Building**")), as a warranty to Buyer but not a Closing condition, all HVAC, lighting systems, electrical systems, automatic fire sprinklers, life safety and plumbing systems and elevators, roof membranes and windows located in Improvements on the Real Property ("**Building Systems**") shall be in good working order and condition, except as provided on Schedule 3.5(a). If, during the first sixty (60) days following the Closing with respect to the Buildings Vacated at Closing, or during the first sixty (60) days following the completion of the Closure Work and delivery of each building with respect to the Remainder Property, (x) any of the Building Systems in place are not in good working order and condition, then upon the written notice of Buyer within such the sixty (60)- day period, Seller shall repair or replace such items at no cost to Buyer; provided, however, Seller's repair and replacement obligation under this sentence shall not apply to (a) Building Systems that are subject to or reasonably affected by the Closure Work (as clarified by Schedule 3.5(a) and (b)), or (b) normal routine maintenance items that may occur during the sixty (60)- day period, including, without limitation, elevator monthly service, building and equipment preventative maintenance, burnt out light bulbs, and other routine maintenance items, it being understood that Buyer shall retain fully trained maintenance personnel to maintain and operate the Building Systems post-Closing.

(b) Performance of Closure Work. Seller shall perform all Closure Work in accordance with this Section 3.5(b). “ **Closure Work** ” means (i) removing all Hazardous Materials from (a) equipment and fixtures (excluding building and construction materials containing ACM and LBM, and transite pipe) within the interior portions of the buildings, and (b) structures exterior to the buildings only if specifically listed on Schedule 3.5(b)(ii) and (ii) decontaminating/decommissioning them to the extent required by the applicable Authority to obtain closure for Hazardous Materials. Seller shall use commercially reasonable efforts to obtain written approval of Hazardous Materials closure from applicable Authorities as soon as reasonably practicable. Notwithstanding any other provision in this Section 3.5(b), Seller shall not be required to perform any such work with respect to the equipment or Improvements within the interior portions of the buildings where specifically identified in Schedule 3.5(b)(i). In performing such Closure Work, Seller will provide advance notice of such work to Stanford, and keep the Property free of mechanic’s liens, as required in Paragraph 9(a) of the Ground Lease.

(c) Closure Work and Building Delivery. Prior to Closing, Seller shall complete all Closure Work at the buildings identified in Schedule 3.5(c) as being delivered at Closing (and related structures identified in Schedule 3.5(b)) (the “ **Buildings Vacated at Closing** ”), but excluding the Remainder Property and Hazardous Materials stored, used or brought onto the Site Services Building by Buyer. With respect to the buildings on the Property other than the Buildings Vacated at Closing (and related structures identified in Schedule 3.5(b)) (“ **Remainder Property** ”), Seller shall use commercially reasonable efforts to complete the Closure Work as soon as commercially practicable. Estimated dates for completion of the Closure Work are set forth on Schedule 3.5(c). During Seller’s performance of the Closure Work, Seller shall keep Buyer reasonably informed about Seller’s ongoing Closure Work, including without limitation, (i) copying Buyer on all material emails and other communications sent to and received from Stanford or Authorities having jurisdiction over the Property with respect to the Closure Work, (ii) notifying Buyer at least two (2) business days in advance of any scheduled meetings with Stanford or Authorities and permitting Buyer to attend such meetings, (iii) providing Buyer with two (2) business days advance notice of any planned testing or sampling activities and (iv) providing closure plans, amendments, sampling results, applications, and certificates to Buyer as soon as reasonably practicable after receipt or submittal of same. Notwithstanding the foregoing sentence, Seller shall serve as the leader and sole spokesperson in all such communications and/or in-person or telephone discussions regarding Hazardous Materials decommissioning/closure. In no circumstance will Buyer, or others acting in cooperation with Buyer, communicate separately with the Authorities or Stanford about such Hazardous Materials decommissioning/closure performed or to be performed by Seller or its implications, nor shall they request, act or communicate in any way with the Authority or Stanford to suggest, solicit, inveigle, or entice them to make any request, or a broader or more stringent request, for the Hazardous Materials decommissioning/closure to be performed by Seller. Buyer shall also not interfere with Seller’s Closure Work. All post-Closing Closure Work shall be performed pursuant to the terms of the Post-Closing Agreement.

(d) Closure of Permits. To Seller’s actual knowledge, Schedule 3.5(d)(i) contains a list of all current Environmental Permits. Seller will also obtain closure and termination of all Environmental Permits (where necessary or appropriate) which Buyer does not intend to use (set forth in Schedule 3.5(d)(ii), as may be updated by Buyer and Seller) as soon as reasonably practicable.

3.6 Seller's Disclosure and Representation Regarding Environmental Media and Asbestos-Containing Materials.

Pursuant to California Health & Safety Code Section 25359.7, Seller has provided prior to and with this Agreement written notice to Buyer of the presence of hazardous substances on or beneath the Property, as reflected in analytical sampling results provided during the due diligence period. Seller has also advised Buyer that certain of the buildings located on the Property have asbestos-containing materials ("ACM") including, without limitation, as identified on a January 21, 1997 Asbestos Survey prepared for Roche Bioscience and provided to Buyer. Buyer understands that disturbance of ACMs must be undertaken with all legally-required and appropriate mitigation measures, safeguards, and notifications to regulatory agencies, contractors, employees and other agents.

3.7 Seller's Disclosure Regarding Lead Paint.

Seller hereby discloses to Buyer that construction built before 1978 may contain lead-based materials (including lead-based paint) ("LBM"). Lead from materials, paint, paint chips and dust can pose health hazards if not managed properly. As of the Effective Date, Seller has not undertaken a survey of lead-based materials within the Improvements to understand the nature and extent of the conditions. Buyer acknowledges that Seller has informed Buyer of these conditions and that disturbance of such materials must be undertaken with all legally-required and appropriate mitigation measures, safeguards, and notifications to regulatory agencies, contractors, employees and other agents.

3.8 Operation of the Property Pending Closing. Following the Effective Date and pending the Closing, Seller shall operate the Property in accordance with the following:

(a) Normal Course of Business. Seller shall use commercially reasonable efforts to continue to operate, manage and maintain the Property in such condition so that the Property shall be in substantially the same condition as of the Closing Date as it is as of the Effective Date, reasonable wear and tear, casualty, the Closure Work and work performed by Seller at Buyer's request, excepted. Seller shall maintain all existing insurance policies in connection with the Property and shall keep in effect and renew without material modification all licenses and permits listed on Schedule 3.8(a) (as updated from time to time by Buyer and Seller in writing) and entitlements applicable to the Property. Seller shall cooperate reasonably with Buyer in obtaining any governmental building and construction related approvals (non-land use approvals) reasonably requested by Buyer without cost to Seller; provided, however, that such approvals may be terminable by Buyer, and shall be terminated by Buyer without cost to Seller, if this Agreement is terminated for any reason. Seller shall further cooperate with Buyer in obtaining confirmation from the City (including, permitting Buyer to draft an initial letter to the City, subject to Seller's review) as to certain information regarding that certain Variance No. 86-V-6 ("Parking Variance"). Notwithstanding any provision herein to the contrary, Seller makes no covenants, representations or warranties regarding (i) the terms or application of the Parking

Variance to the Real Property, (ii) whether or not the Parking Variance is in effect, or (iii) the compliance or non-compliance of the Real Property with the Parking Variance, and Buyer assumes all risk associated therewith at Closing. Seller shall not make any material alterations to the Property or remove any Personal Property other than the Removed Property and Closure Work without the prior written approval of Buyer, which approval shall not be unreasonably withheld or delayed.

(b) Further Encumbrances. Seller shall not execute any documents or otherwise take any action which will have the result of further encumbering the Property in any fashion.

(c) New Obligations. Without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed, Seller shall not enter into any maintenance contract, service contract or any other contract affecting or relating to the Property or any portion thereof which cannot be canceled upon thirty (30) days (or less) prior written notice.

3.9 Not Used.

3.10 Delivery. Seller shall deliver to Buyer possession of (a) the Property (other than the Remainder Property) with all Closure Work related thereto completed upon the Closing and (b) each building in the Remainder Property as the Closure Work related thereto is completed. Notwithstanding the foregoing, but subject to the Post-Closing Agreement, so long as Buyer does not unreasonably interfere with the Closure Work, Buyer shall have full rights to enter and access the Remainder Property commencing on the Closing. Promptly following the Closing, Seller shall deliver to Buyer copies of the Assumed Contracts and Property Information.

ARTICLE 4 — REPRESENTATIONS AND WARRANTIES

4.1 Seller's Representations and Warranties.

The following constitute representations and warranties of Seller to Buyer which shall be true and correct as of the date hereof (except with respect to such representations and warranties which are made subject to the Open Schedules (defined in Section 4.3), which shall be true and correct as of the Schedule Amendment Date (defined in Section 4.3)), and the Closing as if remade in a separate certificate at that time:

(a) Organization. Seller is duly organized, validly existing and in good standing under the laws of Delaware and is authorized to do business in the State of California.

(b) Authority. Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby. All requisite action (corporate, trust, partnership or otherwise) has been taken by Seller in connection with the entering into this Agreement and the instruments referenced herein, and the consummation of the transaction contemplated hereby. No consent of any partner, shareholder, creditor, investor, judicial or administrative body, Authority or other party is required. The individuals executing this Agreement and the instruments referenced

herein on behalf of Seller and the partners, officers or trustees of Seller, if any, have the legal power, right, and actual authority to bind Seller to the terms and conditions hereof and thereof. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principals affecting or limiting the rights of contracting parties generally.

(c) Adverse Claims. Except as set forth on Schedule 4.1(c), Seller has not received written notice of, and to Seller's actual knowledge there are no, pending, threatened or contemplated actions, suits, arbitrations, claims, investigations, condemnations or proceedings, at law or in equity, affecting the Property or in which Seller is, or will be, a party by reason of Seller's ownership of the Property, nor has Seller received any written notice of any action, suit, proceeding or governmental investigation. Seller has no actual knowledge of any basis for any action, suit, inquiry, proceeding or investigation or any other circumstance or facts that would prevent Seller from engaging in the transactions contemplated in this Agreement.

(d) Liens and Encumbrances. The Personal Property is owned by Seller and, to Seller's actual knowledge, there are no liens (including without limitation, mechanics liens), claims, encumbrances, easements, covenants, conditions, restrictions or other matters of record or unrecorded affecting title to the Property which are not disclosed in the PTR, and except as disclosed in the PTR, there are no special assessments (whether from an assessment district, facilities district, or otherwise) against the Property nor has Seller received any written notice of any special assessments being contemplated.

(e) Insolvency. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or, to Seller's knowledge, threatened against Seller, nor are any of such proceedings contemplated by Seller. Seller is not entering into the transactions described in this Agreement with an intent to defraud any creditor or to prefer the rights of one creditor over any other. Seller and Buyer have negotiated this Agreement at arms-length and the consideration to be paid represents fair value for the assets to be transferred.

(f) Environmental Matters. All representations and warranties about environmental matters in this Agreement are contained in this Section 4.1(f) exclusively, and are to Seller's actual knowledge without obligation of inquiry, except as disclosed in Schedule 4.1(f). The attached Schedule 4.1(f) may be amended (i) at any time prior to Closing to reflect the results of testing performed by Buyer as part of Buyer's Inspections and any other circumstance or condition relating to such results; and (ii) for any other matter, within ten (10) days prior to the Contingency Date:

(1) Seller has not received written notice of, and to Seller's actual knowledge there are no, pending or threatened or contemplated actions, suits, arbitrations, claims, investigations or proceedings, at law or in equity by any Authority or any other third party regarding environmental matters arising at the Property or in which Seller is, or will be, a party by reason of Seller's ownership of the Property.

(2) Seller has produced for Buyer's inspection any and all analytical results, of any sampling of soil, soil gas, groundwater, or surface water at or emanating from the Property, and accompanying reports with related factual information.

(3) Seller has not operated any underground or aboveground tanks, sumps, pits, ponds, clarifiers, well, or treatment systems for the storage of Hazardous Materials at the Property except as disclosed by documents produced for Buyer's inspections.

(4) Seller has not operated or used at the Property any surface impoundments, landfills, or other areas for the disposal of Hazardous Materials into soil or groundwater at the Property.

(5) Seller has not received any notices or claims from any Authority or third party, nor is Seller aware, that Hazardous Materials have been spilled, disposed or otherwise Released into the soil, groundwater, or surface water at or emanating from the Property except in accordance with permits or other authorizations issued under Environmental Law. Nor has Seller received any currently pending or threatened notices or claims that Seller may be in violation of any Environmental Law at the Property, or prior notices or claims that Seller may be in violation of any Environmental Law at the Property that could affect the environmental condition of the Property. As used herein, "**Environmental Law**" means any federal, state or local law, ordinance, regulation or directive for the protection of human health and safety or the environment (including those listed as an "Environmental Requirements" under the Ground Lease to the extent that Environmental Law or other "Environmental Requirement" is in effect and validly existing as of the date of Closing).

(g) Assumed Contracts. To Seller's knowledge, it has delivered or will deliver to Buyer pursuant to Section 2.2(b) hereof all of the material agreements concerning the operation, maintenance and occupancy of the Property. As used herein, "material agreements" means agreements that will survive and be binding upon Buyer following the Closing as well as those contracts set forth on Schedule 1.9. To Seller's knowledge, the copies of such agreements are or will be true and correct copies thereof.

(h) Violations. To Seller's knowledge, except as disclosed in Schedule 4.1(h), Seller has not received written notice of any uncured violation of any federal, state or local law relating to the operations on the Property that remains uncured.

(i) Access. To Seller's knowledge, no fact or condition exists which may result in the termination or reduction of the current access from the Property to existing roads and highways.

(j) Leasing Commissions. There are no leasing commissions required to be paid in connection with the Leases.

(k) No Defaults. Except as disclosed in Schedule 4.1(k), to Seller's knowledge, neither Seller nor any party thereto is in default under, and Seller has no knowledge of an occurrence of an event, and has received no notice that any event has occurred, which with the giving of notice or the passage of time, or both, would constitute a default by any party under the Ground Lease or any Assumed Contract.

(l) No Occupancy Rights. Except for the PPA (as defined in Schedule 1.9) and the Leases and matters set forth in the PTR, no third parties have leasehold occupancy rights, and no individuals have personal occupancy rights, with respect to the Real Property.

(m) OFAC. Seller: (i) is not, and shall not become, a person or entity with whom Buyer is restricted from doing business with under regulations of under regulations of the Office of Foreign Asset Control (“**OFAC**”) of the Department of the Treasury (including, but not limited to, those named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (ii) is not knowingly engaged in, and shall not engage in, any dealings or transaction or be otherwise associated with such persons or entities described in (i) above; and (iii) is not, and shall not become, a person or entity whose activities are regulated by the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder.

(n) Not Misleading. To Seller’s actual knowledge, neither Seller’s representations and warranties under this Section 4.1 nor the Schedules attached hereto, contains any untrue statement of material fact or omits to state a material fact in any way concerning the Property or otherwise affecting or concerning the transactions contemplated hereby.

(o) Permits. To Seller’s actual knowledge, the permits listed on Schedule 1.10 (as may be updated from time to time) are all of the non-environmental permits that are active and believed to be material to the operation of the Real Property post-Closing.

All references in this Section 4 to “**Seller’s actual knowledge**” or words of similar import contained in this Agreement shall refer only to the best actual knowledge of Keith Sonberg, Virgil Gass and Alex Haedrich (collectively, the “**Designated Representative**”) and shall not be construed to refer to the knowledge of any other partner, officer, member, shareholder, agent or employee of Seller or Seller’s members or partners (or the members or partners thereof) or any Seller “**Affiliate**” (an entity which controls, is controlled by, or is under common control with such party, or acquires all of the assets of such party), or to impose or have imposed upon the Designated Representative any duty to investigate the matters to which such knowledge, or the absence thereof, pertains, including, but not limited to, the contents of the files, documents and materials made available to or disclosed to Buyer. There shall be no personal liability on the part of the Designated Representative arising out of any representations or warranties made herein.

4.2 Buyer’s Representations and Warranties.

The following constitute representations and warranties of Buyer to Seller which shall be true and correct as of the date hereof and the Closing as if remade in a separate certificate at that time:

(a) Organization. Buyer is duly organized, validly existing and in good standing under the laws of Delaware and is authorized to do business in the State of California.

(b) Authority. Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby. All requisite action (corporate, trust, partnership or otherwise) has been taken by Buyer in connection with the entering into this Agreement and the instruments referenced herein, and the consummation of the transaction contemplated hereby, other than the consent of Buyer's Class B Stockholder, which consent Buyer shall obtain prior to the Contingency Date. Except as provided in the immediately preceding sentence, no consent of any partner, shareholder, creditor, investor, judicial or administrative body, Authority or other party is required. The individuals executing this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof. This Agreement and all documents required hereby to be executed by Buyer are and shall be valid, legally binding obligations of and enforceable against Buyer in accordance with their terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principals affecting or limiting the rights of contracting parties generally.

(c) Insolvency. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or, to Buyer's knowledge, threatened against Buyer, nor are any of such proceedings contemplated by Buyer. Buyer is not entering into the transactions described in this Agreement with an intent to defraud any creditor or to prefer the rights of one creditor over any other. Buyer and Seller have negotiated this Agreement at arms-length and the consideration to be paid represents fair value for the assets to be transferred.

(d) Sophisticated Purchaser. Buyer acknowledges that it is a sophisticated real estate owner, and will conduct its own due diligence regarding the Property as provided for in this Agreement. Buyer agrees that except for Seller's representations and warranties expressly set forth in this Agreement, no representations or warranties, express or implied, have been made by Seller or by Seller's agents, including the suitability of the Property for Buyer's intended use.

(e) OFAC. Buyer: (i) is not, and shall not become, a person or entity with whom Seller is restricted from doing business with under regulations of under regulations of the OFAC (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (ii) is not knowingly engaged in, and shall not engage in, any dealings or transaction or be otherwise associated with such persons or entities described in (i) above; and (iii) is not, and shall not become, a person or entity whose activities are regulated by the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder.

4.3 Modifications Representations and Warranties. Each party shall notify the other promptly if such party becomes aware prior to the Closing of any matter which would render any of the representations or warranties of a party contained in this Article 4 untrue in any material

respect, in which case Section 7.3 and 7.4 shall apply. The parties acknowledge that Schedules 1.10, 3.5(a), 3.5(b)(i), 3.5(b)(ii), 3.5(d)(i), 3.5(d)(ii), 3.8(a), 4.1(c), 4.1(f), and 4.1(h) (collectively, the “Open Schedules”) are incomplete as of the Effective Date. Seller shall furnish the completed Open Schedules to Buyer within ten (10) business days of the Effective Date (“Schedule Amendment Date”), after which time Buyer and Seller shall promptly enter into an amendment to this Agreement to incorporate the completed Open Schedules into the Agreement effective as of the Schedule Amendment Date. Prior to finalization of Schedule 3.5(d)(ii), Buyer will indicate to Seller which Environmental Permits Buyer does not wish to use, for purposes of preparing Schedule 3.5(d)(ii). Seller will submit Schedules 3.5(b)(i) and (b)(ii) to Buyer in draft no later than eight (8) business days after the Effective Date, for Buyer’s review and comment. Seller will consider, but is not required to incorporate or follow, Buyer’s comments on such schedules prior to finalizing them.

ARTICLE 5 — ENVIRONMENTAL

5.1 Seller Indemnity. Seller shall defend, indemnify and hold harmless Buyer and its Affiliates, directors, officers, shareholders, employees, successors, assigns and agents (“**Buyer Entities**”) from and against any and all causes of action, claims, judgments, obligations, damages, penalties, fines, costs (including those associated with any environmental investigation, removal, clean-up, government oversight and restoration work and materials), liabilities and losses (including, without limitation, reasonable attorneys’ fees, consultants’ fees, and expert fees) (collectively, “**Claims**”) to the extent caused by: (i) Pre-Existing Contamination (as defined below), except that if Seller proves that the Pre-Existing Contamination did not arise from the operation, occupancy or use of the Real Property by Seller, Syntex Laboratories, Inc., or any of their predecessors, affiliates, employees, subtenants, occupants, contractors, agents or invitees (“**Seller-related Use Entities**”), Seller’s share of liability for such Claims (i.e. Claims caused by Pre-Existing Contamination that Seller proves did not arise from the operation, occupancy or use of the Real Property by Seller-related Use Entities) shall be limited to fifty percent (50%) of the amount of such Claims and Seller’s total liability for all such Claims in the aggregate shall be limited to \$1,000,000; (ii) any failure of Seller-related Use Entities to comply at the Real Property with Environmental Laws except to the extent such Claim is caused by matters described in Section 5.2(ii); provided that Buyer’s mere ownership alone of the Ground Lease with Pre-Existing Contamination on or under the Real Property shall not be considered a Buyer violation of Environmental Laws as described in Section 5.2(ii) for purposes of this indemnity; (iii) any breach by Seller of any environmental provision of this Agreement; and (iv) any Claim for personal injury, whether asserted before or after Closing, to the extent that is alleged to arise from pre-Closing exposure to building/construction materials at the Real Property or from exposure to building/construction materials caused by Seller’s performance of Closure Work; provided, however, that Seller’s indemnity obligations under any portion of this Section 5.1 will not extend to the extent that such Claims (w) are within the scope of Buyer’s indemnity to Seller in Section 5.2, (x) are first party costs or losses that are released by Buyer Entities pursuant to Section 5.3, (y) are covered by a policy of Worker’s Compensation/Employer’s Liability Insurance in amounts required by applicable law held by Buyer or Buyer Entities or (z) arise from any losses, costs or other Claims suffered, incurred, or asserted by Stanford or any obligations imposed by Stanford under the Ground Lease or otherwise related to the Property, whether at surrender of the Ground Lease or earlier, and whether or not arising from conditions

existing prior to or after Closing, because Seller's obligation for the Claims or other obligations asserted or incurred by Stanford against Seller Entities are addressed exclusively in Section 5.4 below. Notwithstanding any provision of this Section 5.1, Buyer is not relieved of, and Seller does not release Buyer from or indemnify Buyer for, any Buyer failure to comply with the covenants or other provisions of this Agreement regarding environmental matters. The term "**Pre-Existing Contamination**" shall mean those Hazardous Materials present on the Property, including the soil, groundwater, surface water, or soil gas on or under the Real Property, but excluding building/construction materials (such as, without limitation, asbestos-containing materials in buildings or in and around pipes, and lead paint) or indoor air, prior to the Closing; Seller's liability for such excluded building/construction materials is addressed exclusively in Sections 3.3(c) above. The term "**Hazardous Materials**" means any hazardous or toxic substance, material or waste, the storage, use, or disposition of which is or becomes regulated by any local governmental authority, the State of California or the United States government. The term "**Hazardous Materials**" includes, without limitation, any material or hazardous waste under Section 255115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25136 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (viii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ix) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), (x) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601), (xi) listed or defined as "hazardous waste", "hazardous substance", or other similar designation by any regulatory scheme or the State of California or the United States Government, or (xii) constituting a "Hazardous Substance" under the Ground Lease.

5.2 Buyer Indemnity. Buyer shall defend, indemnify and hold harmless Seller, and its Affiliates, directors, officers, shareholders, employees, successors, assigns and agents ("**Seller Entities**"), from and against any and all Claims, to the extent caused by (i) any Hazardous Materials in soil, groundwater, surface water, or soil gas on or under the Real Property (to the extent not present on or under the Real Property prior to the Closing), except that if such Buyer proves that such Hazardous Materials did not arise from the operation, occupancy or use of the Real Property by Buyer, or any of its, affiliates, employees, subtenants, occupants, contractors, agents or invitees ("**Buyer-related Use Entities**"), Buyer's share of liability for such Claims (i.e. Claims caused by any Hazardous Materials in soil, groundwater, surface water, or soil gas on or under the Real Property to the extent not present on or under the Real Property prior to the Closing that Buyer proves did not arise from the operation, occupancy or use of the Real Property by Buyer-related Use Entities) shall be limited to fifty percent (50%) of the amount of

such Claims and Buyer's total liability for all such Claims in the aggregate shall be limited to \$1,000,000; (ii) any failure of Buyer-related Use Entities to comply with Environmental Laws on the Real Property (provided that Buyer's mere ownership alone of the Ground Lease with Pre-Existing Contamination on or under the Real Property shall not be considered a Buyer violation of Environmental Laws for purposes of this indemnity in Section 5.2(ii)) or Buyer's breach of any environmental provision of this Agreement, except to the extent such failure is caused by matters described in Section 5.1(i)-(iii); (iii) the acts of Buyer and/or Buyer-related Use Entities that exacerbate any Pre-Existing Contamination that was disclosed to Buyer in documents provided by Seller, or discovered by Buyer prior to the Closing Date in Buyer's investigations of the Property; or (iv) Building Materials (whether such materials are present before or after Closing, and regardless of whether the Claims caused by the Building Materials arise under the Ground Lease, other Stanford contractual documents related to the Property, or any other provision of law), other than Claims for personal injury that are described in Section 5.1(iv) or with respect to Seller's liability for signing manifests as described in Section 3.3(c). Buyer's indemnity obligation to Seller under this Section 5.2 does not extend to Seller's own lost profits, Seller's business losses, or Seller's consequential damages, providing that such limitations do not apply to Buyer's indemnity obligation of Seller for third party claims that include the third party's lost profits, business losses, or consequential damages. Notwithstanding any provision of this Section 5.2, Seller is not relieved of, and Buyer does not release Seller from or indemnify Seller for, any Seller failure to comply with the covenants or other provisions of this Agreement regarding environmental matters or the Post-Closing Agreement.

5.3 Release by Buyer. Buyer, on behalf of itself and the Buyer Entities, forever waives, releases and discharges Seller Entities, and their respective directors, officers, shareholders, employees, successors, assigns and agents, from (i) any Claims within the scope of Buyer's indemnity of Seller Entities in Section 5.2 above; (ii) from any Claims caused by Pre-Existing Contamination that Seller proves did not arise from the operation, occupancy or use by Seller-related Use Entities, to the extent that they exceed Seller's 50% share of liability or \$1 million aggregate liability limit for such Claims as specified set forth in Section 5.1(i); (iii) from any first party costs or losses incurred by Buyer (including but not limited to lost profits, lost rents, diminution in property value, other business losses, increased construction costs arising from environmental issues, or the costs of environmental investigation and response measures of any kind) arising from Pre-Existing Contamination except where such cost or loss is required to be incurred (x) to satisfy the demands of an environmental regulatory agency, (y) to address the asserted claims of third parties (not including the claims of Stanford as landowner or lessor under the Ground Lease against Buyer Entities, for which Buyer expressly releases Seller), or (z) to address Seller's failure to comply with any provision in this Agreement that relates to environmental matters; (iv) from any first party costs or losses (including but not limited to lost profits, lost rents, diminution in property value, other business losses, increased construction costs arising from environmental issues, or the costs of environmental investigation and response measures of any kind, including surrender obligations under the Ground Lease or otherwise related to the Property) arising from Building Materials or indoor air other than Claims that are described in Section 5.1(iv) or with respect to Seller's liability for signing manifests as described in Section 3.3(c); (v) arise from any environmental losses, costs or Claims suffered, incurred and asserted by Stanford against Buyer Entities, or any environmental obligations imposed by Stanford against Buyer Entities under the Ground Lease or otherwise relating to the Real

Property, whether at surrender of the Ground Lease or earlier, and whether or not arising from conditions existing prior to or after Closing (provided that this does not release Seller from its obligations set forth in Section 5.4(a)); and (vi) arise from costs incurred by Buyer to satisfy the Claims of Stanford asserted against Seller Entities for Pre-Existing Contamination or for violations of Environmental Law or of the environmental provisions of the Ground Lease to the extent that Section 5.4 provides that such costs will be borne by Buyer. With regard to the release given by Buyer Entities in this paragraph, such entities expressly waive all right under Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

/s/ MP
BUYER'S INITIALS

Notwithstanding any provision of this Section 5.3, Seller is not relieved of, and Buyer does not release Seller from, any Seller failure to comply with the covenants or other provisions of this Agreement regarding environmental matters or the Post-Closing Agreement.

5.4 Sharing of Costs of Certain Claims Asserted by Stanford Against Seller Entities and Addressing Regulatory Claims.

(a) This paragraph (and Section 5.4(b) below) will apply to any Claim asserted by Stanford against Seller Entities, not Stanford Claims asserted only against Buyer or Buyer Entities, under the Ground Lease or otherwise relating to the Real Property, either at surrender of the Ground Lease or before, and arising from Pre-Existing Contamination or arising from any asserted violation of the Ground Lease due to environmental matters or conditions existing prior to Closing. If such Claim is asserted by Stanford against Seller Entities prior to Closing, the procedures of this paragraph apply only if Buyer gives its Approval Notice. If such a Claim for environmental response is asserted by Stanford against Seller Entities, and a regulatory agency has not also made a demand for environmental response for the same Pre-Existing Contamination, then Seller Entities will present such Stanford Claim to Buyer, and Buyer will perform the environmental response to the satisfaction of Stanford, at Buyer's sole cost and expense. If such a Claim for environmental response is asserted by Stanford against Seller Entities, and a regulatory agency has also made a demand for environmental response for the same Pre-Existing Contamination, then (i) Seller Entities will present the Claim to VMware, (ii) VMware will perform the environmental response to the satisfaction of both Stanford and the regulatory agency, (iii) Roche will reimburse VMware for the reasonable environmental consultant/engineering/contractor costs of such environmental response (not including VMware's in-house time or attorney's fees) of satisfying the demands of the regulatory agency, if any, and (iv) Roche will itself bear the increased costs of satisfying Stanford's demands for more stringent environmental response (beyond those required by the regulatory agency).

(b) In all instances where a demand is made by a regulatory agency for environmental response for Pre-Existing Contamination, Buyer and Seller will reasonably cooperate to allow both to participate in all discussions and negotiations with the regulatory agency. For any such regulatory agency demand issued prior to the Final Delivery Date, Seller will have sole responsibility for negotiating the scope of the environmental response required by the agency. In no circumstance, either before the Final Delivery Date or after, will Buyer, or others acting in cooperation with Buyer, request, act or communicate in any way with the regulatory agency to suggest, solicit, inveigle, or entice it to issue any regulatory agency demand, or to issue a broader or more stringent regulatory agency demand, for environmental response for Pre-Existing Contamination; provided, however, that Buyer's mere submittal of analytical data to a regulatory agency after the Final Delivery Date shall not be construed as failing to comply with the covenant in this sentence.

(c) Notwithstanding any provision of this Section 5.4, Seller is not relieved of, and Buyer does not release Seller from, any Seller failure to comply with the covenants or other provisions of this Agreement regarding environmental matters or the Post-Closing Agreement.

5.5 Seller's Right to Terminate. Seller may, at any time after receipt of analytical data it collects or that Buyer collects during Buyer's Inspections that identifies material newly- discovered Pre-Existing Contamination or other material newly-discovered environmental conditions whose environmental risks or costs are such that Seller determines, in its sole discretion, that this transaction should not proceed, Seller will provide notice to Buyer (at any time prior to Closing) of termination of this Agreement, which termination shall be effective ten (10) business days after delivery of such notice to Buyer. Upon the effective date of such termination, Escrow Holder shall remit the Deposit, together with any accrued interest on such funds, to Buyer, notwithstanding anything to the contrary in this Agreement. In the event Seller terminates the Agreement under this Section 5.5, Seller may not lease or sell all or any portion of the Property or enter into any transaction for the sale or lease of all or any portion of the Property to any party other than Buyer until twelve months after such termination.

ARTICLE 6 — CONDEMNATION, DAMAGE AND DESTRUCTION

6.1 Condemnation.

If, prior to the Closing, any material portion of the Real Property or Improvements is taken, by eminent domain or otherwise (or is the subject of a pending, threatened or contemplated taking which has not been consummated), Seller shall immediately notify Buyer in writing of such fact. In such event, Buyer shall have the option, in its sole discretion, to terminate this Agreement upon written notice to Seller given not later than ten (10) business days after receipt of Seller's notice, in which case, the procedures for termination pursuant to Section 2.3(a)-(g) shall apply. If Buyer does not exercise this option to terminate this Agreement, the parties shall proceed to consummate the transaction contemplated by this Agreement pursuant to the terms hereof, without modification of the terms of this Agreement and without any reduction in the Purchase Price, however, upon the Closing, Seller shall assign and turn over, and the Buyer shall be entitled to receive and keep, all awards for the taking by eminent domain which accrue to Seller.

6.2 Damage or Destruction.

If, prior to the Closing, any part of the Property is damaged or destroyed by earthquake, flood, landslide, fire or other casualty (including removal of any of the Property by theft, but excluding damage or destruction arising from Buyer's Inspections or other activities), Seller shall immediately notify Buyer, in writing, of such fact. If such damage, destruction or casualty is "material", Buyer shall have the option to terminate this Agreement upon written notice to the Seller given not later than ten (10) business days after receipt of Seller's notice, in which case, the procedures for termination pursuant to Section 2.3(a)-(g) shall apply. For purposes hereof, "material" shall be deemed to be any damage or destruction to the Property where the cost of repair or replacement is estimated to be one percent (1%) of the Purchase Price or more, and where Seller is unwilling to repair or replace the damage or destruction at Seller's cost (if feasible, prior to Closing). If Buyer does not exercise this option to terminate this Agreement, or if the casualty is not material, the parties shall proceed to consummate the transaction contemplated by this Agreement pursuant to the terms hereof without modification of the terms of this Agreement and without any reduction in the Purchase Price, however, upon the Closing, at Buyer's election, (a) Seller shall assign and turn over, and Buyer shall be entitled to receive and keep, all insurance proceeds received by Seller with respect to such damage or destruction or (b) Buyer may credit against the Purchase Price the cost to restore any casualty damage to the Property, as reasonably determined by an unaffiliated consultant reasonably acceptable to Buyer and Seller.

ARTICLE 7 — RIGHTS AND REMEDIES

7.1 Buyer Default; Liquidated Damages.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IF THE SALE OF THE PROPERTY TO BUYER IS NOT CONSUMMATED DUE TO BUYER'S UNCURED MATERIAL DEFAULT UNDER THIS AGREEMENT, SELLER SHALL BE ENTITLED TO RETAIN AND SHALL RECEIVE THE DEPOSIT AS SELLER'S LIQUIDATED DAMAGES; PROVIDED, HOWEVER, THE AMOUNT OF THE LIQUIDATED DAMAGES UNDER THIS SECTION SHALL BE LIMITED TO THE AMOUNT OF THE INITIAL DEPOSIT UNLESS AND UNTIL BUYER HAS PROVIDED THE APPROVAL NOTICE.

THE PARTIES AGREE THAT IT WOULD BE EXTREMELY IMPRACTICABLE AND DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES SUFFERED BY SELLER AS A RESULT OF BUYER'S FAILURE TO COMPLETE THE PURCHASE OF THE PROPERTY PURSUANT TO THIS AGREEMENT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL INCUR AS A RESULT OF SUCH FAILURE. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A

FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTION 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676, AND 1677. THE PARTIES HAVE SET FORTH THEIR INITIALS BELOW TO INDICATE THEIR AGREEMENT WITH THE LIQUIDATED DAMAGES PROVISION CONTAINED IN THIS SECTION.

<u> /s/ SK </u>	<u> /s/ MP </u>
SELLER’S INITIALS	BUYER’S INITIALS

7.2 No Contesting Liquidated Damages.

As material consideration to each party’s agreement to the liquidated damages provisions stated above, each party hereby agrees to waive any and all rights whatsoever to contest the validity of the liquidated damage provisions for any reason whatsoever, including, but not limited to, that such provision was unreasonable under circumstances existing at the time this Agreement was made.

7.3 Seller’s Default.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BUYER HEREBY EXPRESSLY WAIVES, RELINQUISHES AND RELEASES ANY RIGHT, CONDITION PRECEDENT OR REMEDY AVAILABLE TO BUYER AT LAW, IN EQUITY OR UNDER THIS AGREEMENT, UPON WHICH TO (A) TERMINATE THE AGREEMENT, (B) REFUSE TO CLOSE THE TRANSACTION CONTEMPLATED HEREBY, OR (C) MAKE ANY CLAIM AGAINST SELLER FOR DAMAGES, IN EACH CASE BY REASON OF ANY OF SELLER’S REPRESENTATIONS OR WARRANTIES BEING UNTRUE, INACCURATE OR INCORRECT IN ANY RESPECT, IF EITHER (X) BUYER HAD ACTUAL KNOWLEDGE THAT SUCH REPRESENTATION OR WARRANTY WAS UNTRUE, INACCURATE OR INCORRECT PRIOR TO THE EFFECTIVE DATE OR (Y) BUYER REASONABLY ESTIMATES ITS ACTUAL DAMAGES AS A RESULT THEREOF ARE IN THE AGGREGATE AMOUNT OF LESS THAN \$100,000. THE PARTIES ACKNOWLEDGE THAT THE REMEDY OF SPECIFIC PERFORMANCE SHALL BE AVAILABLE TO BUYER UNDER THIS AGREEMENT.

<u> /s/ SK </u>	<u> /s/ MP </u>
SELLER’S INITIALS	BUYER’S INITIALS

7.4 Right to Cure.

In the event of a breach of this Agreement by Buyer or Seller, the non-breaching party shall provide the breaching party with written notice of such breach. The breaching party shall then have a commercially reasonable time from receipt of such notice to cure said breach, not to exceed ten (10) days, in which case such party shall not be in default of this Agreement; provided, however, that if the nature of the breach is such that more than ten (10) days are reasonably required for its cure, then the breaching party shall not be deemed to be in default if such party shall commence such cure within said ten (10) day period and thereafter diligently prosecute such cure to completion, not to exceed thirty (30) days from the receipt of the notice to cure. The provisions of this Section 7.4 shall not apply to (i) defaults in the payment of monetary obligations (including, without limitation, the Deposit or Purchase Price), (ii) a breach by Seller of Section 4.1(a) or (b), or (iii) a breach by Buyer of Section 4.2(a) or (b). The provisions of this Section 7.4 shall not be applied to extend the Contingency Date, but shall extend the Closing Date if necessary.

7.5 General Indemnity.

(a) Buyer's Indemnity. Except as to matters arising out of, concerning or relating to Hazardous Materials, violations of Environmental Law, and/or matters within the scope of Article 5 (which are exclusively addressed elsewhere in this Agreement), Buyer shall indemnify, defend, protect and hold harmless Seller and Seller's Affiliates, from and against all third party (including Stanford) liabilities, claims, losses, actions, damages, fines, costs, expenses, causes of action and demands (collectively "**Indemnity Claims**") made against them or any of them (a) arising out of or in connection with the Ground Lease or the Improvements or Personal Property (except to the extent such Indemnity Claims are caused by a material breach of the obligations of Seller under the Agreement or fall within Seller's indemnity obligations under Section 7.5(b)), and (b) for any tort claims on or with respect to the Real Property giving rise to personal injury or property damage claims to the extent such Indemnity Claims accrue and are applicable to a period on or after the Closing, except to the extent such personal injury or property damage arises out of the active or willful negligence of Seller or Seller Entities.

(b) Seller's Indemnity. Except as to matters arising out of, concerning or relating to Hazardous Materials, violations of Environmental Law, and/or matters within the scope of Article 5 (which are exclusively addressed elsewhere in this Agreement), Seller shall indemnify, defend, protect and hold harmless Buyer and Buyer's employees, partners, subsidiaries, parents, affiliates, shareholders, officers, directors, attorneys, agents and affiliates from and against all third party (including Stanford) Indemnity Claims made against them or any of them for any tort claims on or with respect to the Real Property giving rise to personal injury or property damage claims to the extent such Indemnity Claims accrue and are applicable to a period prior to the Closing, except to the extent such personal injury or property damage arises out of the active or willful negligence of Buyer or Buyer Entities.

ARTICLE 8 — MISCELLANEOUS

8.1 Notices .

Unless otherwise expressly provided herein, all notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by registered mail, or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the date of receipt or refusal thereof at the address set forth below the signatures of this Agreement. Notices of change of address shall be given by written notice as described in this Section.

8.2 Brokers .

Upon the Closing, Seller shall pay any brokerage commission and fees owed to Seller's Broker in connection with the transactions contemplated by this Agreement, and Buyer shall pay any brokerage commission and fees owed to Buyer's Broker in connection with the transactions contemplated by this Agreement. Seller represents and warrants to Buyer that Seller has not retained any broker or finder in connection with this transaction other than Seller's Broker. Buyer represents and warrants to Seller that Buyer has not retained any broker or finder in connection with this transaction other than Buyer's Broker; provided, however, Buyer has engaged Hines as a consultant in connection with this transaction and will be responsible for the fees owed to Hines pursuant to the terms of a separate written agreement between Buyer and Hines. If any claims arise for additional brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Agreement, then Buyer shall indemnify, save harmless and defend Seller from and against such claims if they shall be based upon any statement, representation or agreement made by Buyer, and Seller shall indemnify, save harmless and defend Buyer if such claims shall be based upon any statement, representation or agreement made by Seller.

8.3 Assignment .

Neither Buyer nor Seller shall have the right to assign this Agreement without the other party's consent which may be withheld in such party's sole discretion, except that, (a) so long as Stanford consents to such assignment and the assignment does not delay the Closing, Buyer shall have the right to assign this Agreement to an Affiliate of Buyer without any further consent of Seller, provided that such Affiliate assumes, in writing, all of Buyer's obligations hereunder and VMware, Inc. executes a guaranty in favor of Seller on substantially the same form as Exhibit G, and (b) so long as Stanford consents to such assignment and the assignment does not delay the Closing, Buyer shall have the right to assign this Agreement to a third party that is not an Affiliate with the consent of Seller, which shall not be unreasonably withheld so long as such third party assumes, in writing, all of Buyer's obligations hereunder and VMware, Inc. executes a guaranty in favor of Seller on substantially the same form as Exhibit G. Any such assignment shall not release VMware, Inc. from any of Buyer's obligations hereunder.

8.4 Partial Invalidity .

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

8.5 Waivers.

No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

8.6 Government Approvals.

Except as expressly provided herein, nothing contained in this Agreement shall be construed as authorizing Buyer to apply for a zoning change, variance, subdivision map, lot line adjustment or other governmental act, approval or permit with respect to the Property prior to the Closing, and Buyer agrees not to do so without Seller's prior written approval.

8.7 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto.

8.8 Professional Fees.

In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of the other party arising out of this Agreement, or to interpret this Agreement, then in that event the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action or suit, including actual attorneys' fees, accounting and engineering fees, and any other professional fees resulting therefrom, at trial and on appeal.

8.9 Entire Agreement.

This Agreement (including all Exhibits and Schedules attached hereto) is the final expression of, and contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior understandings with respect thereto, including, without limitation, any letter of intent between the parties with respect to this transaction. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties. This Agreement shall not supersede the Access Agreement between the parties, which shall remain in full force and effect until Closing, but shall terminate upon Closing (except with respect to those provisions of the Access Agreement which specifically survive the termination in accordance with the terms of the Access Agreement).

8.10 Time of Essence .

Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

8.11 Construction .

Headings at the beginning of each Section and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to Sections and subparagraphs are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference. If the date on which Buyer or Seller is required to take any action under the terms of this Agreement occurs on a Saturday, Sunday or Federal or state holiday, then, the action shall be taken on the next succeeding business day.

8.12 Governing Law .

The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

8.13 No Joint Venture .

This Agreement shall not create a partnership or joint venture relationship between Buyer and Seller.

8.14 Required Actions of Buyer and Seller .

Buyer and Seller agree to execute all such instruments and documents and to take all actions pursuant to the provisions hereof in order to consummate the purchase and sale herein contemplated and shall use their commercially reasonable efforts to consummate the transaction contemplated by this Agreement in accordance with the provisions hereof.

8.15 Survival . Section 3.3 – 3.10 and Article 4, 5, 7 & 8 shall survive the termination and the Closing.

8.16 Counterparts . This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

8.17 Amendments to Ground Lease . Any future amendments or modifications to the Ground Lease made by Buyer shall not enlarge Seller's obligations under this Agreement or the Ground Lease. Nothing in this Section 8.17 shall preclude or limit Buyer from entering into any future amendments or modifications to the Ground Lease.

8.18 Exclusivity. Seller (including for this purpose its shareholders, officers, directors, affiliates and employees) shall not offer any of the Property for lease, sublease or sale, and shall not solicit, initiate, respond to or engage in any discussions or negotiations with any third party with respect to the sale, sublease or lease of the Property, at any time prior to the termination of this Agreement, other than a response to the effect that: "Seller is bound by an exclusivity agreement at this time and therefore cannot respond to your inquiry". Seller shall direct its agents and contractors not to accomplish any of the foregoing prohibited activities referenced in this Section 8.18.

8.19 Applicable Upon Closing Only. Notwithstanding anything to the contrary in this Agreement, Sections 5.1-5.3 and 7.5 shall only take effect following the Closing.

(signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

ROCHE PALO ALTO LLC,
a Delaware limited liability company

By: /s/ Steve Kroghes
Name: Steve Kroghes
Title: Vice President Roche Palo Alto LLC

VMWARE, INC.,
a Delaware corporation

By: /s/ Mark S. Peek
Name: Mark S. Peek
Title: Co-President and CFO

Address for notices :

To Buyer:

VMware, Inc.
3401 Hillview Avenue
Palo Alto, California 94304
Attention: General Counsel

and to:

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304
Attention Susan P. Reinstra

To Seller:

Genentech, Inc.
One DNA Way
South San Francisco, CA 94080
Attention: Corporate Secretary

with a copy to:

Genentech, Inc.
One DNA Way
South San Francisco, CA 94080
Attention: Corporate Real Estate

EXHIBIT A

GROUND LEASE

(see attached)

EXHIBIT B

LIST OF PERSONAL PROPERTY

[TO FOLLOW PRIOR TO THE CONTINGENCY DATE,
BASED ON WALK-THROUGH BY THE PARTIES]

Items to be Removed :

Office furniture
Cubicles
Casework
Hoods
Moveable benches
Tables

Clarifications :

EXHIBIT C

BILL OF SALE

This Bill of Sale (“ **Bill of Sale** ”) is made effective as of the day of , 20 , by Roche Palo Alto LLC, a Delaware limited liability company (“ **Seller** ”) pursuant to that certain Agreement of Purchase and Sale and Joint Escrow Instructions (the “ **Agreement** ”) dated as of , 2011 between VMware, Inc., a Delaware corporation (“ **Buyer** ”) and Seller. All capitalized terms used in this Bill of Sale and not otherwise defined shall have the meanings assigned to such terms in the Agreement.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells, transfers, assigns, sets over and conveys to Buyer all of Seller’s right, title and interest in and to the Personal Property, and Intangible Property (each as defined in the Agreement).

This instrument shall be binding upon Seller and its successors and assigns and shall inure to the benefit of Buyer and its successors and assigns. This Bill of Sale may be executed in counterparts, each of which shall be deemed original and all of which together shall constitute one and the same instrument. This Bill of Sale is governed by California law without regard to principals of conflicts of laws.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the day and year first hereinabove written.

ROCHE PALO ALTO LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT D

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption Agreement (this “ **Assignment** ”) is made effective as of the day of , 20 (“ **Effective Date** ”) by and between Roche Palo Alto LLC, a Delaware limited liability company (“ **Assignor** ”) and , a (“ **Assignee** ”) pursuant to that certain Agreement of Purchase and Sale and Joint Escrow Instructions (the “ **Agreement** ”) dated as of , 2011 between Assignor and Assignee. All capitalized terms used in this Assignment and not otherwise defined shall have the meanings assigned to such terms in the Agreement.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby assigns, sells, transfers, sets over and delivers unto Assignee all of Assignor’s estate, right, title and interest in and to the Assumed Contracts set forth on Exhibit A attached hereto, and Assignee hereby accepts such assignment.

By acceptance of this Assignment, Assignee hereby assumes the performance of all of the terms, obligations, covenants and conditions imposed upon Assignor under the Assumed Contracts.

Except as to matters arising out of, concerning or relating to Hazardous Materials, violations of Environmental Law, and/or matters within the scope of Article 5 (which are exclusively addressed in the Agreement), Assignee shall indemnify, defend, protect and hold harmless Assignor and Assignor’s Affiliates, from and against all third party liabilities, claims, losses, actions, damages, fines, costs, expenses, causes of action and demands (collectively “ **Claims** ”) made against them or any of them to the extent such Claims are caused by a material breach of the obligations of Assignee under the Assumed Contracts, but only to the extent such Claims accrue and are applicable to a period on or after the Effective Date of this Assignment and would not be barred by applicable statutes of limitation as to Assignee.

Except as to matters arising out of, concerning or relating to Hazardous Materials, violations of Environmental Law, and/or matters within the scope of Article 5 (which are exclusively addressed in the Agreement), Assignor shall indemnify, defend, protect and hold harmless Assignee and Assignee’s employees, partners, subsidiaries, parents, affiliates, shareholders, officers, directors, attorneys, agents and affiliates, from and against all third party Claims made against them or any of them to the extent such Claims are caused by a material breach of the obligations of Assignor under the Assumed Contracts, but only to the extent such Claims accrue and are applicable to a period prior to the Effective Date of this Assignment and would not be barred by applicable statutes of limitation as to Assignor.

This instrument shall be binding upon parties and their successors and assigns. This Assignment may be executed in counterparts, each of which shall be deemed original and all of which together shall constitute one and the same instrument. This Assignment is governed by California law without regard to principals of conflicts of laws.

[*THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES TO FOLLOW*]

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the day and year first above written.

a _____

ROCHE PALO ALTO LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

[EXHIBIT A TO ASSIGNMENT AND ASSUMPTION ATTACHED]

EXHIBIT E

GROUND LEASE ASSIGNMENT

ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

THIS ASSIGNMENT AND ASSUMPTION OF GROUND LEASE (“ **Assignment** ”) shall be effective as of _____, 2011 (the “ **Effective Date** ”), and is made by and between ROCHE PALO ALTO LLC, a Delaware limited liability company (“ **Assignor** ”), and _____, a _____ (“ **Assignee** ”).

This Assignment is made with reference to the following facts and circumstances:

A. The Board of Trustees of the Leland Stanford Junior University (“ **Stanford** ”), as lessor, and Syntex Laboratories, Inc., predecessor in interest to Assignor, as lessee, entered into that certain Lease dated July 1, 1968, as amended by a Lease Amendment and Extension Agreement dated as of April 14, 2003, and a Second Amendment to Ground Lease dated as of October 1, 2007 (as amended, the “ **Ground Lease** ”), whereby Stanford leased to Assignor certain real property located in Palo Alto, California and more particularly described on Exhibit A attached hereto (the “ **Real Property** ”).

B. Assignor desires to assign to Assignee all of Assignor’s right, title and interest in, under and to the Ground Lease and the Real Property, including to the improvements and fixtures thereon and all easements and other rights appurtenant thereto (the “ **Real Estate** ”), and Assignee desires to accept such assignment.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Purchase Agreement. This Assignment is made pursuant to that certain Agreement of Purchase and Sale and Joint Escrow Instructions (the “ **Agreement** ”) dated as of _____, 2011 between Assignor and Assignee. Capitalized terms used in this Assignment and not specifically defined herein shall have the same meaning as set forth in the Agreement.

2. Assignment and Assumption. Assignor hereby assigns, transfers, grants and conveys to Assignee, and Assignee hereby accepts, all of Assignor’s right, title and interest in, under and to the Ground Lease and the Real Estate. Assignee accepts this assignment and assumes and agrees to keep, perform and fulfill, as a direct obligation to Stanford and for the benefit of Assignor, all of the terms, covenants, conditions and obligations required to be kept, performed and fulfilled by the “Lessee” under the Ground Lease, whether such terms, covenants, conditions and obligations arise or relate to periods prior to or after Effective Date.

3. Further Modification : Assignee shall have the right, without further consent by Assignor, to modify or amend the Ground Lease in any manner, assign the Ground Lease or sublease the Property and exercise any other rights of the “Lessee” under the Ground Lease; provided, however, such modification, amendment or assignment shall not enlarge Assignor’s obligations under this Assignment or the Ground Lease. Nothing in this Section 3 shall preclude or limit Buyer from entering into any future amendments or modifications to the Ground Lease.

4. Miscellaneous : Assignor and Assignee shall execute and deliver such additional documents and take such additional actions as any such party may reasonably request to carry out the purposes of this Assignment. This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns. If any party brings an action or legal proceeding with respect to this Assignment, the prevailing party shall be entitled to recover its reasonable attorneys’ fees and costs. All captions contained in this Assignment are for convenience of reference only and shall not affect the construction of this Assignment. This Assignment may be executed in one or more counterparts, each of which shall be an original, but all of which, taken together, shall constitute one and the same Assignment. If any one or more of the provisions of this Assignment shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. This Assignment shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment intending it to be effective as of the Effective Date set forth above.

a _____

ROCHE PALO ALTO LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

[EXHIBIT A TO ASSIGNMENT OF GROUND LEASE ATTACHED]

EXHIBIT F

MEMORANDUM OF GROUND LEASE ASSIGNMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attn: _____

MEMORANDUM OF ASSIGNMENT AND ASSUMPTION OF GROUND LEASE

THIS MEMORANDUM OF ASSIGNMENT AND ASSUMPTION OF GROUND LEASE (“**Memorandum**”) is made as of _____, 2011 (the “**Effective Date**”), and is made by and between ROCHE PALO ALTO LLC, a Delaware limited liability company (“**Assignor**”), and _____, a _____ (“**Assignee**”).

This Assignment is made with reference to the following facts and circumstances: The Board of Trustees of the Leland Stanford Junior University (“**Stanford**”), as lessor, and Syntex Laboratories, Inc., predecessor in interest to Assignor, as lessee, entered into that certain Lease dated July 1, 1968, as amended by a Lease Amendment and Extension Agreement dated as of April 14, 2003, and a Second Amendment to Ground Lease dated as of October 1, 2007 (as amended, the “**Ground Lease**”), whereby Stanford leased to Assignor certain real property located in Palo Alto, California and more particularly described on Exhibit A attached hereto (the “**Real Property**”). Memoranda of the Ground Lease and the amendments thereto were recorded in the Official Records of Santa Clara County, California on October 30, 1968 in Book 8315, Page 330, on April 15, 2003 as Instrument Number 16965757 and on _____, 2011 as Instrument Number _____.

Pursuant to the terms of the Assignment and Assumption of Ground Lease of even date herewith, Assignor assigns, transfers, grants and conveys to Assignee, and Assignee accepts such assignment and assumes and agrees to keep, perform and fulfill, as a direct obligation to Stanford and for the benefit of Assignor, all of the terms, covenants, conditions and obligations required to be kept, performed and fulfilled by the “Lessee” under the Ground Lease.

[**THIS SPACE INTENTIONALLY LEFT BLANK;**

SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment intending it to be effective as of the Effective Date set forth above.

a _____

ROCHE PALO ALTO LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

[EXHIBIT A TO ASSIGNMENT OF GROUND LEASE ATTACHED]

EXHIBIT G

GUARANTY

[FORM SUBJECT TO APPROVAL BY ROCHE HOLDINGS, INC. BY 5/11/11]

In consideration of VMware, Inc., a Delaware corporation (“**VMware**”) entering into that certain Agreement of Purchase and Sale and Joint Escrow Instructions with Roche Palo Alto, LLC, a Delaware limited liability company (“**Roche**”) (the “**Agreement**”), the undersigned irrevocably and unconditionally guarantees to VMware, and its successors, the observance and performance when due of all obligations of Roche under the Agreement and the Post-Closing Agreement, as defined in the Agreement, including all costs and expenses, including reasonable attorneys’ fees, incurred by VMware in the enforcement of this Guaranty (collectively, the “**Obligations**”).

Nothing herein shall require VMware to first seek or exhaust any remedy against Roche, or its successors, or any other person obligated with respect to the Obligations, or to first foreclose, exhaust or otherwise proceed against any equipment, collateral or security which may be given in connection with the Obligations. Suit may be brought and maintained against the undersigned without joinder of Roche or any other person as parties thereto.

The undersigned specifically waives the following:

(a) the applicability of California’s Civil Code Section 2845 which reads: “A surety may require the creditor, subject to Section 996.440 of the Code of Civil Procedure, to proceed against the principal, or to pursue any other remedy in the creditor’s power which the surety cannot pursue, and which would lighten the surety’s burden; and if the creditor neglects to do so, the surety is exonerated to the extent to which the surety is thereby prejudiced.”; and

(b) any suretyship defenses of every nature otherwise available under California law and the laws of any other state, including, without limitation, all defenses arising under Section 2787 through 2855 of the California Civil Code and any successor provisions to those Sections.

The undersigned waives any claim or other right which the undersigned might now have or hereafter acquire against Roche or any person that is primarily or contingently liable on the Obligations.

The undersigned waives notice of acceptance hereof and all other notices or demands of any kind to which it may be entitled and consents that VMware may, without affecting the undersigned’s liability under this Guaranty, (i) compromise or release, on terms satisfactory to it or by operation of law or otherwise, any rights against Roche and other obligors and guarantors; (ii) grant extensions of time to Roche; or (iii) otherwise modify the Obligations or Agreement at any time for any reason.

The undersigned hereby waives any and all presentment, demand, protest or notice of any kind under the Guaranty.

This Guaranty shall not be discharged or affected by dissolution of the undersigned, shall bind the heirs, administrators, representatives and successors of the undersigned. This Guaranty shall inure to the benefit of any permitted assignee of the Agreement.

The rights and obligations of the parties hereto shall be governed, construed and interpreted according to the laws of the State of California (without regard to its choice of law provisions). The undersigned hereby unconditionally and irrevocably submits to the jurisdiction of any state or federal court in the State of California in any action.

If any provision of this Guaranty or any portion of any provision of this Guaranty shall be deemed to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Guaranty shall be deemed severable from all other provisions of this Guaranty.

This writing is intended by the parties as a final expression of this guaranty agreement and is also intended as a complete and exclusive statement of the terms of such agreement. No course of prior dealing between the parties, no usage of trade and no parol or extrinsic evidence of any nature shall be used to interpret, supplement or modify any term, nor are there any conditions to the full effectiveness, of this Guaranty. This Guaranty, and each of its provisions, can only be waived, modified or terminated, by a duly authorized written instrument signed by VMware.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date below.

Dated: , 2011

GUARANTOR:
Roche Holdings, Inc.
a Delaware corporation

By: _____

Name: _____

Title: _____

EXHIBIT H

POST-CLOSING AGREEMENT

THIS POST-CLOSING AGREEMENT (this “**Agreement**”) is made and entered into as of the day of , 2011 (the “**Effective Date**”), by and between Roche Palo Alto LLC, a Delaware limited liability company (“**Roche**”), and VMware, Inc., a Delaware corporation (“**VMware**”).

A. Roche, as seller, and VMware, as buyer, have entered into an Agreement of Purchase and Sale and Joint Escrow Instructions (the “**Purchase Agreement**”) for the purchase of Roche’s interest in that certain real property commonly known as the Roche Palo Alto Campus situated within the Stanford Research Park, Palo Alto, California, which consists of approximately 69.505 acres improved with buildings and related improvements comprising approximately 966,087 square feet of research and development space, under and pursuant to that certain Ground Lease with The Board of Trustees of the Leland Stanford Junior University, dated July 1, 1968, as amended (the “**Property**”); and

B. Roche and VMware wish to enter into certain agreements with respect to the Property for a period of time following the Closing (as defined in the Purchase Agreement); and

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VMware and Roche, intending to be legally bound, hereby covenant and agree as follows:

1. **Incorporation of Recitals; Definitions** . The foregoing recitals are hereby incorporated into this Agreement and made a part hereof by this reference. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

2. **Term** . This Agreement shall become effective on the Effective Date and shall terminate upon the date of the Final Closure Delivery.

3. **Grant of Access License; Performance of Closure Work** . Subject to the terms and conditions of this Agreement, VMware hereby grants to Roche, and its representatives, agents, consultants and designees (collectively, “**Roche’s Agents**”), and Roche hereby accepts from VMware, a non-exclusive license to enter upon the Property, at Roche’s sole cost, for the purpose of conducting the Closure Work in the Remainder Property, provided that: (i) all persons entering the Property on behalf of Roche for such Closure Work shall be appropriately licensed (if required by Law) and qualified, possess the appropriate permits for the Closure Work, including any proposed drilling or testing, present in advance to VMware evidence of appropriate insurance reasonably satisfactory to VMware, enter at reasonable times and without unreasonable interference with VMware’s use of the Property, and comply with VMware’s reasonable site procedures and requirements; (ii) Roche shall provide VMware with not less

than two (2) business days advance notice of any physical testing or drilling or other similar invasive testing and allow VMware to take split samples; (iii) Roche shall deliver to VMware, without representation or warranty, from time to time, copies of closure plans, amendments, sampling results, applications, and certificates as soon as reasonably practicable after receipt or submittal of same; (iv) Roche shall not have a requirement to restore any damage to the Real Property and Improvements as a result of the Closure Work; however, Roche shall make the Real Property and Improvements reasonably safe and shall restore any roof or building exterior openings, and fill any holes in the ground, as a result of such Closure Work; (v) Roche shall defend, indemnify, and hold harmless VMware Entities (defined below) as set forth in Section 8 below; and (vi) Roche shall keep VMware reasonably informed about Roche's ongoing Closure Work, including without limitation, copying VMware on all emails and other communications sent to and received from Stanford or Authorities having jurisdiction over the Property with respect to the Closure Work and provide the opportunity for meetings between Roche and VMware at regular intervals to review the progress of the Closure Work. All Closure Work, inspections, tests and other evaluations of the Property performed by Roche or its agents shall be at Roche's sole cost and expense. Roche shall use commercially reasonable efforts to perform the Closure Work in accordance with the detailed schedule attached hereto as Exhibit A, which schedule shall have the same or earlier completion dates as those set forth in the closure schedule attached to the Purchase Agreement and shall be prepared by Roche and attached to this Agreement upon execution hereof.

4. Grant of Occupancy License . Subject to the terms and conditions of this Agreement, VMware hereby grants to Roche, and Roche hereby accepts from VMware, a non-exclusive license to use and occupy certain premises shown on Exhibit B hereto (the "**Premises**") within the building commonly known as Building R6 on the Property. Roche may use the Premises only for office purposes in connection with its administration of the Closure Work. In connection with such use, Roche shall comply with all reasonable rules and regulations promulgated from time to time by VMware, including, without limitation, rules relating to security and access. Roche shall pay before delinquency all taxes imposed against Roche's personal property on the Premises. Roche accepts the Premises in "as is" condition. Roche shall maintain the Premises in neat, orderly condition and shall repair any damage to the Premises caused by Roche or its agents, employees, contractors or invitees. Roche shall not do or permit anything to be done in, about or with respect to the Premises which would (a) injure the Property or (b) vibrate, shake, overload, or impair the efficient operation of the Property or the building systems located therein. Roche may not permit any use of the Premises by another party or perform any alterations or improvements to the Premises, except for Closure Work provided in the Purchase Agreement, without the prior written consent of VMware, which consent may be withheld in VMware's sole and absolute discretion. On or prior to the termination of this Agreement, Roche shall remove all of its personal property from the Premises and shall surrender the Premises to VMware broom clean, in the same condition as exists on the Effective Date, reasonable wear and tear excepted. Roche shall not be entitled to any signage on the Property. VMware shall have the right, at any time during the term of this Agreement, to relocate all or a portion of the Premises to other space in the Property that is reasonably comparable in size to the original Premises or applicable portion thereof; provided, however, if VMware so relocates Roche, then VMware shall pay for the reasonable costs of moving Roche from the original Premises to the new Premises.

5. **Services** . Subject to the terms and conditions of this Agreement, Roche shall use commercially reasonable efforts to assist VMware, for a period of sixty (60) days after Closing only, in the transition of operations to VMware, at no cost or liability to Roche.

6. **Confidentiality** . Roche agrees to keep confidential all information which may be disclosed to or discovered by Roche during Roche's occupancy, operations or access on the Property pursuant to this Agreement (" **Confidential Information** "), including, without limitation, the results of all inspections, analyses, studies and similar reports relating to the Property prepared by or for Roche, provided that the term "Confidential Information" shall not include such portions of materials, documents or other information which (i) is now public knowledge, or becomes public knowledge in the future, other than through acts or omissions of Roche or Roche's Agents in violation of this Section, (ii) was known to Roche prior to Closing, or known to Roche after Closing without any restriction on use or disclosure, (iii) is disclosed at any time to Roche by a third party that had a lawful right to disclose it, or (iv) is developed by Roche independently of the Confidential Information received hereunder. Unless otherwise agreed to in writing by VMware, Roche agrees: (x) to keep all Confidential Information confidential and not to disclose or reveal any Confidential Information to any person other than Roche's Agents, which for purposes of this Section, shall include Roche's current and prospective lenders, accountants and attorneys, but then only to the extent such parties need to review the Confidential Information for purposes of performing the Closure Work; and (y) not to use Confidential Information for any purpose other than in connection with its Closure Work. Roche further agrees to cause Roche's Agents to agree to comply with the non-disclosure requirements set forth in subsections (x) and (y) above. In the event that Roche is requested pursuant to, or required by, applicable law, regulation or legal process, to disclose any Confidential Information, Roche agrees it shall provide VMware with prompt notice of such request(s) to enable VMware to seek a protective order or other appropriate remedy. If, in the absence of a protective order or other remedy, Roche or any of Roche's Agents is nonetheless legally compelled to disclose Confidential Information, Roche or Roche's Agents may disclose such portion of the Confidential Information as is legally required to be disclosed. Notwithstanding the foregoing, (a) Confidential Information shall be subject to disclosure in litigation between VMware and Roche and (b) the confidentiality covenant contained herein shall not limit Roche from communicating with Stanford University or governmental authorities regarding its performance of the Closure Work, provided that VMware will be copied on all written communications sent by Roche to Stanford and governmental authorities. Notwithstanding the foregoing, if Roche wishes to have discussions with any environmental regulatory agency staff (including the City of Palo Alto regarding hazardous material closure issues) regarding the environmental condition on or under the Property or the regulatory requirements applicable to them, Roche agrees to reasonably coordinate with VMware in advance to allow a joint approach to and joint discussion with the regulatory agency staff or Stanford, providing VMware and its agents an opportunity to be present for all such discussions; provided, however, that Roche may meet with such agencies without VMware if VMware is not available to meet with such agencies at the times proposed by Roche so long as, not less than two (2) business days before the proposed meeting, Roche proposed to VMware at least two (2) meeting times during normal business hours. Notwithstanding the foregoing sentence, VMware and Roche will also comply with the provisions regarding communications with the governmental authorities in Section 3.5(c) of the Purchase Agreement.

7. **Insurance** . Upon the execution of this Agreement, Roche shall obtain and cause its consultants and agents to obtain, at Roche's sole cost and expense, a policy of commercial general liability insurance covering any and all liability of Roche and Roche's Agents with respect to or arising out of its occupancy and activities under this Agreement. Such policy of insurance shall be an occurrence policy and shall have liability limits of not less than Two Million and No/100 Dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury, personal injury and property damage liability. In addition, for any work that involves hazardous materials, Roche shall cause its consultants and agents to obtain, at Roche's sole cost and expense, a policy of Contractor's Pollution Liability insurance with respect to or arising out of their activities with limits of Two Million and No/100 Dollars (\$2,000,000.00) combined single limit per occurrence and contain the insurer's standard provision regarding waiver of subrogation. Such liability insurance policies shall name VMware and its respective successors and assigns as additional insureds and shall be in form and substance and issued by an insurance company reasonably satisfactory to VMware. Upon execution of this Agreement, Roche shall deliver certificates of such insurance to VMware. Notwithstanding the foregoing, Roche may elect to self-insure (retain the risk on) some or all of its property insurance and/or liability insurance required under this Section 7. Any undertaking by Roche to self-insure with respect to some or all of its insurance shall not serve to adversely affect VMware, and VMware shall be protected against loss or damage insured by Roche hereunder in the same manner as if Roche had obtained separate property insurance as provided herein. The foregoing right of Roche to self-insure does not apply to Roche's consultants and contractors.

8. **Indemnity** . Roche shall indemnify, defend and hold VMware and its Affiliates, directors, officers, shareholders, employees, successor, assigns and agents (" **VMware Entities** "), and their respective officers, directors, advisors, contractors and employees (" **Indemnified Parties** ") harmless from and against any and all claims, damages, liabilities, losses, costs or expenses (including, without limitation, attorneys' fees and costs) (" **Claims** ") to the extent caused by the activities of Roche or Roche's Agents upon the Property in the course of their entry upon the Property pursuant to the access provided in this Agreement, and from all mechanic's, materialmen's and other liens resulting from any such conduct of Roche and Roche's Agents, except to the extent attributable in part to the acts or omissions of the Indemnified Parties; provided, however, that any Claims related to alleged breaches of the Purchase Agreement shall be addressed under the terms of that agreement rather than this Section 8. Notwithstanding anything to the contrary contained in this Agreement, Roche's indemnification obligations set forth herein shall survive the expiration or other termination of this Agreement. As used herein, an " **Affiliate** " shall mean an entity which controls, is controlled by, or is under common control with such party, or acquires all of the assets of such party.

9. **Compliance With Laws** . Roche shall comply with all Laws (hereinafter defined) pertaining to its activities hereunder with respect to the Property. For purposes hereof, the term " **Laws** " shall mean all federal, state, county and local governmental and municipal laws, statutes, ordinances, rules, regulations, codes, decrees, orders and other such requirements, applicable equitable remedies and decisions by courts in cases where such decisions are considered binding precedents in the State of California, and decisions of federal courts applying the Laws of the State of California.

10. **License** . The interest herein created under Sections 3 and 4 is a non-exclusive license and no leasehold or tenancy is intended to be or shall be created hereby.

11. **Copper Allowance** . Roche shall reimburse to VMware the actual cost that VMware incurs to replace and install the copper materials that were stolen from the Real Property prior to the Effective Date of the Purchase Agreement, in an amount not to exceed Ninety Thousand Dollars (\$90,000). Such reimbursement shall be made to VMware within thirty (30) days after completion of such replacement by VMware and VMware's submittal to Roche of an invoice for such amount with appropriate and reasonable substantiation and documentation supporting the invoiced amount. Such work shall be completed by VMware, if at all, by the date that is twelve (12) months after the Closing Date. In the event that such work is not completed by such date, or VMware otherwise elects not to replace the stolen copper materials, then Roche shall pay VMware the cost of the copper materials only (not installation), within thirty (30) days of Roche's receipt of an invoice for the same with appropriate and reasonable substantiation and documentation supporting the invoiced amount (not to exceed Ninety Thousand Dollars (\$90,000)).

12. **Notices** . Unless otherwise expressly provided herein, all notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by registered mail, or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the date of receipt or refusal thereof at the address set forth below the signatures of this Agreement. Notices of change of address shall be given by written notice as described in this Section.

13. **Attorneys' Fees** . In the event any legal action is taken by either party against the other to enforce any of the terms and conditions of this Agreement, it is agreed that the unsuccessful party to such action shall pay to the prevailing party all court costs, reasonable attorneys' fees, expert witness fees and expenses incurred by the prevailing party, at trial and on appeal.

14. **Authority** . Each party hereto warrants that the person signing below on such party's behalf is authorized to do so and to bind such party to the terms of this Agreement.

15. **Disclaimer** . Roche acknowledges that portions of the Property may be vacant and that there are inherent risks of harm entering vacant properties. VMware shall not have an obligation to inspect and make safe its premises prior to Roche's entry on the Property. Roche understands this risk and shall at all times conduct all operations using reasonable care as necessary to avoid the risk of bodily harm to persons or risk of damage to any property.

16. **Miscellaneous** . This Agreement may not be amended or assigned except by an instrument in writing executed by each of the parties hereto, and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No failure or delay by VMware in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall

any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. This Agreement is governed by California law without regard to principals of conflicts of laws. This Agreement is made pursuant to the terms of the Purchase Agreement, the terms of which that are intended to survive closing remain in full force and effect.

17. **Counterparts** . This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and together shall constitute the Agreement.

IN WITNESS WHEREOF, VMware and Roche have executed and delivered this Agreement as of the day and year first above written.

VMWARE, INC.
a Delaware corporation

ROCHE PALO ALTO LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Address for notices:

To VMware:

VMware, Inc.
3401 Hillview Avenue
Palo Alto, California 94304
Attention: General Counsel

and to:

Attn: Real Estate Department
(Same Address)

To Roche:

Attn: Director of Site Services
Palo Alto Site Financial Services
Roche Palo Alto LLC
3431 Hillview Avenue
Palo Alto, California 94304

with a copy to:

Genentech, Inc.
One DNA Way
South San Francisco, CA 94080
Attention: Corporate Secretary

AMENDED AND RESTATED GROUND LEASE
(3431 Hillview Campus)

THIS AMENDED AND RESTATED GROUND LEASE (this “**Lease**”) is made and entered into as of June 13, 2011 (the “**Effective Date**”), by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California (“**Lessor**”), and VMware, Inc., a Delaware corporation (“**Lessee**”).

RECITALS

A. Lessor owns that certain real property commonly known as 3431 Hillview Avenue, Palo Alto, California, and more particularly described in the attached **Exhibit A** (the “**Land**”).

B. Lessor and Roche Palo Alto LLC, a Delaware limited liability company (“**Roche**”), as successor-in-interest to Syntex Laboratories, Inc., a Delaware corporation, are the parties to that certain Lease dated as of July 1, 1968, a memorandum of which was recorded October 30, 1968 in Book 8315, Page 330 in the Official Records of Santa Clara County, California (the “**Official Records**”), as amended by a Lease Amendment and Extension Agreement dated as of April 14, 2003 and a Second Amendment to Ground Lease dated as of October 1, 2007 (collectively, the “**Original Lease**”). In connection with the Original Lease, Lessor, Roche and 3401 Hillview LLC, a Delaware limited liability company (“**3401 Hillview LLC**”), are the parties to that certain Restated and Amended Cooperation Agreement dated as of February 3, 2005 (the “**Cooperation Agreement**”).

C. Pursuant to the Original Lease, Roche leased from Lessor the Land and all improvements on the Land (including all buildings, structures, systems, facilities and fixtures located on the Land), and any and all machinery, equipment, apparatus and appliances (not owned by subtenants) incorporated into the foregoing and used in connection with the operation or occupancy of the Land. The improvements existing as of the Effective Date, all MDA Improvements, and all Additional Improvements and Alterations, once constructed on the Premises, are referred to in this Lease as the “**Improvements**”. The Land and Improvements are referred to in this Lease as the “**Premises**”.

D. As of the Effective Date and prior to this Lease becoming effective, Roche has assigned to Lessee all of its right, title and interest in and to the Original Lease, and Lessee has assumed all of Roche’s obligations and liabilities under the Original Lease, whether arising before or after the date of the assignment.

E. Lessor and Lessee have agreed to extend the term of the Original Lease to the date that is thirty-four (34) years and eleven (11) months after the Effective Date, and to amend and restate the Original Lease on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the rents to be paid hereunder and of the agreements, covenants and conditions contained herein, the parties hereby agree as follows:

ARTICLE 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information. Each term or item in this Article 1 shall be deemed to incorporate all of the provisions set forth below pertaining to such term or item and to the extent there is any conflict between the provisions of this Article 1 and any more specific provision of this Lease, the more specific provision shall control.

Lessor:	The Board of Trustees of the Leland Stanford Junior University
Address of Lessor:	2755 Sand Hill Road, Suite 100 Menlo Park, CA 94025 Attention: Managing Director, Real Estate Facsimile: (650) 854-9268
Lessee:	VMware, Inc.
Address of Lessee:	3401 Hillview Avenue Palo Alto, CA 94304 Attention: Vice President, Real Estate and Facilities
With a copy to:	VMware, Inc. 3401 Hillview Avenue Palo Alto, CA 94304 Attention: General Counsel
Term:	From the Commencement Date to the date that is thirty-four (34) years and eleven (11) months after the Effective Date
Commencement Date:	July 1, 1968
Expiration Date:	May 13, 2046
Minimum Annual Rent:	\$6,800,000 per year (\$566,666.67 per month), commencing on the Effective Date and as adjusted pursuant to Article 7
MDA Rent:	\$1,100,000 per year (\$91,666.67 per month), commencing on the MDA Assignment Date and as adjusted pursuant to Article 7
Security Deposit:	\$500,000 per year, commencing on January 1, 2042 (as further described in Section 28.5)
Use:	Research and development (as further described in Section 10.1)

ARTICLE 2. DEFINITIONS

All capitalized terms not otherwise defined in this Lease shall have the meanings set forth in the Glossary attached to this Lease.

ARTICLE 3. LEASE OF PREMISES; RESERVATION OF RIGHTS

Section 3.1 Lease of Premises . Lessor leases the Premises to Lessee, and Lessee leases the Premises from Lessor on the terms and conditions set forth in this Lease.

(a) Lessor and Lessee agree that: (i) this Lease amends and restates the Original Lease, and the Term of this Lease commenced as of July 1, 1968, which is the Commencement Date of the Original Lease; (ii) notwithstanding the amendment and restatement of the Original Lease, as of the Effective Date Lessee has assumed all obligations and liabilities of Roche under the Original Lease relating to the period prior to the Effective Date, (iii) the terms and conditions of this Lease shall govern with respect to the portion of the Term beginning on and after the Effective Date, and (iv) Lessor will not receive or be entitled to all or any portion of any payment made by Lessee to Roche in exchange for the assignment by Roche to Lessee of the Original Lease.

(b) This Lease is subject to the Cooperation Agreement, and Roche has assigned to Lessee all of Roche's rights under the Cooperation Agreement, including without limitation all easements entered into between Lessor, Roche and 3401 Hillview LLC pursuant to the Cooperation Agreement and Lessee has assumed all of Roche's obligations thereunder.

(c) This Lease shall be subject to (i) all Applicable Laws and all zoning and other governmental regulations now or hereafter in effect, (ii) all liens, encumbrances, restrictions, rights and conditions of law or of record existing as of the Effective Date, and (iii) all other matters affecting title to or use of the Premises either known to Lessee or ascertainable by survey or investigation.

Section 3.2 Reservation of Rights.

(a) Lessor hereby reserves the right of Lessor, at all reasonable times and following reasonable advance written notice to Lessee, to enter and to permit the City, the County of Santa Clara, the Santa Clara Valley Water District, other governmental bodies, public or private utilities and any other persons or entities authorized by Lessor to enter upon the Premises for the purposes of (i) installing, using, operating, maintaining, renewing, relocating and replacing (A) underground wells, (B) water, oil, gas, steam, storm sewer, sanitary sewer and other pipe lines, and (C) telephone, electric, power and other lines, conduits, and facilities; (ii) flood control; (iii) maintenance of rights of way; and (iv) remediation of Hazardous Substances in, on, or under, the Premises or any other property in the neighborhood of the Premises.

(b) Lessor hereby retains the sole and exclusive right, at all reasonable times and following reasonable advance written notice to Lessee, to enter upon the Premises to mine or otherwise produce or extract by any means whatsoever, whether by slant drilling or otherwise, oil, gas, hydrocarbons and other minerals (of any character) in or under or from the Premises, such mining, production or extraction to be for the sole benefit of Lessor without obligation to pay Lessee for any or all of the substances so mined, produced or extracted; provided, however, that none of the operations for such mining, production or extraction shall be conducted from the surface of the Premises, but only at such depth beneath the surface as not to interfere with the use of the Premises or the stability of any Improvements on the Premises.

(c) Section 9 of the Federal Endangered Species Act prohibits the “taking” of wildlife species listed as threatened or endangered, which is defined as an act which kills or injures wildlife, including those activities that cause significant habitat or behavioral modification or degradation. Lessee acknowledges that Lessor has applied for a “ **Habitat Conservation Plan** ” with federal agencies that will, when and if approved, set forth protective measures that will minimize the taking of endangered species on lands owned by Lessor. In furtherance of the foregoing, Lessor hereby reserves the right to record a conservation easement over that portion of the Premises shown on the attached **Exhibit B** (the “ **Conservation Easement** ”) for the purpose of protecting endangered species and their habitats. Lessor further reserves the right to access the Premises for the purposes of habitat restoration, inspection, or other purposes necessary or convenient to the implementation of or compliance with the Conservation Easement and Habitat Conservation Plan. Lessee agrees that its rights under this Lease shall be subordinated to the Conservation Easement. Pursuant to the Conservation Easement, Lessee shall have no right to develop the area of the Premises that is subject to the Conservation Easement, to install Additional Improvements and Alterations in such area, or to install hardscaping or landscaping in such area, and any activities within such area shall require Lessor’s prior written consent. Lessor shall be responsible at its sole cost and expense for any required restoration of the Conservation Easement area or other compliance with the Habitat Conservation Plan, and Lessee’s only obligation shall be to leave the area of the Conservation Easement in its “as-is” condition as of the Effective Date.

(d) Lessor shall be entitled, at all reasonable times and upon reasonable advance written notice to Lessee, to go upon and into the Premises and the Improvements for the purposes of (i) inspecting the same; (ii) inspecting the performance by Lessee of the terms, covenants, agreements and conditions of this Lease; (iii) posting and keeping posted thereon notices of non-responsibility for any construction, alteration or repair; and (iv) any other reason permitted under this Lease.

(e) In exercising or delegating its rights under this Section 3.2, Lessor shall not materially interfere with Lessee’s use of the Premises or materially adversely affect any Improvements on, or the use, operation or value of the Premises. Without limiting the foregoing:

(i) Lessor shall conduct all of Lessor’s activities (and the activities of any person or entity authorized by Lessor to enter upon the Premises pursuant to the rights reserved by Lessor under this Section 3.2), in full compliance with all Applicable Laws;

(ii) Lessor shall make every reasonable effort to accommodate the requests of Lessee and any occupants of the Premises regarding any of Lessor’s activities so as to minimize interference with business operations at the Premises;

(iii) Prior to entering the Premises to perform any of Lessor’s activities permitted under subsections 3.2(a) or (b), (or permitting any other person or entity to enter upon the Premises pursuant to the rights reserved by Lessor under those subsections), Lessor shall provide to Lessee a certificate of insurance (or in Lessor’s case only, self-insurance) showing that Lessor (or such other person or entity, if applicable) maintains in full force and effect a policy of comprehensive general liability insurance (A) covering the activities of Lessor (or such other person or entity) (including its employees, independent contractors and agents) in connection with such activities, (B) in an amount not less than \$3,000,000 combined single limit

per occurrence from a carrier reasonably acceptable to Lessee (which coverage amount shall be subject to annual adjustment as of the first (1st) day of each Lease Year after the Effective Date to reflect percentage increases in the Index), (C) naming Lessee, its officers and directors as additional insureds, and (D) requiring at least fifteen (15) days written notice to Lessee prior to cancellation or reduction in coverage. All of Lessor's activities pursuant to this Section shall be at Lessor's sole cost and expense. Lessor shall promptly repair any damage to the Premises caused by such activities, and shall keep the Premises free of mechanics' or materialmen's liens arising as a result thereof. Except to the extent of Lessor's breach of this Section 3.2, Active Negligence or willful misconduct in the exercise of its rights under this Section, Lessee hereby waives and releases any claims for damages for any injury or inconvenience to or interference with Lessee's business at the Premises, any loss of occupancy or quiet enjoyment or the Premises or any other loss, damage, liability or cost occasioned by Lessor's exercise of the rights reserved to Lessor under, or granted to Lessor pursuant to this Section. In no event shall Lessee be entitled to terminate this Lease as a result of Lessor's exercise of such rights, notwithstanding any possible liability of Lessor for damages as a result of its breach of this Section 3.2, Active Negligence or willful misconduct. Notwithstanding the foregoing, Lessor shall indemnify and hold Lessee harmless from and against any and all damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees) arising out of or relating to the breach of this Section 3.2, Active Negligence or willful misconduct, in each instance to the extent caused by Lessor or Lessor's Agents in the exercise of Lessor's rights under this Section.

(f) Lessee hereby acknowledges that, as owner and in the best interests of the Stanford Research Park, Lessor may find it necessary or convenient from time to time to apply for entitlements, seek rezoning, or otherwise endeavor to negotiate agreements with the governmental entities having jurisdiction over the Stanford Research Park. Lessee agrees that so long as Lessor's efforts do not (i) have a material adverse impact on Lessee's investment in, or the use, operation, value or marketability of the Premises, (ii) discriminate against the Premises or disproportionately burden the Premises as compared to other properties in the Stanford Research Park, or (iii) cause Lessee to incur any cost or expense in excess of \$100,000, Lessee shall not publicly oppose or object to any such efforts by Lessor.

ARTICLE 4. ACCEPTANCE OF PREMISES

Section 4.1 Lessee's Due Diligence . Prior to entering into this Lease, Lessee has made a thorough, independent examination of the Premises and all matters relevant to Lessee's decision to enter into this Lease, and Lessee is thoroughly familiar with all aspects of the Premises and is satisfied that they are in an acceptable condition and meet Lessee's needs. Without in any way limiting the generality of the foregoing, Lessee's inspection and review has included, to the extent that Lessee in its sole discretion has deemed necessary or appropriate:

(a) all matters relating to title; all municipal and other legal requirements such as taxes, assessments, zoning, use permit requirements and building codes;

(b) the physical condition of the Premises, including the soils and groundwater, any other geological conditions, engineering data (including, but not limited to, engineering evaluations of the Improvements), the presence or absence of Hazardous Substances on, under or in the vicinity of the Premises, and all other physical and functional aspects of the Premises;

(c) the boundaries of the Premises and all easements and access rights to which the Premises are subject;

(d) the development potential of the Premises and/or the zoning, land use, or other legal status of the Premises or compliance with any public or private restrictions on the use of the Land, as the same are in effect as of the Commencement Date, or may be hereafter modified, amended, adopted, published, promulgated or supplemented; or the compliance of the Land or Improvements with any Applicable Laws;

(e) the availability, existence, quality, nature, adequacy and physical condition of utilities servicing the Premises;

(f) Lessee's ability to obtain appropriate licenses and satisfy all licensing requirements under Applicable Laws;

(g) all material documents relating to the ownership and operation of the Premises; and

(h) the economics of the business Lessee intends to conduct on the Premises, including without limitation, market conditions and financial viability.

Section 4.2 Acceptance of the Premises . Lessee acknowledges that Lessor has made no representations or warranties, express or implied, regarding the Premises or matters affecting the Premises, whether made by Lessor, on Lessor's behalf or otherwise, including, without limitation, the physical condition of the Premises, title to, or the boundaries of the Premises, pest control matters, soil conditions, the presence, existence or absence of Hazardous Substances on or in the vicinity of the Premises, compliance of the Premises and Improvements with Applicable Laws, structural and other engineering characteristics (including seismic damage) of the Premises, traffic patterns, market data, economic conditions or projections, the availability of utilities, the development potential of the Premises, the suitability of the Premises for the intended use, the likelihood of deriving business from or other characteristics of The Leland Stanford Junior University, the economic feasibility of the business Lessee intends to conduct on the Premises, or any other matter pertaining to the Premises or the market and physical environments in which the Premises are located. Lessee acknowledges: (a) Lessee is a sophisticated real estate operator and owner with sufficient experience and expertise to evaluate the Premises and the operations conducted on the Premises and the risks associated with acquiring a leasehold interest in the Premises upon the terms and conditions set forth herein; (b) Lessee has received sufficient information and had adequate time to make such an evaluation; (c) Lessee has entered into this Lease with the intention of relying upon its own investigation or that of third parties with respect to the physical, environmental, economic and legal condition of the Premises; (d) in connection with its investigations and inspections of the Premises, Lessee has had the opportunity to obtain the advice of advisors and consultants, including but not limited to environmental consultants, engineers and geologists, soils and seismic experts, to conduct such environmental, geological, soil, hydrology, seismic, physical, structural, mechanical and other inspections of the Premises as Lessee deemed to be necessary, and that Lessee has reviewed thoroughly the reports of such advisors and consultants, as well as all materials and other information given or made available to Lessee by Lessor and by public and governmental entities; and (e) Lessee is not relying upon any statements, representations or warranties of any kind, other than those specifically set forth in this Lease. Lessee further acknowledges that it has not received from or on behalf of Lessor any accounting, tax, legal, architectural, engineering, property management

or other advice with respect to this transaction and is relying solely upon the advice of third party accounting, tax, legal, architectural, engineering, property management and other advisors. Lessee agrees and acknowledges that any surveys, reports, studies, plans or other documentary information about the Premises that may have been delivered to Lessee by Lessor were delivered merely as a courtesy, and without any representation or warranty relating to the validity of such documents; Lessee has not relied on such documents, and Lessee is responsible for verifying the accuracy and completeness of such documents and any information contained therein. Lessee has satisfied itself as to such suitability and other pertinent matters by Lessee's own inquiries and tests into all matters relevant in determining whether to enter into this Lease. Except as otherwise specifically provided in this Lease, Lessee accepts the Premises in its existing condition and hereby expressly agrees that if any remedial or restoration work is required in order to conform the Premises to the requirements of Applicable Laws, Lessee shall assume sole responsibility for any such work. **Lessee hereby accepts a leasehold interest in the Premises in its "AS IS" condition and "WITH ALL FAULTS".**

ARTICLE 5. ASSIGNMENT OF MDA RIGHTS

Section 5.1 Mayfield Development Agreement. Lessor and City are the parties to that certain Development Agreement dated May 24, 2005 and recorded on June 28, 2005 in the Official Records as Document No. 18444398 (the "**Mayfield Development Agreement**"). Pursuant to the terms and conditions of the Mayfield Development Agreement, Lessor holds the vested right to demolish and relocate 300,000 square feet of space (defined as "Replacement Square Footage" in the Mayfield Development Agreement). The Mayfield Development Agreement designates certain rights to develop 100,000 square feet of space as "**Phase 1 Square Footage**" and the additional right to develop 200,000 square feet of space as "**Phase 2 Square Footage**". Additionally, the Mayfield Development Agreement gives Lessor the right to designate 1,200,000 square feet of existing improvements in the Stanford Research Park as "**Associated Square Footage**", which can be redeveloped in accordance with its terms. Pursuant to the Mayfield Development Agreement, Lessor may designate a site as a Designated Site to receive Phase 2 Square Footage and Associated Square Footage at any time, but may not construct Phase 2 Square Footage until certain conditions are satisfied pursuant to the Mayfield Development Agreement that allow the Phase 2 Square Footage to become available, and which cannot occur earlier than 2014 (the "**Triggering Event**").

Section 5.2 Designated Site. Lessee shall develop a public relations and communications plan that explains the designation of the Premises as a "**Designated Site**" (as defined in the Mayfield Development Agreement), and the planned redevelopment of the Premises. Lessee shall submit such plan to Lessor for pre-approval, and Lessor shall either approve or disapprove such plan within ten (10) business days after receipt, which approval will not be unreasonably withheld. If Lessor disapproves such plan, Lessor shall provide reasonably detailed comments regarding any Lessor-required modifications, and Lessee shall resubmit modified plans to Lessor for approval or disapproval pursuant to this Section until approved by Lessor. Within ten (10) business days after Lessor has approved such plans, Lessor shall notify City that it has designated the Premises as a Designated Site. Such designation shall not be revoked by Lessor except as provided in Section 5.6 below.

Section 5.3 Excess Site Coverage. Notwithstanding the fact that the 100,000 square feet of Phase 2 Square Footage cannot be constructed until the Triggering Event, once the Premises has been designated a Designated Site, Lessor shall, subject to approval by the City, allow Lessee to exceed the site coverage on the Premises in accordance with Section 6.3.3 of

the Mayfield Development Agreement. Prior to the Triggering Event, Lessor shall not initiate, and Lessor shall use best efforts to prevent, any amendment of the Mayfield Development Agreement or a Lessor default under the Mayfield Development Agreement that affects Lessee's right to legally exceed the site coverage on the Premises as currently permitted under the Mayfield Development Agreement.

Section 5.4 Designated Project. Once the Premises has been designated a Designated Site, Lessee shall prepare a master plan for its proposed improvements on the Premises (the "**MDA Improvements**"), including use of the 100,000 square feet of Phase 2 Square Footage and after Lessor's approval of such Additional Improvements and Alterations pursuant to Article 12, Lessee shall apply for City approval of the master plan. Once the City has approved Lessee's master plan, Lessor shall designate the MDA Improvements as one or more "**Designated Project(s)**" under the Mayfield Development Agreement, and may designate up to 400,000 square feet of existing improvements identified for redevelopment in Lessee's notice as Associated Square Footage. Such designations shall not be revoked by Lessor except as provided in Section 5.6 below.

Section 5.5 Assignment of MDA Rights. Upon the occurrence of the Triggering Event, Lessor will assign to Lessee and Lessee will assume from Lessor the right and obligation to develop 100,000 square feet of Phase 2 Square Footage, along with (a) any Associated Square Footage that is reasonably required to fulfill Lessee's redevelopment plans, which Lessee can use in its sole discretion, but in no event more than 400,000 square feet of Associated Square Footage, and (b) the rights to exceed the otherwise permitted floor area ratio on the Premises in accordance with and subject to the limitations of Section 6.3.3 of the Mayfield Development Agreement (collectively, the "**MDA Rights**"), all in accordance with the remaining provisions of this Article 5 and with the Mayfield Development Agreement. Within ten (10) business days after the occurrence of the Triggering Event, but no sooner than January 1, 2014, Lessor shall notify Lessee that the Triggering Event has occurred and the date of such occurrence (the "**MDA Assignment Date**"). Lessor shall deliver with such notice an assignment and assumption agreement in substantially the form of the attached **Exhibit C**, which Lessee shall execute within ten (10) business days after receipt from Lessor; provided that Lessee's failure to do so shall not in any way affect either party's rights or obligations under this Article 5. As of the MDA Assignment Date, and pursuant to Section 7.2, Lessee shall commence paying MDA Rent. Additionally, Lessor and Lessee shall take such other actions as are reasonably required to effectuate assignment of the MDA Rights to Lessee.

Section 5.6 Failure to Construct MDA Improvements. Lessee shall obtain the entitlements for and undertake construction of the MDA Improvements so that the MDA Improvements are completed prior to the expiration of the Mayfield Development Agreement, or within five (5) years after the MDA Assignment Date if the MDA Assignment Date is less than five (5) years prior to the end of such term, and continued construction is permitted by the City. Lessee shall bear all costs of such entitlement and construction, and shall be solely responsible for compliance with the Mayfield Development Agreement with respect to the MDA Rights and MDA Improvements. Lessor shall have no right to terminate this Lease in the event Lessee fails to construct the MDA Improvements. However, if Lessee fails to complete such construction during the term of the Mayfield Development Agreement, or within five (5) years after the MDA Assignment Date if the MDA Assignment Date is less than five (5) years prior to the end of such term, and continued construction is permitted by the City, Lessee shall pay to Lessor the liquidated damages described in Section 5.7 below; provided that if Lessor has initiated or failed to use best efforts to prevent an amendment of the Mayfield Development Agreement that reduces the term of the Mayfield Development Agreement, Lessor shall be deemed to have

waived its rights to such liquidated damages. Additionally, if Lessee does not commence construction of the MDA Improvements by the fifth (5th) anniversary of the MDA Assignment Date, subject to Force Majeure, Lessor may elect, by delivery of written notice to Lessee (the “**Termination Notice**”), to require that Lessee reassign the MDA Rights to Lessor (or a portion thereof, if Lessor cannot require that all of the MDA Rights be reassigned pursuant to the Mayfield Development Agreement), which Lessee shall do within ten (10) business days after receipt of the Termination Notice, and only to the extent such assignment does not cause a default under the Mayfield Development Agreement or cause Lessee to be in violation of City zoning ordinances. From and after the date of such reassignment of the MDA Rights to Lessor, Lessee shall no longer be obligated to pay the MDA Rent or the liquidated damages provided in Section 5.7, and Lessee shall have no right to build the MDA Improvements. Lessee acknowledges that Lessor has no obligation to require reassignment of the MDA Rights, and that unless and until Lessor does so, Lessee shall remain obligated to pay the MDA Rent and build the MDA Improvements.

Section 5.7 Liquidated Damages. LESSOR AND LESSEE ACKNOWLEDGE AND AGREE THAT LESSOR’S ACTUAL DAMAGES, IN THE EVENT OF LESSEE’S FAILURE TO CONSTRUCT THE MDA IMPROVEMENTS AS REQUIRED UNDER SECTION 5.6, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, IN THE EVENT LESSEE FAILS TO CONSTRUCT THE MDA IMPROVEMENTS AS REQUIRED, AND LESSOR DOES NOT ELECT TO REQUIRE REASSIGNMENT OF THE MDA IMPROVEMENTS PURSUANT TO SECTION 5.6, THE PARTIES HAVE AGREED, AFTER NEGOTIATION, THAT LESSEE SHALL PAY TO LESSOR WITHIN TEN (10) BUSINESS DAYS AFTER LESSOR DELIVERS A WRITTEN DEMAND THEREFOR, AN AMOUNT EQUAL TO \$75 PER SQUARE FOOT OF THE PHASE 2 SQUARE FOOTAGE THAT LESSEE WAS REQUIRED BUT FAILED TO CONSTRUCT. THE FOREGOING PAYMENT SHALL CONSTITUTE LESSOR’S SOLE AND EXCLUSIVE RIGHT TO DAMAGES RESULTING FROM LESSEE’S FAILURE TO CONSTRUCT THE MDA IMPROVEMENTS, AND THE PARTIES AGREE THAT THIS SUM REPRESENTS A REASONABLE ESTIMATE OF THE ACTUAL DAMAGES LESSOR WOULD INCUR IN THE EVENT OF LESSEE’S FAILURE TO CONSTRUCT THE MDA IMPROVEMENTS. BY INITIALING IN THE SPACES WHICH FOLLOW, LESSOR AND LESSEE SPECIFICALLY AND EXPRESSLY AGREE TO ABIDE BY THE TERMS AND PROVISIONS OF THIS SECTION 5.7 GOVERNING LIQUIDATED DAMAGES.

Lessor (/s/ JS)

Lessee (/s/ MP)

Section 5.8 Indemnity. Lessor and Lessee acknowledge that the Mayfield Development Agreement provides a mechanism for the partial release of Lessor from liability upon an assignment of rights under the Mayfield Development Agreement to which the City has consented, which may result in no breach or default under the Mayfield Development Agreement by either Lessor or Lessee being attributed to the other. In the event the City does not grant a partial release to Lessor in connection with the assignment of rights to Lessee, Lessor and Lessee hereby each agree to indemnify, protect, defend and save and hold harmless the other from and against, and shall reimburse the other for, any and all claims, demands, losses, damages, costs, liabilities, causes of action and expenses, including, without limitation, reasonable attorneys’ fees and expenses incurred in any way in connection with or arising from, in whole or in part, any default by the indemnifying party in the observance or performance of any of the terms, covenants or conditions of the Mayfield Development Agreement on the indemnifying party’s part to be observed or performed. The parties agree that Lessee shall be responsible for the observance and performance of only those terms,

covenants and conditions of the Mayfield Development Agreement allocable to the MDA Rights, and that Lessor shall be responsible for the observance and performance of all other terms, covenants and conditions of the Mayfield Development Agreement.

Section 5.9 Assignment. Lessee may assign its rights and obligations with respect to the MDA Rights in connection with a Transfer to which Lessor has consented pursuant to Article 24, but in no event shall Lessee have the right to assign the MDA Rights to any person or entity who is not concurrently assuming all of Lessee's rights and obligations under this Lease in connection with such Transfer, and any such purported assignment shall be void.

Section 5.10 Communications. Lessee shall obtain the prior written approval of Lessor for (a) all applications to any government authority and (b) all written communication requesting written acknowledgment from any government authority or setting forth a position of Lessee to the government authority (whether submitted by hard copy or email) regarding the interpretation of the Mayfield Development Agreement or having bearing on the Mayfield Development Agreement, including without limitation, written communication regarding the MDA Rights, proposed or requested traffic or circulation studies or proposed or requested conditions of approval. Lessee shall provide to Lessor in connection with any request for approval a copy of any such submission, application, or written communication together with complete copies of all correspondence, written materials, plans, studies, maps and applications that Lessee intends to provide to such government authority. The provisions of Section 12.2(e) shall apply to Lessor's approval under this Section 5.10. This Section 5.10 shall not apply to telephone communications.

Section 5.11 Separate Parcels. The Premises and the 3401 Hillview Premises shall be maintained as separate and independent leasehold parcels. Lessee shall seek separate entitlements for each parcel, and in no event shall the Premises or the 3401 Hillview Premises be developed or redeveloped so that either the Premises or the 3401 Hillview Premises fails to meet City zoning requirements, including without limitation parking requirements, on a stand-alone basis. Lessee shall not enter into any agreement with 3401 Hillview LLC or the City that burdens either the Premises or the 3401 Hillview Premises for the benefit of the other premises. Notwithstanding the foregoing, Lessor recognizes that the roadways, sidewalks and landscaping located on the Premises are and will continue to be integrated with the 3401 Hillview Premises, subject to Lessor's approval rights for Additional Improvements and Alterations as provided in Article 12. Lessee may propose to Lessor a parcel line adjustment between the Premises and the 3401 Hillview Premises for the purpose of accommodating its proposed Improvements on the Premises; provided that each of the proposed parcels resulting from the lot line adjustment meets all City zoning requirements on a stand-alone basis. Lessor shall give a request for a lot line adjustment reasonable consideration, but shall have no obligation to consent thereto.

ARTICLE 6. TERM

The Term shall be for the period stated in Article 1, commencing on the Commencement Date and expiring at 11:59 p.m. on the Expiration Date or on such earlier date as this Lease may be terminated as hereinafter provided.

ARTICLE 7. RENT

Section 7.1 Minimum Annual Rent . Beginning on the Effective Date, and on the first day of each calendar month during the Term, Lessee shall pay to Lessor as rent for the use of the Premises for such month an amount equal to one-twelfth ($1/12^{\text{th}}$) of the annual fixed

minimum rent (“ **Minimum Annual Rent** ”), as specified in Article 1, at the address for Lessor set forth in Article 1, or at such other place as Lessor shall designate, without any prior demand therefor and without any deduction or offset whatsoever (except as otherwise expressly provided herein). Minimum Annual Rent shall be prorated for any partial months at the beginning or end of the Term, and for any partial Lease Years at the beginning or end of the Term. Minimum Annual Rent shall be increased as of the first day of the calendar month in which the first anniversary of the Effective Date occurs, and on each twelve (12) month anniversary of such date thereafter (each, an “ **Adjustment Date** ”), by three percent (3%) of the Minimum Annual Rent in effect immediately before the Adjustment Date. Each payment of Minimum Annual Rent shall be allocated to and accrue over the calendar month (or partial calendar month) during which such payment is due.

Section 7.2 MDA Rent . Beginning on the MDA Assignment Date, Lessee shall pay to Lessor, in addition to Minimum Annual Rent, additional rent in the amount set forth in Article 1 (the “ **MDA Rent** ”). MDA Rent shall be paid in monthly installments of one-twelfth (1/12th) of the applicable annual MDA Rent and shall be delivered in the same manner as required for payment of Minimum Annual Rent. The MDA Rent shall be prorated for any partial month at the date of assignment and for any partial Lease Years at the date of assignment or at the end of the Term. The MDA Rent shall be increased as of the first day of the calendar month in which the first anniversary of the MDA Assignment Date occurs, and on each twelve (12) month anniversary of such date thereafter (each, an “ **MDA Adjustment Date** ”), by two percent (2%) of the MDA Rent in effect immediately before the MDA Adjustment Date.

Section 7.3 Late Payments . Any unpaid Rent hereunder shall bear interest from the date which is five (5) days after the date the same is due until paid at the Interest Rate. In addition, Lessee recognizes that late payment of any Rent due hereunder will result in administrative expense to Lessor, the extent of which expense is difficult and economically impracticable to determine. Therefore, Lessee agrees that if Lessee fails to pay any Rent within five (5) days after the date the same is due and payable, an additional late charge of five percent (5%) of the sums so overdue shall become immediately due and payable. Lessee agrees that the late payment charge is a reasonable estimate of the additional administrative costs and detriment that will be incurred by Lessor as a result of such failure by Lessee. In the event of nonpayment of interest or late charges on overdue Rent, Lessor shall have, in addition to all other rights and remedies, the rights and remedies provided herein and by law for nonpayment of rent. Notwithstanding the foregoing, Lessor agrees to waive the assessment of a late payment charge unless and until the third (3rd) time a late payment occurs in any Lease Year.

ARTICLE 8. ADDITIONAL RENT

Section 8.1 Additional Rent . Each and every sum payable to Lessor pursuant to this Lease (other than Minimum Annual Rent and MDA Rent), and each and every sum which Lessor pays to any third party to cure a default of Lessee under this Lease shall be additional rent (“ **Additional Rent** ”).

Section 8.2 Property Taxes . Without limiting the foregoing, Additional Rent shall include, and Lessee agrees to bear, discharge and pay to the relevant authority or entity, in lawful money of the United States, without offset or deduction, as the same becomes due, and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or special, or ordinary or extraordinary, of every name, nature and kind whatsoever, including all governmental charges of every name, nature or kind

that may be levied, assessed, charged or imposed or may be or become a lien or charge upon the Premises or any part thereof; or upon the rent or income of Lessee; or upon the use or occupancy of the Premises; or any document creating or transferring an estate or interest in the Premises; upon any of the buildings or improvements that are or are hereafter placed, built or newly constructed upon the Premises; or upon the leasehold of Lessee or upon the estate hereby created; or upon Lessor by reason of its ownership of the fee underlying this Lease (but not including any franchise, transfer, inheritance, or capital stock taxes or income taxes measured by the net income of Lessor unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Lessor as a substitute for, in whole or in part, any other tax that would otherwise be the responsibility of Lessee). All of the foregoing taxes, assessments and other charges that are the responsibility of Lessee are herein referred to as “ **Property Taxes** ”. Lessee’s obligations described above include, but are not limited to, the payment of any bonds or charges imposed or required by any governmental agency or department with respect to the Premises, by reason of the proposed or actual use, treatment, storage, discharge, cleanup or disposal, or oversight thereof, of Hazardous Substances by any governmental agency, Lessee, or any subtenant, tenant or licensee claiming through Lessee; provided, however, that this provision shall not, and shall not be deemed to permit Lessee to use, treat, store or dispose of any such substances on the Premises, except as otherwise expressly provided in Article 19. If at any time during the Term, under any Applicable Laws, any tax is levied or assessed against Lessor directly, in substitution in whole or in part for Property Taxes, Lessee covenants and agrees to pay and discharge such tax. Notwithstanding the foregoing or any provision hereof to the contrary, the term “Property Taxes” shall not include any “in lieu” payments that Lessor may agree to make in substitution for real estate taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or impositions due to Lessor’s use of property that is subject to its tax-exempt status, nor shall Lessee have any liability for any payment thereof.

Section 8.3 Payment . Lessee shall obtain and deliver to Lessor, promptly upon request therefor, satisfactory evidence of payment of all Property Taxes.

Section 8.4 Right to Contest . Lessee shall have the right to contest, by appropriate proceedings and at Lessee’s sole cost and expense, the amount or validity, in whole or in part, of any Property Taxes. Lessor shall execute or provide such documents or information to Lessee as are reasonably requested by Lessee in connection with such contest, so long as Lessee pays Lessor’s actual, reasonable, third party, out-of-pocket expenses in connection therewith; provided, however, that Lessor shall have no obligation to join in any such proceedings. In the event the applicable taxing authority having jurisdiction over the contest proceedings allows the posting of security or some other method of deferring payment of the disputed Property Taxes, Lessee may do so; otherwise Lessee shall not postpone or defer payment of any disputed Property Taxes but shall pay such Property Taxes in accordance with Section 8.2 notwithstanding such contest. Lessee shall indemnify and defend Lessor against and hold Lessor harmless from and against any and all claims, demands, losses, costs, liabilities, damages, penalties and expenses, including, without limitation, reasonable attorneys’ fees and expenses, arising from or in connection with any such proceedings.

Section 8.5 Proration . Any Property Taxes relating to a fiscal period of any taxing authority, only a part of which period is included within the Term, shall be prorated as between Lessor and Lessee so that Lessor shall pay the portion thereof attributable to any period outside the Term, and Lessee shall pay the portion thereof attributable to any period within the Term.

Section 8.6 Assessment Proceedings . If at any time during the Term any governmental authority shall undertake to create an improvement or special assessment district, the proposed boundaries of which shall include the Premises (the “ **Proposed District** ”), Lessee shall be entitled to appear in any proceeding relating thereto and to exercise all rights of a landowner to have the Premises excluded from the Proposed District, or to determine the degree of benefit to the Premises resulting therefrom. In connection with Lessee’s ability to pursue the exercise of such rights, Lessor shall execute or provide such documents or information to Lessee as are reasonably requested by Lessee, so long as Lessee pays Lessor’s actual, reasonable, third party, out-of-pocket expenses in connection therewith. However, Lessor retains the independent right, but shall be under no obligation, to appear in any such proceeding for the purpose of seeking inclusion of the Premises in, or exclusion of the Premises from, any Proposed District or of determining the degree of benefit therefrom to the Premises. The party receiving any notice or other information relating to the Proposed District shall promptly advise the other party in writing of such receipt. If the Proposed District is ultimately formed and affects the Premises, Lessee may pay any resulting bonds over the maximum period allowed by law, and shall be liable only for any installments that become due during the Term.

Section 8.7 Transit Fees . Without limiting the foregoing, Additional Rent shall also include and Lessee agrees to bear, discharge and pay during the Term, in lawful money of the United States, without offset or deduction, its proportionate share of the reasonable cost of any commuter transit services or traffic mitigation programs that Lessor implements in the Stanford Research Park, including without limitation charges for service and surcharges imposed directly or indirectly on the Premises by any governmental agencies on or with respect to transit (including transit services which may be provided in the future to occupants of the Stanford Research Park) or automobile usage or parking facilities (collectively, “ **Transit Fees** ”), to the extent that such transit services or traffic mitigation programs serve the Premises. Lessee’s share of Transit Fees shall be assessed pro rata and on a non-discriminatory basis, based on a reasonable standard applied in a non-discriminatory manner by Lessor (for example, based on the rentable area of the Improvements as compared to the total rentable area of the Stanford Research Park [or the area being served by the service, if less than the entire Stanford Research Park], or based on the average employee headcount in the Premises as compared to the overall employee density of the Stanford Research Park [or the area being served by the service, if less than the entire Stanford Research Park]). In no event shall Lessee’s share of Transit Fees exceed ten cents (\$0.10) per year per rentable square foot of Improvements located on the Premises, subject to annual adjustment (as of the first day of each Lease Year commencing on the Adjustment Date) to reflect percentage increases or decreases in the Index. Notwithstanding the foregoing or any other provision of this Lease to the contrary, (a) Lessee shall not be required to pay any Transit Fees for programs that do not serve the Premises, and (b) Lessee shall not be required to pay any Transit Fees at any time Lessee is operating its own commuter transit service, which offers peak hour routes to the California Avenue train station, (or the closest mass transit station in the event the California Avenue train station is decommissioned) and a daily number of trips that are reasonably comparable to those being offered under Lessor’s transit program, and which are adequate to obviate any Transit Fee. In the event Lessor determines in its reasonable discretion that any Lessee transit program then being provided is not comparable to Lessor’s then-existing program, Lessor shall have the right to require Lessee to pay Transit Fees as provided above.

ARTICLE 9. NET LEASE; NO COUNTERCLAIM OR ABATEMENT

Section 9.1 Net Lease . The Rent due hereunder shall be absolutely net to Lessor and shall be paid without assertion of any counterclaim, offset, deduction or defense and without abatement, suspension, deferment or reduction. Lessor shall not be expected or required under any circumstances or conditions whatsoever, whether now existing or hereafter arising, and whether now known or unknown to the parties, to make any payment of any kind whatsoever with respect to the Premises or be under any obligation or liability hereunder, except if and solely to the extent expressly so provided elsewhere in this Lease.

Section 9.2 Project Costs . In addition to Minimum Annual Rent and MDA Rent, Lessee shall pay or fund when due all Property Taxes (subject to Lessee's right to contest pursuant to Section 8.4), insurance premiums and deductibles, debt service, permit and license fees, costs of utilities and services, maintenance, repair, replacement, rebuilding, restoration, management, marketing and leasing services incurred by Lessee, operations and other costs of any type whatsoever accruing at any time during the Term in connection with the ownership, marketing, leasing, operation, management, maintenance, repair, replacement, restoration, use, occupancy or enjoyment of the Premises (collectively, "**Project Costs**"). Lessee shall pay all Project Costs directly, and shall contract directly for all required services, utilities and other items described herein; provided, however, that Lessor shall have the right to contract for any such services, utilities or other items if Lessee has failed to do so, or has failed to make any payment of Project Costs which is due and owing. Lessee shall provide Lessor, upon written request, with copies of invoices, receipts, canceled checks and/or other documentation reasonably substantiating Lessee's payment of all Project Costs.

Section 9.3 Expenses of Lessor . Lessee shall pay to Lessor, within ten (10) days after the date of mailing or personal delivery of statements for all reasonable out-of-pocket, third party costs and expenses, including attorneys' fees, (collectively, "**Costs**") paid or incurred by Lessor for the following: (a) Costs required to be paid by Lessee pursuant to this Lease (including without limitation any indemnity provision), (b) subject to Section 40.7, Costs related to the enforcement of any of Lessee's covenants or obligations in this Lease, (c) Costs incurred in remedying any breach of this Lease by Lessee, (d) Costs incurred in recovering possession of the Premises or any part of the Premises after an Event of Default, (e) Costs incurred in collecting or causing to be paid any delinquent rent, taxes or other charges payable by Lessee under this Lease, and (f) Costs incurred in connection with any litigation (other than condemnation proceedings) commenced by or against Lessee to which Lessor shall without fault be made a party. All such costs, expenses and fees shall constitute Additional Rent. Lessee's obligations under this Section shall survive the expiration or earlier termination of the Term.

Section 9.4 No Release . Except as otherwise expressly provided herein, this Lease shall continue in full force and effect, and the obligations of Lessee hereunder shall not be released, discharged or otherwise affected, by reason of: (a) any damage to or destruction of the Premises or any portion thereof or any Improvements thereon, or any Appropriation; (b) any restriction or prevention of or interference with any use of the Premises or the Improvements or any part thereof; (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to Lessor, Lessee or any constituent partner of Lessee or any subtenant, licensee or concessionaire or any action taken with respect to this Lease by any trustee or receiver, or by any court, in any proceeding; (d) any claim that Lessee or any other person has or might have against Lessor; (e) any failure on the part of Lessor to perform or comply with any of the terms hereof or of any other agreement with Lessee or any

other person; (f) any failure on the part of any subtenant, licensee, concessionaire, or other person to perform or comply with any of the terms of any sublease or other agreement between Lessee and any such person; (g) any termination of any sublease, license or concession, whether voluntary or by operation of law; or (h) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, in each case whether or not Lessee shall have notice or knowledge of any of the foregoing.

Section 9.5 Independent Covenants . The obligations of Lessee under this Lease shall be separate and independent covenants, and each covenant of Lessee shall be both a covenant and a condition. Except to the extent expressly provided elsewhere in this Lease, Lessee hereby waives, to the maximum extent permitted by Applicable Laws, any rights that it may now or in the future have to quit or surrender the Premises, to terminate this Lease, or to any abatement, deferment, diminution, reduction or suspension of Rent on account of any event or circumstance, including without limitation any rights it might otherwise have under the provisions of California Civil Code Sections 1932 and 1933, or any amended, similar or successor laws.

ARTICLE 10. USE AND OPERATION OF PREMISES

Section 10.1 Permitted Use . Subject to all provisions and limitations contained herein, the Premises and all Improvements at any time located thereon shall at all times during the Term be used and operated for the purposes stated in Article 1, and for no other purpose. The parties hereby acknowledge and agree that Lessee's covenant that the Premises shall be used solely for the purposes stated in Article 1 and for no other purpose is material consideration for Lessor's agreement to enter into this Lease. The parties further acknowledge and agree that any violation of said covenant shall constitute a material breach of this Lease and entitle Lessor to exercise any and all of its rights and remedies under this Lease or otherwise at law or in equity. For the purposes of this Lease, "research and development" uses means uses primarily related to the study, testing, engineering, design, analysis and experimental development of products, processes, or services related to current or new technologies. "Research and development" may include limited manufacturing, fabricating, processing, assembling or storage of prototypes, products or materials, or similar related activities, where such activities are incidental to research, development or evaluation. Examples of research and development uses include, but are not limited to, computer software and hardware firms, electronic research firms, biotechnical firms, medical device firms, and pharmaceutical research laboratories. Related administrative uses, such as (a) finance, marketing, sales, accounting, or purchasing; (b) provisions of services to others on or off-site; and (c) related educational uses, may also be included; provided they remain supportive to the primary uses of research and development conducted on the Premises or the 3401 Hillview Premises and are part of the same research and development firm.

Section 10.2 Limited Non-R&D Use . The parties acknowledge that pursuant to a Lease between Lessor and 3401 Hillview LLC dated as of February 2, 2006 (the "**3401 Hillview Lease** ") with respect to certain premises commonly known as 3401 Hillview Avenue, Palo Alto, California (the "**3401 Hillview Premises** "), up to 115,000 rentable square feet of the 3401 Hillview Premises may be subleased for general office use unrelated to research and development, which may include, without limitation, corporate, executive, financial, legal and/or non-medical professional offices (the "**Non-R&D Use** "). Notwithstanding any provision hereof to the contrary, provided that the Premises and the 3401 Hillview Premises continue to be leased or entirely occupied (except for the proposed sublease space or space previously subleased in accordance with this Lease or the 3401 Hillview Lease) by the same entity, and/or an Affiliate of

such entity, Lessee may, subject to Article 24, enter into a Permitted Sublease for a portion of the Premises for Non-R&D Use; provided that the aggregate of all Non-R&D Use of space at the Premises and the 3401 Hillview Premises does not exceed a total of 115,000 rentable square feet. At any time that the maximum amount of square footage subject to Non-R&D Use is subleased on the Premises and/or the 3401 Hillview Premises, and upon any change in ownership that results in the Premises and the 3401 Hillview Premises no longer being leased or entirely occupied (except for space previously subleased in accordance with this Lease or the 3401 Hillview Lease) by the same entity, and/or an Affiliate of such entity, Lessee shall have no right to enter into subleases for Non-R&D Use (provided that current subtenants shall not be required to vacate their Premises until the expiration or earlier termination of their subleases). Lessee shall notify Lessor in its request for approval of all proposed subleases pursuant to Section 24.2 whether or not the proposed sublease will be for Non-R&D Use, and if the proposed sublease is approved by Lessor, how many rentable square feet space in the Premises and the 3401 Hillview Premises combined will be subleased for Non-R&D Use. Additionally, with respect to other Permitted Subleases, which are restricted to research and development use, the subleased space may be used for the primary purpose of operating or maintaining an administrative office use, but only if such administrative office use is in support of research and development conducted by the subtenant on the Premises, or by the subtenant elsewhere in the Stanford Research Park.

Section 10.3 Founding Grant . Notwithstanding any other provision of this Lease, Lessee's use of the Premises shall at all times comply with the requirements and restrictions of the Grant of Endowment of the Leland Stanford Junior University (the "**Founding Grant**"), and all subsequent amendments thereto; provided that, Lessee shall not be in breach of this Lease due to any subsequent amendment of the Founding Grant which conflicts or is inconsistent with the terms and conditions of this Lease, unless the applicable amendment occurs through a legislative or judicial act.

Section 10.4 Prohibited Uses . Without limiting the applicability of Sections 10.1, 10.2 and 10.3 or any other provision of this Lease, Lessee shall not do any act, or allow any subtenant or other user of the Premises to do any act, and in no event shall the Premises be used for any purpose that: (a) in any manner causes, creates, or results in a nuisance or waste; (b) is of a nature to involve substantial hazard, such as the manufacture or use of explosives, chemicals or other products that may explode, or that otherwise may harm the health or welfare of persons or the physical environment; (c) would or could invalidate or be in conflict with the provisions of any fire or other insurance policies covering the Premises; (d) would or could result in a refusal by insurance companies of good standing to insure the Premises in amounts required hereunder; (e) involves any Release of Hazardous Substances; or (f) violates any covenant, condition, agreement or easement applicable to the Premises.

Section 10.5 Impacts on Neighboring Property. Lessee shall use reasonable efforts to maintain cooperative relations with the occupants of neighboring properties, including residential neighborhoods in the vicinity of the Premises. Such cooperation shall include, as reasonably requested by Lessor: (a) sending a representative to community meetings; provided that Lessee receives reasonable advance notice of such meetings, (b) responding to complaints regarding operational issues (i.e. lighting, parking, noise, etc.), (c) designating a representative to handle any issues that may arise, and (d) advising Lessee's employees regarding issues of concern to Lessee's neighbors.

ARTICLE 11. LIMITATION ON EFFECT OF APPROVALS

All rights of Lessor to review, comment upon, approve, inspect or take any other action with respect to the Premises, or the design or construction of any Alterations to the Premises, or any other matter, are specifically for the benefit of Lessor and no other party. Lessor neither has nor assumes any liability, responsibility or obligation for, in connection with, or with respect to, any such approvals, and no review, comment, approval or inspection, right or exercise of any right to perform Lessee's obligations, or similar actions required or permitted by, of, or to Lessor hereunder, or actions or omissions of Lessor's Agents, or other circumstances shall give or be deemed to give Lessor any such liability, responsibility or obligation.

ARTICLE 12. IMPROVEMENTS, CONSTRUCTION OF ALTERATIONS

Section 12.1 Improvements. Lessor and Lessee hereby acknowledge and agree that Lessee's interest in the Improvements is subject to this Lease and the Improvements will revert to Lessor upon the expiration or earlier termination of this Lease.

Section 12.2 Additional Improvements and Alterations.

(a) Lessee shall have the right to construct additional Improvements on the Premises and to make Alterations to the existing Improvements, including, without limitation, the MDA Improvements (collectively "**Additional Improvements and Alterations**"); provided, however, that if any such Additional Improvements and Alterations (i) are reasonably expected to cost in excess of \$1,000,000.00 (increased during the Term by three percent (3%) per Lease Year); (ii) relate in whole or in part to any Lessee Environmental Activity; (iii) affect the structural integrity of the building undergoing such Additional Improvements and Alterations (including the foundation); (iv) materially affect the exterior appearance of the Premises; (v) require an environmental impact report (or its equivalent), or any application to a political jurisdiction for rezoning, general plan amendment, variance, conditional use permit or City Architectural Review Board approval (but not merely a building permit); or (vi) require Lessor's approval pursuant to any other provision of this Lease, then such proposed Additional Improvements and Alterations shall be subject to Lessor's prior written approval.

(b) Notwithstanding the foregoing, item (i) of subparagraph (a) of this Section 12.2 shall not apply to interior, non-structural Alterations to the Premises and Lessor's prior written approval of any interior, non-structural Alterations shall only be required if such Alterations would otherwise require approval under items (ii) through (vi) of subparagraph (a).

(c) All Additional Improvements and Alterations shall be at Lessee's sole cost and expense, and shall be subject to the terms of this Article 12 and of First Class quality. Lessee shall be responsible for any Hazardous Substance remediation or abatement work triggered by Additional Improvements and Alterations at the Premises.

(d) All Additional Improvements and Alterations, whether or not subject to Lessor's prior written approval, shall be subject to the provisions of Section 12.6.

(e) In each instance in this Article 12 in which Lessor's prior written approval is required, such approval shall not be unreasonably withheld, conditioned or delayed. Lessor shall use commercially reasonable efforts to respond to any request for approval within ten (10) business days after receiving Lessee's written request for such approval, along with any required accompanying plans, specifications, data or other information. In the event Lessor fails

to respond within such 10 business day period, Lessee may deliver to Lessor a written second request for approval, labeled as such. If Lessor fails to respond to the second request for approval within five (5) business days after receipt of the second request, Lessor's failure to respond shall be deemed approval of the applicable request for approval. Upon reasonable advance notice, during Lessor's review period, Lessee agrees to meet with Lessor's designated representative(s) to review such request for approval. In the event Lessor disapproves the matter which is the subject of Lessee's request, Lessor shall provide reasonable detail regarding the basis for such disapproval.

Section 12.3 Permits and Approvals . Lessee shall be solely responsible for obtaining, at its sole cost and expense, the approval of the City (and any other governmental agencies with jurisdiction over the Premises) for any general plan amendment, rezoning, variance, conditional use permit, building, electrical and plumbing permits, environmental impact analysis and mitigations imposed thereby, or other governmental action necessary to permit the development, construction and operation of any Additional Improvements and Alterations in accordance with this Lease. Notwithstanding the foregoing, Lessee shall apply for and prosecute any required governmental review processes for a general plan amendment, rezoning, variance or use permit only through and in the name of Lessor, or otherwise with the approval of Lessor, which shall not be unreasonably withheld, conditioned or delayed, and Lessee shall not submit any environmental impact report or other consultant's report containing information regarding Lessor, Lessor's lands or Lessor's tenants to any public agency without Lessor's prior written approval. Lessor, at no cost or expense to itself, shall reasonably cooperate with Lessee to the extent reasonably required to obtain the approval of the City for any proposed Additional Improvements and Alterations approved by Lessor hereunder. Lessee shall reimburse Lessor for Lessor's Administrative Fees in connection with such cooperation, which reimbursement shall be due and payable by Lessee to Lessor upon demand, provided that Lessee requested such cooperation. Nothing contained herein, however, shall permit or be deemed to permit Lessee to use the Premises for any purpose not expressly permitted under Section 10.1.

Section 12.4 Design . The following provisions shall apply to all Additional Improvements and Alterations requiring Lessor's approval pursuant to this Lease:

(a) The design of all such Additional Improvements and Alterations, including without limitation, the site plan, structural plans, landscaping plan, materials, colors, and elevations, shall be subject to Lessor's prior written approval.

(b) Prior to submittal to the City, Lessee shall submit to Lessor, for Lessor's review, four (4) duplicate sets of design drawings for the proposed Additional Improvements and Alterations, whether or not they are required by the City to commence the application for governmental design approval. The design drawings shall be subject to Lessor's prior written approval. Lessee shall not apply for any governmental approvals until after obtaining Lessor's prior written approval of the design drawings.

(c) Lessee acknowledges that prior to approving the design drawings for the proposed Additional Improvements and Alterations, Lessor may be obligated to meet and consult with certain committees and other persons within Lessor's organization. Lessee shall provide Lessor with such information and materials as Lessor may request, attend committee and other meetings with Lessor and other persons associated with Lessor, and take such other actions at Lessee's sole cost and expense as Lessor deems reasonably necessary to satisfy the requirements of such committees and other persons within Lessor's organization, and to otherwise respond to Lessee's request for approval of the proposed Additional Improvements and Alterations.

(d) Prior to finalizing any construction documents that differ in any material respect from any design or other construction documents previously approved by Lessor, Lessee shall submit to Lessor for Lessor's prior written approval four (4) duplicate sets of such documents, upon which any changes shall be indicated.

(e) If Lessor disapproves any item pursuant to this Article 12, Lessee shall make whatever changes are reasonably necessary to address the disapproved item and shall resubmit it for Lessor's written approval. Lessee shall not proceed with the disapproved item, or any item affected by the disapproved item, until Lessor has approved Lessee's changes. If Lessor and Lessee are unable to agree upon a resolution, Lessor and Lessee shall meet to attempt in good faith to resolve the dispute; provided, however, that Lessor's final determination shall prevail. Lessor may also, in its sole discretion, present its objections to the construction of any disapproved items to the City or other applicable governmental agency with jurisdiction.

(f) Prior to entering into a contract with any design architect, landscape architect or general contractor for any Additional Improvements and Alterations, Lessee shall obtain Lessor's prior written approval of the identity of each such design architect, landscape architect or general contractor. Each such contract shall contain provisions acceptable to Lessor that permit the contract to be assumed by Lessor or its designee, at Lessor's sole discretion, following a termination of this Lease. Any such assumption shall be on the same terms and conditions (including fees and prices) as set forth in the contract.

Section 12.5 Prerequisites to Commencement of Construction . In addition to all other requirements set forth in this Article, before commencing the construction of any Additional Improvements and Alterations (whether or not requiring Lessor's approval), and before any building materials have been delivered to the Premises by Lessee or under Lessee's authority, Lessee shall:

(a) Furnish Lessor with a true copy of Lessee's contract with the general contractor.

(b) Deliver to Lessor true copies of all documents evidencing the commitment of construction financing for any new construction, or evidence satisfactory to Lessor regarding other arrangements to provide for payment for work undertaken by Lessee.

(c) Procure or cause to be procured and keep in force during the course of construction the insurance coverage described below, subject to reasonable deductibles, and provide Lessor with certified copies of all such insurance, if requested by Lessor, or with the prior written approval of Lessor, certificates of such insurance in form satisfactory to Lessor. All such insurance shall comply with the requirements of this Article 12 and of Article 20.

(i) To the extent not covered by property insurance maintained by Lessee pursuant to Article 20, comprehensive "all risk" builder's risk insurance, including vandalism and malicious mischief, covering all Additional Improvements and Alterations in place on the Premises, all materials and equipment stored at the Premises and furnished under contract, and all materials and equipment that are in the process of fabrication at the premises of any third party or that have been placed in due course of transit to the Premises when such fabrication or transit is at the risk of, or when title to or an insurable interest in such materials or equipment has passed to, Lessee or its construction manager, contractors or subcontractors (excluding

any contractors', subcontractors' and construction managers' tools and equipment, and property owned by the employees of the construction manager, any contractor or any subcontractor), such insurance to be written on a completed value basis in an amount not less than the full estimated replacement value of the Additional Improvements and Alterations, as applicable.

(ii) Commercial liability insurance covering Lessee and Lessor, which insurance may be effected by endorsement, if obtainable, on the policy required to be carried pursuant to Article 20, including insurance for completed operations, elevators, owner's protective liability, products completed operations for three (3) years after the date of acceptance of the work by Lessee, broad form blanket contractual liability, broad form property damage and full form personal injury (including but not limited to bodily injury), covering the performance of all work at or from the Premises by Lessee, and in a liability amount not less than the amount at the time carried by prudent owners of comparable construction projects in Santa Clara County, but in any event not less than Five Million Dollars (\$5,000,000) combined single limit, which policy shall contain a cross-liability clause or separation of insureds provision, an endorsement deleting the property damage exclusion as to explosion, underground, and collapse hazards, and an endorsement providing incidental malpractice coverage, and shall include thereunder for the mutual benefit of Lessor and Lessee, bodily injury liability and property damage liability automobile insurance on any non-owned, hired or leased automotive equipment used in the construction of any work.

(iii) Worker's Compensation Insurance in the amounts and coverages required under workers' compensation, disability and similar employee benefit laws applicable to the Premises, and Employer's Liability Insurance with limits not less than One Million Dollars (\$1,000,000) or such higher amounts as may be required by law.

Section 12.6 General Construction Requirements.

(a) All construction and other work in connection with any Additional Improvements and Alterations shall be done at Lessee's sole cost and expense and in a prudent and First Class manner and with First Class materials. Lessee shall construct all Additional Improvements and Alterations in accordance with (i) all Applicable Laws, (ii) plans and specifications that are in accordance with the provisions of this Article 12 and all other applicable provisions of this Lease, and (iii) the requirements of the then-current Stanford Research Park Handbook promulgated from time-to-time by Lessor (the "**Handbook**"); provided that in the event of a direct conflict between the terms of this Lease and any amendment or modification to the Handbook, the terms of this Lease shall control, unless the applicable amendment or modification reflects any change in Applicable Laws, or does not materially adversely affect the operation or economic performance of the Premises for Lessee's intended use.

(b) Lessee shall give Lessor not less than fifteen (15) days notice of any excavation contemplated on any portion of the Premises. Lessor's staff archeologist shall determine Lessor's requirements for archaeological oversight of the excavation, and Lessee shall pay the cost of any on-site archaeological consultant (other than Lessor's staff archeologist, which shall be paid by Lessor), not to exceed \$5,000 per proposed Improvement for which excavation is required. When Lessor or its consultant deems it necessary to investigate the possible presence of, or to protect, archaeological artifacts, Lessee shall temporarily halt the excavation work in the area subject to such investigation. Lessee shall comply, at its own expense, with state law regarding the protection, removal or reburial of human remains and archaeological artifacts. In addition, Lessee shall comply with Lessor's archeologist's requests regarding the

protection, removal or reburial of human remains and archaeological artifacts, provided that such compliance with respect to any remains or artifacts that are not regulated by Applicable Laws shall be at Lessor's expense, and if required by Lessee, shall be performed by Lessor. Lessee shall use good faith efforts to notify Lessor of any archeological discovery on the Premises in the event Lessor's staff archeologist is not present at the time of such discovery but only if and to the extent that Lessee obtains actual knowledge thereof (it being agreed that Lessee shall not be required to retain its own archaeologist to observe, inspect or oversee any such excavation unless otherwise required by Applicable Laws). Each party shall deliver to the other a copy of any written reports prepared by that party's archeological consultant. Any archaeological artifacts discovered on the Premises shall belong to Lessor. Provided Lessor and its archeological consultant have not been arbitrary in any decision made by Lessor or its archeological consultant to halt Lessee's excavation, Lessor and its archeological consultant shall not be liable for any damages or other liability that may result from cessation of excavation, or other compliance with the provisions of this Section 12.5(b).

(c) Lessee shall construct all Additional Improvements and Alterations within setbacks required by Applicable Laws and the Handbook.

(d) Prior to the commencement of any Additional Improvements and Alterations costing in excess of Fifty Thousand Dollars (\$50,000) (increased annually as of the Adjustment Date by three percent (3%)) Lessor shall have the right to post in a conspicuous location on the Premises, as well as to record with Santa Clara County, a Notice of Lessor's Nonresponsibility pursuant to the California Civil Code. Lessee covenants and agrees to give Lessor at least ten (10) days prior written notice of the commencement of any such construction, alteration, addition, improvement, repair or landscaping in order that Lessor shall have sufficient time to post such notice. Notwithstanding the foregoing, in the event that Lessee deems it reasonably necessary to engage on an emergency basis in any work that could result in a Lien against the Premises, Lessee shall give Lessor such advance notice as is feasible under the circumstances of the emergency.

(e) The provisions of Section 12.3 shall apply to any change in the design elements of the Additional Improvements and Alterations that are subject to Lessor's prior written approval and that have been approved by Lessor, and to any material deviations in the actual construction of the Additional Improvements and Alterations from such approved design elements.

(f) Lessee shall take all customary and necessary safety precautions during any construction.

(g) Lessee shall prepare and maintain in accordance with normal construction practices (i) on a current basis during construction, annotated plans and specifications showing clearly all changes, revisions and substitutions during construction, and (ii) upon completion of construction, as-built drawings showing clearly all changes, revisions and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions and other significant features of any Additional Improvements and Alterations. The as-built drawings and annotated plans and specifications shall be kept at the Premises or another office of Lessee in the San Francisco Bay Area, and Lessee shall update them as often as necessary to keep them current. The as-built drawings and annotated plans and specifications shall be made available for copying and inspection by Lessor at all reasonable times.

(h) The contracts entered into between Lessee and each architect and contractor shall include language to effectuate a subordination of mechanic's and materialmen's liens. Each such contract shall provide that such lien rights shall be subject and subordinate to this Lease and shall not affect Lessor's Interest (as defined in Section 16.2), regardless of whether such lien rights, if asserted, would otherwise be entitled to priority over this Lease and attach to Lessor's Interest. Each such contract shall also provide that the contractor, subcontractor, or materialmen executing the same shall not, in any mechanic's or materialmen's lien proceeding or otherwise, claim priority with respect to this Lease or claim an interest in Lessor's Interest.

(i) If requested by Lessor, Lessee shall provide to Lessor reasonable evidence that there are funds available (in cash or cash equivalents) sufficient to pay for one hundred fifty percent (150%) of the total costs associated with the construction project, including, without limitation, architectural fees, other professional or consulting fees, finance charges or fees for loan commitments or money borrowed for such construction, costs for obtaining governmental approvals necessary for such construction, and Lessee's overhead and administrative costs for such construction and development. Notwithstanding the foregoing, Lessor shall only have the right to make such request in the event Lessor cannot reasonably determine from publicly available financial statements of Lessee whether or not Lessee meets the foregoing requirement.

(j) For construction projects costing more than \$20,000,000, if requested by Lessor, Lessee shall deposit with Lessor certificates or other satisfactory evidence that the general contractor has procured one or more bonds for a total amount not less than one hundred percent (100%) of the total construction cost of any Additional Improvements and Alterations (including the correction of any construction defects), naming Lessor and Lessee as co-obligees, in form and content and with a surety or sureties satisfactory to Lessor, guaranteeing the full and faithful performance of the construction contract for such construction free and clear of all mechanics' and materialmen's liens and the full payment of all subcontractors, labor and materialmen, including without restricting the generality of the foregoing, all architects and interior designers, except that with respect to architects and interior designers, no such bond shall be required if Lessee delivers to Lessor a waiver of lien from such architect or interior designer.

(k) Notwithstanding the foregoing provisions of subsections (i) and (j), and only so long as VMware, Inc. or its Affiliate remains the Lessee under this Lease, Lessee shall have the right to either (i) cause its general contractor to satisfy the bonding requirements set forth in subsection (j), or (ii) provide reasonable evidence that there are funds available (in cash or cash equivalents) sufficient to pay for one hundred fifty percent (150%) of the total costs associated with the Additional Improvements and Alterations (including all costs noted above). If Lessee chooses alternative (ii), Lessee shall be deemed to have made an affirmative covenant to diligently prosecute and complete the Additional Improvements and Alterations that are to be constructed at least to shell condition, subject to Force Majeure, and to Lessee's right to make any design changes reasonably approved by Lessor pursuant to Section 12.2(e). In the event Lessee breaches such covenant, after the expiration of applicable notice and cure periods, Lessor shall have the rights and remedies set forth in Article 26.

Section 12.7 Construction Completion Procedures . Promptly upon completion of the construction of any Additional Improvements and Alterations, Lessee shall file for recordation, or cause to be filed for recordation, a notice of completion. Upon completion of any such construction, Lessee shall deliver to Lessor evidence reasonably satisfactory to Lessor of the payment of all costs, expenses, liabilities and liens arising out of or in any way connected with such construction (except for Liens that are contested in the manner provided in Article 16).

Section 12.8 On Site Inspection . Lessor shall be entitled to have on site, at all times during the construction of any Additional Improvements and Alterations requiring Lessor's approval and at Lessor's sole cost and expense, an inspector or representative who shall be entitled to observe all aspects of the construction. No inspection performed or not performed by Lessor hereunder shall (a) give, or be deemed to give, Lessor any responsibility or liability for the Additional Improvements and Alterations or the design or construction thereof; (b) constitute, or be deemed to constitute, approval or acceptance of, any aspect of the design or construction of the Additional Improvements and Alterations; or (c) constitute or be deemed to constitute a waiver of any of Lessee's obligations hereunder. Subject to the provisions of Section 12.6(b) hereof, Lessee shall not be required to postpone or delay any investigative or construction activity to accommodate any inspector or representative of Lessor.

Section 12.9 Restoration . If this Lease expires or is terminated prior to the completion of construction of any Additional Improvements and Alterations, Lessee shall, at Lessor's option and at Lessee's expense, either promptly complete such construction or remove all such Additional Improvements and Alterations, construction materials, equipment and other items from the Premises and restore the Premises to their pre-construction condition.

ARTICLE 13. OWNERSHIP OF IMPROVEMENTS

All Improvements shall be the property of Lessee during, and only during, the Term and no longer. During the Term, no Improvements shall be conveyed, transferred or assigned, except as permitted under Articles 23, 24 and 25, and at all such times the holder of the leasehold interest of Lessee under this Lease shall be the owner of all Improvements. Any attempted conveyance, transfer or assignment of any of the Improvements, whether voluntarily or by operation of law or otherwise, to any person, corporation or other entity shall be void and of no effect whatever, except as permitted under Articles 23, 24 and 25. Notwithstanding the foregoing, Lessee may from time to time replace the Improvements and make Additional Improvements and Alterations, provided that the replacements for such items are of equivalent or better value and quality, and such items are free from any liens and encumbrances except for equipment leases and any other financings expressly permitted hereunder. Upon any termination of this Lease, whether by reason of the expiration of the Term hereof, or pursuant to any provision hereof, or by reason of any other cause whatsoever, all of Lessee's right, title and interest in the Improvements and any Additional Improvements and Alterations shall cease and terminate and title to the Improvements shall immediately vest in Lessor. Lessee shall surrender the Improvements to Lessor as provided in Article 28. No further deed or other instrument shall be necessary to confirm the vesting in Lessor of title to the Improvements. However, upon any termination of this Lease, Lessee, upon request of Lessor, shall execute, acknowledge and deliver to Lessor a quitclaim deed confirming that all of Lessee's rights, title and interest in the Improvements has expired and that title thereto has vested in Lessor. Notwithstanding the foregoing, the ownership and disposition of all personal property, trade fixtures and improvements installed by any subtenants of the Property shall be as provided in their subleases.

ARTICLE 14. MAINTENANCE AND REPAIRS; NO WASTE

Section 14.1 Maintenance and Repairs . During the Term, Lessee shall, at its own cost and expense and without any cost or expense to Lessor, keep and maintain the Premises

and all Improvements and appurtenant facilities, including without limitation the structural components, roof, fixtures and building systems of the Improvements, grounds, sidewalks, parking and landscaped areas, in a First Class condition. Lessee shall promptly make all repairs, replacements and alterations (whether structural or nonstructural, foreseen or unforeseen, or ordinary or extraordinary) necessary to maintain the Premises and the Improvements in a First Class condition and in compliance with all Applicable Laws and to avoid any structural damage or injury to the Premises or the Improvements. The foregoing shall not limit Lessee's right to demolish the existing Improvements and construct the MDA Improvements and any other permitted Additional Improvements and Alterations pursuant to Articles 5 and 12, nor shall it supersede the provisions of Article 22.

Section 14.2 No Obligation of Lessor to Repair . Lessor shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Premises or the Improvements, and Lessee hereby expressly waives any right to terminate this Lease and any right to make repairs at Lessor's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code, or any amendments thereof, or any similar law, statute or ordinance now or hereafter in effect.

Section 14.3 Lessee's Failure to Repair . If Lessee fails for any reason to repair or maintain the Premises as required by this Lease to Lessor's reasonable satisfaction, and does not cure such failure (a) within thirty (30) days after receipt of Lessor's written notice, or (b) if the nature of the cure will reasonably require more than thirty (30) days to perform, within a reasonable time so long as Lessee promptly commences and diligently prosecutes such cure to completion, then Lessor shall have the right, but not the obligation, to enter onto the Premises and perform such repairs or maintenance without liability to Lessee (except to the extent of Lessor's gross negligence or willful misconduct) for any loss or damage to Lessee's furnishings, fixtures, equipment or other personal property or for interference with Lessee's business arising therefrom. If Lessor performs such repairs or maintenance, Lessee shall pay all costs thereof to Lessor upon demand as Additional Rent.

ARTICLE 15. UTILITIES AND SERVICES

Lessee shall be solely responsible for, shall make all arrangements for, and shall pay for all utilities and services furnished to or used at the Premises, including without limitation, gas, electricity, water, telephone, cable and other communication services, security services, sewage, sewage service fees, trash collection, and any taxes or Property Taxes thereon. All service lines of such utilities shall be installed beneath the surface of the Premises and connected and maintained at no cost or expense to Lessor.

ARTICLE 16. MECHANICS' AND OTHER LIENS

Section 16.1 No Liens . Lessee covenants and agrees to keep the Premises and every part thereof and all Improvements free and clear of and from any and all mechanics', material supplier's and other liens for: (a) work or labor done, services performed, materials, appliances, or power contributed, used or furnished, or to be used, in or about the Premises for or in connection with any operations of Lessee; (b) any Additional Improvements and Alterations; or (c) any work or construction by, for or permitted by Lessee on or about the Premises or Improvements (collectively, "**Liens** "). Lessee shall promptly and fully pay and discharge any and all claims upon which any such Lien may or could be based, and keep the Premises and Improvements free and clear of, and save and hold Lessor, the Premises and the Improvements harmless from, any and all such Liens and claims of Liens, damages, liabilities, costs (including, without limitation, attorneys' fees and costs), suits or other proceedings pertaining thereto.

Section 16.2 Lessor's Interests . In no event shall any interest of Lessor in the Premises, including without limitation, Lessor's fee interest in the Premises or reversionary interest in the Improvements or Lessor's right to receive Rent and its other rights and interest under this Lease (collectively, "**Lessor's Interest**"), be subject or subordinate to any Lien.

Section 16.3 Lessor's Right to Cause Release of Liens . If Lessee does not cause any Lien that Lessee does not contest in accordance with Article 17 to be released of record by payment or posting of a proper bond or insured over within thirty (30) days following the imposition of such Lien, Lessor shall have the right, but not the obligation, to cause the Lien to be released by any means Lessor may deem appropriate, and the amount paid by Lessor, together with Lessor's Administrative Fees, plus interest at the Interest Rate from the date of payment by Lessor, shall be Additional Rent, immediately due and payable by Lessee to Lessor upon demand.

ARTICLE 17. RIGHT TO CONTEST LIENS

Lessee shall have the right to contest, in good faith, the amount or validity of any Lien, provided that, before doing so, Lessee shall give Lessor written notice of Lessee's intention to do so within thirty (30) days after the recording of such Lien and provided further that Lessee shall, at its expense, defend itself and Lessor against such Lien and shall pay and satisfy any adverse judgment that may be rendered concerning such Lien before that judgment is enforced against the Premises. In addition, at the request of Lessor, Lessee shall either (a) procure and record the bond provided for in Section 3143 of the California Civil Code, or in any comparable statute hereafter enacted providing for a bond freeing the Premises from the effect of such Lien; or, (b) at Lessee's election, cause such Lien to be insured over for the benefit of Lessor; or (c) post alternative security that is reasonably acceptable to Lessor. Lessee shall pay Lessor's Administrative Fees in connection with any such contest.

ARTICLE 18. COMPLIANCE WITH LAWS; INSURANCE REQUIREMENTS

Section 18.1 Compliance with Applicable Laws . Lessee, at Lessee's sole cost and expense, shall comply with all Applicable Laws relating to this Lease, the Premises and the Improvements during the Term. Lessee shall give Lessor prompt written notice of any violation of Applicable Laws known to Lessee and, at its sole cost and expense, Lessee shall promptly rectify any such violation. Without in any way limiting the generality of the foregoing obligation of Lessee, Lessee shall be solely responsible for compliance with, and shall make or cause to be made all such improvements and alterations to the Premises (including, without limitation, removing barriers and providing alternative services) as shall be required by the Americans with Disabilities Act (42 USC section 12101 et seq.), as the same may be amended from time to time, and any similar or successor laws, and with any rules or regulations promulgated thereunder. Any work or installations made or performed by or on behalf of Lessee or any person or entity claiming through or under Lessee in order to conform the Premises to Applicable Laws shall be subject to and performed in compliance with the provisions of Article 12.

Section 18.2 Compliance with Insurance Requirements . Lessee shall not do anything, or permit anything to be done, in or about the Premises that would: (a) invalidate or be in conflict with the provisions of any fire or other insurance policies covering the Premises or

any property located therein; or (b) result in a refusal by insurance companies of good standing to insure the Premises or any such property in amounts required hereunder. Lessee, at Lessee's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body that shall hereafter perform the function of such Association.

Section 18.3 General . Lessee shall not do any act, or allow any subtenant or other user of the Property to do any act, that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person (whether on or off the Premises), is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Premises.

ARTICLE 19. ENVIRONMENTAL ISSUES

Section 19.1 Hazardous Substances . Except as provided in this Section 19.1, no Hazardous Substance shall be used, treated, kept, stored, transported, handled, sold or Released at, on, under or from the Premises during the Term. Notwithstanding the foregoing, (a) Lessee and Lessee's Agents may use small quantities of standard janitorial and office products, and also such products as are incorporated into the functioning of building systems (e.g. HVAC units and elevators), and then only in compliance with all Applicable Laws; and (b) Lessee and Lessee's Agents shall also be permitted to use, keep and store reasonable quantities of the Hazardous Substances required for research and development activities permitted under this Lease, provided that to the extent such entities are required by any Environmental Requirements to maintain an inventory of Hazardous Substances used on the Premises and to file such inventory with any environmental agency, Lessee shall obtain and provide a current copy of such inventory to Lessor upon written request from Lessor, and shall periodically update this inventory so that it remains current. Lessee shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required for Lessee's use of Hazardous Substances at the Premises, including, without limitation, discharge of appropriately treated materials or wastes into or through any sanitary sewer serving the Premises. Lessee shall in all respects handle, treat, deal with and manage any and all Hazardous Substances used by Lessee in strict conformity with all Environmental Requirements and prudent industry practices regarding management of such Hazardous Substances.

Section 19.2 Lessee's Indemnity for Environmental Claims . Lessee shall indemnify, protect, defend, reimburse, and save and hold harmless Lessor and the Lessor Released Parties from and against any and all Environmental Claims to the extent caused by (i) Lessee Environmental Activity, (ii) any non-compliance by Lessee with Environmental Requirements at the Premises, or (iii) any other acts or omissions of Lessee or Lessee's Agents, or Roche or Roche's Agents in or about the Premises which results in the Release of Hazardous Substances. Lessee's obligations hereunder shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably approved by Lessor), even if such claims, suits or proceedings are groundless, false or fraudulent; conducting all negotiations of any description; and promptly paying and discharging when due any and all judgments, penalties, fines or other sums due against or from Lessor or the Premises. Prior to retaining counsel to defend such claims, suits or proceedings, Lessee shall obtain Lessor's written approval of the identity of such counsel, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 19.3 Obligation to Remediate.

(a) Notwithstanding the obligation of Lessee to indemnify Lessor pursuant to this Lease, Lessee shall, upon demand of Lessor, and at Lessee's sole cost and expense, promptly take all actions to remediate the Premises from the effects of any Lessee Environmental Activity. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Premises, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work, whether on or off of the Premises. Lessee shall take all actions necessary to remediate the Premises from the effects of such Lessee Environmental Activity to a condition allowing unrestricted use of the Premises (i.e. to a level that will allow any future use of the Premises, including residential, hospital, or day care, without any engineering controls or deed restrictions), notwithstanding any lesser standard of remediation allowable under Applicable Laws. All such work, including without limitation the contractor(s) performing the work and the work plan for the remediation, shall be reasonably approved in advance and in writing by Lessor. Lessee shall proceed continuously and diligently with such investigatory and remedial actions, provided that in all cases such actions shall be in accordance with all Applicable Laws. Any such actions shall be performed in a good, safe and workmanlike manner. Lessee shall pay all costs in connection with such investigatory and remedial activities, including but not limited to all power and utility costs, and any and all taxes or fees that may be applicable to such activities. Lessor's environmental consultant shall have the right to be present during any testing or investigation on the Premises, and Lessee shall promptly provide to Lessor copies of testing results and reports that are generated in connection with the above activities and any that are submitted to any governmental entity. Notwithstanding the foregoing or any provision hereof to the contrary, Lessee shall not be required to postpone or delay any testing, investigation or remedial action to accommodate Lessor's representatives or consultants provided that Lessee shall have given Lessor at least ten (10) business days notice of the applicable test, investigation or remedial activity. Promptly upon completion of such investigation and remediation, Lessee shall permanently seal or cap all monitoring wells and test holes in accordance with sound engineering practice and in compliance with Applicable Laws, remove all associated equipment, and restore the Premises to the maximum extent possible, which shall include, without limitation, the repair of any surface damage, including paving, caused by such investigation or remediation.

(b) Prior to the expiration or earlier termination of this Lease (and in addition to Lessor's rights pursuant to Sections 19.5 and 19.6 below), Lessor shall have the right to engage a consultant to perform an environmental assessment of the Premises to verify that Lessee has fully complied with the requirements of this Article 19 and to determine the need for any further remediation. Lessee shall reasonably cooperate with the consultants performing the assessment and comply with Lessor's then-current policies and requirements generally applicable to the Stanford Research Park regarding the environmental condition of the Premises and closure of any facility permits upon surrender, and shall make its employees reasonably available for interviews by Lessor and Lessor's Agents regarding the use of Hazardous Substances and Lessee's end-of-Term obligations hereunder. In the event the end-of-Term assessment identifies any deficiencies in the compliance of the Premises with Environmental Requirements due to any Lessee Environmental Activity, Lessee shall promptly correct any such deficiencies identified in the assessment, and document to Lessor that corrective action has been taken. In such event, Lessee shall also reimburse Lessor for the reasonable cost of the assessment. In the event that there are Hazardous Substances remaining on, in or under the Premises (including those that may be identified in the components of any Improvements) as a result of any Lessee Environmental Activity that cannot be removed without material

damage to or demolition of some or all of the Improvements (the “ **Remaining Substances** ”), Lessee shall pay to Lessor an amount equal to the estimated Added Costs associated with such Remaining Substances on or before the later of thirty (30) days after receipt of the estimate described in the following sentence and the expiration date of the Term. Lessor and Lessee shall mutually agree upon a third-party consultant who, prior to the end of the Term, will provide the parties with an estimate of the Added Costs, based on a commercially reasonable method of remediation (based on the costs associated with the prospective demolition of the structure at the end of the Term) and an industry-standard contingency amount. Upon payment of such estimated Added Costs, Lessee shall be released from future liability to Lessor with respect to such Remaining Substances, including for additional Added Costs beyond the estimate, but not from liability for claims by third parties arising out of the presence of the Remaining Substances in the Improvements prior to the end of the Term, or for subsequently detected Hazardous Substances due to Lessee Environmental Activity. Lessor shall have no obligation to refund to Lessee any sums paid by Lessee that are not expended in the remediation of the Premises. With respect to any work undertaken by Lessor to remediate the Premises from the effects of Lessee’s Environmental Activity, Lessee shall be named as generator of all Hazardous Substances that are disposed of in connection with the remediation, and all such Hazardous Substances shall be disposed of using Lessee’s hazardous waste generator number.

Section 19.4 Obligation to Notify . If Lessee or Lessor shall become aware of or receive notice or other communication in writing concerning any actual, alleged, suspected or threatened violation of Environmental Requirements, or liability for Environmental Claims in connection with the Premises, including but not limited to, notice or other communication concerning any actual or threatened investigation, inquiry, lawsuit, claims, citation, directive, summons, proceeding, complaint, notice, order, writ, or injunction, relating to same, then such party promptly shall deliver to the other party a written description of said notice or other communication, and documentation of any corrective action or mitigation measures undertaken or requested by such party.

Section 19.5 Periodic Audits . Lessee shall establish and maintain, at its sole cost and expense, a system to assure and monitor continued compliance on the Premises with Environmental Requirements related to Lessee Environmental Activity. No more than once per Lease Year, or at any time Lessor has a reasonable basis for belief that Lessee is in breach of its obligations under this Article 19, Lessor may retain a consultant selected by Lessor to undertake a detailed review of such compliance (the “ **Environmental Audit** ”). A copy of the Environmental Audit report shall be promptly supplied to Lessor and Lessee when it becomes available. In the event the Environmental Audit identifies any deficiencies in the compliance of the Premises with Environmental Requirements due to any Lessee Environmental Activity, Lessee shall promptly correct any such deficiencies identified in the Environmental Audit, and document to Lessor that corrective action has been taken. In such event, Lessee shall also reimburse Lessor for the reasonable cost of the Environmental Audit. If the Environmental Audit identifies any such deficiency in compliance of the Premises with Environmental Requirements due to any Lessee Environmental Activity, then, within nine (9) months of the date of the Environmental Audit, Lessor may request a detailed review of the status of such violation by a consultant selected by Lessor (the “ **Supplemental Audit** ”). Lessee shall pay for the reasonable cost of any Supplemental Audit. A copy of the Supplemental Audit shall be promptly supplied to Lessor and Lessee when it becomes available.

Section 19.6 Right to Inspect . In addition to Lessor’s rights under Section 19.5 above, Lessor shall have the right to enter and conduct an inspection of the Premises, including invasive tests, at any reasonable time and upon reasonable advance notice, to determine

whether Lessee is complying with the terms of this Lease, including but not limited to the compliance of the Premises and the activities thereon with Environmental Requirements and the existence of Environmental Claims as a result of the condition of the Premises or surrounding properties and activities thereon. Lessor shall have the right, but not the obligation, to retain at its expense any independent professional consultant to enter the Premises to conduct such an inspection, and to review any report prepared by or for Lessee concerning such compliance. Lessee hereby grants to Lessor and Lessor's Agents the right to enter the Premises and to perform such tests on the Premises as are reasonably necessary in the opinion of Lessor to conduct such review and inspections. Except to the extent of Lessor's gross negligence or willful misconduct in the exercise of its rights under this Section, Lessee hereby waives and releases any claims for damages for any injury or inconvenience to or interference with Lessee's business at the Premises, any loss of occupancy or quiet enjoyment of the Premises or any other loss, damage, liability or cost occasioned by Lessor's exercise of the rights reserved to Lessor under, or granted to Lessor pursuant to this Section. Notwithstanding the foregoing, Lessor shall repair any actual damage caused by the exercise of such rights. In no event shall Lessee be entitled to terminate this Lease as a result of Lessor's exercise of such rights, notwithstanding any possible liability of Lessor for damages as a result of its gross negligence or willful misconduct.

Section 19.7 Right to Remediate . Should Lessee fail to perform or observe any of its obligations or agreements pertaining to Hazardous Substances or Environmental Requirements, then Lessor shall have the right, but not the obligation, without limitation of any other rights of Lessor hereunder, to enter the Premises personally or through Lessor's Agents and perform the same. Lessee agrees to indemnify Lessor for the costs thereof and liabilities therefrom as set forth above in this Article 19. With respect to any work undertaken by Lessor to remediate the Premises from the effects of Lessee's Environmental Activity pursuant to this Section 19.7, Lessee shall be named as generator of all Hazardous Substances that are disposed of in connection with the remediation, and all such Hazardous Substances shall be disposed of using Lessee's hazardous waste generator number.

Section 19.8 Roche Closure Activities. Lessor acknowledges that after the Effective Date, Roche will continue to access and occupy portions of the Premises to perform certain closure work with respect to its prior use of Hazardous Substances (the "**Closure Work**") pursuant to a license between Roche and Lessee (the "**Roche License**"). Lessor agrees that the Roche License shall be deemed a Permitted Sublease pursuant to Section 24.3, and that the presence of the Hazardous Substances that Roche will remediate in connection with the Closure Work shall not be deemed a violation of this Lease so long as Roche is diligently pursuing the Closure Work and completes it within a reasonable time. During the period in which Roche continues to occupy any portion of the Premises pursuant to the Roche License, Lessee shall use commercially reasonable efforts to cause Roche to comply with the requirements of this Article 19 and the other terms and conditions of this Lease in the performance of the Closure Work, and to otherwise conduct the Closure Work in compliance with all Applicable Laws, including Environmental Requirements; provided that Lessee shall remain liable for any breach of the terms and conditions of this Lease by Roche.

Section 19.9 General Provisions.

(a) The obligations of Lessee under this Article 19 shall not be affected by any investigation by or on behalf of Lessor, or by any information which Lessor may have or obtain as a result of any such investigation.

(b) The provisions of this Article 19 shall survive any termination of this Lease.

(c) The provisions of Article 20 (Insurance) shall not limit in any way Lessee's obligations under this Article 19; provided that the provisions of Section 20.2(f) shall apply.

ARTICLE 20. INSURANCE

Section 20.1 Required Insurance. At all times during the Term and at its sole cost and expense, Lessee shall obtain and keep in force for the benefit of Lessee and Lessor the following insurance:

(a) **Property Insurance.** All risk, fire, earthquake, flood and other perils, including extended coverage insurance on all Improvements. The amount of such insurance shall be the Full Insurable Replacement Value. Each such policy shall specify that proceeds shall be payable whether or not any improvements are actually rebuilt. Each such policy shall include an endorsement protecting the named and additional insureds against becoming a co-insured under the policy.

" Full Insurable Replacement Value " means 100% of the actual costs to replace the Improvements (without deduction for depreciation but with standard exclusions such as foundations, excavations, paving and landscaping, as applicable to specific perils), including the costs of demolition and debris removal and including materials and equipment not in place but in transit to or delivered to the Premises. The Full Insurable Replacement Value initially shall be determined at Lessee's expense by an appraiser or an insurer, selected by Lessee and acceptable to Lessor. Lessor or Lessee may at any time, but not more frequently than once in any twelve (12) month period, by written notice to the other, require the Full Insurable Replacement Value to be redetermined, at Lessee's expense, by an appraiser or insurer selected by Lessee and reasonably acceptable to Lessor. Lessee shall maintain coverage at the current Full Insurable Replacement Value throughout the Term, subject to reasonable deductibles approved by Lessor pursuant to Section 20.2(a).

(b) **Rental and Business Interruption Insurance.** Insurance against loss of rental from the Premises, under a rental value insurance policy, or against loss from business interruption under a business interruption policy, covering risk of loss due to causes insured against under subsection (a), in an amount not less than twelve (12) months of projected revenues from the Premises.

(c) **Worker's Compensation and Employer's Liability Insurance.** Worker's Compensation Insurance in the amounts and coverages required under worker's compensation, disability and similar employee benefit laws applicable to the Premises, and Employer's Liability Insurance with limits not less than \$1,000,000 or such higher amounts as may be required by law.

(d) **Commercial General Liability Insurance.** Commercial general liability insurance through one or more primary and umbrella liability policies covering the use and occupancy of the Premises and insuring against claims for personal injury, property damage and other covered loss (however occasioned) occurring on the Premises during the policy term. Such coverage shall be written on an "occurrence" form, with such limits as may be reasonably required by Lessor from time to time, but in any event not less than \$10,000,000, combined single limit and annual aggregate for the Premises, which Lessee shall increase as necessary during the Term to maintain adequate coverage over time that is comparable to the

requirements in effect as of the execution of this Lease. Such insurance shall include broad form contractual liability coverage to insure the performance by Lessee of the indemnity agreements and other obligations contained in this Lease. If any governmental agency or department requires insurance or bonds with respect to any proposed or actual use, storage, treatment or disposal of Hazardous Substances by Lessee or any of Lessee's Agents, Lessee shall be responsible for such insurance and bonds and shall pay all premiums and charges connected therewith; provided, however, that this provision shall not and shall not be deemed to modify the provisions of this Article 20.

Such insurance shall (i) delete any employee exclusion on personal injury coverage; (ii) include employees as additional insureds; (iii) provide blanket contractual coverage, including liability assumed by and the obligations of Lessee under Article 21 for personal injury, death and/or property damage; (iv) provide Products and Completed Operations and Independent Contractors coverage and Broad Form Property Damage liability coverage without exclusions for collapse, explosion, demolition, underground coverage and excavating, including blasting; (v) provide automobile liability coverage for owned, non-owned and hired vehicles; (vi) provide liability coverage on all mobile equipment used by Lessee; and (vii) include a cross liability endorsement (or provision) permitting recovery with respect to claims of one insured against another. Such insurance shall insure against any and all claims for bodily injury, including death resulting therefrom, and damage to or destruction of property of any kind whatsoever and belonging to any party, arising from Lessee's operations hereunder and whether such operations are performed by Lessee or any of its contractors, subcontractors, or by any other person.

(e) **Other.** All other insurance that Lessee is required to maintain under Applicable Laws.

Section 20.2 Policy Form and General.

(a) All of the insurance policies required under this Lease, including without limitation, under the provisions of Article 12 and this Article 20, and all renewals thereof shall be issued by one or more companies of recognized responsibility, authorized to do business in California with a financial rating of at least a Class A- (or its equivalent successor) status, as rated in the most recent edition throughout the Term of Best's Insurance Reports (or its successor, or, if there is no equivalent successor rating, otherwise reasonably acceptable to Lessor). Except as otherwise provided herein, the proceeds of all property damage and builder's risk policies of insurance shall be payable to Lessor for application in accordance with this Lease. Any loss adjustment or disposition of insurance proceeds by the insurer shall require the written consent of Lessor for losses in excess of One Hundred Thousand Dollars (\$100,000), such consent not to be unreasonably withheld or delayed. All property insurance hereunder shall name Lessor as an additional insured. All liability insurance shall name as additional insureds Lessor, and its directors, trustees, officers, agents, and employees, and such other parties as Lessor reasonably may request, and shall include an "additional insured" endorsement for lessors of property. Any deductibles or self-insurance retention for any of the foregoing insurance must be agreed to in advance in writing by Lessor, in its reasonable discretion. All deductibles and self-insurance retention shall be paid by Lessee. All insurance of Lessee shall be primary coverage.

(b) Each policy of property insurance and all other policies of insurance on the Improvements and/or the Premises which shall be obtained by Lessee, whether required by the provisions of this Lease or not, shall be made expressly subject to the provisions of this Article

20. All policies provided for herein expressly shall provide that such policies shall not be canceled, terminated or materially altered without thirty (30) days' prior written notice to Lessor. Each policy, or a certificate of the policy executed by the insurance company evidencing that the required insurance coverage is in full force and effect, shall be deposited with Lessor on or before the date of this Lease, shall be maintained throughout the Term, and shall be renewed not less than fifteen (15) days before the expiration of the term of the policy. Except for specific provisions described herein, no policy shall contain any provisions for exclusions from liability and no exclusion shall be permitted in any event if it conflicts with any coverage required hereby, and, in addition, no policy shall contain any exclusion from liability for personal injury or sickness, disease or death or which in any way impairs coverage under the contractual liability coverage described above.

(c) If either party shall at any time deem the limits of any of the insurance described in this Lease then carried or required to be carried to be either excessive or insufficient, that party shall deliver written notice to the other, and the parties shall endeavor to agree upon the proper and reasonable limits for such insurance then to be carried and such insurance shall thereafter be carried with the limits thus agreed upon until further change pursuant to the provisions of this subsection. If the parties shall be unable to agree on the proper and reasonable limits for such insurance after thirty (30) days of good faith negotiations, then such limits shall be determined pursuant to the provisions of Article 37. The decision of the arbitrator as to such limits for such insurance then to be carried shall be binding upon the parties and such insurance shall be carried with the limits as thus determined until such limits shall again be changed pursuant to the provisions of this subsection. The expenses of the prevailing party in connection with any such arbitration shall be paid by the other party within thirty (30) days after the decision in such arbitration proceeding.

(d) No approval by Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible, and Lessee assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers.

(e) Should Lessee fail to take out and keep in force each insurance policy required under this Article 20, or should such insurance not be reasonably approved by Lessor and should Lessee not rectify the situation within five (5) business days after written notice from Lessor to Lessee, Lessor shall have the right, without assuming any obligation in connection therewith, to purchase such insurance at the sole cost of Lessee, and all costs incurred by Lessor shall be payable to Lessor by Lessee within thirty (30) days after demand as Additional Rent and without prejudice to any other rights and remedies of Lessor under this Lease.

(f) Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance and to the extent of insurance proceeds received (or which would have been received had the party carried the insurance required by this Lease) with respect to the loss, Lessor and Lessee each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance with respect to the Premises or the Improvements or any portion thereof for any loss or damage sustained by such other party with respect to the Premises or the Improvements, or any portion thereof, or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. Either party shall notify the other party if the policy of insurance carried by it does not permit the foregoing waiver.

ARTICLE 21. INDEMNITY AND RELEASE

Section 21.1 Indemnity . Lessee shall indemnify, protect, defend and save and hold harmless the Lessor Released Parties from and against, and shall reimburse the Lessor Released Parties for, any and all claims, demands, losses, damages, costs, liabilities, causes of action and expenses, including, without limitation, reasonable attorneys' fees and expenses (collectively, "**Claims**") incurred in any way in connection with or arising from, in whole or in part, the following: (a) any default by Lessee or Roche in the observance or performance of any of the terms, covenants or conditions of this Lease (or the Original Lease, as applicable) on Lessee's part to be observed or performed; (b) the use, occupancy or manner of use or occupancy of the Premises by Lessee, Lessee's Agents, Roche, Roche's Agents, or any other person or entity claiming by, through or under Lessee or Roche during the Term; (c) the conduct or management during the Term of any work or thing done in or on the Premises by Lessee, Roche, Lessee's Agents, Roche's Agents, or any other person or entity claiming by, through or under Lessee or Roche; (d) the design, construction, removal, financing, maintenance or condition of the Improvements, the MDA Improvements, or any Additional Improvements and Alterations constructed during the Term; (e) the condition of the Premises during the Term; (f) any actual or alleged acts, omissions, or negligence of Lessee, Lessee's Agents, Roche or Roche's Agents, in, on or about the Premises or any other of Lessor's lands; (g) any Lessee Environmental Activity during the Term; (h) any accident or other occurrence on the Premises from any cause whatsoever during the Term; and (i) Lessee's failure to surrender possession of all or any part of the Premises after the Termination Date, whether with or without Lessor's written consent, including without limitation Claims incurred in connection with prospective or actual successor tenants, lost rents, and lost development opportunities. In case any claim, action or proceeding be brought, made or initiated against a Lessor Released Party relating to any of the above described events, acts, omissions, occurrences, or conditions, Lessee, upon notice from such Lessor Released Party, shall at its sole cost and expense, resist or defend such claim, action or proceeding by attorneys reasonably approved by such Lessor Released Party. Notwithstanding the foregoing, Lessee's indemnity shall not apply to the extent of Lessor's breach of its obligations under this Lease, any Active Negligence or willful misconduct of Lessor or Lessor's Agents, or to the extent that the circumstance giving rise to the Claim occurs after the expiration or termination of the Term; provided that Lessee's indemnity shall continue during any period after the expiration or termination of the Term during which Lessee remains in possession of the Premises, or during which Lessee is continuing to perform obligations under this Lease requiring Lessee's (or its Agents') presence on the Premises, or during which Lessee maintains equipment on the Premises (e.g. environmental monitoring or remediation equipment).

Section 21.2 Lessee's Assumption of Risk and Waiver. As a material part of the consideration to Lessor for entering into this Lease, Lessee agrees that no Lessor Released Party shall be liable to Lessee for, and Lessee expressly assumes the risk of and waives, releases and discharges all Lessor Released Parties from any and all claims, damages, liabilities, costs and expenses of any kind or nature relating in any manner, directly or indirectly, in whole or in part, to the Premises or this Lease, whether resulting from any act or omission of Lessor or from any other cause whatsoever, including without limitation: (a) the performance of any public or quasi public works on or near the Premises; (b) any loss or theft of, or damage to, any Improvements or personal property; (c) any act or omission of any person accessing the Premises pursuant to an easement or right of entry reserved under this Lease or implied by Applicable Law; and (d) any past, present or future aspect, feature, characteristic, circumstance or condition arising out of or in connection with the Premises, including without limitation any circumstances or conditions arising prior to the Effective Date; provided, however, that this

assumption of risk and waiver and release shall not apply to the gross negligence, willful misconduct or failure by Lessor to comply with any of its express obligations under this Lease. Without limiting the generality of the foregoing provisions of this Section 21.2, and notwithstanding anything to the contrary elsewhere in this Lease, Lessor shall not under any circumstances whatsoever be liable to Lessee for: (i) consequential damages; or (ii) interference with light or other incorporeal hereditaments. The provisions of this Section 21.2 shall survive the expiration or earlier termination of this Lease.

Section 21.3 Limited Recourse.

(a) In no event shall Lessor's trustees, officers, directors or employees have any personal liability to Lessee under this Lease, and Lessor's liability under this Lease for all claims Lessee may have against Lessor shall not exceed an amount equal to the value of the Lessor's interest in the Premises. The parties agree that such value is based on the sum of the present value of (i) Lessor's reversionary fee interest in the Premises, and (ii) the rental income to be earned by Lessor during the remaining Term (measured at the time of any judgment).

(b) In no event shall any shareholder, investor, partner, employee, officer or director of Lessee have any personal liability under this Lease.

ARTICLE 22. APPROPRIATION, DAMAGE OR DESTRUCTION

Section 22.1 No Termination, No Effect on Rental Obligation. No Appropriation nor any loss or damage by any casualty resulting in either partial or total destruction of the Premises, the Improvements or any other property on the Premises shall, except as otherwise provided herein, operate to terminate this Lease. Except as expressly provided herein, no such Appropriation, loss or damage shall affect or relieve Lessee from Lessee's obligation to pay Rent, and in no event shall Lessee be entitled to any proration or refund of Rent paid hereunder. Unless this Lease is terminated pursuant to and in accordance with this Article 22, and except as expressly provided in Section 22.3 below with respect to reduction of Rent in the event of a partial Appropriation, no such Appropriation, loss or damage shall relieve or discharge Lessee from the payment of Rent, or from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Lessee to be performed and observed. Lessee hereby expressly waives the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, or any amendments thereto or any similar law, statute or ordinance now or hereafter in effect.

Section 22.2 Evaluation of Effect of Damage or Appropriation. Upon the occurrence of any event of damage or destruction to the Premises or the Improvements or any portion thereof during the Term, Lessee shall promptly undertake to determine the extent of the same and the estimated cost and time to repair and restore the Improvements in accordance with the provisions of this Lease. Lessee shall notify Lessor of its estimation of such cost and time not later than sixty (60) days after the occurrence of the damage or destruction. Upon any Appropriation of less than the entire Premises, Lessee shall promptly undertake to determine the effect of such Appropriation on the remaining portion of the Premises and the function of the Premises and, if this Lease is not terminated pursuant to and in accordance with this Article 22, the cost and time to make any repairs and Alterations to the remaining portion of the Premises necessary in order for the Premises to be restored to an economically viable whole capable of operation in accordance with this Lease. Lessee shall notify Lessor of its estimation of such cost and time not later than sixty (60) days after the occurrence of the Appropriation.

Section 22.3 Partial Appropriation; Amendment; Duty to Restore. If less than the entire Premises is subject to an Appropriation and this Lease is not terminated by either party pursuant to and in accordance with this Article 22, this Lease shall be deemed terminated as to the part so Appropriated as of the date of Appropriation and shall be deemed amended, effective as of the effective date of such Appropriation, such that the definition of the “Premises” shall include only that portion of the Premises that is not subject to such Appropriation. As of the effective date of such Appropriation, the Minimum Annual Rent and MDA Rent shall be adjusted proportionately, based on the portion of the Premises that has been Appropriated and the value of such portion. Lessee, as promptly as practicable and with all due diligence, shall cause the repair or reconstruction of or the making of Alterations to the Improvements as necessary to restore the Improvements to an economically viable whole capable of operation in accordance with this Lease.

Section 22.4 Damage or Destruction; Duty to Restore. If the Premises or the Improvements, or any portion thereof, are damaged or destroyed at any time during the Term and this Lease is not terminated by either party pursuant to and in accordance with this Article 22, Lessee, as promptly as practicable and with all due diligence (given the time required to obtain insurance proceeds and to obtain construction permits), shall cause the repair, reconstruction and replacement of the Improvements as nearly as possible given the circumstances and then-Applicable Law to their condition immediately prior to such damage or destruction and, except as otherwise approved in writing by Lessor or precluded by then-Applicable Law, to their same general appearance. Notwithstanding the foregoing, Lessee shall have the right to elect not to restore any building that is damaged where the cost to repair and restore such building to substantially the same condition as existed immediately prior to such damage exceeds thirty-three percent (33%) of the Full Insurable Replacement Value of such building and the damage is not covered by special form insurance which Lessee is required to maintain under this Lease (not including the amount of any deductible); provided, however, that Lessee shall be obligated to repair or restore the Premises such that at least seventy-five percent (75%) of the square footage comprising the Improvements in existence immediately prior to such damage (the “**Pre-Existing Square Footage**”) is available for occupancy. If Lessee elects not to restore any such building(s) pursuant to the foregoing right, then the following shall apply: (a) Lessee shall cause such building(s) to be demolished and removed in accordance with Applicable Law, and shall clear, level and landscape the area of such building(s) in a manner comparable to the remainder of the Premises; and (b) the amount of Minimum Annual Rent shall not be changed or abated. In addition, if any damage or destruction occurs that is not covered by special form insurance which Lessee is required to maintain under this Lease (not including the amount of any deductible) and there is less than fifteen (15) but more than five (5) years remaining in the Term, then

(a) Lessee shall be obligated to repair and restore the Premises pursuant to this Article 22 (such that at least seventy-five percent (75%) of the Pre-Existing Square Footage is available for occupancy) only in the event Lessor agrees to extend the Term so that twenty (20) years remains in the Term as of the date such restoration of the Premises is completed, which Lessor may elect in its sole discretion; and

(b) if Lessor elects not to so extend the Term, Lessee shall: (i) make such repairs as may be necessary to place the Premises in a safe condition by repairing any partially damaged buildings and demolishing any buildings that cannot be repaired, (ii) clear, level and landscape the area of any demolished buildings, and (iii) remove any debris (including without limitation, any Hazardous Substances resulting from the casualty); provided, however, that in the event Lessee does not restore the Improvements (such that at least seventy-five percent (75%) of the

Pre-Existing Square Footage is available for occupancy) within eighteen (18) months after the date of such damage (subject to extension for Force Majeure), Lessor may terminate this Lease upon ninety (90) days notice to Lessee; provided, further however, that if Lessor fails to exercise its right to terminate this Lease under the foregoing provisions of this clause (b) on or before the date which is ninety (90) days after the earlier of (A) the date of the expiration of such eighteen (18) month period, as same may be extended for Force Majeure, or (B) the date of written notice from Lessee that Lessee does not intend to so restore the Premises, then Lessor shall be deemed to have waived its right to terminate this Lease pursuant to this clause (b).

Section 22.5 Performance of Repairs and Restoration. All repairs and restoration shall be performed in accordance with the provisions of Article 12 of this Lease (as applicable). Except as otherwise provided herein, all insurance proceeds and all Awards received by or payable to any party with respect to any casualty or to the repairs needed to repair the Premises following a partial Appropriation (except proceeds of insurance carried by subtenants under Permitted Subleases covering loss or damage of their personal property), less actual costs and expenses incurred in connection with the collection thereof, shall be applied to the costs of repair and restoration (or demolition) of the Premises and the Improvements in accordance with the provisions of this Article 22 and in compliance with Article 12 (as applicable). All such insurance proceeds shall be held by Lessee (if and for so long as Lessee is the original Lessee named in this Lease or an Affiliate thereof, and otherwise such proceeds shall be held by a trust company reasonably satisfactory to Lessor and Lessee), or at the request of the holder of any Leasehold Mortgage, by a trust company reasonably satisfactory to Lessor and such holder. Insurance proceeds shall be made available to Lessee in monthly draws during the repair of the Premises, which shall be available upon submission by Lessee of written request accompanied by reasonably detailed invoices and customary lien releases from Lessee's contractor. Lessee shall pay any amount by which the Award or insurance proceeds received by Lessee as a result of the applicable damage or Appropriation, less the costs and expenses incurred in connection with the collection thereof, are insufficient to pay the entire cost of such repair and restoration.

Section 22.6 Option to Terminate Upon Damage or Destruction. Notwithstanding any provision hereof to the contrary, in the event of (a) any damage to or destruction of the Premises or the Improvements or any portion thereof at any time during the Term and the cost to repair and restore the same to substantially the same condition as existed immediately prior to such occurrence is reasonably estimated to exceed thirty-three percent (33%) of full replacement cost of all Improvements on the Premises and is not covered by any insurance obtained or required to be obtained by Lessee pursuant to Article 20, (b) any damage to or destruction of the Premises or the Improvements occurring during the last five (5) Lease Years, or (c) any damage to or destruction of the Premises or the Improvements costing more than thirty-three percent (33%) of the full replacement cost of the Improvements, which Lessee is unable to repair or restore within five (5) years after the date of the casualty (despite diligent efforts to do so) due to the physical condition of the Premises or governmental restrictions, then Lessee shall have the option to terminate this Lease, exercisable as provided below.

Section 22.7 Option to Terminate upon Appropriation. If during the Term the entire Premises or such portion thereof shall be Appropriated such that the Appropriation makes the continued operation of the remaining portion of the Premises not capable of being restored to an economically viable whole for the purposes permitted hereunder, then, in either such case, Lessee shall have the option to terminate this Lease.

Section 22.8 Termination; Lessee's Obligation to Restore. Lessee may exercise its option to terminate this Lease during the Term pursuant to this Article 22 by giving written notice

to Lessor within ninety (90) days after the occurrence of the event of damage or destruction, any other date that triggers Lessee's termination right, or the Appropriation, as the case may be. If Lessee elects to terminate this Lease pursuant to this Article 22, Lessee shall surrender the Premises to Lessor in accordance with the provisions of Article 28, except to the extent the damage or destruction prevents Lessee from so doing, shall demolish any partially destroyed Improvements, and shall make such other repairs as may be necessary to place the Premises in a safe condition, remove any debris and clean and level the area of any demolished buildings (it being agreed, however, that Lessee shall not be required to landscape the area of any demolished buildings in the case of termination of this Lease). Lessee's obligations under this Article 22 shall survive the termination of this Lease. All proceeds of insurance payable with respect to damage to, or destruction of the Improvements and other property located on the Premises, after payment of costs and expenses of collection thereof, shall first be applied to the costs of any demolition, removal, restoration, and remediation required under this Article 22, depending on the extent of the damage or destruction, with the balance, if any, of such insurance proceeds, to be distributed as provided in Section 22.10. All Awards with respect to Lessee's interests with respect to such Appropriation shall be distributed as provided in Section 22.10. Notwithstanding any provision hereof to the contrary, if Lessee elects to not restore any portion of the Premises pursuant to its rights under this Article 22, or Lessee or Lessor elects to terminate this Lease pursuant to their respective rights under this Article 22, then all insurance proceeds with respect to the applicable fire or other casualty, less the amount, if any, required to cure any default on the part of Lessee with respect to its obligations under the foregoing provisions of this Article 22 in connection with the applicable fire or other casualty shall belong (and be paid) to Lessee.

Section 22.9 Determination of Award. The amount of the Award due to Lessor and Lessee as a result of Appropriation shall be separately determined by the court having jurisdiction over such proceedings based on the following: Lessor shall be entitled to that portion of the Award attributable to the value of the fee interest in the Premises (or portion thereof subject to Appropriation, in case of a partial Appropriation) subject to this Lease, and to the value of Lessor's reversionary interest in the Improvements (or portion thereof subject to Appropriation, in case of a partial Appropriation), as determined by the court; Lessee shall be entitled to that portion of the Award attributable to the value of Lessee's leasehold interest in the Premises (or portion thereof subject to Appropriation, in case of a partial Appropriation) and to the value of Lessee's interest in the Improvements (or portion thereof subject to Appropriation, in case of a partial Appropriation), as determined by the court.

Section 22.10 Excess Proceeds and Awards for Lessee's Interests. If the total Award made in connection with any Appropriation for Lessee's interests, and for severance damages to both Lessee's and Lessor's interests, exceeds the amount necessary to repair, restore, reconstruct or demolish the Improvements to the extent required under this Article 22 in a case where this Lease is not terminated, or if there are proceeds of insurance in excess of that required to repair, restore, reconstruct or demolish the Premises and the Improvements to the extent required under this Article 22, upon receipt by Lessor of satisfactory evidence that the work of repair, restoration, reconstruction or demolition required under this Article 22 has been fully completed to the extent required under this Section 22 and paid for in accordance with the provisions of Article 12 and that the last day for filing any mechanic's or materialmen's liens has passed without the filing of any, or if filed, any such lien has been released, any remaining Award or proceeds of insurance shall be paid to Lessee and the holders of Leasehold Mortgages as their interests may appear. In case of an Award with respect to Lessee's interests with respect to an Appropriation in a case where this Lease is terminated, any such Award shall be paid to Lessee and the holders of Leasehold Mortgages as their interests may appear.

Section 22.11 Right to Participate in Settlement. Except for any damage or Appropriation occurring during the Entitlement Period, Lessor and Lessee shall both have the right to participate in the settlement or compromise of any insurance proceeds and Awards. To the extent applicable, if in any Appropriation the court does not make the allocation of Awards referred to in Section 22.10, the parties shall endeavor to agree upon the proper and reasonable allocation of Awards. If the parties have been unable to agree on the proper and reasonable allocation of Awards after thirty (30) days of good faith negotiations, then such allocation shall be determined by submitting the dispute to arbitration pursuant to Article 37, and the arbitration shall be final and binding upon both parties. The costs and expenses of the prevailing party in connection with any such arbitration shall be paid by the other party within thirty (30) days after the decision in such arbitration proceeding.

Section 22.12 Emergency Repairs. If a casualty occurs there is a substantial possibility that immediate emergency repairs will be required to eliminate defective or dangerous conditions and to comply with Applicable Laws pending settlement of insurance claims and prior to procuring bids for performance of restoration work. Notwithstanding any other provision of this Article 22 to the contrary, Lessee shall promptly undertake such emergency repair work after a casualty as is necessary or appropriate under the circumstances to eliminate defective or dangerous conditions and to comply with Applicable Laws and any proceeds of insurance shall first be applied to reimburse Lessee for the cost of such emergency repair work.

ARTICLE 23. ASSIGNMENT

Section 23.1 Consent Required. Except as otherwise permitted in this Article 23 or in Articles 24 or 25, Lessee shall not directly or indirectly, in whole or in part, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate its interest in or rights with respect to the Premises or Lessee's leasehold estate therein or the Improvements (any of the foregoing being herein referred to as a "**Transfer**") without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Any sale or other transfer of voting stock, partnership interests or membership interests, or any consolidation or reorganization that results in a change in control of Lessee, shall be deemed a Transfer hereunder; provided, however, that the sale of voting stock of Lessee shall not be deemed a Transfer if Lessee is a publicly traded company, nor shall any assignment by Lessee to an Affiliate of Lessee or to a successor-in-interest to Lessee that acquires Lessee through a merger or sale of substantially all of the assets of Lessee be deemed a Transfer hereunder. For this purpose, "control" shall mean the sale or other transfer of more than fifty percent (50%) of the beneficial interest in Lessee, whether directly or by sales or transfers of underlying interests, and whether in a single transaction or a series of transactions. Lessor shall approve or disapprove any proposed Transfer within fifteen (15) business days after receipt of Lessee's written request for approval (except as otherwise provided in Section 23.5), which request shall be deemed complete and delivered only if it (a) identifies the proposed assignee, (b) includes a copy of the proposed assignment documentation, and (c) includes reasonably detailed information regarding the financial condition of the proposed assignee.

Section 23.2 Conditions to Approval. Without limiting any other reasonable basis for denial of consent to a Transfer, Lessee agrees that it shall be conclusively presumed to be reasonable for Lessor to consider the following requirements in determining whether or not to consent to a proposed Transfer:

- (a) No Event of Default shall have occurred and remain uncured under this Lease;
- (b) Lessee shall have complied with all provisions of this Article 23, including Section 23.5;
- (c) The use of the Premises by the transferee shall comply with the provisions of this Lease and shall not materially increase the risk of an Environmental Claim arising from any Lessee Environmental Activity to be conducted by the transferee at the Premises;
- (d) The proposed transferee shall be (or shall commit to hiring a manager or operator that is) experienced in the ownership, management and operation of First Class properties similar to the Premises,
- (e) The proposed transferee shall not have filed a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of any government or any subdivision within five (5) years prior to the date of the proposed Transfer;
- (f) The proposed transferee shall not (i) be under formal investigation by the Securities and Exchange Commission (the “SEC”) or subject to any SEC proceedings disclosed (or required to be disclosed) on the proposed transferee’s periodic filings with the SEC on the date of the proposed transfer or (ii) subject to a material enforcement action issued by the SEC against the proposed transferee within two (2) years prior to the date of the proposed Transfer;
- (g) The proposed transferee shall not have been a party to litigation adverse to Lessor, or the subject of any default proceedings instituted by Lessor as landlord of property leased by the proposed transferee; and
- (h) The proposed transferee shall be capable financially of performing Lessee’s obligations under this Lease and all other obligations relating to the Premises.

Section 23.3 Assumption in Writing. Upon any Transfer, Lessee shall deliver to Lessor a fully executed copy of the assignment instrument, pursuant to which the proposed transferee shall unconditionally assume and agree to perform and observe all covenants and conditions to be performed and observed by Lessee under this Lease. The consent by Lessor to any Transfer shall not relieve Lessee from the obligation to obtain Lessor’s express consent to any other Transfer requiring Lessor’s consent. Any Transfer or attempted Transfer that fails to comply with this Article 22 shall be void and, at the option of Lessor, shall constitute an Event of Default. No Transfer shall relieve Lessee from liability under this Lease.

Section 23.4 Entire Interest. Lessee shall not be entitled to Transfer less than all of its interest under this Lease or to Transfer its title to the Improvements separately from its interest under this Lease.

Section 23.5 Lessor’s Rights of First Offer and First Re Offer.

(a) **Right of First Offer.** If Lessee desires to enter into a Transfer, it shall first, before commencing any marketing activity in anticipation of a Transfer, deliver to Lessor a

written offer (the “**Offer**”) setting forth all the material terms and conditions upon which Lessee proposes to Transfer its interest and offering to enter into a Transfer with Lessor on the same terms and conditions (except that if the terms and conditions include financing, Lessor shall have the option to acquire Lessee’s interest for all cash). Lessor shall have thirty (30) days after receipt in which to accept the Offer by written notice to Lessee. If Lessor does not give Lessee written notice accepting the Offer within the 30 day period, Lessee may at any time within the 9-month period after the expiration of the 30 day period, subject to all of the applicable terms and conditions of this Article 23, enter into a letter of intent or lease assignment for the Transfer of its interest to a third party without reoffering the interest to Lessor, provided that the terms and conditions of such Transfer shall not be “materially more favorable” to the Transferee (as defined in Section 23.5(b)) than those set forth in the Offer, and, if Lessee shall have entered into a letter of intent but not a lease assignment within such nine (9) month period, Lessee shall proceed diligently to the execution of assignment documents as soon as reasonably possible after the expiration of such 9-month period. If Lessee does not enter into a letter of intent or lease assignment for a Transfer before the expiration of the aforesaid 9-month period, but Lessee still desires to enter into a Transfer, Lessee shall again deliver to Lessor an Offer in accordance with this Section 23.5(a) (but offering the interest to Lessor on the same terms as were being offered to a third party), and Lessor shall have the right of first offer for another period of thirty (30) days after receipt of such Offer. This right of first offer shall be ongoing, and shall apply to all Transfers proposed at any time during the Term.

(b) **Right of Re-Offer.** If Lessee proposes to enter into a Transfer at any time within the nine-month period after delivery of the Offer on terms and conditions materially more favorable to the proposed Transferee than those contained in the Offer, Lessee shall again deliver to Lessor an Offer in accordance with Section 23.5(a), offering the interest to Lessor on the more favorable terms, and Lessor shall have fifteen (15) business days after receipt of the better Offer to accept such Offer by written notice to Lessee. For purposes of this Lease, the terms and conditions shall be “materially more favorable” if, taking into account all terms and conditions which would affect the economics of the proposed Transfer, they would have an aggregate economic value to Lessee that is equal to or lower than 95% of the economic value of the original Offer made by Lessee to Lessor. This right of re-offer shall be ongoing, and shall apply to all Transfers proposed at any time during the Term.

(c) **Documentation and Closing of Transfer.** If Lessor accepts an Offer, Lessor and Lessee shall work in good faith to complete a purchase and sale contract, together with such other appropriate documentation as may be necessary to effect the Transfer to Lessor, within forty-five (45) days after Lessor’s written notice of acceptance of the Offer, and to close such Transfer within ninety (90) days after Lessor’s written notice of acceptance of the Offer; provided, however, that the closing date may be extended for an additional thirty (30) days by Lessor in the event Lessor identifies a commercially reasonable due diligence item that requires more time to resolve. If Lessor accepts such Offer, Lessor shall promptly commence and diligently pursue its due diligence investigations. The Transfer shall be consummated by Lessor’s payment of the required consideration and Lessee’s delivery to Lessor of such documentation as Lessor may elect consistent with the Offer, which may consist, at Lessor’s election, of: (i) the documentation provided for in Section 28.2 in the case of a termination of this Lease; or (ii) (A) an assignment of lease, in recordable form, assigning to Lessor or its nominee all of Lessee’s right, title and interest in, to and under the Lease, free and clear of any and all Liens except for title exceptions existing as of the Commencement Date or as otherwise permitted hereunder, (B) a good and sufficient assignment of all of Lessee’s rights as landlord under any Permitted Subleases and such other agreements as Lessor may elect, and (C) a quitclaim deed to the Improvements. Lessor may elect, in its sole discretion, to assign its rights hereunder to an affiliate or nominee.

(d) **Transfer to an Affiliate.** Notwithstanding anything to the contrary contained herein, the provisions of this Section 23.5 shall not apply to any transaction that is permitted under Section 23.1 without Lessor's consent.

ARTICLE 24. SUBLETTING

Section 24.1 Conditions to Subletting. Notwithstanding the provisions of Article 23 regarding Transfers, Lessee may enter into subleases for portions of the Premises subject to the following conditions:

(a) Lessee shall obtain the prior written consent of Lessor, which consent shall not be unreasonably withheld, provided that if all other conditions of this Article 24 are satisfied, it shall be presumed unreasonable to withhold such consent (absent extraordinary circumstances justifying denial of such consent); provided, however, if the sublease is to an Affiliate of Lessee, in which case Lessee shall provide notice of such sublease to Lessor, and the other terms and conditions of this Section 24.1 shall apply to such sublease other than those set forth in subparts (j) and (k) below, but Lessee shall have no obligation to obtain Lessor's consent;

(b) no rent paid to Lessee under any sublease shall be based in whole or in part on the subtenant's net income or profits;

(c) no sublease shall relieve Lessee from the performance of any of its obligations under this Lease;

(d) no sublease shall extend beyond the expiration date of the Term of this Lease;

(e) each sublease shall be subject to and subordinate to the terms, covenants and conditions of this Lease and the rights of Lessor hereunder, including the use restrictions contained in Article 10 hereof;

(f) each sublease shall contain a provision that upon any termination or surrender of this Lease, either such sublease shall terminate, or, at Lessor's sole option, such sublease shall continue in full force and effect and the subtenant shall attorn to, or, at Lessor's option, enter into a direct lease on identical terms with, Lessor;

(g) each sublease shall prohibit prepayment of rent thereunder (except for security for the payment of rent) in an amount exceeding twelve (12) months' rent;

(h) the subtenant's proposed use of its space shall be permitted under this Lease and shall not materially increase the risk of an Environmental Claim arising from any Lessee Environmental Activity to be conducted by such subtenant at the Premises (it being the understanding of the parties that if Lessor approves a sublease to a research and development user, it shall be reasonable for Lessor to condition such consent on the subtenant agreeing to additional environmental requirements normally contained in Lessor's leases of research and development space (i.e. specific approval of any Hazardous Substances to be used in the Premises, the requirement of an annual inventory of Hazardous Substances, and requirements for permitting and closure);

(i) Lessor may reasonably consider the requirements set forth in Section 23.2(f) and (g);

(j) for any sublease of over 100,000 rentable square feet, the subtenant shall demonstrate financial responsibility and resources reasonably satisfactory to Lessor (taking into consideration Lessee's continuing primary liability under this Lease, the term of the sublease and the amount of space being subleased); provided that Lessor shall have no right to base its decision on the rent to be charged to the subtenant and Lessee may redact the rent information from any documents submitted to Lessor;

(k) if the sublease is for twenty-five percent (25%) or more of the Premises, Lessee shall have complied with the requirements of Section 24.4 below;

(l) if the subtenant's proposed use of its space is primarily Non-R&D Use, such Non-R&D Use must be in compliance with the requirements of Section 10.2 above; and

(m) the subtenant shall execute Lessor's then-current form of environmental release, which provides for a full release of Lessor from any liability to the subtenant arising out of or relating to the environmental condition of the Premises.

Section 24.2 Required Information; Lessor's Response. Lessor agrees to approve or disapprove any proposed sublease within twenty (20) business days after Lessee's written request for approval, which request shall (a) identify the proposed subtenant and the subtenant's proposed use of its space, (b) state that the proposed sublease meets the conditions set forth in Section 24.1 above, (c) include the proposed form of sublease, (d) include information regarding the financial condition of the proposed subtenant, and (e) include such other information as is reasonably necessary to respond to the requirements of Section 24.1, or otherwise to allow Lessor to reasonably evaluate the proposed subtenant. With respect to any Major Sublease, Lessee acknowledges that it is also required to comply with the requirements of Section 24.4 below before submitting a request for approval with respect to such Major Sublease, and nothing contained in this Section 24.2 shall relieve Lessee from the obligation to do so.

Section 24.3 Permitted Sublease. Any sublease entered into by Lessee in accordance with the provisions of this Article 24 is herein referred to as a "**Permitted Sublease**". Lessee shall provide Lessor with a fully executed copy of each Permitted Sublease promptly upon execution, without redaction of rent information. Within thirty (30) days after written demand by Lessor, Lessee shall furnish Lessor a schedule, certified by Lessee as true and correct, setting forth all Permitted Subleases then in effect, including in each case the name of the subtenant, a description of the space subleased, the annual rental payable by such subtenant, a list of the Permitted Subleases, if any, that have been assigned to any Leasehold Mortgagee as additional security, and any other information reasonably requested by Lessor with respect to the Permitted Subleases.

Section 24.4 Lessor's Right of First Offer Regarding Major Subleases. If Lessee desires to market twenty-five percent (25%) or more of the square footage comprising the Premises (whether for a single sublease or multiple subleases to be entered into pursuant to a unified marketing campaign and within substantially the same period of time) (each, a "**Major Sublease**"), it shall first, before commencing any marketing activity in anticipation of such Major Sublease, deliver to Lessor a written offer, based on the Fair Market Rental Value (as of the date of such offer) of such Major Sublease (the "**Major Sublease Offer**") setting forth all the

material terms and conditions upon which Lessee proposes to enter into the Major Sublease and offering to enter into a Major Sublease with Lessor on the same terms and conditions. Lessor shall have fifteen (15) business days after receipt in which to accept the Major Sublease Offer by written notice to Lessee, or to notify Lessee that Lessor accepts the Major Sublease offer but disputes Lessee's determination of Fair Market Rental Value.

(a) In the event Lessor notifies Lessee that it disputes the Fair Market Rental Value, the parties shall enter into good faith negotiations for a period of thirty (30) days to arrive at agreement, and in the event they are unable to do so after thirty (30) days of good faith negotiations, the Fair Market Rental Value shall be determined pursuant to the process described in **Exhibit D**.

(b) If Lessor does not give Lessee written notice accepting the Major Sublease Offer or disputing the Fair Market Rental Value within the initial 15 business-day period, Lessee may at any time within the twelve (12) month period after the expiration of the 15 business-day period, subject to all of the applicable terms and conditions of this Article 24, enter into a letter of intent or sublease for a Major Sublease with respect to the portion of the Premises identified in the original Major Sublease Offer submitted to Lessor on any terms without submitting a new Major Sublease Offer to Lessor and, if Lessee shall have entered into a letter of intent but not a sublease within such 12-month period, Lessee shall proceed diligently to the execution of a sublease as soon as reasonably possible after the expiration of such 12-month period. If Lessee does not enter into a letter of intent or sublease for a Major Sublease before the expiration of the aforesaid 12-month period, but Lessee still desires to enter into a Major Sublease, Lessee shall deliver to Lessor a new Major Sublease Offer in accordance with this Section 23.4(a), and Lessor shall have the right of first offer for another period of fifteen (15) business days after receipt of such new Major Sublease Offer.

(c) The right of first offer with respect to Major Subleases shall be ongoing, and shall apply to all Major Subleases proposed at any time during the Term. If Lessor accepts a Major Sublease Offer, Lessor and Lessee shall work in good faith to consummate the Major Sublease pursuant to a mutually satisfactory sublease document within thirty (30) days after Lessor's written notice of acceptance of such Major Sublease Offer, or the final determination of the Fair Market Rental Value pursuant to **Exhibit D**, whichever comes later.

(d) Notwithstanding the foregoing, the provisions of this Section 24.4 shall not apply to any sublease to an Affiliate of Lessee.

ARTICLE 25. LEASEHOLD MORTGAGES

Section 25.1 Leasehold Mortgage.

(a) Notwithstanding the provisions of Article 23 regarding Transfer of this Lease, but subject to the provisions of this Article 25, Lessee shall have the right at any time and from time to time to encumber the entire (but not less than the entire) leasehold estate created by this Lease and Lessee's interest in the Improvements by a mortgage, deed of trust or other security instrument (any such mortgage, deed of trust, or other security instrument that satisfies the requirements of this Article 25 being herein referred to as a "**Leasehold Mortgage**") to secure repayment of a loan (and associated obligations) made to Lessee by an Institutional Lender for the purpose of financing the construction of any Improvements made pursuant to the terms of this Lease or for the long-term financing of any such Improvements, provided that the loan secured by a Leasehold Mortgage shall be payable over not more than the remaining portion of

the Term, and shall be in an amount that, when aggregated with the outstanding amount of all other Leasehold Mortgages, does not exceed seventy percent (70%) of the then fair market value of Lessee's leasehold estate and interest in the Improvements.

(b) In no event shall all or any portion of Lessor's Interest, including without limitation, Lessor's fee interest in the Premises or reversionary interest in the Improvements or interest under this Lease, be subject or subordinate to any lien or encumbrance of any mortgage, deed of trust or other security instrument.

(c) For purposes of this Article 25, "**Institutional Lender**" shall mean a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company or a foreign banking institution (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an insurance company organized and existing under the laws of the United States or any state thereof or a foreign insurance company (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an institutional investor such as a publicly held real estate investment trust, an entity that qualifies as a "REMIC" under the Internal Revenue Code or other public or private investment entity (in each case whether acting as principal or agent) which at the date hereof or in the future is involved in the business of investing in real estate assets; a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an employees' welfare, benefit, pension or retirement fund; an institutional leasing company; any governmental agency or entity insured by a governmental agency, or any combination of Institutional Lenders; provided that each of the entities shall qualify as an Institutional Lender only if (at the time it becomes an Institutional Lender) it shall not be an Affiliate of Lessee.

Section 25.2 Agreement with Institutional Lender. Upon request by Lessee, Lessor agrees to enter into a tri-party agreement in the form attached hereto as **Exhibit E** with Lessee and any Institutional Lender holding a first priority Leasehold Mortgage.

ARTICLE 26. EVENTS OF DEFAULT AND REMEDIES

Section 26.1 Events of Default. The occurrence of any of the following shall be an "**Event of Default**" on the part of Lessee hereunder:

(a) Failure to pay Rent or any other sums of money that Lessee is required to pay hereunder at the times or in the manner herein provided, when such failure shall continue for a period of ten (10) days after written notice thereof from Lessor to Lessee; any such notice shall be deemed to be the notice required under California Code of Civil Procedure Section 1161. No such notice shall be deemed a forfeiture or a termination of this Lease unless Lessor expressly so elects in such notice.

(b) Failure to perform any nonmonetary provision of this Lease when, except in the case of any provision which by its terms provides for no grace period, such failure shall continue for a period of thirty (30) days, or such other period as is expressly set forth herein, after written notice thereof from Lessor to Lessee; any such notice shall be deemed to be the notice required under California Code of Civil Procedure Section 1161; provided that if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then an Event of Default shall not be deemed to have occurred if Lessee shall commence such cure within said 30-day period and thereafter diligently and continuously prosecute such cure to completion. No such notice shall be deemed a forfeiture or a termination of this Lease unless Lessor expressly so elects in such notice.

(c) The abandonment of the Premises by reason of a course of conduct by Lessee that reasonably evidences an interest permanently to relinquish its rights under this Lease and which continues for the applicable period of time identified in Section 1951.3 of the California Civil Code after delivery to Lessee of a Notice of Belief of Abandonment pursuant to Section 1951.3.

(d) Lessee shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of any government or any subdivision thereof either now or hereafter in effect, make an assignment for the benefit of its creditors, consent to or acquiesce in the appointment of a receiver of itself or of the whole or any substantial part of the Premises.

(e) A court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver of Lessee or of the whole or any substantial part of the Premises and such order, judgment or decree shall not be vacated, set aside or stayed within sixty (60) days after the date of entry of such order, judgment, or decree, or a stay thereof shall be thereafter set aside.

(f) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Lessee under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute of the Federal government or any state government or any subdivision of either now or hereafter in effect, and such order, judgment or decree shall not be vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay thereof shall be thereafter set aside.

(g) Failure to surrender possession of the Premises as of the Termination Date.

Section 26.2 Lessor's Remedies. Upon the occurrence of an Event of Default, Lessor shall have the following rights and remedies:

(a) The right to terminate this Lease, in which event Lessee shall immediately surrender possession of the Premises in accordance with Article 28, and pay to Lessor all Rent and other charges and amounts due from Lessee hereunder to the date of termination.

(b) The rights and remedies described in California Civil Code Section 1951.2, pursuant to which Lessor may recover from Lessee upon a termination of this Lease, (i) the worth at the time of award of 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 Lessee proves could have been reasonably avoided; (iii) the worth at the time of the 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 Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom. The "worth at the time of award" of the amounts referred to in (i) and (ii) above is computed by allowing interest at the rate of ten percent (10%) per annum. The "worth at the time of award" of the amount referred to in (iii) above shall be

computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). The detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom, includes, without limitation, (A) any direct costs or expenses incurred by Lessor in recovering possession of the Premises, maintaining or preserving the Premises after such default, (B) preparing the Premises for marketing to a new tenant, (C) any repairs or alterations to the Premises for such reletting, (D) leasing commissions, architect's fees and any other costs necessary or appropriate to relet the Premises and (E) such amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Applicable Law to the extent that such payment would not result in a duplicative recovery.

(c) The rights and remedies described in California Civil Code Section 1951.4 that allow Lessor to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as Lessor does not terminate Lessee's right to possession. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon Lessor's initiative to protect its interest under this Lease shall not constitute a termination of Lessee's right to possession. Lessee acknowledges that in the exercise of its rights under this subsection, Lessor has no duty to mitigate its damages.

(d) The right and power, as attorney-in-fact for Lessee, to enter and to sublet the Premises upon any vacancy while an Event of Default is outstanding, to collect rents from all subtenants and to provide or arrange for the provision of all services and fulfill all obligations of Lessee under the Permitted Subleases, and Lessor is hereby authorized on behalf of Lessee, but shall have absolutely no obligation, to provide such services and fulfill such obligations and to incur all such expenses and costs as Lessor deems necessary in connection therewith. Lessee shall be liable immediately to Lessor for all costs and expenses Lessor incurs in collecting such rents and arranging for or providing such services or fulfilling such obligations. Lessor is hereby authorized, but not obligated, to relet the Premises or any part thereof on behalf of Lessee, to incur such expenses as may be necessary to effect a relet and make said relet for such term or terms, upon such conditions and at such rental as Lessor in its sole discretion may deem proper. Lessee shall be liable immediately to Lessor for all reasonable costs Lessor incurs in reletting the Premises including, without limitation, brokers' commissions, expenses of remodeling the Premises required by the reletting, and other costs. If Lessor relets the Premises or any portion thereof, such reletting shall not relieve Lessee of any obligation hereunder, except that Lessor shall apply the rent or other proceeds actually collected by it as a result of such reletting against any amounts due from Lessee hereunder to the extent that such rent or other proceeds compensate Lessor for the nonperformance of any obligation of Lessee hereunder. Such payments by Lessee shall be due at such times as are provided elsewhere in this Lease, and Lessor need not wait until the termination of this Lease, by expiration of the Term hereof or otherwise, to recover them by legal action or in any other manner. Lessor may execute any lease made pursuant hereto in its own name, and the lessee thereunder shall be under no obligation to see to the application by Lessor of any rent or other proceeds, nor shall Lessee have any right to collect any such rent or other proceeds. Lessor shall not by any reentry or other act be deemed to have accepted any surrender by Lessee of the Premises or Lessee's interest therein, or be deemed to have otherwise terminated this Lease, or to have relieved Lessee of any obligation hereunder, unless Lessor shall have given Lessee express written notice of Lessor's election to do so as set forth herein.

(e) The right to have a receiver appointed upon application by Lessor to take possession of the Premises and to collect the rents or profits therefrom and to exercise all other rights and remedies pursuant to Section 26.2(d).

(f) The right to enjoin, and any other remedy or right now or hereafter available to a lessor against a defaulting lessee under the laws of the State of California or the equitable powers of its courts, and not otherwise specifically reserved herein.

(g) Whether or not this Lease is terminated, the right to recover actual damages incurred by Lessor arising out of the Event of Default, or due to Lessee's failure to indemnify Lessor pursuant to Section 21.1.

(h) In the event of Lessee's failure to surrender possession of the Premises as of the Termination Date, and in addition to the damages described in Section 21.1(i), the right to collect the Minimum Annual Rent during any holdover period in the amount of one hundred fifty percent (150%) of the Fair Market Rental Value of the Premises as of the Termination Date.

Section 26.3 Waiver of Notice and Redemption. Except as otherwise expressly provided in this Article 26, Lessee hereby expressly waives, so far as permitted by law, the service of any notice of intention to enter or re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Lessee, for and on behalf of itself and all persons claiming through or under Lessee, also waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 or 1179, or under any other present or future law, if Lessee is evicted or Lessor takes possession of the Premises by reason of any default by Lessee hereunder.

Section 26.4 Rights Cumulative. The various rights and remedies reserved to Lessor herein, including those not specifically described herein, shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity and the exercise of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity shall not preclude the simultaneous or later exercise by Lessor of any or all other rights and remedies.

Section 26.5 Roche Default. Notwithstanding any other provisions of this Lease, Lessor and Lessee agree that although Roche was not released from liability upon the assignment of this Lease to Lessee, Lessor has agreed that Roche's liability shall be limited to the obligations described in the Original Lease. As a result of the restatement and amendment of this Lease, only Lessee (and not Roche) shall be liable for performance of Lessee's obligations under this Lease, including any liability for breach of this Lease by Roche in connection with the Closure Work or the Roche License. Without waiving any rights it may have against Roche, Lessor agrees that so long as Lessee performs its obligations under this Lease, including any obligations of Roche that are capable of being performed by Lessee, any breach by Roche shall not be a default by Lessee unless Lessee is capable of curing such default and fails to do so within any cure period provided in this Lease.

Section 26.6 Lessor's Default. Lessor shall be in default under this Lease if Lessor fails to cure any breach of its obligations under this Lease within thirty (30) days after receipt of written notice from Lessee specifying in reasonable detail the nature of Lessor's breach; provided, however, that if the nature of Lessor's breach is such that more than thirty (30) days are required for performance, then Lessor shall not be in default if Lessor commences the cure of such breach within such thirty (30) day period and thereafter diligently prosecutes the same

to completion. Lessee shall be entitled to actual (but not consequential) damages in the event of an uncured default by Lessor, and shall have the right to pursue an action for specific performance of Lessor's obligations under this Lease, but shall not have any right to terminate this Lease as a result of any Lessor default.

ARTICLE 27. LESSOR'S RIGHT TO CURE DEFAULTS

If Lessee shall fail or neglect to do or perform any act or thing herein provided by it to be done or performed and such failure shall not be cured within any applicable grace period provided in Article 26, then Lessor shall have the right, but shall have no obligation, to pay any amounts payable by Lessee to third parties hereunder, discharge any lien, take out, pay for and maintain any insurance required under Article 20, or do or perform or cause to be done or performed any such other act or thing (entering upon the Premises for such purposes, if Lessor shall so elect), and Lessor shall not be or be held liable or in any way responsible for any loss, disturbance, inconvenience, annoyance or damage resulting to Lessee on account thereof (except to the extent of Lessor's gross negligence or willful misconduct), and Lessee shall repay to Lessor upon demand the entire cost and expense thereof, including, without limitation, Lessor's Administrative Fees. Lessor may act upon shorter notice or no notice at all if necessary in Lessor's judgment to meet an emergency situation or governmental or municipal time limitation. Lessor shall not be required to inquire into the correctness of the amount or validity of any payable or lien that may be paid by Lessor, and Lessor shall be duly protected in paying the amount of any such payable or lien claimed, and, in such event, Lessor shall also have the full authority, in Lessor's sole judgment and discretion and without prior notice to or approval by Lessee, to settle or compromise any such lien or payable. Any act or thing done by Lessor pursuant to the provisions of this Article 27 shall not be or be construed as a waiver of any default by Lessee, or as a waiver of any term, covenant, agreement or condition herein contained or of the performance thereof.

ARTICLE 28. SURRENDER OF THE PREMISES

Section 28.1 Surrender. Upon the termination of this Lease, whether at the expiration of the Term or prior thereto, Lessee shall surrender the Premises to Lessor in good order and repair, and in keeping with the then-current standards of the Stanford Research Park (but subject to the age of the Improvements), reasonable wear and tear excepted, free and clear of all letting and occupancies other than any Permitted Subleases that, pursuant to the provisions of this Lease, Lessor has elected to recognize after such termination, and free and clear of all Liens or any other encumbrances and any other encumbrances.

Section 28.2 Ownership of Improvements; Contracts. Upon any termination of this Lease, all Improvements shall automatically and without further act by Lessor or Lessee, become the property of Lessor, free and clear of any claim or interest therein on the part of Lessee or anyone claiming under Lessee, and without payment therefor by Lessor. Upon or at any time after the Termination Date, if requested by Lessor, Lessee shall, without charge to Lessor, promptly execute, acknowledge and deliver to Lessor a good and sufficient quitclaim deed of all of Lessee's right, title, and interest in and to the Premises and the Improvements and a good and sufficient assignment to Lessor of Lessee's interest in any Permitted Subleases which Lessor has elected to recognize after the Termination Date, and in any contracts, as designated by Lessor, relating to the operation, management, maintenance or leasing of the Premises or any part thereof, and shall deliver to Lessor all such other instruments, records and documents relating to the operation, management, maintenance or leasing of the Premises or any part thereof, including but not limited to all leases, lease files, plans and specifications,

records, registers, permits, and all other papers and documents which may be necessary or appropriate for the proper operation and management of the Premises. Lessee hereby irrevocably appoints Lessor as its lawful attorney-in-fact to execute and deliver for, on behalf of and in the name of Lessee, any such deed, assignment or other instrument referred to in this Article 28 or otherwise, required to document the transfer or reversion to Lessor of such interests of Lessee, and Lessee and Lessor agree that such power of attorney shall be a power coupled with an interest. Lessee agrees to indemnify, protect, defend, and hold harmless Lessor from and against any and all losses, costs, damages, claims, liabilities and expenses arising directly or indirectly, in whole or in part, out of any obligations or liabilities incurred by Lessee prior to the Termination Date with respect to any such items so assigned to Lessor. Any contracts, agreements or other obligations of Lessee relating to the Premises not designated by Lessor and assigned by Lessee to Lessor pursuant to this Article 28 shall immediately terminate and be of no further force or effect as of the Termination Date.

Section 28.3 Personal Property. Any personal property of Lessee that remains on the Premises after the Termination Date may, at the option of Lessor, be deemed to have been abandoned by Lessee and may either be retained by Lessor as its property or disposed of, without accountability, at Lessee's expense in such manner as Lessor may determine in its sole discretion.

Section 28.4 Holding Over. Lessee shall have no right to remain in possession after the expiration of the Term. If Lessee remains in possession of all or any part of the Premises after the Termination Date: (i) Lessee's occupancy of the Premises shall be solely as a tenant at sufferance and no notice of termination shall be necessary in order to recover possession; (ii) except as otherwise provided herein, Lessee's occupancy of the Premises shall be subject to all applicable terms and conditions of this Lease; and (ii) Lessee shall be in default under this Lease, entitling Lessor to the remedies set forth in Section 26.2(h).

Section 28.5 Security Deposit. Commencing on January 1, 2042, and each January 1 thereafter during the Term, Lessee shall deliver to Lessor a cash security deposit (the "**Security Deposit**") in the amount of \$500,000 (for a total Security Deposit of \$2,500,000), to be held by Lessor as security for the faithful performance of Lessee's surrender obligations under this Lease. Lessor may, without waiving any of Lessor's other rights or remedies under this Lease, apply the Security Deposit in whole or in part to remedy any failure by Lessee to comply with its surrender obligations hereunder as of the Termination Date, including, without limitation, surrendering the Premises in the condition set forth in Section 28.1 and taking all actions to remediate the Premises from the effects of any Lessee Environmental Activity as set forth in Article 19, or to compensate Lessor for any loss or damages which Lessor may suffer as a result thereof. Lessor shall not be required to keep the Security Deposit separate from its general funds, and Lessee shall not be entitled to interest on the Security Deposit. To the extent Lessor does not require the Security Deposit to rectify Lessee's failure to surrender the Premises in the required condition, all or any remaining portion of the Security Deposit shall be returned to Lessee no later than sixty (60) days after the date on which the Lease terminates.

ARTICLE 29. USE OF NAME

Lessee acknowledges and agrees that the names "The Leland Stanford Junior University," "Stanford" and "Stanford University," and all variations thereof, are proprietary to Lessor. Lessee shall not use any such name or any variation thereof or identify Lessor in any promotional advertising or other promotional materials to be disseminated to the public or any portion thereof or use any trademark, service mark, trade name or symbol of Lessor or that is associated with it, without Lessor's prior written consent, which may be given or withheld in Lessor's sole discretion.

ARTICLE 30. SIGNS

Lessee shall have the right to install any signs on the Premises that are permitted under Applicable Laws; provided, however, Lessee will not place or maintain or authorize or permit any other person to place or maintain any sign or advertisement upon the roof, along the roof line, any window or any exterior wall of any building or structure upon the Premises, or any sign visible from any point beyond not on the Premises without Lessor's consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, Lessee shall be entitled to install, at its sole cost and expense, any signs that are not visible from any point not on the Premises or that otherwise do not require Lessor's consent pursuant to the preceding sentence.

ARTICLE 31. REPRESENTATIONS AND WARRANTIES

Section 31.1 Lessee's Representations and Warranties. Lessee hereby represents and warrants to Lessor as follows:

(a) Lessee is a Delaware corporation duly formed and validly existing under the laws of the state identified in Article 1 and is qualified to do business under the laws of the State of California. Lessee has full corporate power and authority to enter into and perform its obligations under this Lease and to develop, construct and operate the Premises as contemplated by this Lease.

(b) Lessee has taken all necessary action to authorize the execution, delivery and performance of this Lease and this Lease constitutes the legal, valid, and binding obligation of Lessee.

(c) Lessee has the right, power, legal capacity and authority to enter into and perform its obligations under this Lease and no approvals or consents of any person are required in connection with the execution and performance of this Lease. The execution and performance of this Lease will not result in or constitute any default or event that with notice or the lapse of time or both, would be a default, breach or violation of the organizational instruments governing Lessee or any agreement or any order or decree of any court or other governmental authority to which Lessee is a party or to which it is subject.

Section 31.2 Lessor's Representations and Warranties. Lessor hereby represents and warrants to Lessee as follows:

(a) Lessor is a body having corporate powers under the laws of the State of California.

(b) Lessor has taken all necessary action to authorize the execution, delivery and performance of this Lease and this Lease constitutes the legal, valid, and binding obligation of Lessor.

(c) Lessor has the right, power, legal capacity and authority to enter into and perform its obligations under this Lease and no approvals or consents of any person are required in connection with the execution and performance of this Lease. The execution and performance of this Lease will not result in or constitute any default or event that with notice or the lapse of

time or both, would be a default, breach or violation of the organizational instruments governing Lessor or any agreement or any order or decree of any court or other governmental authority to which Lessor is a party or to which it is subject.

ARTICLE 32. NO WAIVER BY LESSOR

No failure by Lessor to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease or to exercise any right or remedy upon a breach thereof, and no acceptance by Lessor of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such term, covenant, agreement, provision, condition or limitation. No term, covenant, agreement, provision, condition or limitation of this Lease and no breach thereof may be waived, altered or modified except by a written instrument executed by Lessor. No waiver of any breach shall affect or alter this Lease but each and every term, covenant, agreement, provision, condition and limitation of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

ARTICLE 33. NO PARTNERSHIP

It is expressly understood that neither Lessee nor Lessor is or becomes, in any way or for any purpose, a partner of the other in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with the other, or agent of the other by reason of this Lease or otherwise. Lessee is and shall be an independent contractor with respect to the Lease and Premises.

ARTICLE 34. NO DEDICATION

This Lease shall not be, nor be deemed or construed to be, a dedication to the public of the Premises, the areas in which the Premises are located or the Improvements, or any portion thereof.

ARTICLE 35. NO THIRD PARTY BENEFICIARIES

This Lease shall not confer nor be deemed nor construed to confer upon any person or entity, other than the parties hereto, any right or interest, including, without limiting the generality of the foregoing, any third party beneficiary status or any right to enforce any provision of this Lease.

ARTICLE 36. NOTICES

Any notice, consent or other communication required or permitted under this Lease shall be in writing and shall be delivered by hand, sent by air courier, sent by prepaid registered or certified mail with return receipt requested, and shall be deemed to have been given on the earliest of (a) receipt or refusal of receipt; (b) one business day after delivery to an air courier for overnight expedited delivery service; or (c) five (5) business days after the date deposited in the United States mail, registered or certified, with postage prepaid and return receipt requested (provided that such return receipt must indicate receipt at the address specified). All notices shall be addressed as appropriate to the addresses given in Article 1 (or to such other or further addresses as the parties may designate by notice given in accordance with this section).

ARTICLE 37. DISPUTE RESOLUTION

Section 37.1 Dispute Resolution.

(a) **Meet and Confer.** The parties shall endeavor to resolve any disputes relating to this Lease through reasonable business-like dispute resolution procedures without resort to litigation. Accordingly, if a dispute arises that is not elsewhere in this Lease expressly made subject to the arbitration procedure set forth in Section 36.2, either party may call a special meeting of the parties by written request specifying the nature of the matter to be addressed. The meeting shall be held at the Premises, and shall be attended by representatives of Lessor and Lessee who have authority to resolve the dispute. Such representatives shall confer in a good faith attempt to resolve the dispute until they either succeed or one or both parties concludes that the dispute will not be resolved through one or more special meetings.

(b) **Mediation.** If a matter in dispute is not resolved through the special meeting process, either party may initiate mediation by delivering written notice to the other. Both parties shall attend and participate in the mediation, which shall be non-binding and without prejudice to any other rights or remedies which any party may have. Unless the parties agree otherwise, the mediation proceeding shall be conducted in San Jose, California, by an independent mediator from the offices of the American Arbitration Association (or any successor or mutually acceptable alternative, referred to hereafter as the “AAA”) in accordance with AAA procedures, within thirty (30) days after the notice initiating mediation is delivered. The costs of the mediation shall be shared equally by both parties to the mediation, except that each party shall pay the fees, costs and expenses of its own legal counsel and consultants in connection with such mediation. Any voluntary settlement reached as a result of the mediation proceeding shall be reduced to writing. All mediation proceedings shall be subject to the provisions of California Evidence Code sections 1152 and 1152.5, and any amended, similar or successor laws.

(c) **General.** This dispute resolution procedure shall not in any way affect any statutes of limitation relating to any dispute relating to this Lease. This dispute resolution procedure may be conducted before or during the pendency of any other legal proceedings, and either party shall be entitled to bring any legal or judicial action to enjoin an act or proposed act by the other party which is in dispute, or seek any other ancillary relief to preserve the status quo or protect the rights of either party, pending the commencement or completion of any mediation process.

Section 37.2 Arbitration of Disputes.

(a) **Scope of Obligation to Arbitrate.** Those disputes which the parties are expressly required or authorized to resolve through arbitration shall be subject to the procedures prescribed in this Section 37.2. This arbitration provision is expressly limited to those matters as to which arbitration is expressly required or authorized elsewhere in this Lease and no other matter shall be subject to arbitration unless the parties, each in the exercise of its sole discretion, mutually agree in writing. Notwithstanding the foregoing, this arbitration provision shall also apply to any disputes between the parties that are not directly related to the enforcement or interpretation of this Lease. The arbitrator (as defined in Section 36.2(b)) shall dismiss any matter submitted to it for determination if such determination is not expressly required or authorized elsewhere in this Lease or in another written agreement executed by both parties.

(b) **Arbitration Procedure.** A party shall initiate arbitration by written notice to the other. The date such notice is given shall be the **“Initiation Date”**. Except as expressly modified herein, the arbitration proceeding shall be conducted by a single neutral arbitrator in accordance with the provisions of Section 1280 *et seq.* of the California Code of Civil Procedure (including without limitation the provisions of Section 1283.05 concerning discovery), as amended or replaced by any successor laws.

Unless the parties mutually agree otherwise, the arbitrator shall be selected by mutual agreement of the parties from a panel provided by the San Francisco office of the AAA, and if the parties fail to agree within fifteen (15) days after the Initiation Date, or if the AAA does not offer a selection of potential arbitrators having the requisite qualifications, either party may apply to the Santa Clara County Superior Court for the appointment of the arbitrator. The date on which the arbitrator is selected or appointed is referred to as the **“Selection Date”**. The arbitrator shall set the matter for hearing within thirty (30) days after the Selection Date, and shall try any and all issues of law or fact that are the subject of the arbitration, and report a statement of decision upon them, if possible, within forth-five (45) days of the Selection Date or as soon thereafter as is practicable. The following time periods set forth in the California Code of Civil Procedure shall be shortened as follows: Section 1288 - four years to 90 days, and 100 days to 30 days; Section 1288.2 - 100 days to 30 days.

The arbitrator shall be empowered, subject to any limitations on the availability of any particular remedies or relief expressly set forth in this Lease, to: (i) enter equitable as well as legal relief; (ii) provide all temporary and/or provisional remedies; and (iii) enter equitable orders that will be binding upon the parties. The costs of the arbitration, including the fees and charges of the arbitrator, shall be shared equally by Lessor and Lessee; provided, however, that each party shall pay the fees and charges of its own legal counsel and any other experts or consultants retained by such party for or in connection with the arbitration unless the arbitrator concludes that the position taken in the arbitration by one of the parties has been substantially upheld in the arbitration award and the position of the other party has been substantially rejected in the arbitration award, in which event the arbitrator shall be empowered, in the discretion of the arbitrator and as part of the arbitration award, to make an award of attorneys’, experts’, and/or consultants’ fees and costs to the party whose position has been substantially upheld in the arbitration. The arbitrator shall issue a single written decision at the close of the arbitration proceeding which shall dispose of all of the claims of the parties that are the subject of the arbitration, and an order or judgment upon that decision may be obtained by either party in a court of competent jurisdiction. The parties expressly reserve their appeal rights under California Code of Civil Procedure Sections 1294(b), (c) and (d), and any amended, similar or successor laws.

The provisions of this Lease relating to arbitration shall be specifically enforceable and shall be subject to the discretion of the court as provided in Part 3, Title 9 (beginning with Section 1280) of the California Code of Civil Procedure. All actions brought under said Title 9 and all actions pertaining to these arbitration provisions shall be brought in the Superior Court of Santa Clara County or the U.S. District Court for the Northern District of California. An award of the arbitrator selected by the parties or by the court shall be final and binding upon the parties hereto and judgment may be entered upon it in a court having jurisdiction pursuant to Section 40.8 below.

(c) **NOTICE.** BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ABOVE “ARBITRATION OF DISPUTES” PROVISION DECIDED BY NEUTRAL ARBITRATION AS

PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT OT THIS ARBITRATION PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF SPECIFIED DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

LESSEE: /s/ MP LESSOR: /s/ JS

ARTICLE 38. [INTENTIONALLY OMITTED]

ARTICLE 39. MEMORANDUM OF LEASE

This Lease shall not be recorded. Concurrently with the execution of this Lease, the parties hereto shall execute and acknowledge a memorandum hereof in recordable form in the form attached hereto as **Exhibit F** that Lessee shall file for recording in the Official Records on or after the Effective Date.

ARTICLE 40. GENERAL PROVISIONS

Section 40.1 Commissions. Each party hereby indemnifies and agrees to protect, defend and hold harmless the other party from and against all liability, cost, damage or expense (including, without limitation, attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which the indemnifying party has agreed to pay or which is claimed to be due as a result of the actions of the indemnifying party. This Section 40.1 is intended to be solely for the benefit of the parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a party to this Lease.

Section 40.2 Severability. In case any one or more of the provisions of this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, and this Lease shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

Section 40.3 Time of the Essence. Time is hereby expressly declared to be of the essence of this Lease and of each and every term, covenant, agreement, condition and provision hereof.

Section 40.4 Headings. Article, Section and subsection headings in this Lease are for convenience only and are not to be construed as a part of this Lease or in any way limiting or amplifying the provisions hereof.

Section 40.5 Lease Construed as a Whole. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Lessor or Lessee. The parties acknowledge that each party and its counsel have reviewed this Lease and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed nor applied in the interpretation of this Lease.

Section 40.6 Meaning of Terms. Whenever the context so requires, the neuter gender shall include the masculine and the feminine, and the singular shall include the plural, and vice versa.

Section 40.7 Attorneys' Fees. In the event of any action or proceeding at law or in equity between Lessor and Lessee to enforce or interpret any provision of this Lease or to protect or establish any right or remedy of either party hereunder, the party not prevailing in such action or proceeding shall pay to the prevailing party all costs and expenses, including without limitation, reasonable attorneys' fees and expenses (including attorneys' fees and expenses of in-house attorneys), incurred therein by such prevailing party and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included in and as a part of such judgment.

Section 40.8 California Law; Forum. The laws of the State of California, other than those laws denominated choice of law rules which would require the application of the laws of another forum, shall govern the validity, construction and effect of this Lease. This Lease is made and all obligations hereunder arise and are to be performed in the County of Santa Clara, State of California. Any action which in any way involves the rights, duties and obligations of the parties hereto may (and if against Lessor, shall) be brought in the courts of the State of California located in Santa Clara County or in the United States District Court for the Northern District of California, and the parties hereto hereby submit to the personal jurisdiction of said courts.

Section 40.9 Binding Agreement. Subject to the provisions of Articles 22, 23 and 24 of this Lease, the terms, covenants and agreements contained in this Lease shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 40.10 Entire Agreement. This instrument, together with the exhibits hereto, all of which are incorporated herein by reference, constitutes the entire agreement between Lessor and Lessee with respect to the subject matter hereof and supersedes all prior offers, negotiations, oral and written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Lessor and Lessee.

Section 40.11 Quiet Enjoyment. Lessor agrees that Lessee, upon paying the Rent and all other sums due hereunder and upon keeping and observing all of the covenants, agreement and provisions of this Lease on its part to be observed and kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term without hindrance or molestation by anyone claiming by, through, or under Lessor.

Section 40.12 Termination Not Merger. The voluntary sale or other surrender of this Lease by Lessee to Lessor, or a mutual cancellation thereof, or the termination thereof by Lessor pursuant to any provision contained herein, shall not work a merger, but at the option of Lessor shall either terminate any or all existing subleases or subtenancies hereunder, or operate as an assignment to Lessor of any or all of such subleases or subtenancies.

Section 40.13 Modification of Lease. In the event of any ruling or threat by the Internal Revenue Service, or opinion of counsel, that all or part of the Rent paid or to be paid to Lessor under this Lease will be subject to the income tax on unrelated business taxable income, Lessee agrees to modify this Lease to avoid such tax; provided that such modifications will not result in any increase in Rent, or any increased obligations of Lessee under this Lease. Lessor will pay all Lessee's reasonable costs incurred in reviewing and negotiating any such lease modification, including reasonable attorneys' and accountants' fees.

Section 40.14 Survival. The obligations of this Lease shall survive the expiration or earlier termination of this Lease to the extent necessary to implement any requirement for the performance of obligations or forbearance of an act by either party hereto which has not been completed prior to the termination of this Lease. Such survival shall be to the extent reasonably necessary to fulfill the intent thereof, or if specified, to the extent of such specification, as same is reasonably necessary to perform the obligations and/or forbearance of an act set forth in such term, covenant or condition. Notwithstanding the foregoing, in the event a specific term, covenant or condition is expressly provided for in such a clear fashion as to indicate that such performance of an obligation or forbearance of an act is no longer required, then the specific shall govern over this general provisions of this Lease.

Section 40.15 Estoppel Certificates. Either party, at any time and from time to time within ten (10) business days after receipt of written notice from the other party, shall execute, acknowledge and deliver to the requesting party a certificate stating (to the responding party's best knowledge where applicable): (a) that Lessee has accepted the Premises (if true); (b) the Commencement Date and Expiration Date of this Lease; (c) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that same is in full force and effect as modified and stating the modifications); (d) to Lessee's knowledge, whether or not there are then existing any defenses against the enforcement of any of the obligations of Lessee under this Lease (and, if so, specifying same); (e) whether or not there are then existing any defaults on the part of Lessee, or, to Lessee's knowledge, on the part of Lessor in the performance of their respective obligations under this Lease (and, if so, specifying same); and (f) any other factual information relating to the rights and obligations under this Lease that may reasonably be required by requesting party.

Section 40.16 Consequential Damages. Notwithstanding any provision hereof to the contrary, except as provided in Article 19 and in Sections 12.6(i) and 28.4, in no event shall either party have any liability to the other for any indirect or consequential damages suffered or incurred as a result of any breach or default by such party of its obligations hereunder, nor shall any party be obligated to indemnify, defend or hold the other party harmless from or against any indirect or consequential damages.

Section 40.17 Confirmation. Lessor confirms that, from and after the Effective Date, (a) Roche shall not be entitled to exercise any rights, powers, privileges, options or elections or to make or give any approvals, consents, determinations, selections, designations, judgments and decisions of "Lessee" under and with respect to the Lease, including amendments, modifications, alterations and further assignments or subleases of this Lease or the Premises and (b) if Roche rejects or terminates, or attempts to reject or terminate, this Lease pursuant to the United States Bankruptcy Code or other law involving the rights of creditors, as between Lessor and Lessee, this Lease shall not be terminated or affected thereby and shall continue in full force as a direct agreement between Lessor and Lessee.

Section 40.18 Independent Leases. Lessee and Lessor agree that neither the terms and conditions of the Lease nor the terms and conditions of the 3401 Hillview Lease shall be applicable or admissible as evidence in the interpretation of the other document.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease by proper persons thereunto duly authorized as of the date first above written.

THE BOARD OF TRUSTEES OF THE LELAND
STANFORD JUNIOR UNIVERSITY

By: /s/ Jean Snider

Its: Jean Snider Managing
Director, Real Estate

VMWARE, INC.,
a Delaware corporation

By: /s/ Mark S. Peek

Its: CFO and Co-President

Schedules and Exhibits

<u>Glossary</u> <u>Exhibit</u>	<u>Description</u>
A	Legal Description of Premises
B	HCP Easement Area (Section 3.2(c))
C	MDA Rights Assignment (Section 5.5)
D	Fair Market Rental Value (Section 24.4)
E	Tri-Party Agreement (Section 25.2)
F	Memorandum of Lease (Article 39)

GLOSSARY

As used in this Lease, the following terms shall have the following meanings, applicable, as appropriate, to both the singular and plural forms of the terms herein defined:

“3401 Hillview Lease” is defined in Section 10.2.

“3401 Hillview LLC” is defined in Recital B, and means 3401 Hillview LLC, a Delaware limited liability, which is an Affiliate of Lessee and the lessee of the 3401 Hillview Premises pursuant to the 3401 Hillview Lease.

“3401 Hillview Premises” is defined in Section 10.2.

“AAA” is defined in Section 37.1(b).

“Active Negligence” means the want of care in performing an act, as distinguished from inaction which in a proper case may be negligence. Active Negligence occurs only when Lessor or Lessor’s Agents have personally participated in an affirmative act of negligence or has failed to perform a precise duty which Lessor agreed to perform.

“Added Costs” means the extra, incremental out-of-pocket costs to redevelop, upgrade, renovate, repair, rehabilitate, or remodel the existing Improvements or construct new improvements at the Premises, or to make the Premises suitable for sale or tenant use, to the extent due to Lessee Environmental Activity, including the presence of residual Hazardous Substances after remediation. Added Costs may include, but is not limited to, the costs of any studies or risk assessments required by any government authority with jurisdiction, or those that are technically warranted and reasonably requested by subsequent lessee of the Premises or any portion thereof, including without limitation, the costs of any hazardous material contractor to perform work at the Premises, the costs for handling and disposal of any Hazardous Substances at the Premises, and the costs of any special requirements to control soil vapors or dewater the Premises. Added costs shall not include ordinary costs to redevelop, upgrade, renovate, repair, rehabilitate, or remodel the existing Improvements or construct new improvements at the Premises, or to make the Premises suitable for use by another occupant, that would have been incurred absent the Lessee Environmental Activity.

“Additional Improvements and Alterations” are defined in Section 12.2.

“Additional Rent” is defined in Section 8.1.

“Adjustment Date” is defined in Section 7.1.

“Administrative Fees” means any reasonable, third-party consultants’ fees, attorneys’ fees, and other out-of-pocket costs incurred by Lessor in connection with Lessor’s review and approval of matters within the scope of this Lease.

“Affiliate” means (a) successor or assignee of, or any trustee of a trust for the benefit of, Lessee; (b) any entity of which a majority of the voting or economic interest is owned, directly or indirectly, by Lessee; (c) any entity in which Lessee or a person referred to in the preceding clause (b) is a controlling stockholder, controlling partner or controlling member; (d) any person or entity which is a controlling stockholder, controlling partner or controlling member of Lessee or of any person or entity referred to in the preceding clauses (b) or (c) or (e) any person or

entity directly or indirectly controlling, controlled by or under common control with, Lessee or any person or entity referred to in any of the preceding clauses (a)-(c). For purposes of this definition, “control” means owning directly or indirectly fifty percent (50%) or more of the beneficial interest in such entity or the direct or indirect power to control the management policies of such person or entity, whether through ownership, by contract or otherwise.

“**Alterations**” means any additional improvements, alterations, remodeling, or reconstruction of or to the Improvements existing on the Premises as of the Effective Date.

“**Applicable Laws**” means (a) all applicable laws, statutes, codes, ordinances, orders, resolutions, rules, regulations and requirements, including, without limitation, all Environmental Requirements, of all federal, state, county, municipal and other governmental authorities and the departments, commissions, boards, bureaus, instrumentalities, and officers thereof; (b) all judicial rulings, decrees and orders; and (c) all orders, rules and regulations of the Pacific Fire Rating Bureau, and the American Insurance Association (formerly the National Board of Fire Underwriters) or any other body exercising similar functions relating to or affecting the Premises, the Improvements now or hereafter located on the Premises or the use, operation or occupancy of the Premises for the purposes permitted hereunder. In each instance, Applicable Laws shall include those existing as of the Commencement Date and those thereafter enacted.

“**Appropriation**” means any taking by exercise of right of condemnation (direct or inverse) or eminent domain, or requisitioning by military or other public authority for any purpose arising out of a temporary emergency or other temporary circumstance or sale under threat of condemnation. “Appropriated” means having been subject to such taking and “Appropriating” means exercising such taking authority.

“**Associated Square Footage**” is defined in Section 5.1.

“**Award**” means the amount paid by the Appropriating authority as a result of an Appropriation.

“**City**” means the City of Palo Alto.

“**Claim**” is defined in Section 21.1.

“**Closure Work**” is defined in Section 19.8.

“**Commencement Date**” is defined in Article 1.

“**Conservation Easement**” is defined in Section 3.2(c).

“**Cooperation Agreement**” is defined in Recital B.

“**Costs**” are defined in Section 9.3.

“**Designated Project**” is defined in Section 5.4.

“**Designated Site**” is defined in Section 5.2.

“**Effective Date**” is defined in the introductory paragraph.

“**Environmental Audit**” is defined in Section 19.5.

“Environmental Claims” means all claims, demands, suits, actions (including, without limitation, notices of noncompliance, charges, directives, and requests for information), causes of action, orders, judgments, settlements, damages, losses, diminutions in value, penalties, fines, actions, proceedings, obligations, liabilities (including strict liability), encumbrances, liens, costs (including, without limitation, costs of investigation and defense of any claim, whether or not such claim is ultimately defeated, and costs of any good faith settlement or judgment), and expenses of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys’ and consultants’ fees and disbursements, any of which are incurred at any time, arising out of or related to Environmental Requirements, including, without limitation:

(A) Damages for personal injury, or injury to property or natural resources occurring upon the Premises or off the Premises, foreseeable or unforeseeable, including, without limitation, consequential damages, lost profits, lost rents, the cost of demolition and rebuilding of any improvements on real property, interest and penalties;

(B) Claims brought by or on behalf of employees of Lessee;

(C) Fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of Releases of Hazardous Substances (whether or not performed voluntarily) or violation of Environmental Requirements, including, but not limited to, preparation of feasibility studies or reports, or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, reasonably necessary to restore full economic use of the Premises or any other property, or otherwise expended in connection with such conditions, and including without limitation any attorneys’ fees, costs and expenses incurred in enforcing this Lease or collecting any sums due hereunder;

(D) Liability to any third person or governmental agency to indemnify such person or agency for costs expended in connection with the items referenced above; and

(E) Diminution in the value of the Premises, and damages for the loss of business and restriction on the use of, or adverse impact on the marketing of, rentable or usable space or any amenity of the Premises.

“Environmental Requirements” means all applicable present and future statutes, regulations, rules, ordinances, codes, common law, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, and all amendments thereto, of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, California, and political subdivisions thereof, and all applicable judicial, administrative and regulatory decrees, judgments, orders and directives relating to the protection of human health, safety, wildlife or the environment, including, without limitation, (a) all requirements pertaining to reporting, licensing, permitting, investigation and/or remediation of emissions, discharges, Releases, or threatened Releases of Hazardous Substances, whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances; and (b) all requirements pertaining to occupational health, the health and safety of employees or the public. Environmental Requirements include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances

Transportation Act; the Resource Conservation and Recovery Act; the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the California Medical Waste Management Act and Radiation Control Law; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act and the National Environmental Policy Act and any and all state or local law counterparts.

“Expiration Date” is stated in Article 1.

“Event of Default” is defined in Section 26.1.

“Fair Market Rental Value” means, as of the applicable date set forth in the Lease, the arms-length fair market annual rental rate per rentable square foot, including periodic increases, for direct leases (as opposed to subleases) of space comparable to the Premises (in terms of rentable square footage, physical quality (including that of any existing leasehold improvements in such comparable space that are reasonably reuseable by a new tenant), views, floor levels, location and other matters) in the Stanford Research Park. The determination shall take into account any material economic differences among the comparison leases, such as the presence or absence of the obligation to pay a leasing commission, base years, the load factor for the applicable spaces, the length of the term for such leases, rent abatements, tenant improvement obligations, free rent periods, moving allowances, design allowances, the manner (if any) in which the landlord under any such lease is reimbursed for operating expenses and taxes, and any other concessions.

“First Class” means having a standard of condition, maintenance, repair and operation at least equal to comparable Class A properties in the Stanford Research Park.

“Force Majeure” means any delay in the performance of construction, installations, repairs, alterations, additions or improvements under this Lease by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain utilities or materials, or by any other reason (financial inability excluded) beyond the performing party’s reasonable control.

“Founding Grant” is defined in Section 10.3.

“Full Insurable Replacement Value” is defined in Section 20.1(a).

“Habitat Conservation Plan” is defined in Section 3.2(c).

“Handbook” is defined in Section 12.6(a).

“Hazardous Substance” means any chemical, material, substance, pollutant, medical or other waste, living organism or combination thereof which is or may be designated, defined, classified or regulated as hazardous to the environment or human health or animal health or safety due to its radioactivity, ignitability, corrosivity, reactivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness or other harmful or potentially harmful properties or effects under any Environmental Requirements. Hazardous Substances shall include, without limitation, petroleum hydrocarbons (including crude oil or any fraction thereof and all petroleum products and additives thereto), asbestos, lead, radon, polychlorinated biphenyls (PCBs), methane, explosives, mold, universal waste, corrosives, toxic materials, flammable materials, infectious materials, radioactive materials, carcinogenic materials, reproductive toxicants and all

other substances which now or in the future may be defined as “hazardous substances”, “hazardous waste”, “extremely hazardous waste”, “hazardous materials”, “toxic substances”, “infectious waste”, “biohazardous wastes”, “medical waste”, “radioactive waste” or which are otherwise listed, defined, or regulated in any manner pursuant to any Environmental Requirements. Hazardous Substances shall also include any of the foregoing the presence or Release of which at, on, under or from the Premises causes or threatens to cause a nuisance upon the Premises or to surrounding properties, or could constitute a trespass by Lessee.

“**Improvements**” is defined in Recital C.

“**Index**” means the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics (San Francisco, Oakland, San Jose Area, All Urban Consumers, All Items, 1982-84 - 100), or if such index is no longer published, a successor or substitute index designated by Lessor in its reasonable discretion, which shall be published by a governmental agency and reflecting changes in consumer prices in the San Francisco Bay Area.

“**Initiation Date**” is defined in Section 37.2(b).

“**Institutional Lender**” is defined in Section 25.1(c).

“**Interest Rate**” means the prime rate of interest published in the Wall Street Journal as of the first date any applicable interest accrues, plus four percent (4%).

“**Land**” is defined in Recital A.

“**Lease**” is defined in the introductory paragraph.

“**Lease Year**” means each successive twelve month period commencing on September 1 and ending on August 31, provided that the first partial Lease Year shall commence on the Effective Date and the last partial Lease Year shall end on the Termination Date.

“**Leasehold Mortgage**” is defined in Section 25.1(a).

“**Lessee**” is defined in the introductory paragraph.

“**Lessee Environmental Activity**” means any use, treatment, keeping, handling, storage, transport, sale or Release at, on, under or from the Premises of any Hazardous Substance during the Term by Lessee or Lessee’s Agents, or Roche or Roche’s Agents.

“**Lessee’s Agents**” means Lessee’s employees, agents, contractors, invitees, assignees and subtenants.

“**Lessor**” is defined in the introductory paragraph.

“**Lessor Released Parties**” shall mean The Board of Trustees of The Leland Stanford Junior University, and all of its affiliated organizations, and their respective trustees, directors, officers, employees, faculty, students, agents, and insurance carriers.

“**Lessor’s Agents**” means Lessor’s employees, agents and contractors.

“**Lessor’s Interest**” is defined in Section 16.2.

“Liens” are defined in Section 16.1.

“Major Sublease” is defined in Section 24.4(a).

“Major Sublease Offer” is defined in Section 24.4(a).

“Mayfield Development Agreement” is defined in Section 5.1.

“MDA Adjustment Date” is defined in Section 7.2.

“MDA Assignment Date” is defined in Section 5.5.

“MDA Improvements” are defined in Section 5.4.

“MDA Rent” is defined in Section 7.2.

“MDA Rights” is defined in Section 5.5.

“Minimum Annual Rent” is defined in Section 7.1.

“Non-R&D Use” is defined in Section 10.2

“Offer” is defined in Section 23.5(a).

“Official Records” is defined in Recital B.

“Original Lease” is defined in Recital B.

“Permitted Sublease” is defined in Section 24.3.

“Phase 1 Square Footage” is defined in Section 5.1.

“Phase 2 Square Footage” is defined in Section 5.1.

“Pre-Existing Square Footage” is defined in Section 22.4.

“Premises” is defined in Recital C.

“Project Costs” is defined in Section 9.2.

“Property Taxes” are defined in Section 8.2.

“Proposed District” is defined in Section 8.6.

“Release” with respect to Hazardous Substances, means any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing, or other movement of Hazardous Substances into the environment; provided that “Release” shall not include the migration, seepage or discharge on, over or across the Premises of any Hazardous Substance that originates off of the Premises.

“Remaining Substances” is defined in Section 19.3(b).

“Rent” means Minimum Annual Rent, MDA Rent and Additional Rent.

“Roche” is defined in Recital B.

“Roche’s Agents” means Roche’s employees, agents, contractors, predecessors-in-interest, assignees, subtenants and invitees.

“Roche License” is defined in Section 19.8.

“SEC” is defined in Section 23.2(f).

“Security Deposit” is defined in Section 28.5.

“Selection Date” is defined in Section 37.2(b).

“Supplemental Audit” is defined in Section 19.5.

“Term” is stated in Article 1.

“Termination Date” means the Expiration Date or such earlier date as this Lease is terminated pursuant to any provision hereof.

“Termination Notice” is defined in Section 5.6.

“Transfer” is defined in Section 23.1.

“Transit Fees” are defined in Section 8.7.

“Triggering Event” is defined in Section 5.1.

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Real property in the City of PALO ALTO, County of SANTA CLARA, State of California, described as follows:

PARCEL ONE:

BEING A PORTION OF PARCEL A, AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED APRIL 27, 1979 IN BOOK 440 OF MAPS AT PAGE 37, RECORDS OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL A, DISTANT THEREON SOUTH 53°09'05" EAST 409.70 FEET ALONG SAID LINE, FROM THE NORTHWESTERLY TERMINUS OF THE NORTHEASTERLY LINE OF SAID PARCEL A, SHOWN ON SAID PARCEL MAP (440 M 37) AS "S 53°09'05" E 1410.04'";

THENCE LEAVING SAID NORTHEASTERLY LINE, THE FOLLOWING THIRTY-FOUR (34) COURSES:

1) SOUTH 36°50'55" WEST, 67.33 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 251.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 34°14'40" WEST;

2) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07°34'55" AND AN ARC LENGTH OF 33.21 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 246.00 FEET;

3) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07°42'11" AND AN ARC LENGTH OF 33.07 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 444.00 FEET;

4) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 08°00'14" AND AN ARC LENGTH OF 62.02 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 275.00 FEET;

5) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 20°11'57" AND AN ARC LENGTH OF 96.95 FEET;

6) SOUTH 44°08'23" WEST, 32.27 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 19.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 07°56'38" WEST;

7) WESTERLY AND SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 63°19'01" AND AN ARC LENGTH OF 21.00 FEET;

8) SOUTH 34°37'37" WEST, 11.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 100.00 FEET;

9) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 43°40'46" AND AN ARC LENGTH OF 76.24 FEET;

10) SOUTH 78°18'23" WEST, 15.55 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 58.00 FEET;

11) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 32°06'19" AND AN ARC LENGTH OF 32.50 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 33.00 FEET;

12) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 42°21'17" AND AN ARC LENGTH OF 24.39 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 85.00 FEET;

13) SOUTHERLY AND SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 31°53'43" AND AN ARC LENGTH OF 47.32 FEET;

14) SOUTH 28°02'56" EAST, 13.27 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 661.00 FEET;

15) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 05°47'03" AND AN ARC LENGTH OF 66.73 FEET;

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- 16) SOUTH 33°49'59" EAST, 41.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 450.00 FEET;
 - 17) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 23°35'50" AND AN ARC LENGTH OF 185.33 FEET;
 - 18) SOUTH 10°14'09" EAST, 132.03 FEET;
 - 19) SOUTH 79°45'51" WEST, 86.26 FEET;
 - 20) SOUTH 07°29'54" EAST, 17.21 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 25.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 18°39'09" EAST;
 - 21) WESTERLY AND SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 78°31'49" AND AN ARC LENGTH OF 34.27 FEET;
 - 22) SOUTH 84°26'47" WEST, 282.62 FEET;
 - 23) SOUTH 09°38'42" WEST, 153.27 FEET;
 - 24) SOUTH 80°21'18" EAST, 60.31 FEET;
 - 25) SOUTH 05°16'41" EAST, 233.88 FEET;
 - 26) SOUTH 84°43'19" WEST, 65.79 FEET;
 - 27) NORTH 05°16'41" WEST, 10.15 FEET;
 - 28) SOUTH 84°43'19" WEST, 89.73 FEET;
 - 29) SOUTH 05°16'41" EAST, 32.52 FEET;
 - 30) NORTH 84°43'19" EAST, 18.38 FEET;
 - 31) SOUTH 05°16'41" EAST, 51.46 FEET;
 - 32) SOUTH 85°00'12" WEST, 28.74 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 20.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 36°41'24" WEST;
 - 33) NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 83° 22'23" AND AN ARC LENGTH OF 29.10 FEET;
 - 34) SOUTH 85°00'12" WEST, 318.23 FEET TO THE SOUTHWESTERLY LINE OF SAID PARCEL A (440 M 37);

THENCE ALONG SAID SOUTHWESTERLY LINE AND ALONG THE GENERAL SOUTHEASTERLY, EASTERLY AND NORTHEASTERLY LINES OF SAID PARCEL A, THE FOLLOWING TWENTY-FIVE (25) COURSES:

- 1) SOUTH 15°27'55" EAST, 470.41 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 3040.00 FEET;
- 2) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 06°08'16" AND AN ARC LENGTH OF 325.66 FEET;
- 3) SOUTH 09°19'39" EAST, 444.50 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 629.58 FEET;
- 4) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL OF 09°56'07" AND AN ARC LENGTH OF 109.17 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 50.00 FEET;
- 5) SOUTHEASTERLY, EASTERLY AND NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 105°43'31" AND AN ARC LENGTH OF 92.26 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 4045.00 FEET;
- 6) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 02°39'21" AND AN ARC LENGTH OF 187.50 FEET;
- 7) NORTH 57°40'04" EAST, 19.62 FEET TO THE BEGINNING OF CURVE TO THE LEFT, HAVING A RADIUS OF 7955.00 FEET;
- 8) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 01°45'20" AND AN ARC LENGTH OF 243.74 FEET;

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- 9) NORTH 55°54'44" EAST, 422.41 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 3045.00 FEET;
 - 10) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 03°42'43" AND AN ARC LENGTH OF 197.27 FEET;
 - 11) NORTH 59°37'27" EAST, 500.76 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 2955.00 FEET;
 - 12) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 03°24'00" AND AN ARC LENGTH OF 175.35 FEET;
 - 13) NORTH 34°06'07" WEST, 119.98 FEET;
 - 14) NORTH 55°53'53" EAST, 10.00 FEET;
 - 15) SOUTH 34°06'07" EAST, 120.02 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 2955.00 FEET, FROM WHICH A RADIAL LINE BEARS NORTH 33°58'11" WEST;
 - 16) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 00°07'05" AND AN ARC LENGTH OF 6.09 FEET;
 - 17) NORTH 55°54'44" EAST, 484.28 FEET;
 - 18) NORTH 34°05'16" WEST, 15.00 FEET;
 - 19) NORTH 55°54'44" EAST, 20.00 FEET;
 - 20) SOUTH 34°05'16" EAST, 15.00 FEET;
 - 21) NORTH 55°54'44" EAST, 283.15 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 50.00 FEET;
 - 22) NORTHEASTERLY, NORTHERLY AND NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 116° 54'44" AND AN ARC LENGTH OF 102.03 FEET;
 - 23) NORTH 61°00'00" WEST, 468.88 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 2065.00 FEET;
 - 24) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07°50'55" AND AN ARC LENGTH OF 282.87 FEET;
 - 25) NORTH 53°09'05" WEST, 1000.34 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR VEHICULAR ACCESS, AS GRANTED IN THAT CERTAIN RECIPROCAL EASEMENT AGREEMENT RECORDED APRIL 15, 2003, INSTRUMENT NO. 16965759, AND BEING SHOWN IN THE DRAWING MARKED, "SCHEDULE C EASEMENTS", ATTACHED THERETO.

PARCEL THREE:

A NON-EXCLUSIVE EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS, AS GRANTED IN THAT CERTAIN EASEMENT AGREEMENT RECORDED APRIL 15, 2003, INSTRUMENT NO. 16965760, AND BEING DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL A, AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED APRIL 27, 1979 IN BOOK 440 OF MAPS AT PAGE 37, RECORDS OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL A, DISTANT THEREON SOUTH 53° 09' 05" EAST, 409.70 FEET ALONG SAID LINE, FROM THE NORTHWESTERLY TERMINUS OF THE NORTHEASTERLY LINE OF SAID PARCEL A, AS SHOWN ON SAID PARCEL MAP (440 M 37) AS "S 53° 09' 50" E 1410.04");

THENCE LEAVING SAID NORTHEASTERLY LINE, THE FOLLOWING FIVE (5) COURSES:

-
- 1) SOUTH 36° 50' 55" WEST, 67.33 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 251.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 34° 14' 40" WEST;
 - 2) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07° 34' 55" AND AN ARC LENGTH OF 33.21 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 246.00 FEET;
 - 3) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07° 42' 11" AND AN ARC LENGTH OF 33.07 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 444.00 FEET;
 - 4) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 08° 00' 14" AND AN ARC LENGTH OF 62.02 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 275.00 FEET;
 - 5) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 18° 41' 00" AND AN ARC LENGTH OF 89.67 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE LEAVING SAID POINT, THE FOLLOWING TWENTY-EIGHT (28) COURSES:

- 1) SOUTH 44° 08' 23" WEST, 28.73 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 19.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 32° 08' 21" WEST;
- 2) WESTERLY AND SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 87° 30' 44" AND AN ARC LENGTH OF 29.02 FEET;
- 3) SOUTH 34° 37' 37" WEST, 11.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 100.00 FEET;
- 4) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 43° 40' 46" AND AN ARC LENGTH OF 76.24 FEET;
- 5) SOUTH 78° 18' 23" WEST, 15.55 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 58.00 FEET;
- 6) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 32° 06' 19" AND AN ARC LENGTH OF 32.50 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 33.00 FEET;
- 7) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 42° 21' 17" AND AN ARC LENGTH OF 24.39 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 85.00 FEET;
- 8) SOUTHERLY AND SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 31° 53' 43" AND AN ARC LENGTH OF 47.32 FEET;
- 9) SOUTH 28° 02' 56" EAST, 13.27 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 661.00 FEET;
- 10) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 05° 47' 03" AND ARC LENGTH OF 66.73 FEET;
- 11) SOUTH 33° 49' 59" EAST, 41.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 450.00 FEET;
- 12) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 23° 35' 50" AND AN ARC LENGTH OF 185.33 FEET;
- 13) SOUTH 10° 14' 09" EAST, 132.03 FEET;
- 14) SOUTH 79° 45' 51" WEST, 26.00 FEET;
- 15) NORTH 10° 14' 09" WEST, 132.03 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 424.00 FEET;
- 16) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 04° 21' 35" AND AN ARC LENGTH OF 32.26 FEET;
- 17) NORTH 75° 24' 16" EAST, 6.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 430.00 FEET, FROM

WHICH A RADIAL LINE BEARS SOUTH 75° 24' 16" WEST;

- 18) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 19° 14' 15" AND AN ARC LENGTH OF 144.38 FEET;
- 19) NORTH 33° 49' 59" WEST, 41.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 681.00 FEET;
- 20) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 05° 47' 03" AND AN ARC LENGTH OF 68.75 FEET;
- 21) NORTH 28° 02' 56" WEST, 13.27 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 105.00 FEET;
- 22) NORTHERLY AND NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 31° 53' 43" AND AN ARC LENGTH OF 58.45 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHEAST, HAVING A 53.00 FEET;
- 23) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 42° 21' 17" AND AN ARC LENGTH OF 39.18 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 78.00 FEET;
- 24) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 32° 06' 19" AND AN ARC LENGTH OF 43.71 FEET;
- 25) NORTH 78° 18' 23" EAST, 15.55 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 80.00 FEET;
- 26) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 43° 40' 46" AND AN ARC LENGTH OF 60.99 FEET;
- 27) NORTH 34° 37' 37" EAST, 70.87 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 275.00 FEET, FROM WHICH A RADIAL LINE BEARS NORTH 54° 56' 42" EAST;
- 28) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 09° 17' 54" AND AN ARC LENGTH OF 44.63 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

PARCEL FOUR:

A NON-EXCLUSIVE EASMENT TO OPERATE, INSPECT, REPAIR, MAINTAIN, REPLACE AND REMOVE UNDERGROUND TELEPHONE, GAS, ELECTRIC AND WATER LINES AND STORM DRAIN AND SANITARY SEWER SYSTEMS AND A NON-EXCLUSIVE RIGHT OF INGRESS AND EGRESS, AS GRANTED IN THAT CERTAIN EASEMENT AGREEMENT RECORDED APRIL 15, 2003, INSTRUMENT NO. 16965761, AS AMENDED BY THAT CERTAIN FIRST AMENDMENT TO EASEMENT AGREEMENT RECORDED APRIL 27, 2011 AS INSTRUMENT NO. 21158403, AND BEING DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL A, AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED APRIL 27, 1979 IN BOOK 440 OF MAPS AT PAGE 37, RECORDS OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL A, DISTANT THEREON SOUTH 53° 09' 05" EAST, 409.70 FEET ALONG SAID LINE, FROM THE NORTHWESTERLY TERMINUS OF THE NORTHEASTERLY LINE OF SAID PARCEL A, SHOWN ON SAID PARCEL MAP (440 M 37) AS "S 53° 09' 05" E 1410.04)";

THENCE LEAVING SAID NORTHEASTERLY LINE, THE FOLLOWING FIFTEEN (15) COURSES:

- 1) SOUTH 36° 50' 55" WEST, 67.33 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 251.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 34° 14' 40" WEST;

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- 2) NORTHWESTERLY, ALONG SID CURVE, THROUGH A CENTRAL ANGLE OF 07° 34' 55" AND AN ARC LENGTH OF 33.21 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 246.00 FEET;
 - 3) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07° 42' 11" AND AN ARC LENGTH OF 33.07 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 444.00 FEET;
 - 4) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 08° 00' 14" AND AN ARC LENGTH OF 62.02 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 275.00 FEET;
 - 5) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 20° 11' 57" AND AN ARC LENGTH OF 96.95 FEET;
 - 6) SOUTH 44° 08' 23" WEST, 32.27 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 19.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 07° 56' 38" WEST;
 - 7) WESTERLY AND SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 63° 19' 01" AND AN ARC LENGTH OF 21.00 FEET;
 - 8) SOUTH 34° 37' 37" WEST, 11.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 100.00 FEET;
 - 9) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 43° 40' 46" AND AN ARC LENGTH OF 76.24 FEET;
 - 10) SOUTH 78° 18' 23" WEST, 15.55 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 58.00 FEET;
 - 11) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 32° 06' 19" AND AN ARC LENGTH OF 32.50 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 33.00 FEET;
 - 12) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 42° 21' 17" AND AN ARC LENGTH OF 24.39 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 85.00 FEET;
 - 13) SOUTHERLY AND SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 31° 53' 43" AND AN ARC LENGTH OF 47.32 FEET;
 - 14) SOUTH 28° 02' 56" EAST, 13.27 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 661.00 FEET;
 - 15) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 03° 22' 40" AND AN ARC LENGTH OF 38.97 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION, FROM SAID POINT A RADIAL LINE BEARS NORTH 58° 34' 24" EAST;

THENCE CONTINUING ALONG SAID CURVE WITH RADIUS OF 661.00 FEET, THE FOLLOWING TWELVE (12) COURSES:

- 1) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 02° 24' 23" AND AN ARC LENGTH OF 27.76 FEET;
- 2) SOUTH 33° 49' 59" EAST, 41.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 450.00 FEET;
- 3) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 23° 35' 50" AND AN ARC LENGTH OF 185.33 FEET;
- 4) SOUTH 10° 14' 09" EAST, 132.03 FEET;
- 5) SOUTH 79° 45' 51" WEST, 86.26 FEET;
- 6) SOUTH 07° 29' 54" EAST, 17.21 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 25.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 18° 39' 09" EAST;
- 7) SOUTHWESTERLY AND SOUTHERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 78° 31' 49" AND AN ARC LENGTH OF 34.27 FEET;
- 8) SOUTH 84° 26' 47" WEST, 27.04 FEET;

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- 9) NORTH 05° 32' 28" WEST, 82.55 FEET;
 - 10) NORTH 50° 43' 24" EAST, 122.74 FEET;
 - 11) NORTH 20° 02' 40" WEST, 276.20 FEET;
 - 12) NORTH 73° 26' 18" EAST, 3.46 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT TO OPERATE, INSPECT, REPAIR, MAINTAIN, REPLACE AND REMOVE THE FIBER OPTIC COMMUNICATIONS CONDUIT AND A NON-EXCLUSIVE RIGHT OF INGRESS AND EGRESS, AS GRANTED IN THAT CERTAIN EASEMENT AGREEMENT RECORDED APRIL 15, 2003, INSTRUMENT NO. 16965763 AS AMENDED BY THAT FIRST AMENDMENT TO EASEMENT RECORDED MARCH 29, 2005, INSTRUMENT NO. 18295969, AND BEING DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL A, AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED APRIL 27, 1979 IN BOOK 440 OF MAPS AT PAGE 37, RECORDS OF SANTA CLARA COUNTY, DESCRIBED AS FOLLOWS:

BEING ALSO A PORTION OF THAT 36.008 ACRE \pm PARCEL OF LAND, AS DESCRIBED IN THAT CERTAIN MEMORANDUM OF LEASE AMENDMENT, BETWEEN THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY AND ROCHE PALO ALTO, LLC, RECORDED APRIL 15, 2003, UNDER DOCUMENT NO. 16965756, OFFICIAL RECORDS OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID 36.008 ACRE PARCEL (DOC. 16965756), SAID CORNER BEING ALSO A POINT ON THE SOUTHWESTERLY LINE OF SAID PARCEL A (440 M 37);

THENCE ALONG SAID SOUTHWESTERLY LINE OF SAID PARCEL A, NORTH 15° 27' 55" WEST, 856.93 FEET;

THENCE LEAVING SAID SOUTHWESTERLY LINE, THE FOLLOWING FOUR (4) COURSES:

- 1) NORTH 85° 20' 05" EAST, 255.73 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 370.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 50° 25' 21" WEST;
- 2) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 34° 26' 52" AND ARC LENGTH OF 222.45 FEET;
- 3) SOUTH 05° 07' 47" EAST, 284.07 FEET;
- 4) NORTH 84° 43' 19" EAST, 291.54 FEET TO A POINT ON THE EASTERLY LINE OF SAID 36.008 ACRE PARCEL (DOC. 16965756);

THENCE ALONG SAID EASTERLY LINE AND ALONG THE GENERAL EASTERLY AND SOUTHERLY LINES OF SAID 36.008 ACRE PARCEL, THE FOLLOWING TWELVE (12) COURSES:

- 1) SOUTH 09° 38' 42" WEST, 26.65 FEET;
- 2) SOUTH 80° 21' 18" EAST, 60.31 FEET;
- 3) SOUTH 05° 16' 41" EAST, 233.88 FEET;
- 4) SOUTH 84° 43' 19" WEST, 65.79 FEET;
- 5) NORTH 05° 16' 41" WEST, 10.15 FEET;
- 6) SOUTH 84° 43' 19" WEST, 89.73 FEET;
- 7) SOUTH 05° 16' 41" EAST, 32.52 FEET;
- 8) NORTH 84° 43' 19" EAST, 18.38 FEET;

9) SOUTH $05^{\circ} 16' 41''$ EAST, 51.46 FEET;

10) SOUTH $85^{\circ} 00' 12''$ WEST, 28.74 FEET TO BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 20.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH $36^{\circ} 41' 24''$ WEST;

11) NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $83^{\circ} 22' 23''$ AND ARC LENGTH OF 29.10 FEET;

12) SOUTH $85^{\circ} 00' 12''$ WEST, 318.23 FEET TO THE POINT OF BEGINNING.

APN: 142-16-085 and 142-16-083

EXHIBIT B
HCP EASEMENT AREA

EXHIBIT C

**ASSIGNMENT AND ASSUMPTION OF MDA RIGHTS
AND CONFIRMATION OF MDA RENT COMMENCEMENT DATE**

THIS ASSIGNMENT AND ASSUMPTION OF MDA RIGHTS AND CONFIRMATION OF MDA RENT COMMENCEMENT DATE (the “**Assignment**”) is entered into as of _____, 20__ (the “**MDA Assignment Date**”) by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY (“**Assignor**”), and _____, a _____ (“**Assignee**”). [NOTE: LESSOR TO INSERT DATE OF TENDER OF THIS ASSIGNMENT AS THE MDA ASSIGNMENT DATE AT THE TIME OF DELIVERY TO LESSEE. SEE ARTICLE 5.]

A. Assignor is the lessor, and Assignee is the lessee under that certain Amended and Restated Ground Lease dated as of _____, 2011 (the “**Lease**”), pursuant to which Assignee leases that certain real property commonly known as 3431 Hillview Avenue, Palo Alto, California (the “**Premises**”), and more particularly described in the Lease.

B. Pursuant to Article 5 of the Lease, Assignor and Assignee have agreed to the terms and conditions upon which Assignor will assign and Assignee will assume, the “MDA Rights”, as defined in the Lease. All capitalized terms not defined in this Assignment shall have the meanings set forth in the Lease.

C. Lessor now desires to assign the MDA Rights to Assignee, and Assignee desires to assume the MDA Rights from Assignor, on the terms and conditions set forth in the Lease.

NOW THEREFORE, the parties agree as follows:

1. As of the MDA Assignment Date, Assignor hereby assigns to Assignee the MDA Rights, and all of Assignor’s rights and obligations with respect to the MDA Rights as more particularly described in the Lease and in the Mayfield Development Agreement.
2. As of the MDA Assignment Date, Assignee hereby assumes the MDA Rights, and all of Assignor’s rights and obligations with respect to the MDA Rights as more particularly described in the Lease and in the Mayfield Development Agreement.
3. As of the MDA Assignment Date, Assignee shall commence the payment of the MDA Rent described in Section 7.2 of the Lease.
4. In the event of any legal or equitable proceeding to enforce any of the terms or conditions of this Assignment, or any alleged disputes, breaches, defaults or misrepresentations in connection with any provision of this Assignment, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including, without limitation, reasonable attorneys’ fees and costs of defense paid or incurred in good faith.
5. This Assignment shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

6. If any provision of this Assignment as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Assignment, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Assignment as a whole.

7. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Assignment to physically form one document.

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment as of the day and year first above written.

THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR UNIVERSITY

By: _____

Title: _____

By: _____

Title: _____

EXHIBIT D

DETERMINATION OF FAIR MARKET RENTAL VALUE

If within the 30-day negotiating period Lessor and Lessee cannot reach agreement as to the Fair Market Rental Value, they shall each select one appraiser to determine the Fair Market Rental Value. Each such appraiser shall arrive at a determination of the Fair Market Rental Value and submit his or her conclusions to Lessor and Lessee within thirty (30) days after the expiration of the initial 30-day negotiating period.

If only one appraisal is submitted within the requisite time period, it shall be deemed to be the Fair Market Rental Value. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten (10) percent of the higher of the two, the average of the two shall be the Fair Market Rental Value. If the two appraisals differ by more than ten (10) percent of the higher of the two, then the two appraisers shall immediately select a third appraiser who will within thirty (30) days of his or her selection make a determination of the Fair Market Rental Value and submit such determination to Lessor and Lessee. This third appraisal will then be averaged with the closer of the previous two appraisals and the result shall be the Fair Market Rental Value.

All appraisers specified pursuant hereto shall be members of the American Institute of Real Estate Appraisers with not less than five (5) years experience appraising office, research and development and industrial properties in the San Francisco/Peninsula/South Bay area. Each party shall pay the cost of the appraiser selected by such party and one-half of the cost of the third appraiser plus one-half of any other costs incurred in the determination.

EXHIBIT E

TRI-PARTY AGREEMENT

THIS AGREEMENT is entered into as of _____, _____, by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California ("**Lessor**") , _____, a _____ ("**Lessee**") and _____, a _____ ("**Lender**") .

RECITALS

A. Lessor is the owner of that certain real property, being a portion of the lands of The Leland Stanford Junior University, located in the County of Santa Clara, State of California, and more particularly described in attached Exhibit A (the "**Premises**") and the lessor under that certain Restated and Amended Ground Lease of the Premises dated as of _____, 2011, by and between Lessor and Lessee (the "**Lease**").

B. Lessee desires to obtain a loan from Lender in the principal amount [of] [not to exceed] _____ Dollars (\$ _____) (the "**Loan**") and to encumber its leasehold interest under the Lease as security for the Loan.

C. Lender is willing to make the Loan to Lessee secured by Lessee's leasehold interest under the Lease provided that Lessor consents thereto and agrees to the provisions of this Agreement.

D. Lessor is willing to consent to the encumbering of Lessee's leasehold interest under the Lease as security for the Loan on the terms and conditions set forth in this Agreement. Lender is an approved "Institutional Lender" as that term is defined in the Lease.

AGREEMENT

NOW THEREFORE, in consideration of the premises and other mutual valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Encumbrance of Leasehold Interest.** Subject to the terms and conditions of this Agreement, Lessor hereby consents to the encumbering of Lessee's leasehold interest under the Lease pursuant to a mortgage or deed of trust as security for the Loan provided that the outstanding amount of the Loan secured thereby shall not exceed \$ _____ (the mortgage, deed of trust or other security instrument permitted hereunder being herein referred to as the "**Leasehold Mortgage**"). In no event shall any interest of Lessor in the Premises be subject or subordinate to any lien or encumbrance of the Leasehold Mortgage or any other mortgage, deed of trust, or other security instrument.

2. **Parties' Obligations.** During the continuance of the Leasehold Mortgage until such time as the lien of the Leasehold Mortgage shall have been extinguished, the parties agree as follows:

(a) **Modifications to Lease.** Lessor shall not agree to any mutual termination nor accept any surrender of the Lease, except upon the expiration of the term of the

Lease or its termination pursuant to any express provision of the Lease, nor shall any material amendment or modification of the Lease be binding upon Lender or any purchaser in foreclosure from Lender, unless Lender has given its prior written consent to such amendment or modification, which consent shall not be unreasonably withheld and shall be deemed given if a written refusal to consent together with a written explanation of the reasons for such refusal to consent is not received by Lender from Lender within ten (10) days after receipt by Lender of a written request for Lender's consent to a proposed amendment or modification.

(b) **Insurance.** Lender may be a named insured on any fire and other hazard insurance policies carried by Lessee and covering the Premises. All proceeds of any such insurance policies shall be held by Lessor, or at the request of Lender, by a trust company satisfactory to Lessor and Lender. In the event that at any time prior to expiration of the term of the Lease there shall be a partial or total destruction of the buildings and improvements then on the Premises from any cause, Lessee shall not have the right to terminate the Lease but shall diligently restore and rehabilitate said buildings and improvements pursuant to plans and specifications first approved by Lessor and Lender in writing, and, except as hereinafter provided, all proceeds of all property damage insurance shall be disbursed to Lessee upon such terms as Lessor and Lender may agree, for the purpose of restoring and rehabilitating said buildings and improvements. Should the proceeds of such insurance exceed the cost of such restoration and rehabilitation, the balance shall be paid to Lender to be credited by Lender as a payment on account of the Loan, and the remaining balance, if any, shall be paid in accordance with the Lease. Proceeds of any business or rental interruption insurance carried by Lessee with respect to the Premises shall be applied first to any unpaid obligations of Lessee under the Lease, then to any unpaid obligations under the Leasehold Mortgage and any remaining balance may be paid to Lessee.

(c) **Lender's Right to Perform.** Lender shall have the right, but not the obligation, at any time prior to termination of the Lease to pay all rental due thereunder, to provide any insurance and make any other payments, to make any repairs and improvements and do any other act or thing required of Lessee thereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the covenants, conditions and agreements thereof to prevent the termination of the Lease. All payments so made and all things so done and performed by Lender shall be as effective to prevent a termination of the Lease as the same would have been if made, done and performed by Lessee instead of by Lender.

(d) **Lessee's Default.** Should any default occur under the Lease, Lender shall have thirty (30) days after receipt of notice from Lessor setting forth the nature of such default, and, if the default is such that possession of the Premises may be necessary to remedy the default, a reasonable time after the expiration of such thirty (30) day period within which to remedy such default, provided that (i) Lender shall have fully cured any default in the payment of any monetary obligations of Lessee under the Lease, within such thirty (30) day period and shall continue to pay currently such monetary obligations as and when the same are due, and (ii) Lender shall have given Lessor written notice that Lender intends to take action to acquire Lessee's leasehold estate, and, subject to the provisions of Section 2(i) below, commenced foreclosure or other appropriate proceedings in the nature thereof, and shall thereafter diligently and continuously prosecute such proceedings to completion. Lender shall not be liable for any indemnities set forth in the Lease unless and until Lender assumes the obligations of Lessee thereunder; provided, however, that in the event the default under the Lease relates to Lessee's failure to make any payment due on an indemnity set forth in the Lease, Lender acknowledges that its failure to cure such default may result in the termination of the Lease and the loss of Lender's security.

(e) **Lender's Right to Cure.** A default under the Lease which in the nature thereof cannot be remedied by Lender shall be deemed to be remedied if (i) within thirty (30) days after receiving written notice from Lessor of such default, Lender shall have given Lessor written notice that Lender intends to take action to acquire Lessee's interest under the Lease and, subject to the provisions of Section 2(i) below, commenced foreclosure or other appropriate proceedings in the nature thereof, and Lender shall thereafter diligently and continuously prosecute any such proceedings to completion, (ii) Lender shall have fully cured any default in the payment of any monetary obligations of Lessee under the Lease within such thirty (30) day period and shall thereafter continue to faithfully perform all such monetary obligations, and (iii) after gaining possession of the Premises, Lender shall perform all of the obligations of Lessee under the Lease as and when the same are due and cure any defaults that are curable by Lender but that require possession of the Premises to cure, such cure to be effected within thirty (30) days after gaining possession, or such longer period of time as is reasonably necessary to effect such cure using all due diligence.

(f) **Notices.** Lessor shall mail to Lender a duplicate copy by certified mail of any and all notices which Lessor may from time to time give to or serve upon Lessee pursuant to the provisions of the Lease; and no notice by Lessor to Lessee hereunder shall be deemed to have been given as to Lender unless and until a copy thereof has been mailed to Lender.

(g) **Foreclosure.** Subject to the provisions of this subsection (g) and subsection (i) below, foreclosure of a Leasehold Mortgage or any sale thereunder, whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage, or any conveyance of the leasehold interest under the Lease from Lessee to Lender by virtue or in lieu of foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Lessor or constitute a breach of any provision of or a default under the Lease and upon such foreclosure, sale or conveyance, Lessor shall recognize Lender, or any other foreclosure sale purchaser or recipient of any deed in lieu, as the Lessee under the Lease; provided:

(i) Lender shall have fully complied with the provisions of this Agreement applicable prior to gaining possession of the Premises and Lender or the foreclosure sale purchaser or deed in lieu recipient, as the case may be, who is to become the Lessee under the Lease shall comply with the provisions of this Agreement applicable after gaining possession of the Premises;

(ii) Lender, or the foreclosure sale purchaser or deed in lieu recipient, as the case may be, who is to become the Lessee under the Lease shall be responsible for taking such actions as shall be necessary to obtain possession of the Premises; and

(iii) Lender, or the foreclosure sale purchaser or deed in lieu recipient, as the case may be, who is to become the Lessee under the Lease shall execute, acknowledge and deliver to Lessor an instrument in form satisfactory to Lessor pursuant to which Lender or the foreclosure sale purchaser or deed in lieu recipient, as the case may be, expressly assumes all obligations of the Lessee under the Lease, which instrument shall contain the same representation and release by the entity assuming the Lessee's obligations under the Lease as are made by Lender pursuant to Section 3 of this Agreement.

If there are two or more Leasehold Mortgages or foreclosure sale purchasers (whether of the same or different Leasehold Mortgages), Lessor shall have no duty or obligation whatsoever to determine the relative priorities of such Leasehold Mortgages or the rights of the different holders thereof and/or foreclosure sale purchasers. If Lender becomes the Lessee under the Lease, or under any new lease obtained pursuant to subsection (h) below, Lender shall not be personally liable for the obligations of the Lessee under the Lease accruing prior to or after the period of time that Lender is the Lessee thereunder.

(h) **Rejection of Lease.** Should the Lease be terminated by reason of any rejection of the Lease in a bankruptcy proceeding, Lessor shall, subject to the terms and conditions of this subsection (h) and subsection (i) below, upon written request by Lender to Lessor made within thirty (30) days after such termination, execute and deliver a new lease of the Premises to Lender for the remainder of the term of the Lease with the same covenants, conditions and agreements (except for any requirements which have been satisfied by the Lessee prior to termination) as are contained therein; provided, however, that Lessor's execution and delivery of such new lease of the Premises shall be made without representation or warranty of any kind or nature whatsoever, either express or implied, including without limitation, any representation or warranty regarding title to the Premises or the priority of such new lease; Lessor's obligations and liability under such new lease shall not be greater than if the Lease had not terminated and Lender had become the Lessee thereunder, and the new lease shall contain the same representation and release made by the entity that is the lessee thereunder as are made by Lender under Section 3 of this Agreement. Lessor's delivery of the Premises to Lender pursuant to such new lease shall be made without representation or warranty of any kind or nature whatsoever, either express or implied; and Lender shall take the Premises "as is" in their then current condition. Upon execution and delivery of such new lease, Lender, at its sole cost and expense, shall be responsible for taking such action as shall be necessary to cancel and discharge the Lease and to remove the Lessee named therein and any other occupant from the Premises. Lessor's obligation to enter into such new lease of the Premises with Lender shall be conditioned as follows:

(i) Lender shall have complied with the provisions of this Agreement applicable prior to the gaining of possession and shall comply with the provisions of this Agreement applicable after gaining possession of the Premises;

(ii) if more than one holder of a Leasehold Mortgage claims to be the Lender and requests such new lease, Lessor shall have no duty or obligation whatsoever to determine the relative priority of such Leasehold Mortgages, and in the event of any dispute between or among the holders thereof, Lessor shall have no obligation to enter into any such new lease if such dispute is not resolved to the sole satisfaction of Lessor within ninety (90) days after the date of termination of the Lease; and

(iii) Lender shall pay all costs and expenses of Lessor, including without limitation, reasonable attorneys' fees, real property transfer taxes and any escrow fees and recording charges, incurred in connection with the preparation and execution of such new lease and any conveyances related thereto.

(i) **Transfer of Leasehold Interest.** In the event Lender desires to transfer the leasehold interest in the Premises by foreclosure sale, accept a deed in lieu of foreclosure, or acquire Lessee's interest in the Lease by any other means, Lender shall provide Lessor not less than thirty (30) days prior written notice of its intention to exercise any such right and Lessor shall have the right, exercisable within thirty (30) days after receipt of such written notice

to elect to acquire the entire interest in the Loan and the Leasehold Mortgage for a price equal to the sum of the outstanding unpaid balance of the Loan secured by the Leasehold Mortgage, together with any other amounts due and unpaid under the Leasehold Mortgage. In the event Lender desires to sell the Loan to a third party, Lender shall provide Lessor not less than thirty (30) days prior written notice of its intention to do so, identifying in reasonable detail the terms upon which the third party is willing to purchase the Loan, and Lessor shall have the right, exercisable within thirty (30) days after receipt of such written notice, to elect to purchase the Loan and the Leasehold Mortgage for a price equal to that which would have been paid by the third party. The closing of the acquisition of the Loan (the **"Closing"**) shall occur within thirty (30) days after the date of such election through escrow at a title company selected by Lessor and reasonably acceptable to Lender (the **"Title Company"**). At the Closing Lessor shall deliver to Lender through escrow the purchase price for the Loan and Lender shall assign to Lessor all of its right, title and interest in the Loan and the Leasehold Mortgage pursuant to documentation satisfactory to Lessor and the Title Company. If Lessor fails to deliver into escrow the required funds within said thirty (30) day period with instructions to deliver said funds to Lender conditioned only upon receipt of the documentation necessary to enable the Title Company to insure Lessor as the sole Beneficiary of the Leasehold Mortgage, Lender shall be entitled to pursue its rights to acquire or transfer the leasehold estate pursuant to this Agreement. If Lessor delivers said funds as required herein, Lender's rights under this Agreement shall terminate and be of no further force or effect.

3. **Hazardous Substances.** By execution of this Agreement, Lender hereby represents to Lessor as follows: Lender is aware that detectable amounts of hazardous substances and groundwater contaminants have come to be located beneath and/or in the vicinity of the Premises. (See, for example, Remedial Action Order No. 95-013 dated 1/18/95; and No. 88/89-005 dated 8/16/88 and DTSC #HSA 88/89-016 dated 6/30/97 issued by the Department of Toxic Substances Control, Cal EPA, formerly known as the California Department of Health Services, Toxic Substances Division; and Regional Water Quality Control Board Order No. 95-013 dated 1/18/95.) Lender has made such investigations and inquiries as it deems appropriate to ascertain the effects, if any, of such substances and contaminants on the Premises and persons using the Premises. Lessor makes no representation or warranty with regard to the environmental condition of the Premises. Lender hereby covenants and agrees not to sue and forever releases and discharges Lessor, and its trustees, officers, directors, agents and employees for and from any and all claims, losses, damages, causes of action and liabilities, arising out of hazardous substances or groundwater contamination presently existing on, under, or emanating from or onto the Premises. Lender understands and expressly waives any rights or benefits available under Section 1542 of the Civil Code of California or any similar provision in any other jurisdiction. Section 1542 provides substantially as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

4. **Notices.** Any notice or demand required or given hereunder shall be in writing and shall be considered to have been duly and properly given upon personal delivery to the party or an officer of the party being served, or if mailed, upon the first to occur of actual receipt or 48 hours after deposit in United States registered or certified mail, postage prepaid, addressed to the parties as follows :

Lessor: The Board of Trustees of the Leland Stanford Junior University
2755 Sand Hill Road, Suite 100
Menlo Park, CA 94025
Attention: Managing Director, Real Estate

Lessee: _____

Attention: _____

Lender: _____

Attention: _____

Such addresses may be changed by notice to the other parties given in the same manner as provided herein, such changes to be effective only upon receipt of notice thereof.

5. **Assignment.** Neither this Agreement nor any of the rights or obligation of the parties hereto may be assigned in whole or in part to any other party without the consent of the other parties hereto and any attempted assignment without such consent shall be null and void. Nothing contained in this Agreement shall constitute the consent of Lessor to any other or future encumbrance of Lessee's leasehold interest under the Lease.

6. **Counterparts.** This Agreement may be executed in any number of counterparts and each of the counterparts shall be considered an original and all counterparts shall constitute but one and the same instrument.

7. **Entire Agreement; Modifications; Waiver.** This Agreement and the exhibits hereto, which are incorporated herein by this reference, shall constitute the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be changed or modified orally or in any manner other than by any agreement in writing signed by the parties hereto. No waiver of any of the terms or conditions of this Agreement and no waiver of any default or failure of compliance shall be effective unless in writing, and no waiver furnished in writing shall be deemed to be a waiver of any other term or provision or any future condition of this Agreement.

8. **Governing Law.** This Agreement shall be governed by California law.

9. **Attorneys' Fees.** In the event of any litigation arising out of any dispute or controversy concerning this Agreement, the party or parties not prevailing in such dispute shall pay any and all costs and expenses incurred by the prevailing party or parties, including, without limitation, reasonable attorneys' fees and expenses, which shall include fees and expenses of in-house attorneys.

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

LESSOR:

THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR UNIVERSITY

By: _____

Its: _____

LESSEE:

By: _____

Its: _____

LENDER:

By: _____

Its: _____

EXHIBIT F

AMENDMENT TO MEMORANDUM OF LEASE

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

VMware, Inc.
3401 Hillview Avenue
Palo Alto, CA 94304
Attn: General Counsel

APN: 142-16-083; 142-16-085
Remaining term less than 35 years

AMENDMENT TO MEMORANDUM OF LEASE

THIS AMENDMENT TO MEMORANDUM OF LEASE (this “*Memorandum*”) is entered into as of _____, 2011, by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California (“*Lessor*”), and VMWARE, INC., a Delaware corporation (“*Lessee*”) in the following factual context:

A. Lessor and Lessee’s predecessor are the parties to that certain Lease dated as of July 1, 1968 (the “*Original Lease*”), whereby Lessor leases to Lessee certain real property commonly known as 3431 Hillview Avenue, Palo Alto, California, as legally described in the attached **Exhibit A** and incorporated herein by this reference, a memorandum of which was recorded October 30, 1968 in Book 8315, Page 330 in the Official Records of Santa Clara County, California (the “*Official Records*”).

B. Lessor and Lessee’s predecessor are also parties to the following amendments to the Original Lease: a Lease Amendment and Extension Agreement dated as of April 14, 2003, a memorandum of which was recorded April 15, 2003 as Instrument No. 16965757 in the Official Records (the “*First Amendment*”); and a Second Amendment to Ground Lease dated as of October 1, 2007, a memorandum of which was recorded April 28, 2011 as Instrument No. 21159140 in the Official Records (the “*Second Amendment*”). The Original Lease, as amended, by the First Amendment and the Second Amendment shall be referred to herein as the “*Lease*”.

C. Lessor and Lessee have entered into a further amendment to the Lease pursuant to an Amended and Restated Ground Lease of even date herewith and desire to record a notice thereof in the Official Records.

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

1. **Term.** The term of the Lease is hereby extended to expire, if not sooner terminated pursuant thereto, on _____, 2046 and Lessor’s early termination rights set forth in the First Amendment are hereby deleted.

2. **Controlling Document.** This Memorandum is subject to all the terms and conditions of the Lease. Should there be any inconsistency between the terms of this instrument and the Lease, the terms of the Lease shall prevail.

3. **Counterparts.** This Memorandum may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Memorandum to be executed as of the day and year first above written.

LESSOR:

THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR UNIVERSITY,
a body having corporate powers
under the laws of the State of California

By: _____
Name: _____
Its: _____

LESSEE:

VMWARE, INC.,
a Delaware corporation

By: _____
Name: _____
Its: _____

STATE OF CALIFORNIA)
) §
County of _____)
_____)

On _____, before me, _____ a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

Signature of Notary

(Affix seal here)

STATE OF CALIFORNIA)
) §
County of _____)
_____)

On _____, before me, _____ a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal.

Signature of Notary

(Affix seal here)

Exhibit "A" (to Exhibit F)

Legal Description

Real property in the City of PALO ALTO, County of SANTA CLARA, State of California, described as follows:

PARCEL ONE:

BEING A PORTION OF PARCEL A, AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED APRIL 27, 1979 IN BOOK 440 OF MAPS AT PAGE 37, RECORDS OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL A, DISTANT THEREON SOUTH 53°09'05" EAST 409.70 FEET ALONG SAID LINE, FROM THE NORTHWESTERLY TERMINUS OF THE NORTHEASTERLY LINE OF SAID PARCEL A, SHOWN ON SAID PARCEL MAP (440 M 37) AS "S 53°09'05" E 1410.04'";

THENCE LEAVING SAID NORTHEASTERLY LINE, THE FOLLOWING THIRTY-FOUR (34) COURSES:

- 1) SOUTH 36°50'55" WEST, 67.33 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 251.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 34°14'40" WEST;
- 2) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07°34'55" AND AN ARC LENGTH OF 33.21 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 246.00 FEET;
- 3) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07°42'11" AND AN ARC LENGTH OF 33.07 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 444.00 FEET;
- 4) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 08°00'14" AND AN ARC LENGTH OF 62.02 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 275.00 FEET;
- 5) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 20°11'57" AND AN ARC LENGTH OF 96.95 FEET;
- 6) SOUTH 44°08'23" WEST, 32.27 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 19.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 07°56'38" WEST;
- 7) WESTERLY AND SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 63°19'01" AND AN ARC LENGTH OF 21.00 FEET;
- 8) SOUTH 34°37'37" WEST, 11.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 100.00 FEET;
- 9) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 43°40'46" AND AN ARC LENGTH OF 76.24 FEET;

-
- 10) SOUTH $78^{\circ}18'23''$ WEST, 15.55 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 58.00 FEET;
 - 11) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $32^{\circ}06'19''$ AND AN ARC LENGTH OF 32.50 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 33.00 FEET;
 - 12) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $42^{\circ}21'17''$ AND AN ARC LENGTH OF 24.39 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 85.00 FEET;
 - 13) SOUTHERLY AND SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $31^{\circ}53'43''$ AND AN ARC LENGTH OF 47.32 FEET;
 - 14) SOUTH $28^{\circ}02'56''$ EAST, 13.27 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 661.00 FEET;
 - 15) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $05^{\circ}47'03''$ AND AN ARC LENGTH OF 66.73 FEET;
 - 16) SOUTH $33^{\circ}49'59''$ EAST, 41.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 450.00 FEET;
 - 17) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $23^{\circ}35'50''$ AND AN ARC LENGTH OF 185.33 FEET;
 - 18) SOUTH $10^{\circ}14'09''$ EAST, 132.03 FEET;
 - 19) SOUTH $79^{\circ}45'51''$ WEST, 86.26 FEET;
 - 20) SOUTH $07^{\circ}29'54''$ EAST, 17.21 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 25.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH $18^{\circ}39'09''$ EAST;
 - 21) WESTERLY AND SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $78^{\circ}31'49''$ AND AN ARC LENGTH OF 34.27 FEET;
 - 22) SOUTH $84^{\circ}26'47''$ WEST, 282.62 FEET;
 - 23) SOUTH $09^{\circ}38'42''$ WEST, 153.27 FEET;
 - 24) SOUTH $80^{\circ}21'18''$ EAST, 60.31 FEET;
 - 25) SOUTH $05^{\circ}16'41''$ EAST, 233.88 FEET;
 - 26) SOUTH $84^{\circ}43'19''$ WEST, 65.79 FEET;
 - 27) NORTH $05^{\circ}16'41''$ WEST, 10.15 FEET;
 - 28) SOUTH $84^{\circ}43'19''$ WEST, 89.73 FEET;
 - 29) SOUTH $05^{\circ}16'41''$ EAST, 32.52 FEET;
 - 30) NORTH $84^{\circ}43'19''$ EAST, 18.38 FEET;
 - 31) SOUTH $05^{\circ}16'41''$ EAST, 51.46 FEET;
 - 32) SOUTH $85^{\circ}00'12''$ WEST, 28.74 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 20.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH $36^{\circ}41'24''$ WEST;
 - 33) NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $83^{\circ}22'23''$ AND AN ARC LENGTH OF 29.10 FEET;
 - 34) SOUTH $85^{\circ}00'12''$ WEST, 318.23 FEET TO THE SOUTHWESTERLY LINE OF SAID PARCEL A (440 M 37);

THENCE ALONG SAID SOUTHWESTERLY LINE AND ALONG THE GENERAL SOUTHEASTERLY, EASTERLY AND NORTHEASTERLY LINES OF SAID PARCEL A, THE FOLLOWING TWENTY-FIVE (25) COURSES:

- 1) SOUTH 15°27'55" EAST, 470.41 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 3040.00 FEET;
- 2) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 06°08'16" AND AN ARC LENGTH OF 325.66 FEET;
- 3) SOUTH 09°19'39" EAST, 444.50 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 629.58 FEET;
- 4) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL OF 09°56'07" AND AN ARC LENGTH OF 109.17 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 50.00 FEET;
- 5) SOUTHEASTERLY, EASTERLY AND NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 105°43'31" AND AN ARC LENGTH OF 92.26 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 4045.00 FEET;
- 6) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 02°39'21" AND AN ARC LENGTH OF 187.50 FEET;
- 7) NORTH 57°40'04" EAST, 19.62 FEET TO THE BEGINNING OF CURVE TO THE LEFT, HAVING A RADIUS OF 7955.00 FEET;
- 8) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 01°45'20" AND AN ARC LENGTH OF 243.74 FEET;
- 9) NORTH 55°54'44" EAST, 422.41 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 3045.00 FEET;
- 10) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 03°42'43" AND AN ARC LENGTH OF 197.27 FEET;
- 11) NORTH 59°37'27" EAST, 500.76 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 2955.00 FEET;
- 12) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 03°24'00" AND AN ARC LENGTH OF 175.35 FEET;
- 13) NORTH 34°06'07" WEST, 119.98 FEET;
- 14) NORTH 55°53'53" EAST, 10.00 FEET;
- 15) SOUTH 34°06'07" EAST, 120.02 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 2955.00 FEET, FROM WHICH A RADIAL LINE BEARS NORTH 33°58'11" WEST;
- 16) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 00°07'05" AND AN ARC LENGTH OF 6.09 FEET;
- 17) NORTH 55°54'44" EAST, 484.28 FEET;
- 18) NORTH 34°05'16" WEST, 15.00 FEET;
- 19) NORTH 55°54'44" EAST, 20.00 FEET;
- 20) SOUTH 34°05'16" EAST, 15.00 FEET;
- 21) NORTH 55°54'44" EAST, 283.15 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 50.00 FEET;
- 22) NORTHEASTERLY, NORTHERLY AND NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 116°54'44" AND AN ARC LENGTH OF 102.03 FEET;
- 23) NORTH 61°00'00" WEST, 468.88 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 2065.00 FEET;
- 24) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07°50'55" AND AN ARC LENGTH OF 282.87 FEET;
- 25) NORTH 53°09'05" WEST, 1000.34 FEET TO THE POINT OF BEGINNING.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR VEHICULAR ACCESS, AS GRANTED IN THAT CERTAIN RECIPROCAL EASEMENT AGREEMENT RECORDED APRIL 15, 2003, INSTRUMENT NO. 16965759, AND BEING SHOWN IN THE DRAWING MARKED, "SCHEDULE C EASEMENTS", ATTACHED THERETO.

PARCEL THREE:

A NON-EXCLUSIVE EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS, AS GRANTED IN THAT CERTAIN EASEMENT AGREEMENT RECORDED APRIL 15, 2003, INSTRUMENT NO. 16965760, AND BEING DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL A, AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED APRIL 27, 1979 IN BOOK 440 OF MAPS AT PAGE 37, RECORDS OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL A, DISTANT THEREON SOUTH 53° 09' 05" EAST, 409.70 FEET ALONG SAID LINE, FROM THE NORTHWESTERLY TERMINUS OF THE NORTHEASTERLY LINE OF SAID PARCEL A, AS SHOWN ON SAID PARCEL MAP (440 M 37) AS "S 53° 09' 50" E 1410.04");

THENCE LEAVING SAID NORTHEASTERLY LINE, THE FOLLOWING FIVE (5) COURSES:

- 1) SOUTH 36° 50' 55" WEST, 67.33 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 251.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 34° 14' 40" WEST;
- 2) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07° 34' 55" AND AN ARC LENGTH OF 33.21 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 246.00 FEET;
- 3) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07° 42' 11" AND AN ARC LENGTH OF 33.07 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 444.00 FEET;
- 4) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 08° 00' 14" AND AN ARC LENGTH OF 62.02 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 275.00 FEET;
- 5) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 18° 41' 00" AND AN ARC LENGTH OF 89.67 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE LEAVING SAID POINT, THE FOLLOWING TWENTY-EIGHT (28) COURSES:

- 1) SOUTH 44° 08' 23" WEST, 28.73 FEET TO THE BEGINNING OF A

NON-TANGENT CURVE, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 19.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 32° 08' 21" WEST;

2) WESTERLY AND SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 87° 30' 44" AND AN ARC LENGTH OF 29.02 FEET;

3) SOUTH 34° 37' 37" WEST, 11.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 100.00 FEET;

4) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 43° 40' 46" AND AN ARC LENGTH OF 76.24 FEET;

5) SOUTH 78° 18' 23" WEST, 15.55 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 58.00 FEET;

6) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 32° 06' 19" AND AN ARC LENGTH OF 32.50 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 33.00 FEET;

7) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 42° 21' 17" AND AN ARC LENGTH OF 24.39 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 85.00 FEET;

8) SOUTHERLY AND SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 31° 53' 43" AND AN ARC LENGTH OF 47.32 FEET;

9) SOUTH 28° 02' 56" EAST, 13.27 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 661.00 FEET;

10) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 05° 47' 03" AND ARC LENGTH OF 66.73 FEET;

11) SOUTH 33° 49' 59" EAST, 41.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 450.00 FEET;

12) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 23° 35' 50" AND AN ARC LENGTH OF 185.33 FEET;

13) SOUTH 10° 14' 09" EAST, 132.03 FEET;

14) SOUTH 79° 45' 51" WEST, 26.00 FEET;

15) NORTH 10° 14' 09" WEST, 132.03 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 424.00 FEET;

16) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 04° 21' 35" AND AN ARC LENGTH OF 32.26 FEET;

17) NORTH 75° 24' 16" EAST, 6.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 430.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 75° 24' 16" WEST;

18) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 19° 14' 15" AND AN ARC LENGTH OF 144.38 FEET;

19) NORTH 33° 49' 59" WEST, 41.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 681.00 FEET;

20) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 05° 47' 03" AND AN ARC LENGTH OF 68.75 FEET;

21) NORTH 28° 02' 56" WEST, 13.27 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 105.00 FEET;

22) NORTHERLY AND NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 31° 53' 43" AND AN ARC LENGTH OF 58.45 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHEAST, HAVING A 53.00 FEET;

23) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 42° 21' 17" AND AN ARC LENGTH OF 39.18 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 78.00 FEET;

24) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 32° 06' 19" AND AN ARC LENGTH OF 43.71 FEET;

25) NORTH 78° 18' 23" EAST, 15.55 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 80.00 FEET;

26) NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 43° 40' 46" AND AN ARC LENGTH OF 60.99 FEET;

27) NORTH 34° 37' 37" EAST, 70.87 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 275.00 FEET, FROM WHICH A RADIAL LINE BEARS NORTH 54° 56' 42" EAST;

28) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 09° 17' 54" AND AN ARC LENGTH OF 44.63 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

PARCEL FOUR:

A NON-EXCLUSIVE EASMENT TO OPERATE, INSPECT, REPAIR, MAINTAIN, REPLACE AND REMOVE UNDERGROUND TELEPHONE, GAS, ELECTRIC AND WATER LINES AND STORM DRAIN AND SANITARY SEWER SYSTEMS AND A NON-EXCLUSIVE RIGHT OF INGRESS AND EGRESS, AS GRANTED IN THAT CERTAIN EASEMENT AGREEMENT RECORDED APRIL 15, 2003, INSTRUMENT NO. 16965761, AS AMENDED BY THAT CERTAIN FIRST AMENDMENT TO EASEMENT AGREEMENT RECORDED APRIL 27, 2011 AS INSTRUMENT NO. 21158403, AND BEING DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL A, AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED APRIL 27, 1979 IN BOOK 440 OF MAPS AT PAGE 37, RECORDS OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF SAID PARCEL A, DISTANT THEREON SOUTH 53° 09' 05" EAST, 409.70 FEET ALONG SAID LINE, FROM THE NORTHWESTERLY TERMINUS OF THE NORTHEASTERLY LINE OF SAID PARCEL A, SHOWN ON SAID PARCEL MAP (440 M 37) AS "S 53° 09' 05" E 1410.04");

THENCE LEAVING SAID NORTHEASTERLY LINE, THE FOLLOWING FIFTEEN (15) COURSES:

1) SOUTH 36° 50' 55" WEST, 67.33 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 251.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 34° 14' 40" WEST;

2) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07° 34' 55" AND AN ARC LENGTH OF 33.21 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 246.00 FEET;

3) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 07° 42' 11" AND AN ARC LENGTH OF 33.07 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 444.00 FEET;

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- 4) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $08^{\circ} 00' 14''$ AND AN ARC LENGTH OF 62.02 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 275.00 FEET;
 - 5) NORTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $20^{\circ} 11' 57''$ AND AN ARC LENGTH OF 96.95 FEET;
 - 6) SOUTH $44^{\circ} 08' 23''$ WEST, 32.27 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 19.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH $07^{\circ} 56' 38''$ WEST;
 - 7) WESTERLY AND SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $63^{\circ} 19' 01''$ AND AN ARC LENGTH OF 21.00 FEET;
 - 8) SOUTH $34^{\circ} 37' 37''$ WEST, 11.51 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 100.00 FEET;
 - 9) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $43^{\circ} 40' 46''$ AND AN ARC LENGTH OF 76.24 FEET;
 - 10) SOUTH $78^{\circ} 18' 23''$ WEST, 15.55 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 58.00 FEET;
 - 11) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $32^{\circ} 06' 19''$ AND AN ARC LENGTH OF 32.50 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 33.00 FEET;
 - 12) SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $42^{\circ} 21' 17''$ AND AN ARC LENGTH OF 24.39 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 85.00 FEET;
 - 13) SOUTHERLY AND SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $31^{\circ} 53' 43''$ AND AN ARC LENGTH OF 47.32 FEET;
 - 14) SOUTH $28^{\circ} 02' 56''$ EAST, 13.27 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 661.00 FEET;
 - 15) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $03^{\circ} 22' 40''$ AND AN ARC LENGTH OF 38.97 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION, FROM SAID POINT A RADIAL LINE BEARS NORTH $58^{\circ} 34' 24''$ EAST;
- THENCE CONTINUING ALONG SAID CURVE WITH RADIUS OF 661.00 FEET, THE FOLLOWING TWELVE (12) COURSES:
- 1) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $02^{\circ} 24' 23''$ AND AN ARC LENGTH OF 27.76 FEET;
 - 2) SOUTH $33^{\circ} 49' 59''$ EAST, 41.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 450.00 FEET;
 - 3) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $23^{\circ} 35' 50''$ AND AN ARC LENGTH OF 185.33 FEET;
 - 4) SOUTH $10^{\circ} 14' 09''$ EAST, 132.03 FEET;
 - 5) SOUTH $79^{\circ} 45' 51''$ WEST, 86.26 FEET;
 - 6) SOUTH $07^{\circ} 29' 54''$ EAST, 17.21 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 25.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH $18^{\circ} 39' 09''$ EAST;
 - 7) SOUTHWESTERLY AND SOUTHERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF $78^{\circ} 31' 49''$ AND AN ARC LENGTH OF 34.27 FEET;

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- 8) SOUTH 84° 26' 47" WEST, 27.04 FEET;
 - 9) NORTH 05° 32' 28" WEST, 82.55 FEET;
 - 10) NORTH 50° 43' 24" EAST, 122.74 FEET;
 - 11) NORTH 20° 02' 40" WEST, 276.20 FEET;
 - 12) NORTH 73° 26' 18" EAST, 3.46 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT TO OPERATE, INSPECT, REPAIR, MAINTAIN, REPLACE AND REMOVE THE FIBER OPTIC COMMUNICATIONS CONDUIT AND A NON-EXCLUSIVE RIGHT OF INGRESS AND EGRESS, AS GRANTED IN THAT CERTAIN EASEMENT AGREEMENT RECORDED APRIL 15, 2003, INSTRUMENT NO. 16965763 AS AMENDED BY THAT FIRST AMENDMENT TO EASEMENT RECORDED MARCH 29, 2005, INSTRUMENT NO. 18295969, AND BEING DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL A, AS SHOWN ON THAT CERTAIN PARCEL MAP, FILED APRIL 27, 1979 IN BOOK 440 OF MAPS AT PAGE 37, RECORDS OF SANTA CLARA COUNTY, DESCRIBED AS FOLLOWS:

BEING ALSO A PORTION OF THAT 36.008 ACRE ± PARCEL OF LAND, AS DESCRIBED IN THAT CERTAIN MEMORANDUM OF LEASE AMENDMENT, BETWEEN THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY AND ROCHE PALO ALTO, LLC, RECORDED APRIL 15, 2003, UNDER DOCUMENT NO. 16965756, OFFICIAL RECORDS OF SANTA CLARA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID 36.008 ACRE PARCEL (DOC. 16965756), SAID CORNER BEING ALSO A POINT ON THE SOUTHWESTERLY LINE OF SAID PARCEL A (440 M 37);

THENCE ALONG SAID SOUTHWESTERLY LINE OF SAID PARCEL A, NORTH 15° 27' 55" WEST, 856.93 FEET;

THENCE LEAVING SAID SOUTHWESTERLY LINE, THE FOLLOWING FOUR (4) COURSES:

- 1) NORTH 85° 20' 05" EAST, 255.73 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 370.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 50° 25' 21" WEST;
- 2) SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 34° 26' 52" AND ARC LENGTH OF 222.45 FEET;
- 3) SOUTH 05° 07' 47" EAST, 284.07 FEET;
- 4) NORTH 84° 43' 19" EAST, 291.54 FEET TO A POINT ON THE EASTERLY LINE OF SAID 36.008 ACRE PARCEL (DOC. 16965756);

THENCE ALONG SAID EASTERLY LINE AND ALONG THE GENERAL EASTERLY AND SOUTHERLY LINES OF SAID 36.008 ACRE PARCEL, THE FOLLOWING TWELVE (12) COURSES:

- 1) SOUTH 09° 38' 42" WEST, 26.65 FEET;
- 2) SOUTH 80° 21' 18" EAST, 60.31 FEET;
- 3) SOUTH 05° 16' 41" EAST, 233.88 FEET;
- 4) SOUTH 84° 43' 19" WEST, 65.79 FEET;
- 5) NORTH 05° 16' 41" WEST, 10.15 FEET;
- 6) SOUTH 84° 43' 19" WEST, 89.73 FEET;
- 7) SOUTH 05° 16' 41" EAST, 32.52 FEET;
- 8) NORTH 84° 43' 19" EAST, 18.38 FEET;
- 9) SOUTH 05° 16' 41" EAST, 51.46 FEET;
- 10) SOUTH 85° 00' 12" WEST, 28.74 FEET TO BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 20.00 FEET, FROM WHICH A RADIAL LINE BEARS SOUTH 36° 41' 24" WEST;
- 11) NORTHWESTERLY, WESTERLY AND SOUTHWESTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 83° 22' 23" AND ARC LENGTH OF 29.10 FEET;
- 12) SOUTH 85° 00' 12" WEST, 318.23 FEET TO THE POINT OF BEGINNING.

APN: 142-16-085 and 142-16-083

GROUND LEASE

THIS LEASE is made and entered into as of February 2, 2006 (the “ **Effective Date** ”), by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California (“ **Lessor** ”), and 3401 HILLVIEW LLC, a Delaware limited liability company (“ **Lessee** ”).

RECITALS

A. Lessor owns that certain real property commonly known as 3401 Hillview Avenue, Palo Alto, California, and more particularly described in the attached **Exhibit A** (the “ **Land** ”).

B. Lessor and Lessee’s predecessor-in-interest are the parties to that certain Agreement to Lease dated as of August 18, 2004, as amended by that certain letter agreement dated as of December 15, 2004, and as further amended by that certain Second Amendment to Agreement to Lease dated as of January 20, 2005 (as amended, the “ **Agreement to Lease** ”), pursuant to which Lessee has agreed to lease the Land and all of the improvements on the Land (including all buildings, structures, systems, facilities and fixtures located on the Land, and any and all machinery, equipment, apparatus and appliances (not owned by subtenants) incorporated into the foregoing and used in connection with the operation or occupancy of the Land) (collectively, the “ **Improvements** ”) from Lessor. Accordingly, the Land and Improvements are referred to herein as the “ **Premises** .”

NOW, THEREFORE, in consideration of the rents to be paid hereunder and of the agreements, covenants and conditions contained herein, the parties hereby agree as follows:

ARTICLE 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information. Each term or item in this Article 1 shall be deemed to incorporate all of the provisions set forth below pertaining to such term or item and to the extent there is any conflict between the provisions of this Article 1 and any more specific provision of this Lease, the more specific provision shall control.

Lessor:	The Board of Trustees of the Leland Stanford Junior University
Address of Lessor:	Stanford Management Company 2770 Sand Hill Road Menlo Park, CA 94025-3065 Attention: Director, Stanford Research Park Facsimile: (650) 854-9268

Lessee: 3401 Hillview LLC

Address of Lessee: 176 South Street
Hopkinton, MA 01748
Attn: Vice President for
Worldwide Facilities
Facsimile: (508) 435-3324

With a copy to: EMC Corporation
176 South Street
Hopkinton, MA 01748-9103
Attention: General Counsel
Facsimile: (508) 293-7189

Entitlement Period: From the Effective Date through August 31, 2005 (as may be extended pursuant to Section 5.2)

Term: Fifty-one (51) years, commencing on the Commencement Date

Commencement Date: The day after the date the Entitlement Period expires

Rent Commencement Date: The date that is three hundred nine (309) days after the Commencement Date

Expiration Date: The date that is fifty-one (51) years after the Commencement Date

Minimum Annual Rent (Article 7): 7.25% multiplied by the Land Value Factor, multiplied by Entitled Square Feet, and as adjusted pursuant to Article 7

Use (Article 10): Research and development (as further described in Section 10.2)

ARTICLE 2. DEFINITIONS

As used in this Lease, the following terms shall have the following meanings, applicable, as appropriate, to both the singular and plural forms of the terms herein defined:

“ **2003 Rules** ” means (a) the City ordinances and resolutions, rules, regulations, and official policies that are in effect on June 10, 2003 and attached as an exhibit to the Mayfield Development Agreement, and the City ordinances and resolutions, rules, regulations and official policies that are incorporated therein by reference, and (b) the 1998-2010 Palo Alto Comprehensive Plan, all as modified by Section 6 of the Mayfield Development Agreement and limited by Sections 7 and 8 of the Mayfield Development Agreement.

“ **3421 Hillview Premises** ” is defined in Section 5.6.

“ **Additional Improvements and Alterations** ” are defined in Section 12.1.

“ **Additional Rent** ” is defined in Section 8.1.

“ **Affiliate** ” means (a) any entity of which a majority of the voting or economic interest is owned, directly or indirectly, by Lessee; (b) any entity in which Lessee or a person referred to in the preceding clauses is a controlling stockholder, controlling partner or controlling member; (c) any person or entity which is a controlling stockholder, controlling partner or controlling member of Lessee or of any person or entity referred to in the preceding clauses; or (d) any person or entity directly or indirectly controlling, controlled by or under common control with, Lessee or any person or entity referred to in any of the preceding clauses. For purposes of this definition, “control” means owning directly or indirectly fifty percent (50%) or more of the beneficial interest in such entity or the direct or indirect power to control the management policies of such person or entity, whether through ownership, by contract or otherwise.

“ **Agreement to Lease** ” is defined in Recital B.

“ **Alterations** ” means any additional improvements, alterations, remodeling, or reconstruction of or to the Improvements existing on the Premises as of the Commencement Date.

“ **Applicable Laws** ” means (a) all applicable laws, statutes, codes, ordinances, orders, resolutions, rules, regulations and requirements, including, without limitation, all Environmental Requirements, of all federal, state, county, municipal and other governmental authorities and the departments, commissions, boards, bureaus, instrumentalities, and officers thereof; (b) all judicial rulings, decrees and orders; and (c) all orders, rules and regulations of the Pacific Fire Rating Bureau, and the American Insurance Association (formerly the National Board of Fire Underwriters) or any other body exercising similar functions relating to or affecting the Premises, the Improvements now or hereafter located on the Premises or the use, operation or occupancy of the Premises for the purposes permitted hereunder. In each instance, Applicable Laws shall include those existing as of the Commencement Date and those hereafter enacted.

“ **Appropriation** ” means any taking by exercise of right of condemnation (direct or inverse) or eminent domain, or requisitioning by military or other public authority for any purpose arising out of a temporary emergency or other temporary circumstance or sale under threat of condemnation. “Appropriated” means having been subject to such taking and “Appropriating” means exercising such taking authority.

“ **ARB** ” is defined in Section 5.3.

“ **Award** ” means the amount paid by the Appropriating authority as a result of an Appropriation.

“ **Basic Lease Information** ” means the information contained in Article 1.

“ **City** ” means the City of Palo Alto.

“ **Commencement Date** ” is defined in Article 1.

“ **Complete ARB Application** ” is defined in Section 5.3.

“ **Cooperation Agreement** ” is defined in Section 3.1.

“ **Demolition Work** ” is defined in Section 12.9.

“ **Development Impact Fees** ” means all fees collected by the City from applicants for new development, including all forms of approvals and permits necessary for development, for the funding of public services, infrastructure, improvements or facilities, but not including taxes or assessments or fees for processing applications or permits or for design review. The fees included in this definition include, but are not limited to those included in Chapters 16.45, 16.57, 16.58 of the Municipal Code, those for traffic improvements and mitigation; provided nothing herein shall preclude the City from collecting fees lawfully imposed by another entity having jurisdiction which the City is required or authorized to collect pursuant to state law.

“ **Effective Date** ” is defined in Article 1.

“ **Entitled Square Feet/Footage** ” is defined in Section 7.1.

“ **Entitlement Cost** ” is defined in Section 5.1(c).

“ **Entitlement Period** ” is defined in Article 1.

“ **Entitlements** ” is defined in Section 5.1(a).

“ **Environmental Audit** ” is defined in Section 19.5.

“ **Environmental Claims** ” means all claims, demands, suits, actions (including, without limitation, notices of noncompliance, charges, directives, and requests for information), causes of action, orders, judgments, settlements, damages, losses, diminutions in value, penalties, fines, actions, proceedings, obligations, liabilities (including strict liability), encumbrances, liens, costs (including, without limitation, costs of investigation and defense of any claim, whether or not such claim is ultimately defeated, and costs of any good faith settlement or judgment), and expenses of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys’ and consultants’ fees and disbursements, any of which are incurred at any time, arising out of or related to Environmental Requirements, including, without limitation:

(a) Damages for personal injury, or injury to property or natural resources occurring upon the Premises or off the Premises, foreseeable or unforeseeable, including, without limitation, the cost of demolition and rebuilding of any improvements on real property, interest and penalties;

(b) Claims brought by or on behalf of employees of Lessee, with respect to which Lessee waives any immunity to which it may be entitled under any industrial or worker's compensation laws;

(c) Fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of Releases of Hazardous Substances (whether or not performed voluntarily) or violation of Environmental Requirements, including, but not limited to, preparation of feasibility studies or reports, or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, reasonably necessary to restore full economic use of the Premises or any other property, or otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs and expenses incurred in enforcing this Lease or collecting any sums due hereunder;

(d) Liability to any third person or governmental agency to indemnify such person or agency for costs expended in connection with the items referenced above; and

(e) Diminution in the value of the Premises, and damages for the loss of business and restriction on the use of, or adverse impact on the marketing of, rentable or usable space or any amenity of the Premises.

“ Environmental Requirements ” means, to the extent applicable to the Premises, all present and future statutes, regulations, rules, ordinances, codes, common law, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, and all amendments thereto, of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, California, and political subdivisions thereof, and all applicable judicial, administrative and regulatory decrees, judgments, and orders relating to the protection of human health, safety, wildlife or the environment, including, without limitation, (a) all requirements pertaining to reporting, licensing, permitting, investigation and/or remediation of emissions, discharges, Releases, or threatened Releases of Hazardous Substances, whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances; and (b) all requirements pertaining to the health and safety of employees or the public. Environmental Requirements include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act; the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the California Medical Waste Management

Act and Radiation Control Law; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act and the National Environmental Policy Act and any and all state or local law counterparts.

“ **Exacerbation** ” means any direct, material adverse impact on a Pre-Existing Environmental Condition that arises out of, is the result of, or is related to the acts or omissions (where there is a duty to act) of Lessee or Lessee’s Agents, subtenants or invitees on or about the Premises during the Entitlement Period or the Term. Exacerbation includes, without limitation, actions which speed, redirect or enhance the migration of groundwater contamination at the Premises in a fashion that causes a material adverse impact (for example, by causing Hazardous Substances to migrate to deeper aquifers), actions which cause damage to or limit the effectiveness of any existing remediation systems or equipment, and actions which give rise to Environmental Claims. Notwithstanding the foregoing or any provision hereof to the contrary, “Exacerbation” does not include (and Lessee shall have no liability for, and no obligation to indemnify, defend or hold Lessor harmless from or against any losses, costs, damages, or expenses arising from) any exacerbation of any Pre-Existing Environmental Condition resulting from any investigation of the Premises or any construction activity provided that such investigation or construction activity is performed: (A) in accordance with the scope and logistics therefor approved (or deemed approved) by Lessor pursuant to the provisions of Section 12.10 hereof; and (B) in a manner that meets then current industry standards for such investigation, or for the conduct of construction activity in areas of potential environmental sensitivity.

“ **Excess Rent** ” is defined in Section 24.4.

“ **Existing 3421 Square Footage** ” is defined in Section 5.6(d).

“ **Expiration Date** ” is defined in Article 1.

“ **Event of Default** ” is defined in Section 26.1.

“ **Fair Market Land Value** ” as determined from time to time, means the arms-length fair market value of the fee simple interest in the Land (as unimproved) for real property comparable to the Premises (in terms of location, permitted densities, views and allowable uses), based on the maximum square foot of improvements permitted by Applicable Laws as of the time of such determination. No value shall be attributed to and no consideration shall be given to buildings or other improvements on the Land or to Lessee’s income or profits derived in whole or in part from the Land or any other source. In the event the parties cannot agree as to the Fair Market Land Value after thirty (30) days of good faith negotiations, the Fair Market Land Value shall be determined pursuant to the process described in **Exhibit B** .

“ **First Class** ” means having a standard of condition, maintenance, repair and operation at least equal to comparable properties in the Stanford Research Park as of the Commencement Date.

“ **Force Majeure** ” means any delay in the performance of construction, installations, repairs, alterations, additions or improvements under this Lease by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain utilities or materials, or by any other reason (financial inability excluded) beyond the performing party’s reasonable control.

“ **Founding Grant** ” is defined in Section 10.3.

“ **Full Insurable Replacement Value** ” is defined in Section 20.2.

“ **Handbook** ” is defined in Section 12.5(a).

“ **Hazardous Substance** ” means any substance, material or waste:

(a) the presence of which requires investigation or remediation under any Environmental Requirement;

(b) which is or becomes listed, regulated or defined as a “hazardous waste,” “hazardous substance,” “hazardous material”, “toxic substance”, “hazardous air pollutant”, “pollutant,” “infectious waste,” “bio-hazardous waste”, “medical waste”, “radioactive waster”, or “contaminant” under any Environmental Requirement;

(c) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous to human health, safety, wildlife or the environment and is or becomes regulated under any Environmental Requirement;

(d) which falls into one of the categories listed in clauses (a) through (c) above, and the presence or Release of which at, on, under or from the Premises causes or threatens to cause a nuisance upon the Premises or to surrounding properties or poses or threatens to pose a hazard to the environment or the health or safety of persons on or about the Premises; or

(e) which falls into one of the categories listed in clauses (a) through (c) above, and the presence of which on adjacent properties could constitute a trespass by Lessee.

Without limitation of the foregoing, Hazardous Substances shall include gasoline, diesel fuel and other petroleum hydrocarbons and the additives and constituents thereto, including MTBE; polychlorinated biphenals (PCBs); asbestos and asbestos-containing material; lead; urea formaldehyde foam insulation; radon gas and microbial material (including mold).

“ **Improvements** ” are defined in Recital B, and shall also include (a) all Replacement Improvements, MDA Improvements and Additional Improvements and Alterations, once constructed on the Premises, and (b) the existing building located on the 3421 Hillview Premises (if applicable), when the 3421 Hillview Premises are leased by Lessee pursuant to Section 5.6.

“ **Institutional Lender** ” is defined in Section 25.1(c).

“ **Interest Rate** ” means the lesser of (a) the rate of interest charged by Bank of America at its offices in San Francisco as its prime or reference rate, plus 4%; or (b) the highest rate permitted under Applicable Laws, compounded monthly.

“ **Land** ” is the real property more particularly described in **Exhibit A** .

“ **Land Value Factor** ” is defined in Section 7.2(a).

“ **Lease Amendment** ” is defined in Section 5.6.

“ **Lease Year** ” means each successive twelve month period commencing on September 1 and ending on August 31, provided that the first partial Lease Year shall commence on the Commencement Date and the last partial Lease Year shall end on the Termination Date.

“ **Leasehold Mortgage** ” is defined in Section 25.1(a).

“ **Lessee Environmental Activity** ” means (a) any use, treatment, keeping, handling, storage, transport, sale or Release at, on, under or from the Premises of any Hazardous Substance during the Entitlement Period or the Term by Lessee or Lessee’s Agents, subtenants or invitees, or (b) the Exacerbation of any Pre-Existing Environmental Condition, as defined in Section 19.8 by Lessee or Lessee’s Agents, subtenants or invitees.

“ **Lessee’s Agents** ” means Lessee’s employees, agents and contractors.

“ **Lessor Released Parties** ” is defined in Section 19.10(b).

“ **Lessor’s Agents** ” means Lessor’s employees, agents and contractors.

“ **Liens** ” are defined in Section 16.1.

“ **Mayfield Development Agreement** ” is defined in Section 5.5.

“ **MDA Entitlement Turnover Date** ” is defined in Section 5.5(c).

“ **MDA Improvements** ” are defined in Section 5.5(a).

“ **MDA Rights** ” is defined in Section 5.5.

“ **Minimum Annual Rent** ” is defined in Section 7.3(a).

“ **Offer** ” is defined in Section 23.5(a).

“ **Official Records** ” is defined in Section 3.1.

“ **Permitted Sublease** ” is defined in Section 24.3.

“ **Pre-Existing Environmental Condition** ” is defined in Section 19.8.

“ **Premises** ” is defined in Recital B.

“ **Project Costs** ” is defined in Section 9.2.

“ **Property Taxes** ” are defined in Section 8.2.

“ **Proposed District** ” is defined in Section 8.6.

“ **Release** ” with respect to Hazardous Substances, means any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing, or other movement of Hazardous Substances into the environment; provided that “Release” shall not include the migration, seepage or discharge on, over or across the Premises of any Hazardous Substance that originates off of the Premises.

“ **Rent** ” means Minimum Annual Rent and Additional Rent.

“ **Rent Commencement Date** ” is defined in Article 1.

“ **Rent Reset Date** ” is defined in Section 7.2(b).

“ **Replacement Improvements** ” are defined in Section 5.1(a).

“ **Roche** ” is defined in Section 3.1.

“ **Roche Utilities** ” are defined in Section 5.6.

“ **SAP** ” means SAP Labs, Inc., a Delaware corporation.

“ **SAP Lease** ” is defined in Section 5.6.

“ **SEC** ” is defined in Section 23.2(g).

“ **Supplemental Audit** ” is defined in Section 19.5.

“ **Term** ” is defined in Article 1.

“ **Termination Date** ” means the Expiration Date or such earlier date as this Lease is terminated pursuant to any provision hereof.

“ **Transfer** ” is defined in Section 23.1.

“ **Transfer Costs** ” are defined in Section 24.4.

“ **Transit Fees** ” are defined in Section 8.7.

“ **Work Product** ” is defined in Section 5.1(b).

ARTICLE 3. LEASE OF PREMISES; RESERVATION OF RIGHTS

Section 3.1 Lease of Premises. As of the Effective Date, Lessor hereby leases the Premises to Lessee, and Lessee hereby leases the Premises from Lessor on the terms and conditions set forth in this Lease. Without limiting the foregoing, the Premises shall include and Lessor hereby assigns to Lessee the rights and interests granted to Lessor pursuant (a) that certain Easement Agreement dated April 14, 2003 by and between Lessor and Roche Palo Alto LLC (“**Roche**”) recorded April 15, 2003 as Document No. 16965762 in the Official Records of Santa Clara County (the “**Official Records**”), and (b) that certain Reciprocal Easement Agreement by and between Lessor and Roche dated April 14, 2003, recorded April 15, 2003 as Document No. 16915759 in the Official Records, as amended by that certain First Amendment by and among Lessor, Lessee and Roche dated February 3, 2005, and recorded March 29, 2005 as Document No. 18295968 in the Official Records. This Lease shall be subject to (a) all Applicable Laws and all zoning and other governmental regulations now or hereafter in effect, (b) all liens, encumbrances, restrictions, rights and conditions of law or of record existing as of the Effective Date, and (c) all other matters affecting title to or use of the Premises either known to Lessee or ascertainable by survey or investigation, including without limitation that certain Cooperation Agreement dated as of April 14, 2003 by and between Lessor and Roche, and as restated and amended as of February 3, 2005 pursuant to that certain Restated and Amended Cooperation Agreement by and between Roche, Lessor and Lessee (as amended and restated, the “**Cooperation Agreement**”).

Section 3.2 Reservation of Rights.

(a) Lessor hereby reserves the right of Lessor, at all reasonable times and following reasonable advance written notice to Lessee, to enter and to permit the City, the County of Santa Clara, the Santa Clara Valley Water District, other governmental bodies, public or private utilities and any other persons or entities authorized by Lessor to enter upon the Premises for the purposes of (i) installing, using, operating, maintaining, renewing, relocating and replacing (A) underground wells, (B) water, oil, gas, steam, storm sewer, sanitary sewer and other pipe lines, and (C) telephone, electric, power and other lines, conduits, and facilities; (ii) flood control; (iii) maintenance of rights of way; and (iv) remediation of Hazardous Substances in, on, or under, the Premises or any other property in the neighborhood of the Premises.

(b) Lessor hereby retains the sole and exclusive right, at all reasonable times and following reasonable advance written notice to Lessee, to enter upon the Premises to mine or otherwise produce or extract by any means whatsoever, whether by slant drilling or otherwise, oil, gas, hydrocarbons and other minerals (of any character) in or under or from the Premises, such mining, production or extraction to be for the sole benefit of Lessor without obligation to pay Lessee for any or all of the substances so mined, produced or extracted; provided, however, that none of the operations for such mining, production or extraction shall be conducted from the surface of the Premises, but only at such depth beneath the surface as not to interfere with the use of the Premises or the stability of any Improvements on the Premises.

(c) Lessor shall be entitled, at all reasonable times and upon reasonable advance written notice to Lessee, to go upon and into the Premises and the Improvements for the purposes of (i) inspecting the same; (ii) inspecting the performance by Lessee of the terms, covenants, agreements and conditions of this Lease; (iii) posting and keeping posted thereon notices of non-responsibility for any construction, alteration or repair; and (iv) any other reason permitted under this Lease. Notwithstanding the foregoing, Lessor shall have the right to go upon and into the Premises and the Improvements during the Entitlement Period, at any time and without prior notice to Lessee, as Lessor deems necessary.

(d) In exercising or delegating its rights under this Section 3.2, Lessor shall not materially interfere with Lessee's use of the Premises or materially adversely affect any Improvements on, or the use, operation or value of the Premises. Without limiting the foregoing:

(i) Lessor shall conduct all of Lessor's activities (and the activities of any person or entity authorized by Lessor to enter upon the Premises pursuant to the rights reserved by Lessor under this Section 3.2), in full compliance with each law, zoning restriction, ordinance, rule, regulation or requirement of any governmental or quasi-governmental agency with jurisdiction over the Property;

(ii) Lessor shall make every reasonable effort to accommodate the requests of Lessee and any occupants of the Premises regarding any of Lessor's activities so as to minimize interference with business operations at the Premises;

(iii) Prior to entering the Premises to perform any of Lessor's activities permitted under subsections 3.2(a) or (b), (or permitting any other person or entity to enter upon the Premises pursuant to the rights reserved by Lessor under those subsections), Lessor shall provide to Lessee a certificate of insurance (or in Lessor's case only, self-insurance) showing that Lessor (or such other person or entity, if applicable) maintains in full force and effect a policy of comprehensive general liability insurance (A) covering the activities of Lessor (or such other person or entity) (including its employees, independent contractors and agents) in connection with such activities, (B) in an amount not less than \$3 million combined single limit per occurrence from a carrier reasonably acceptable to Lessee (which coverage amount shall be subject to annual adjustment as of the first (1st) day of each Lease Year after the Rent Commencement Date to reflect percentage increases in the Index), (C) naming Lessee, its officers and directors as additional insureds, and (D) requiring at least thirty (30) days written notice to Lessee prior to cancellation or reduction in coverage. All of Lessor's activities pursuant to this Section shall be at Lessor's sole cost and expense. Lessor shall promptly repair any damage to the Premises caused by such activities, and shall keep the Premises free of mechanics' or materialmen's liens arising as a result thereof. In no event shall Lessee be entitled to terminate this Lease as a result of Lessor's exercise of its rights under this Section 3.2, notwithstanding any possible liability of Lessor for damages as a result of its breach of this Lease, violation of Applicable Law, negligence or willful misconduct. Except to the extent of Lessor's breach of this Lease, violation of Applicable Law, negligence or willful misconduct in the exercise of its rights under this

Section, Lessee hereby waives and releases any claims for damages for any injury or inconvenience to or interference with Lessee's business at the Premises, any loss of occupancy or quiet enjoyment or the Premises or any other loss, damage, liability or cost occasioned by Lessor's exercise of the rights reserved to Lessor under, or granted to Lessor pursuant to this Section. Notwithstanding the foregoing, Lessor shall indemnify and hold Lessee harmless from and against any and all damages, liabilities and expenses (including, without limitation, reasonable attorneys' fees) arising out of or relating to the breach of this Lease, violation of Applicable Law, Release of Hazardous Substances on or under the Premises, exacerbation of any Pre-Existing Environmental Condition, negligence or willful misconduct, in each instance caused by Lessor or Lessor's Agents in the exercise of Lessor's rights under this Section.

(e) Lessee hereby acknowledges that, as owner and in the best interests of the Stanford Research Park, Lessor may find it necessary or convenient from time to time to apply for entitlements, seek rezoning, or otherwise endeavor to negotiate agreements with the governmental entities having jurisdiction over the Stanford Research Park. Lessee agrees that so long as Lessor's efforts do not (i) have a material adverse impact on Lessee's investment in, or the use, operation, value or marketability of the Premises, (ii) discriminate against the Premises or disproportionately burden the Premises as compared to other properties in the Stanford Research Park, and (iii) cause Lessee to incur any cost or expense, Lessee shall not publicly oppose or object to any such efforts by Lessor.

ARTICLE 4. ACCEPTANCE OF PREMISES

Section 4.1 Lessee's Due Diligence. Prior to entering into this Lease, Lessee has made a thorough, independent examination of the Premises and all matters relevant to Lessee's decision to enter into this Lease, and Lessee is thoroughly familiar with all aspects of the Premises and is satisfied that they are in an acceptable condition and meet Lessee's needs. Without in any way limiting the generality of the foregoing, Lessee's inspection and review has included, to the extent that Lessee in its sole discretion has deemed necessary or appropriate:

(a) all matters relating to title; all municipal and other legal requirements such as taxes, assessments, zoning, use permit requirements and building codes; and all matters relating to the development potential of the Premises;

(b) the physical condition of the Premises, including the soils and groundwater, any other geological conditions, engineering data (including, but not limited to, engineering evaluations of the Improvements), the presence or absence of Hazardous Substances on, under or in the vicinity of the Premises, the availability of utilities to the Premises, and all other physical and functional aspects of the Premises;

(c) the boundaries of the Premises and all easements and access rights to which the Premises are subject;

(d) Lessee's ability to obtain appropriate licenses and satisfy all licensing requirements under Applicable Laws;

(e) all material documents relating to the ownership and operation of the Premises made available to Lessee; and

(f) the economics of the business Lessee intends to conduct on the Premises, including without limitation, market conditions and financial viability.

Section 4.2 Acceptance of the Premises. Lessee acknowledges that, except as otherwise provided in this Lease or the Agreement to Lease, Lessor has made no representations or warranties, express or implied, regarding the Premises or matters affecting the Premises, whether made by Lessor, on Lessor's behalf or otherwise, including, without limitation, the physical condition of the Premises, title to, or the boundaries of the Premises, pest control matters, soil conditions, the presence, existence or absence of Hazardous Substances on or in the vicinity of the Premises, compliance of the Premises and Improvements with Applicable Laws, structural and other engineering characteristics (including seismic damage) of the Premises, traffic patterns, market data, economic conditions or projections, the availability of utilities, the development potential of the Premises, the suitability of the Premises for the intended use, the likelihood of deriving business from or other characteristics of The Leland Stanford Junior University, the economic feasibility of the business Lessee intends to conduct on the Premises, or any other matter pertaining to the Premises or the market and physical environments in which the Premises are located. Lessee acknowledges: (a) Lessee is a sophisticated real estate operator and owner with sufficient experience and expertise to evaluate the Premises and the operations conducted on the Premises and the risks associated with acquiring a leasehold interest in the Premises upon the terms and conditions set forth herein; (b) Lessee has received sufficient information and had adequate time to make such an evaluation; (c) Lessee has entered into this Lease with the intention of relying upon its own investigation or that of third parties with respect to the physical, environmental, economic and legal condition of the Premises; (d) in connection with its investigations and inspections of the Premises, Lessee has had the opportunity to obtain the advice of advisors and consultants, including but not limited to environmental consultants, engineers and geologists, soils and seismic experts, to conduct such environmental, geological, soil, hydrology, seismic, physical, structural, mechanical and other inspections of the Premises as Lessee deemed to be necessary, and that Lessee has reviewed thoroughly the reports of such advisors and consultants, as well as all materials and other information given or made available to Lessee by Lessor and by public and governmental entities; and (e) Lessee is not relying upon any statements, representations or warranties of any kind, other than those specifically set forth in or required pursuant to this Lease or the Agreement to Lease. Lessee further acknowledges that it has not received from or on behalf of Lessor any accounting, tax, legal, architectural, engineering, property management or other advice with respect to this transaction and is relying solely upon the advice of third party accounting, tax, legal, architectural, engineering, property management and other advisors except to the extent of any representations and warranties of Lessor provided in this Lease or in the Agreement to Lease. Except to the extent of any express representations or warranties provided in this

Lease or in the Agreement to Lease, Lessee has satisfied itself as to such suitability and other pertinent matters by Lessee's own inquiries and tests into all matters relevant in determining whether to enter into this Lease. Except as otherwise specifically provided in this Lease or in the Agreement to Lease, Lessee accepts the Premises in its existing condition and hereby expressly agrees that if any remedial or restoration work is required in order to conform the Premises to the requirements of Applicable Laws, Lessee shall assume sole responsibility for any such work. Except as otherwise specifically provided in this Lease or in the Agreement to Lease, **Lessee is acquiring on the Effective Date a leasehold interest in the Premises in its "AS IS" condition and "WITH ALL FAULTS".**

ARTICLE 5. ENTITLEMENTS

Section 5.1 Entitlement of Replacement Improvements.

(a) As provided in Section 5.3, Lessee's obligations hereunder are subject to Lessee obtaining, at its sole cost and expense, prior to expiration of the Entitlement Period, all necessary entitlements from the City, including, without limitation, a building permit (the "**Entitlements**"), allowing construction of at least 333,000 square feet of office and research and development buildings on the Land (the "**Replacement Improvements**"), such Replacement Improvements to be acceptable to Lessee in design, schedule and cost. Notwithstanding the foregoing, Lessee shall not agree to any obligations with respect to the Entitlements that would any way bind Lessor, the Premises, or any part thereof prior to the Commencement Date. Lessor acknowledges that Lessee's obligations hereunder do not include a covenant to obtain the Entitlements, and that Lessee shall not be obligated to appeal the denial of any Entitlement or to defend any appeal of any Entitlement.

(b) Lessee shall obtain the prior written approval of Lessor for all submissions and applications to any government authority regarding the Premises and the Entitlements pursuant to the provisions of Section 12.1(e) and shall provide to Lessor in connection with any request for approval a copy of any such submission or application, together with complete copies of all correspondence, written materials, plans, studies, maps and applications that Lessee intends to provide to such government authority. All such correspondence, written materials, plans, studies, maps and applications that are intended to be submitted to governmental authorities, together with all such other written materials that are prepared by or for Lessee in connection with obtaining the Entitlements are herein referred to as the "**Work Product**." Notwithstanding the foregoing or any other provision hereby to the contrary, including, without limitation, the provisions of Section 12.1(e), if Lessor fails to give written notice to Lessee within five (5) business days after Lessee makes any submittal (or resubmittal) to Lessor of any application for Entitlements either approving such submittal (or resubmittal) or specifying Lessor's reasonable objections thereto, then the Entitlement Period shall be extended on a day-by-day basis for each day until Lessor issues such approval or reasonable objection. Lessor shall also have the right to approve all proposed exactions, mitigations and other conditions of approval relating to the Entitlements before they are imposed; provided that such approval right shall apply only to the extent such exactions, mitigations and other

conditions of approval materially adversely affect other property owned by Lessor in the vicinity of the Premises. Lessee shall keep Lessor reasonably apprised as to the scheduling of meetings with governmental authorities in connection with Lessee's pursuit of the Entitlements. Without limiting the foregoing, the provisions of Section 3.1(c)(vi) of the Agreement to Lease shall continue to apply during the Entitlement Period.

(c) In addition to the foregoing, Lessor may provide Lessee with such reasonable assistance as Lessee may request, provided that such assistance shall be at no cost or expense to Lessor. Lessee shall pay for all costs (the "**Entitlement Costs**") incurred in connection with all submissions, applications and other matters related to obtaining the Entitlements, including, without limitation, filing fees and the costs of all of the Work Product, provided, however, that in no event shall Lessee be obligated to pay or reimburse Lessor for any costs or expenses incurred by Lessor relating to Entitlements unless Lessee and Lessor agreed in writing in advance that Lessee would pay or reimburse Lessor for such costs or expenses. Under no circumstances shall Lessor have any obligation or liability to pay any of the Entitlement Costs unless the parties otherwise agree in writing in advance. In the event this Lease is terminated during the Entitlement Period or upon the expiration thereof for any reason, Lessee shall assign to Lessor the rights to all of the Work Product, so that Lessor can, if it so elects, move forward with the development of the Replacement Improvements.

Section 5.2 Entitlement Period. The Entitlement Period shall expire on August 31, 2005, subject to the extension rights provided below. If Lessee does not obtain the Entitlements during the Entitlement Period, then Lessee shall have the right (but not the obligation) to extend the Entitlement Period for an additional ninety (90) day period, provided that (a) Lessee has used commercially reasonable efforts to obtain the Entitlements during the initial Entitlement Period, including, without limitation, submitting the Complete ARB Application (as defined in Section 5.3) no later than June 30, 2005, and (b) Lessee provides Lessor notice of its intent to extend the Entitlement Period prior to the expiration of the initial Entitlement Period. If, after the first 90-day extension of the Entitlement Period, Lessee still has not obtained the Entitlements despite continued commercially reasonable efforts to do so, then Lessee shall have the right (but not the obligation) to extend the Entitlement Period for a second ninety (90) day period; provided that Lessee complies with the requirements set forth in subsection (a) above and provides Lessor notice of its intent to extend the Entitlement Period prior to the expiration of the initial 90-day extension period. In addition, if Lessee's inability to obtain the Entitlements during the Entitlement Period is due to (i) a governmental or legally mandated delay beyond Lessee's reasonable control resulting from an appeal from or legal challenge to an entitlement decision, (ii) the determination by the City that the proposed construction of the Replacement Improvements will require an environmental impact report, or (iii) any request by any Entitlement-granting authority that Lessee consider potential impacts from development of the MDA Improvements on the Premises, then Lessee shall have the right (but not the obligation) to extend the Entitlement Period for an additional period of no more than two hundred seventy (270) days, provided that Lessee has continued to use commercially reasonable efforts to obtain the Entitlements during the second 90-day extension and that Lessee provides Lessor notice of its intent to extend the Entitlement Period prior to the expiration of the second

90-day extension period. Notwithstanding the foregoing, the Entitlement Period (as extended pursuant to this Section, if applicable) shall automatically expire and the Term shall commence once Lessee obtains the Entitlements. Notwithstanding any provision of this Agreement to the contrary, no Entitlement shall be deemed to be "obtained" unless and until all appeal periods applicable thereto shall have expired without the filing of any appeal or all appeals shall have been fully and finally adjudicated in favor of issuance of the Entitlements.

Section 5.3 Lessee's Right to Terminate. In the event Lessee does not obtain the Entitlements (including, without limitation, the building permit) in form and substance satisfactory to Lessee within the Entitlement Period (including any extension thereof in accordance with Section 5.2) for any reason, Lessee shall have the right to terminate this Lease upon written notice to Lessor given within thirty (30) days after the expiration of the Entitlement Period. Provided that Lessee has submitted a Complete ARB Application to the City Architectural Review Board (the "**ARB**") no later than June 30, 2005, upon Lessee's termination of this Lease in accordance with the terms of this Section, Lessor shall return the Deposit (as defined in the Agreement to Lease) and all interest accrued thereon to Lessee. In the event Lessee has failed to submit a Complete ARB Application within such period, Lessor shall have the right to retain the Deposit and all interest accrued thereon as consideration for Lessor's agreement to allow Lessee to terminate this Lease. For the purposes of this Section, the parties agree that the application submitted by Lessee to the ARB shall be deemed to be a "**Complete ARB Application**" if (a) Lessee submits to Lessor a draft of the ARB application before filing same with the ARB and the parties agree that such submittal is a complete package under the then-current ARB rules for a formal ARB hearing (not merely a study session or a preliminary hearing). It is further agreed that a subsequent determination by the ARB that the application was not complete for the purposes of a final hearing shall not change the status of the application as a Complete ARB Application for the purposes of this Section 5.3.

Section 5.4 Lessor's Right to Terminate. In the event Lessee has not completed construction of at least 333,000 square feet of Replacement Improvements on the Premises by the fifth (5th) year anniversary of the Effective Date, Lessor shall have the right to terminate this Lease upon written notice to Lessee, which notice shall be effective only if delivered no later than ninety (90) days after such fifth (5th) anniversary date, and only in the event that Lessee fails to complete the Replacement Improvements within one hundred twenty (120) days after the date Lessee receives Lessor's termination notice, subject to extension for Force Majeure. The Replacement Improvements shall be deemed completed when all building shells have been completed, the buildings are weather-tight, and the site has been landscaped.

Section 5.5 MDA Rights.

(a) In addition to the Replacement Improvements, Lessor shall assign to Lessee up to 100,000 square feet of Lessor's first priority entitlement rights that are not linked to the development of housing or the performance or satisfaction of any other condition or obligation on the part of Lessor under the Mayfield Development Agreement

(as defined below) (the “**MDA Rights**”) [for purposes of clarification such first priority rights are those defined as the “Phase 1 Square Footage” in Section 6.1.1 of the Mayfield Development Agreement] if and when the development agreement for the Stanford Research Park that is currently being negotiated between Lessor and the City (the “**Mayfield Development Agreement**”) is executed (it being agreed that Lessee shall not be obligated to accept the assignment of any less than 90,000 s.f. of entitlement rights unless Lessee otherwise agrees in writing in its sole discretion); provided, however, that the assignment of the MDA Rights shall not occur until after the date that Lessee’s right to terminate this Lease pursuant to Section 5.3 has expired without exercise by Lessee. Lessor shall designate the Premises as a “Designated Site” (as such term is defined in the Mayfield Development Agreement) upon the date of such assignment; and within ten (10) days after written notice from Lessee describing the MDA Improvements (as such term is defined below), Lessor shall designate the MDA Improvements as a “Designated Project” under the Mayfield Development Agreement. Such designations shall not be revoked by Lessor unless and until Lessee reassigns the MDA rights to Lessor pursuant to subsections (b) or (c) below. Once assigned to Lessee by Lessor, the MDA Rights shall be included within the definition of Entitled Square Footage as provided in Section 7.1, subject to the following:

(i) Lessee shall be entitled to construct the allocated square footage (the “**MDA Improvements**”) based on the development rights set forth in the Mayfield Development Agreement that are applicable to the MDA Rights, including, without limitation, the application of the 2003 Rules, the City’s agreement that no Development Impact Fees will be required to be paid, and no material adverse changes to the applicable provisions of the Mayfield Development Agreement.

(ii) Neither the City nor any other governmental authority shall impose requirements on the construction of the MDA Improvements that are materially different from those imposed on the Replacement Improvements in terms of construction methods or materials, design criteria, and other aspects of the physical condition of the improvements.

(b) In the event that either of the conditions in Sections 5.5(a)(i) and (a)(ii) are not satisfied or waived in writing by Lessee, or if for any reason beyond Lessee’s reasonable control Lessee is unable to obtain final ARB approval for the MDA Improvements despite commercially reasonable efforts to do so and Lessor’s approval of Lessee’s ARB submission, Lessee shall so notify Lessor in writing, whereupon Lessor shall have the right to seek satisfaction of the conditions in Sections 5.5(a)(i) and (a)(ii) and to obtain ARB approval for the MDA Improvements through enforcement of its rights under the Mayfield Development Agreement and/or (at Lessor’s sole election) payment of any Development Impact Fees. The date of such notice to Lessor shall be referred to herein as the “**MDA Entitlement Turnover Date.**” For purposes of this Section 5.5(b), “commercially reasonable efforts” to obtain final ARB approval shall mean that Lessee files an application with the ARB that has been approved by Lessor and uses commercially reasonable efforts to obtain final ARB approval for a period of one hundred eighty (180) days after the date of such application. If Lessor has not succeeded in obtaining satisfaction of the conditions in Sections 5.5(a)(i) and (a)(ii) and final ARB approval for the MDA Improvements within one hundred eighty (180) days after the MDA Entitlement Turnover Date, then Lessee may elect to re-assign the MDA Rights to

Lessor, whereupon Lessee shall execute a written re-assignment of the MDA Rights to Lessor and the Entitled Square Footage shall be accordingly reduced by the actual square footage of the MDA Rights initially assigned to Lessee, retroactive to the date of such initial assignment to Lessee. Notwithstanding the foregoing, Lessee agrees that in the event any third party appeals any entitlement for the construction of the MDA Improvements, Lessee will not have any right to reassign the MDA Rights under this subsection unless and until such appeal has been concluded with a final determination by the City that results in a failure of one or both of the conditions in Sections 5.5(a)(i) and (a)(ii) or the refusal of the City to issue a building permit, except as set forth below. Lessee shall be obligated to defend any such third-party appeal at its sole cost and expense, but Lessee shall not be obligated to appeal any denial of its right to develop the MDA Improvements that has been finally determined by the Palo Alto City Council, nor shall Lessee be obligated to defend any third-party appeal of any decision of the Palo Alto City Council in favor of its right to develop the MDA Improvements. In the event the ARB disapproves the development of the MDA Improvements in a final decision, Lessee shall have no obligation to appeal such denial, it being agreed that any such appeal may be brought by Lessor at Lessor's sole cost and expense (and at Lessor's sole election) but with cooperation from Lessee; provided, however, that if Lessor shall fail to resolve such appeal and obtain final ARB approval within one (1) year after the MDA Entitlement Turnover Date, then Lessee shall have the right to reassign the MDA Rights under this subsection at any time after the expiration of such one (1) year period. If Lessee or Lessor obtains ARB approval for the MDA Improvements pursuant to the foregoing provisions of this Section 5.5(b), but Lessee is unable to obtain a building permit for the MDA Improvements due to reasons beyond Lessee's reasonable control (e.g. a change in Applicable Laws), then Lessee shall also have the right to reassign the MDA Rights to Lessor. Until such time as Lessee shall re-assign the MDA Rights to Lessor in accordance with the provisions of this Section 5.5(b), Lessee shall continue to pay Rent with respect to the MDA Rights; provided, however, that if Lessee so re-assigns the MDA Rights, then, at the time of such re-assignment, Lessor shall refund to Lessee all Rent paid by Lessee with respect to the MDA Rights prior to the date of such re-assignment.

(c) If Lessee does not commence construction of the MDA Improvements within five (5) years after receiving the MDA Rights, upon election by Lessor, Lessee shall re-assign the MDA Rights to Lessor and the Entitled Square Footage shall be accordingly reduced by the actual square footage of the MDA Rights assigned to Lessee. Lessor's termination notice shall be effective only if delivered no later than ninety (90) days after the expiration of such 5-year period, and only in the event that Lessee fails to commence construction of the additional square footage within one hundred twenty (120) days after the date Lessee receives Lessor's termination notice, subject to extension for Force Majeure.

(d) Lessor and Lessee acknowledge that the Mayfield Development Agreement provides a mechanism for the partial release of Lessor from liability upon an assignment of rights under the Mayfield Development Agreement to which the City has consented. In the event the City does not grant partial releases to Lessor and Lessee in connection with the assignment of rights to Lessee (i.e. such that neither party is liable

for any default by the other party of any obligations under the Mayfield Development Agreement), Lessor and Lessee hereby each agree to indemnify, protect, defend and save and hold harmless the other from and against, and shall reimburse the other for, any and all claims, demands, losses, damages, costs, liabilities, causes of action and expenses, including, without limitation, reasonable attorneys' fees and expenses incurred in any way in connection with or arising from, in whole or in part, any default by the indemnifying party in the observance or performance of any of the terms, covenants or conditions of the Mayfield Development Agreement on the indemnifying party's part to be observed or performed. The parties agree that Lessee shall be responsible for the observance and performance of only those terms, covenants and conditions of the Mayfield Development Agreement allocable to the MDA Rights, and that Lessor shall be responsible for the observance and performance of all other terms, covenants and conditions of the Mayfield Development Agreement.

Section 5.6 3421 Hillview Premises. During the term of that certain lease dated as of August 8, 2001 by and between Roche as original landlord and SAP Labs, Inc. ("SAP") as tenant (the "SAP Lease"), the real property more particularly identified on the attached **Exhibit C**, including all improvements thereon, if any (collectively, the "3421 Hillview Premises") shall be retained by Lessor and not included within Lessee's leasehold estate under this Lease. Lessor and Lessee agree and acknowledge that at the expiration or earlier termination of the SAP Lease, the 3421 Hillview Premises will become a part of the Premises and Lessee's responsibility through an amendment to this Lease in the form of the attached **Exhibit D** (the "Lease Amendment"), subject to the provisions set forth below in this Section 5.6. Upon the earlier of December 31, 2013 or the date which is one (1) year after the earlier termination of the SAP Lease, the Lease Amendment shall be executed by Lessor and Lessee, and the Existing 3421 Square Footage shall be included in the Entitled Square Footage, as provided in Section 7.1(c); provided, however, that:

(a) Lessee acknowledges that as of the expiration of the SAP Lease, it will be Lessee's responsibility to obtain replacement utility service for the 3421 Hillview Premises in lieu of certain utilities currently provided by Roche under the terms of the Cooperation Agreement, which consist of gas, sanitary sewers and storm sewers (collectively, the "Roche Utilities"). If Lessee is unable to replace the Roche Utilities due to a moratorium imposed by the City on new utility connections, then Lessee shall so notify Lessor in writing, whereupon (i) the Lease Amendment shall not take effect (whether or not previously executed) and the Existing 3421 Square Footage shall not be included in the Entitled Square Footage, and (ii) Lessor shall have the right (at Lessor's sole cost and expense) to attempt to obtain such replacement utility services for Lessee's benefit, in which case the Lease Amendment shall be executed and take effect, and the Existing 3421 Square Footage shall be included in the Entitled Square Footage from and after the date which is one hundred eighty (180) days after the date of notice from Lessor to Lessee that replacement utility source has been obtained, and Lessee shall reimburse Lessor for the cost of obtaining such replacement utility services;

(b) If, (i) due to any change in any Applicable Laws after the Effective Date, Lessee is unable to obtain all entitlements (including, without limitation, a building

permit), to demolish any existing improvements on the 3421 Hillview Premises and construct new building(s) totaling at least 67,000 leasable square feet after the exercise of commercially reasonable efforts, or (ii) the 3421 Hillview Premises can accommodate fewer than 3.3 parking spaces per 1,000 square feet of building area, assuming 67,000 leasable square feet of improvements, then Lessee shall have the right to either (A) preserve the existing improvements on the 3421 Hillview Premises (if any) and use them pursuant to the terms of this Lease (assuming that replacement utility services are available as described in subsection (a) above), in which case the Existing 3421 Square Footage will be included in the Entitled Square Footage, (B) demolish such improvements in the event Lessee has replaced the Existing 3421 Square Footage elsewhere on the Premises, or (C) terminate the Lease Amendment and reconvey to Lessor the 3421 Hillview Premises, which will thereafter be excluded from the definition of the Premises for all purposes under this Lease. In the event Lessee elects option (C), the Existing 3421 Square Footage of the 3421 Hillview Premises shall be excluded from the Entitled Square Footage from and after the date of such reconveyance, notwithstanding the provisions of Section 7.1(c). For purposes of this Section 5.6, "commercially reasonable efforts" shall mean that Lessee files an application with the ARB and uses commercially reasonable efforts to obtain ARB approval for a period of one hundred eighty (180) days after the date of such application. Notwithstanding the foregoing, Lessee agrees that in the event any third party appeals the final ARB approval, Lessee will not have any right to reconvey the 3421 Hillview Premises under this subsection unless and until such appeal has been concluded with a final determination by the City that results in a failure of one or both of the conditions set forth in clauses (b)(i) and (b)(ii) above or the refusal of the City to issue a building permit. Lessee shall be obligated to defend any such third-party appeal at its sole cost and expense, but Lessee shall not be obligated to appeal any denial of Entitlements for the redevelopment of the 3421 Hillview Premises that has been finally determined by the Palo Alto City Council, nor shall Lessee be obligated to defend any third-party appeal of any decision of the Palo Alto City Council in favor of issuance of entitlements for the redevelopment of the Sublease Premises. In the event the ARB disapproves the redevelopment of the 3421 Hillview Premises in a final decision, Lessee shall have no obligation to appeal such denial;

(c) The date upon which the Existing 3421 Square Footage shall be included in the Entitled Square Footage shall be extended by the number of days, if any, after December 31, 2013 or the earlier termination date of the SAP Lease before all tenants and occupants have vacated and yielded up the 3421 Hillview Premises in accordance with the terms of the SAP Lease; and

(d) For purposes of this Lease, including, without limitation, Section 7.1(c) hereof, the leasable square footage of the improvements located on the 3421 Hillview Premises shall be deemed to be 67,000 square feet as of the Effective Date (the "**Existing 3421 Square Footage**"), notwithstanding any provision of the SAP Lease to the contrary, or any subsequent destruction of the improvements.

ARTICLE 6. TERM

The term of this Lease (the “**Term**”) shall be for the period stated in the Basic Lease Information, commencing on the Commencement Date and expiring at 11:59 p.m. on the Expiration Date or on such earlier date as this Lease may be terminated as hereinafter provided.

ARTICLE 7. RENT

Section 7.1 Entitled Square Feet. The Minimum Annual Rent to be paid pursuant to Section 7.3 shall be based on the total square feet of Improvements entitled and/or constructed on the Premises (the “**Entitled Square Feet/Footage**”), including the following:

- (a) The square footage of the Replacement Improvements, but in no event less than 333,000 square feet, whether or not the Replacement Improvements total a smaller square footage and whether or not the Replacement Improvements have been constructed;
- (b) The MDA Rights, as and when assigned by Lessor to Lessee pursuant to Section 5.5; and
- (c) Upon expiration of the SAP Lease, the Existing 3421 Square Footage (whether or not such square footage continues to exist), or the leasable square footage (if larger) of any building constructed as a replacement for the existing improvements on the 3421 Hillview Premises, such leasable square footage to be determined based on the definition of gross floor area set forth in Section 18.04.030(65)(A) of the City Municipal Code, including any area that would otherwise be exempt under Section 18.04.030(65)(B)(iv), a copy of which is attached as **Schedule 7.1(c)**.

Section 7.2 Land Value Factor

(a) Beginning on the Rent Commencement Date, the land value used to calculate the Minimum Annual Rent will be set at ninety (\$90.00) dollars (“**Land Value Factor**”), which amount shall be adjusted on the first anniversary of the Rent Commencement Date, and on each anniversary thereafter (except on the Rent Reset Date), to one hundred two percent (102%) of the then-previous Land Value Factor.

(b) On the twenty-fifth (25th) anniversary of the Rent Commencement Date (the “**Rent Reset Date**”) the Land Value Factor shall be adjusted to the current Fair Market Land Value, provided that the Fair Market Land Value shall in no event be less than the then-previous Land Value Factor, and in no event be greater than one hundred fifty dollars (\$150.00).

Section 7.3 Minimum Annual Rent.

(a) Beginning on the Rent Commencement Date, and on the first day of each calendar month during the Term, Lessee shall pay to Lessor installments of one-twelfth (1/12th) of the annual fixed minimum rent (“ **Minimum Annual Rent** ”) specified in Article 1 at the address for Lessor set forth in Article 1, or at such other place as Lessor shall designate, without any prior demand therefor and without any deduction or offset whatsoever (except as otherwise expressly provided herein), which amount shall be adjusted as provided in subsection (b) below. Minimum Annual Rent shall be prorated for any partial months at the beginning or end of the Term, and for any partial Lease Years at the beginning or end of the Term.

(b) Minimum Annual Rent shall be adjusted for any change to the Land Value Factor (per Section 7.2) or Entitled Square Feet (per Section 7.1). Minimum Annual Rent shall be automatically adjusted commencing on the next calendar month after any change in Entitled Square Feet. For example, if Entitled Square Footage on the third anniversary of the Rent Commencement Date is 433,000, the Minimum Annual Rent for the following Lease Year shall be \$2,998,257 [$7.25\% \times (\$90 \times (102\%^3)) \times 433,000$].

Section 7.4 Late Payments. Any unpaid Rent hereunder shall bear interest from the date which is five (5) days after the date the same is due until paid at the Interest Rate. In addition, Lessee recognizes that late payment of any Rent due hereunder will result in administrative expense to Lessor, the extent of which expense is difficult and economically impracticable to determine. Therefore, Lessee agrees that if Lessee fails to pay any Rent within five (5) days after the date the same is due and payable, an additional late charge of five percent (5%) of the sums so overdue shall become immediately due and payable. Lessee agrees that the late payment charge is a reasonable estimate of the additional administrative costs and detriment that will be incurred by Lessor as a result of such failure by Lessee. In the event of nonpayment of interest or late charges on overdue Rent, Lessor shall have, in addition to all other rights and remedies, the rights and remedies provided herein and by law for nonpayment of rent. Notwithstanding the foregoing, Lessor agrees to waive the assessment of a late payment charge unless and until the third (3rd) time a late payment occurs in any Lease Year.

ARTICLE 8. ADDITIONAL RENT

Section 8.1 Additional Rent. Each and every sum payable to Lessor pursuant to this Lease (other than Minimum Annual Rent), and each and every sum which Lessor pays to any third party to cure a default of Lessee under this Lease shall be additional rent (“ **Additional Rent** ”).

Section 8.2 Property Taxes. Without limiting the foregoing, Additional Rent shall include, and, during the Term Lessee agrees to bear, discharge and pay to the relevant authority or entity, in lawful money of the United States, without offset or deduction, as the same becomes due, and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or

special, or ordinary or extraordinary, of every name, nature and kind whatsoever, including all governmental charges of every name, nature or kind that may be levied, assessed, charged or imposed or may be or become a lien or charge upon the Premises or any part thereof; or upon the rent or income of Lessee; or upon the use or occupancy of the Premises; or any document creating or transferring an estate or interest in the Premises; upon any of the buildings or improvements that are or are hereafter placed, built or newly constructed upon the Premises; or upon the leasehold of Lessee or upon the estate hereby created; or upon Lessor by reason of its ownership of the fee underlying this Lease (but not including any franchise, transfer, inheritance, or capital stock taxes or income taxes measured by the net income of Lessor unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Lessor as a substitute for, in whole or in part, any other tax that would otherwise be the responsibility of Lessee). Lessee's obligations described above include, but are not limited to, the payment of any bonds or charges imposed or required by any governmental agency or department with respect to the Premises, by reason of the proposed or actual use, treatment, storage, discharge, cleanup or disposal, or oversight thereof, of Hazardous Substances by any governmental agency, Lessee, or any subtenant, tenant or licensee claiming through Lessee; provided, however, that this provision shall not, and shall not be deemed to, (a) permit Lessee to use, treat, store or dispose of any such substances on the Premises, or (b) impose any liability on Lessee for any bonds or other charges imposed or required by any governmental agency or department with respect to any Pre-Existing Environmental Condition, it being agreed that Lessor shall be responsible for all such costs and expenses. If at any time during the Term, under any Applicable Laws, any tax is levied or assessed against Lessor directly, in substitution in whole or in part for real property taxes, Lessee covenants and agrees to pay and discharge such tax. All of the foregoing taxes, assessments and other charges which are the responsibility of Lessee are herein referred to as "**Property Taxes** ." Notwithstanding the foregoing or any provision hereof the contrary, the term "Property Taxes" shall not include any "in lieu" payments that Lessor may agree to make in substitution for real estate taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts due to Lessor's use of property that is subject to its tax-exempt status, nor shall Lessee have any liability for any payment thereof.

Section 8.3 Payment. Lessee shall obtain and deliver to Lessor, promptly upon request therefor, satisfactory evidence of payment of all Property Taxes.

Section 8.4 Right to Contest. Lessee shall have the right to contest, by appropriate proceedings, the amount or validity, in whole or in part, of any Property Taxes. In the event the applicable taxing authority having jurisdiction over the contest proceedings allows the posting of security or some other method of deferring payment of the disputed Property Taxes, Lessee may do so; otherwise Lessee shall not postpone or defer payment of any disputed Property Taxes but shall pay such Property Taxes in accordance with Section 8.2 notwithstanding such contest. Lessor shall have no obligation to join in any such proceedings. Lessee shall indemnify and defend Lessor against and hold Lessor harmless from and against any and all claims, demands, losses, costs, liabilities, damages, penalties and expenses, including, without limitation, reasonable attorneys' fees and expenses, arising from or in connection with any such proceedings.

Section 8.5 Proration. Any Property Taxes relating to a fiscal period of any taxing authority, only a part of which period is included within the Term, shall be prorated as between Lessor and Lessee so that Lessor shall pay the portion thereof attributable to any period outside the Term, and Lessee shall pay the portion thereof attributable to any period within the Term. In addition, the parties shall cooperate in the equitable proration of any Property Taxes assessed on the Premises that include the 3421 Hillview Premises, and in the equitable proration of any Property Taxes assessed on the 3421 Premises that includes the Premises, until such time as the assessor's parcels for both the 3421 Premises and the Premises have been adjusted to reflect the actual lease line of the Premises.

Section 8.6 Assessment Proceedings. If at any time during the Term any governmental authority shall undertake to create an improvement or special assessment district, the proposed boundaries of which shall include the Premises (the "**Proposed District**"), Lessee shall be entitled to appear in any proceeding relating thereto and to exercise all rights of a landowner to have the Premises excluded from the Proposed District, or to determine the degree of benefit to the Premises resulting therefrom. However, Lessor retains the independent right, but shall be under no obligation, to appear in any such proceeding for the purpose of seeking inclusion of the Premises in, or exclusion of the Premises from, any Proposed District or of determining the degree of benefit therefrom to the Premises. The party receiving any notice or other information relating to the Proposed District shall promptly advise the other party in writing of such receipt. If the Proposed District is ultimately formed and affects the Premises, Lessee may pay any resulting bonds over the maximum period allowed by law, and shall be liable only for any installments that become due during the Term.

Section 8.7 Transit Fees. Without limiting the foregoing, Additional Rent shall also include and Lessee agrees to bear, discharge and pay during the Term, in lawful money of the United States, without offset or deduction, its proportionate share of the reasonable cost of any commuter transit services or traffic mitigation programs which Lessor implements in the Stanford Research Park, including without limitation charges for service and surcharges imposed directly or indirectly on the Premises by any governmental agencies on or with respect to transit (including transit services which may be provided in the future to occupants of the Stanford Research Park) or automobile usage or parking facilities (collectively, "**Transit Fees**"), to the extent that such transit services or traffic mitigation programs serve the Premises. Lessee's share of Transit Fees shall be assessed pro rata and on a non-discriminatory basis, based on a reasonable standard applied in a non-discriminatory manner by Lessor (for example, based on the rentable area of the Improvements as compared to the total rentable area of the Stanford Research Park [or the area being served by the service, if less than the entire Stanford Research Park], or based on the average employee headcount in the Premises as compared to the overall employee density of the Stanford Research Park [or the area being served by the service, if less than the entire Stanford Research Park]). In no event shall Lessee's share of Transit Fees exceed ten cents (\$0.10) per year per rentable square

foot of space in the Premises, subject to annual adjustment (as of the first day of each Lease Year after the Rent Commencement Date) to reflect percentage increases or decreases in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics (San Francisco, Oakland, San Jose Area, All Urban Consumers, All Items, 1982-84 - 100), or if such index is no longer published, a successor or substitute index designated by Lessor in its reasonable discretion, which shall be published by a governmental agency and reflecting changes in consumer prices in the San Francisco Bay Area (the “ **Index** ”). Notwithstanding the foregoing or any other provision hereof to the contrary, (a) Lessee shall not be required to pay any Transit Fees for programs that do not serve the Premises, and (B) in the event Lessee is operating its own commuter transit service (such as, but not limited to, a shuttle bus or van service), Lessee shall not be obligated to pay any Transit Fees so long as such service is in effect.

ARTICLE 9. NET LEASE; NO COUNTERCLAIM OR ABATEMENT

Section 9.1 Net Lease. The Rent due hereunder shall be absolutely net to Lessor and shall be paid without assertion of any counterclaim, offset, deduction or defense and without abatement, suspension, deferment or reduction. Lessor shall not be expected or required under any circumstances or conditions whatsoever, whether now existing or hereafter arising, and whether now known or unknown to the parties, to make any payment of any kind whatsoever with respect to the Premises or be under any obligation or liability hereunder during the Term, except if and solely to the extent expressly so provided elsewhere in this Lease or in the Agreement to Lease.

Section 9.2 Project Costs. In addition to Minimum Annual Rent, Lessee shall pay or fund when due all Property Taxes (subject to Lessee’s right to contest pursuant to Section 8.4), insurance premiums and deductibles, debt service, permit and license fees, costs of utilities and services, maintenance, repair, replacement, rebuilding, restoration, management, marketing and leasing services incurred by Lessee, operations and other costs of any type whatsoever accruing at any time during the Term in connection with the ownership, marketing, leasing, operation, management, maintenance, repair, replacement, restoration, use, occupancy or enjoyment of the Premises (collectively, “ **Project Costs** ”). Lessee shall pay all Project Costs directly, and shall contract directly for all required services, utilities and other items described herein during the Term; provided, however, that Lessor shall have the right to contract for any such services, utilities or other items if Lessee has failed to do so, or has failed to make any payment of Project Costs which is due and owing. Lessee shall provide Lessor, upon written request, with copies of invoices, receipts, canceled checks and/or other documentation reasonably substantiating Lessee’s payment of all Project Costs.

Section 9.3 Entitlement Period; Prorations. Notwithstanding anything to the contrary contained herein, during the Entitlement Period, Lessor shall be responsible for the cost of all utilities and services provided to the Premises, the maintenance, repair, management and operation of the Premises, and all Property Taxes. All receipts and disbursements of the Premises (including, without limitation, all Property Taxes, charges under any service contracts, and all utility bills) shall be prorated as of the expiration date of the Entitlement Period. Furthermore, Lessor shall receive a credit for the amount of

deposits, if any, with utility companies that are transferable and that are assigned to Lessee as of the expiration of the Entitlement Period, so that Lessor shall be responsible for the portion thereof attributable to any period prior to the Commencement Date and Lessee shall be responsible for the portion thereof attributable to any period from the Commencement Date forward. The parties shall agree on a final prorations schedule within fifteen (15) days after the expiration of the Entitlement Period, and shall settle any amounts due within thirty (30) days after the finalization of the prorations schedule.

Section 9.4 No Release. Except as otherwise expressly provided herein, this Lease shall continue in full force and effect, and the obligations of Lessee hereunder shall not be released, discharged or otherwise affected, by reason of: (a) any damage to or destruction of the Premises or any portion thereof or any Improvements thereon, or any Appropriation; (b) any restriction or prevention of or interference with any use of the Premises or the Improvements or any part thereof; (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to Lessor, Lessee or any constituent partner of Lessee or any sublessee, licensee or concessionaire or any action taken with respect to this Lease by an trustee or receiver, or by any court, in any proceeding; (d) any claim that Lessee or any other person has or might have against Lessor; (e) any failure on the part of Lessor to perform or comply with any of the terms hereof or of any other agreement with Lessee or any other person; (f) any failure on the part of any sublessee, licensee, concessionaire, or other person to perform or comply with any of the terms of any sublease or other agreement between Lessee and any such person; (g) any termination of any sublease, license or concession, whether voluntary or by operation of law; or (h) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, in each case whether or not Lessee shall have notice or knowledge of any of the foregoing.

Section 9.5 Independent Covenants. The obligations of Lessee under this Lease shall be separate and independent covenants, and each covenant of Lessee shall be both a covenant and a condition. Except to the extent expressly provided elsewhere in this Lease, Lessee hereby waives, to the maximum extent permitted by Applicable Laws, any rights that it may now or in the future have to quit or surrender the Premises, to terminate this Lease, or to any abatement, deferment, diminution, reduction or suspension of Rent on account of any event or circumstance, including without limitation any rights it might otherwise have under the provisions of California Civil Code Sections 1932 and 1933, or any amended, similar or successor laws.

ARTICLE 10. USE AND OPERATION OF PREMISES

Section 10.1 Permitted Use During the Entitlement Period. Subject to the rights granted to Lessor under Section 9.3, during the Entitlement Period, the Premises and all Improvements located thereon shall be used by Lessee solely for the purpose of obtaining the Entitlements. In order to obtain the Entitlements, Lessee shall have the right to enter the Premises at all reasonable times during the Entitlement Period. All entries into the Premises and all inspections, tests, surveys and other investigations thereof shall be at Lessee's sole cost and expense and shall be done in a workmanlike manner in accordance with Applicable Laws. Lessee may not perform any activity

during the Entitlement Period that could cause any damage to the Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld. In the event Lessee does not obtain the Entitlements during the Entitlement Period, Lessee shall, at its sole cost and expense, repair any damage to the Premises arising from Lessee's entrance onto the Premises during the Entitlement Period.

Section 10.2 Permitted Use During the Term. Subject to all provisions and limitations contained herein, the Premises and all Improvements at any time located thereon shall at all times during the Term be used and operated for the purposes stated in the Basic Lease Information and for no other purpose. The parties hereby acknowledge and agree that Lessee's covenant that the Premises shall be used solely for the purposes stated in the Basic Lease Information and for no other purpose is material consideration for Lessor's agreement to enter into this Lease. The parties further acknowledge and agree that any violation of said covenant shall constitute a material breach of this Lease and entitle Lessor to exercise any and all of its rights and remedies under this Lease or otherwise at law or in equity. For the purposes of this Lease, "research and development" uses means uses primarily related to the study, testing, engineering, design, analysis and experimental development of products, processes, or services related to current or new technologies. "Research and development" may include limited manufacturing, fabricating, processing, assembling or storage of prototypes, products or materials, or similar related activities, where such activities are incidental to research, development or evaluation. Examples of research and development uses include, but are not limited to, computer software and hardware firms, electronic research firms, biotechnical firms, medical device firms, and pharmaceutical research laboratories. Related administrative uses, such as (a) finance, marketing, sales, accounting, or purchasing, (b) provisions of services to others on or off-site, and (c) related educational uses, may also be included provided they remain supportive of research and development uses conducted on the Premises and are part of the same research and development firm. In addition, notwithstanding any provision hereof to the contrary, up to twenty-five percent (25%) of the rentable square footage comprising the Premises may be subleased for general office use unrelated to research and development (subject to the requirements of Article 24), which may include, without limitation, corporate, executive, financial, legal, and/or non-medical professional offices.

Section 10.3 Founding Grant. Notwithstanding any other provision of this Lease, Lessee's use of the Premises shall at all times comply with the requirements and restrictions of the Grant of Endowment of the Leland Stanford Junior University (the "**Founding Grant**"), and all subsequent amendments thereto; provided that, Lessee shall not be in breach of this Lease due to any subsequent amendment of the Founding Grant which conflicts or is inconsistent with the terms and conditions of this Lease, unless the applicable amendment occurs through a legislative or judicial act.

Section 10.4 Prohibited Uses. Without limiting the applicability of Sections 10.1, 10.2 and 10.3 or any other provision of this Lease, Lessee shall not do any act, or allow any sublessee or other user of the Premises to do any act, and in no event shall the Premises be used for any purpose that: (a) in any manner causes, creates, or results in a nuisance or waste; (b) is of a nature to involve substantial hazard, such as the

manufacture or use of explosives, chemicals or products that may explode, or that otherwise may harm the health or welfare of persons or the physical environment; (c) would or could invalidate or be in conflict with the provisions of any fire or other insurance policies covering the Premises; (d) would or could result in a refusal by insurance companies of good standing to insure the Premises in amounts required hereunder; (e) involves any Release of Hazardous Substances; or (f) violates any covenant, condition, agreement or easement applicable to the Premises.

ARTICLE 11. LIMITATION ON EFFECT OF APPROVALS

All rights of Lessor to review, comment upon, approve, inspect or take any other action with respect to the Premises, or the design or construction of any Alteration to the Premises, or any other matter, are specifically for the benefit of Lessor and no other party. Lessor neither has nor assumes any liability, responsibility or obligation for, in connection with, or with respect to, any such approvals, and no review, comment, approval or inspection, right or exercise of any right to perform Lessee's obligations, or similar actions required or permitted by, of, or to Lessor hereunder, or actions or omissions of Lessor's Agents, or other circumstances shall give or be deemed to give Lessor any such liability, responsibility or obligation.

ARTICLE 12. CONSTRUCTION REQUIREMENTS

Section 12.1 Construction of Improvements.

(a) The construction of any Improvements during the Term shall comply with the requirements of this Article 12. In addition to the Replacement Improvements and MDA Improvements, Lessee shall have the right to construct additional Improvements on the Premises, to redevelop the 3421 Hillview Premises, and to make Alterations to the existing Improvements during the Term (collectively "**Additional Improvements and Alterations**").

(b) If any Improvements (i) relate in whole or in part to any Lessee Environmental Activity; (ii) affect the structural integrity of the Premises or any existing Improvements thereon; (iii) materially affect the exterior appearance of the Premises, (iv) require any environmental permits or any application to a political jurisdiction for rezoning, general plan amendment, variance, conditional use permit or City Architectural Review Board approval (but not merely a building permit); or (v) require Lessor's approval pursuant to any other provision of this Lease, then such proposed Improvements shall be subject to Lessor's prior written approval.

(c) All Improvements shall be at Lessee's sole cost and expense, and shall be subject to the terms of this Article 12 and of First Class quality.

(d) All Improvements, whether or not subject to Lessor's prior written approval, shall be subject to the provisions of Section 12.5.

(e) In each instance in this Article 12 in which Lessor's prior written approval is required, such approval shall not be unreasonably withheld, conditioned or

delayed. Lessor shall use commercially reasonable efforts to respond to any request for approval within ten (10) business days after receiving Lessee's written request for such approval, along with any required accompanying plans, specifications, data or other information; provided that Lessor shall use commercially reasonable efforts to respond to any request for approval with respect to the Replacement Improvements within five (5) business days. In the event Lessor fails to respond within the applicable time period, Lessee may deliver to Lessor a written second request for approval, labeled as such. If Lessor fails to respond to the second request for approval within five (5) business days after receipt, Lessor's failure to respond shall be deemed approval of the applicable request for approval. Upon reasonable advance notice, during Lessor's review period, Lessee agrees to meet with Lessor's designated representative(s) to review such request for approval. In the event Lessor disapproves the matter which is the subject of Lessee's request, Lessor shall provide reasonable detail regarding the basis for such disapproval.

(f) During the term of the SAP Lease, Lessee shall cooperate with Lessor to ensure that in no event shall the construction of Improvements materially interfere with SAP's rights under the SAP Lease. In addition, Lessor shall cooperate with Lessee to make such non-material adjustments to the lease lines of the 3421 Hillview Premises as are reasonably necessary to the redevelopment of the Premises (excluding the 3421 Hillview Premises); provided that no such adjustments shall affect the use of the 3421 Hillview Premises or Lessor's ability to redevelop the 3421 Hillview Premises with replacement improvements equal to the Existing 3421 Square Footage.

Section 12.2 Permits and Approvals. Lessee shall be solely responsible for obtaining, at its sole cost and expense, the approval of the City (and any other governmental agencies with jurisdiction over the Premises) for any general plan amendment, rezoning, variance, conditional use permit, building, electrical and plumbing permits, environmental impact analysis and mitigations imposed thereby, or other governmental action necessary to permit the development, construction and operation of any Improvements in accordance with this Lease. Notwithstanding the foregoing, Lessee shall apply for and prosecute any required governmental review processes for a general plan amendment, rezoning, variance or use permit only through and in the name of Lessor, or otherwise with the approval of Lessor, which shall not be unreasonably withheld, conditioned or delayed, and Lessee shall not submit any environmental impact report or other consultant's report containing information regarding Lessor, Lessor's lands or Lessor's tenants to any public agency without Lessor's prior written approval. Lessor, at no cost or expense to itself, shall reasonably cooperate with Lessee to the extent reasonably required to obtain the approval of the City for any proposed Improvements approved by Lessor hereunder. Lessee shall reimburse Lessor for any out-of-pocket expenses incurred by Lessor in connection with such cooperation, which reimbursement shall be due and payable by Lessee to Lessor upon demand, provided that Lessee requested such cooperation and agreed to reimburse such expenses in writing. Nothing contained herein, however, shall permit or be deemed to permit Lessee to use the Premises for any purpose not expressly permitted under Section 10.1.

Section 12.3 Design.

The following provisions shall apply to all Improvements requiring Lessor's approval pursuant to Section 12.1(a):

(a) The design of all such Improvements, including without limitation, the site plan, structural plans, landscaping plan, materials, colors, and elevations, shall be subject to Lessor's prior written approval.

(b) Prior to submittal to the City, Lessee shall submit to Lessor, for Lessor's review, four (4) duplicate sets of design drawings for the proposed Improvements, whether or not they are required by the City to commence the application for governmental design approval. The design drawings shall be subject to Lessor's prior written approval. Lessee shall not apply for any governmental approvals until after obtaining Lessor's prior written approval of the design drawings.

(c) Lessee acknowledges that prior to approving the design drawings for the proposed Improvements, Lessor may be obligated to meet and consult with certain committees and other persons within Lessor's organization. Lessee shall provide Lessor with such information and materials as Lessor may request, attend committee and other meetings with Lessor and other persons associated with Lessor, and take such other actions at Lessee's sole cost and expense as Lessor deems reasonably necessary to satisfy the requirements of such committees and other persons within Lessor's organization, and to otherwise respond to Lessee's request for approval of the proposed Improvements.

(d) Prior to finalizing any construction documents that differ in any material respect from any design or other construction documents previously approved by Lessor, Lessee shall submit to Lessor for Lessor's prior written approval four (4) duplicate sets of such documents, upon which any changes shall be indicated.

(e) If Lessor disapproves any item pursuant to this Article 12, Lessee shall make whatever changes are reasonably necessary to address the disapproved item and shall resubmit it for Lessor's written approval. Lessee shall not proceed with the disapproved item, or any item affected by the disapproved item, until Lessor has approved Lessee's changes. If Lessor and Lessee are unable to agree upon a resolution, Lessor and Lessee shall meet to attempt in good faith to resolve the dispute; provided, however, that Lessor's final determination shall prevail. Lessor may also, in its sole discretion, present its objections to the construction of any disapproved items to the City or other applicable governmental agency with jurisdiction.

(f) Prior to entering into a contract with any design architect, landscape architect or general contractor for any Improvements, Lessee shall obtain Lessor's prior written approval of the identity of each such design architect, landscape architect or general contractor. Each such contract shall contain provisions acceptable to Lessor that permit the contract to be assumed by Lessor or its designee, at Lessor's sole discretion, following a termination of this Lease. Any such assumption shall be on the same terms and conditions (including fees and prices) as set forth in the contract.

Section 12.4 Prerequisites to Commencement of Construction. In addition to all other requirements set forth in this Article, before commencing the construction of any Improvements (whether or not requiring Lessor's approval), and before any building materials have been delivered to the Premises by Lessee or under Lessee's authority, Lessee shall:

- (a) Furnish Lessor with a true copy of Lessee's contract with the general contractor (or the written assurance referred to in Section 12.3(f), if applicable).
- (b) Deliver to Lessor true copies of all documents evidencing the commitment of construction financing for any new construction, or evidence satisfactory to Lessor regarding other arrangements to provide for payment for work undertaken by Lessee.
- (c) Procure or cause to be procured and keep in force during the course of construction the insurance coverage described below, subject to reasonable deductibles, and provide Lessor with certificates of such insurance in form satisfactory to Lessor. All such insurance shall comply with the requirements of this Article 12 and of Article 20.
 - (i) To the extent not covered by property insurance maintained by Lessee pursuant to Article 20, comprehensive "all risk" builder's risk insurance, including vandalism and malicious mischief, covering all Improvements in place on the Premises, all materials and equipment stored at the Premises and furnished under contract, and all materials and equipment that are in the process of fabrication at the premises of any third party or that have been placed in due course of transit to the Premises when such fabrication or transit is at the risk of, or when title to or an insurable interest in such materials or equipment has passed to, Lessee or its construction manager, contractors or subcontractors (excluding any contractors', subcontractors' and construction managers' tools and equipment, and property owned by the employees of the construction manager, any contractor or any subcontractor), such insurance to be written on a completed value basis in an amount not less than the full estimated replacement value of the Improvements, as applicable.
 - (ii) Comprehensive liability insurance covering Lessee and Lessor, which insurance may be effected by endorsement, if obtainable, on the policy required to be carried pursuant to Article 20, including insurance for completed operations, elevators, owner's protective liability, products completed operations for three (3) years after the date of acceptance of the work by Lessee, broad form blanket contractual liability, broad form property damage and full form personal injury (including but not limited to bodily injury), covering the performance of all work at or from the Premises by Lessee, and in a liability amount not less than the amount at the time carried by prudent owners of comparable construction projects in Santa Clara County, but in any event not less than Five Million Dollars (\$5,000,000) combined single limit, which policy shall contain a cross-liability clause or separation of insureds provision, an endorsement deleting the property damage exclusion as to explosion, underground, and collapse hazards, and an endorsement providing incidental malpractice coverage, and shall include

thereunder for the mutual benefit of Lessor and Lessee, bodily injury liability and property damage liability automobile insurance on any non-owned, hired or leased automotive equipment used in the construction of any work.

(iii) Worker's Compensation Insurance in the amounts and coverages required under workers' compensation, disability and similar employee benefit laws applicable to the Premises, and Employer's Liability Insurance with limits not less than One Million Dollars (\$1,000,000) or such higher amounts as may be required by law.

Section 12.5 General Construction Requirements.

(a) All construction and other work in connection with any Improvements shall be done at Lessee's sole cost and expense and in a prudent and First Class manner and with First Class materials. Lessee shall construct all Improvements in accordance with (i) all Applicable Laws, (ii) plans and specifications that are in accordance with the provisions of this Article 12 and all other applicable provisions of this Lease, and (iii) the requirements of the then-current Stanford Research Park Handbook promulgated from time-to-time by Lessor (the "**Handbook**"); provided that in the event of a direct conflict between the terms of this Lease and any amendment or modification to the Handbook, the terms of this Lease shall control, unless the applicable amendment or modification reflects any change in Applicable Laws, or does not materially adversely affect the operation or economic performance of the Premises for Lessee's intended use.

(b) Lessee shall give Lessor not less than fifteen (15) days notice of any excavation contemplated on any portion of the Premises. Lessor's staff archeologist shall determine Lessor's requirements for archaeological oversight of the excavation, and Lessee shall pay the cost of any on-site archaeological consultant (other than Lessor's staff archeologist, which shall be paid by Lessor), not to exceed \$5,000 per proposed Improvement for which excavation is required. When Lessor or its consultant deems it necessary to investigate the possible presence of, or to protect, archaeological artifacts, Lessee shall temporarily halt the excavation work in the area subject to such investigation. Lessee shall comply, at its own expense, with state law regarding the protection, removal or reburial of human remains and archaeological artifacts. In addition, Lessee shall comply with Lessor's archeologist's requests regarding the protection, removal or reburial of human remains and archaeological artifacts, provided that such compliance with respect to any remains or artifacts that are not regulated by Applicable Laws shall be at Lessor's expense, and if required by Lessee, shall be performed by Lessor. Lessee shall use good faith efforts to notify Lessor of any archeological discovery on the Premises in the event Lessor's staff archeologist is not present at the time of such discovery but only if and to the extent that Lessee obtains actual knowledge thereof (it being agreed that Lessee shall not be required to retain its own archeologist to observe, inspect or oversee any such excavation unless otherwise required by Applicable Laws). Each party shall deliver to the other a copy of any written reports prepared by that party's archeological consultant. Any archaeological artifacts discovered on the Premises shall belong to Lessor. Provided Lessor and its archeological

consultant have not been arbitrary in any decision made by Lessor or its archeological consultant to halt Lessee's excavation, Lessor and its archeological consultant shall not be liable for any damages or other liability that may result from cessation of excavation, or other compliance with the provisions of this Section 12.5(b). Notwithstanding the foregoing, in the event construction of the Replacement Improvements is delayed for more than ten (10) business days due to the cessation of excavation pursuant to this subsection, the Rent Commencement Date shall be delayed by one (1) calendar day for each day of construction delay beyond the initial ten (10) business-day delay period.

(c) Lessee shall construct all Improvements within setbacks required by Applicable Laws and the Handbook.

(d) Prior to the commencement of any Improvements costing in excess of Fifty Thousand Dollars (\$50,000) (which amount shall be subject to annual adjustment as of the first day of each Lease Year after the Rent Commencement Date to reflect percentage increases in the Index), Lessor shall have the right to post in a conspicuous location on the Premises, as well as to record with Santa Clara County, a Notice of Lessor's Nonresponsibility pursuant to the California Civil Code. Lessee covenants and agrees to give Lessor at least ten (10) days prior written notice of the commencement of any such construction, alteration, addition, improvement, repair or landscaping in order that Lessor shall have sufficient time to post such notice. Notwithstanding the foregoing, in the event that Lessee deems it reasonably necessary to engage on an emergency basis in any work that could result in a Lien against the Premises, Lessee shall give Lessor such advance notice as is feasible under the circumstances of the emergency.

(e) The provisions of Section 12.3 shall apply to any change in the design elements of the Improvements that are subject to Lessor's prior written approval and that have been approved by Lessor, and to any material deviations in the actual construction of the Improvements from such approved design elements.

(f) Lessee shall take all customary and necessary safety precautions during any construction.

(g) Lessee shall prepare and maintain in accordance with normal construction practices (i) on a current basis during construction, annotated plans and specifications showing clearly all changes, revisions and substitutions during construction, and (ii) upon completion of construction, as-built drawings showing clearly all changes, revisions and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions and other significant features of any Improvements. These as-built drawings and annotated plans and specifications shall be kept at the Premises or other office of Lessee in the San Francisco Bay Area, and Lessee shall update them as often as necessary to keep them current. The as-built drawings and annotated plans and specifications shall be made available for copying and inspection by Lessor at all reasonable times.

Section 12.6 Construction Completion Procedures. Promptly upon completion of the construction of any Improvements, Lessee shall file for recordation, or cause to be filed for recordation, a notice of completion. Upon completion of any such construction, Lessee shall deliver to Lessor evidence reasonably satisfactory to Lessor of the payment of all costs, expenses, liabilities and liens arising out of or in any way connected with such construction (except for Liens that are contested in the manner provided in Article 16).

Section 12.7 On Site Inspection. Lessor shall be entitled to have on site, at all times during the construction of any Improvements requiring Lessor's approval and at Lessor's sole cost and expense, an inspector or representative who shall be entitled to observe all aspects of the construction. No inspection performed or not performed by Lessor hereunder shall (a) give, or be deemed to give, Lessor any responsibility or liability for the Improvements or the design or construction thereof; (b) constitute, or be deemed to constitute, approval or acceptance of, any aspect of the design or construction of the Improvements; or (c) constitute or be deemed to constitute a waiver of any of Lessee's obligations hereunder. Subject to the provisions of Section 12.5(b) hereof, Lessee shall not be required to postpone or delay any investigative or construction activity to accommodate any inspector or representative of Lessor.

Section 12.8 Restoration. If this Lease expires or is terminated prior to the completion of construction of any Improvements, Lessee shall, at Lessor's option and at Lessee's expense, either promptly complete such construction or remove all such Improvements, construction materials, equipment and other items from the Premises and restore the Premises to their pre-construction condition.

Section 12.9 Demolition of Existing Improvements. Lessor shall demolish the existing improvements located on the Premises and deliver the Premises to Lessee as a cleared site ready for construction of Replacement Improvements in accordance with the scope of work attached as **Exhibit E** (the "**Demolition Work**"). Within thirty (30) days after written request by Lessee, which request may be delivered once Lessee has determined that the City is prepared to issue a permit for the Demolition Work, Lessor will seek a demolition permit and shall thereafter diligently prosecute the Demolition Work to completion; provided, however, that Lessor shall not be required to incur any costs or perform any Demolition Work unless and until Lessee has waived its right to terminate this Lease under Section 5.3 hereof. In connection with the Demolition Work, Lessor shall enforce its rights under the Cooperation Agreement with respect to the environmental condition of the existing improvements and the soil underlying such improvements or, if Roche fails to perform any of its obligations thereunder, Lessor shall perform such obligation on behalf of Roche (Lessor hereby reserving all of its rights to recover damages from Roche for the cost to perform such obligations). Lessor shall pay the entire cost of the Demolition Work.

Section 12.10 Prior to conducting any invasive investigation or construction activity which may impact any Pre-Existing Environmental Condition, Lessee shall have the right, but not the obligation (except as otherwise expressly provided herein), to present a plan to Lessor setting forth the scope and logistics of the proposed investigation

or construction activity. Lessor shall promptly review any such plan solely for the purpose of determining whether the scope and logistics of the plan comply with then current industry standards for investigation of, or construction activity relating to, pre-existing environmental conditions (it being agreed that, except as otherwise expressly provided by any other section of this Lease, Lessor's approval of such plan shall not be a condition to Lessee's right to perform the applicable investigation or construction activity). Lessor shall use commercially reasonable efforts to respond to any request for approval within ten (10) business days after receiving Lessee's written request for such approval, along with any required accompanying plans, specifications, data or other information. In the event Lessor fails to respond within the applicable time period, Lessee may deliver to Lessor a written second request for approval, labeled as such. If Lessor fails to respond to the second request for approval within five (5) business days after receipt, Lessor's failure to respond shall be deemed approval of the applicable request for approval. Notwithstanding any provision hereof to the contrary, Lessee shall not be liable for, and shall not be obligated to indemnify, defend or hold Lessor or any of its trustees, officers, directors, employees, agents, successors or assigns harmless from or against, any claims, losses, damages, costs or expenses, including, without limitation, attorneys' fees or costs, arising from any exacerbation of any Pre-Existing Environmental Condition or relating to any investigation or construction activity performed (a) in accordance with the scope and logistics therefor approved (or deemed approved) by Lessor pursuant to the foregoing provisions of this Section, and (b) in a manner that meets then current industry standards for such investigation, or for the conduct of construction activity in areas of potential environmental sensitivity.

ARTICLE 13. OWNERSHIP OF IMPROVEMENTS

All Improvements shall be the property of Lessee during, and only during, the Term and no longer. During the Term, no Improvements shall be conveyed, transferred or assigned, except as permitted under Articles 23, 24 and 25, and at all such times the holder of the leasehold interest of Lessee under this Lease shall be the owner of all Improvements. Any attempted conveyance, transfer or assignment of any of the Improvements, whether voluntarily or by operation of law or otherwise, to any person, corporation or other entity shall be void and of no effect whatever, except as permitted under Articles 23, 24 and 25. Notwithstanding the foregoing, Lessee may from time to time replace the Improvements and make Additional Improvements and Alterations, provided that the replacements for such items are of equivalent or better value and quality, and such items are free from any liens and encumbrances except for equipment leases and any other financings expressly permitted hereunder. Upon any termination of this Lease, whether by reason of the expiration of the Term hereof, or pursuant to any provision hereof, or by reason of any other cause whatsoever, all of Lessee's right, title and interest in the Improvements shall cease and terminate and title to the Improvements shall immediately vest in Lessor. Lessee shall surrender the Improvements to Lessor as provided in Article 28. No further deed or other instrument shall be necessary to confirm the vesting in Lessor of title to the Improvements. However, upon any termination of this Lease, Lessee, upon request of Lessor, shall execute, acknowledge and deliver to Lessor a quitclaim deed confirming that all of Lessee's rights, title and interest in the Improvements has expired and that title thereto has vested in Lessor. Notwithstanding

the foregoing, the ownership and disposition of all personal property, trade fixtures and improvements installed by any subtenants of the Property shall be as provided in their subleases.

ARTICLE 14. MAINTENANCE AND REPAIRS; NO WASTE

Section 14.1 Lessor's Obligation. During the Entitlement Period only, (a) Lessor shall cause the Premises to be maintained in the ordinary and usual course of business and consistent with Lessor's past practice, and (b) Lessor shall continue to carry its existing insurance or maintain its existing program of self-insurance on the Premises, and shall not allow any termination or cancellation of such insurance policies or programs to occur or exist. As of the expiration of the Entitlement Period, there shall be no agreements with third parties in connection with the Premises that will be binding on Lessee after the expiration of the Entitlement Period, except for those agreements that have been assumed by Lessee pursuant to the Agreement to Lease.

Section 14.2 Maintenance and Repairs. During the Term, Lessee shall, at its own cost and expense and without any cost or expense to Lessor, keep and maintain the Premises and all Improvements and appurtenant facilities, including without limitation the structural components, roof, fixtures and building systems of the Improvements, grounds, sidewalks, parking and landscaped areas, in a First Class condition. Lessee shall promptly make all repairs, replacements and alterations (whether structural or nonstructural, foreseen or unforeseen, or ordinary or extraordinary) necessary to maintain the Premises and the Improvements in a First Class condition and in compliance with all Applicable Laws and to avoid any structural damage or injury to the Premises or the Improvements. The foregoing shall not limit Lessee's right to demolish the existing Improvements and construct the Replacement Improvements, the MDA Improvements and any subsequent Additional Improvements and Alterations pursuant to Articles 5 and 12, nor shall it supercede the provisions of Article 22.

Section 14.3 No Obligation Of Lessor To Repair. Except as set forth in Section 14.1, Lessor shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Premises or the Improvements, and Lessee hereby expressly waives any right to terminate this Lease and any right to make repairs at Lessor's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code, or any amendments thereof, or any similar law, statute or ordinance now or hereafter in effect.

Section 14.4 Lessee's Failure to Repair. If Lessee fails for any reason to repair or maintain the Premises as required by this Lease to Lessor's reasonable satisfaction, and does not cure such failure (a) within thirty (30) days after receipt of Lessor's written notice, or (b) if the nature of the cure will reasonably require more than thirty (30) days to perform, within a reasonable time so long as Lessee promptly commences and diligently prosecutes such cure to completion, then Lessor shall have the right, but not the obligation, to enter onto the Premises and perform such repairs or maintenance without liability to Lessee (except to the extent of Lessor's gross negligence or willful misconduct) for any loss or damage to Lessee's furnishings, fixtures, equipment or other

personal property or for interference with Lessee's business arising therefrom. If Lessor performs such repairs or maintenance, Lessee shall pay all costs thereof to Lessor upon demand as Additional Rent.

ARTICLE 15. UTILITIES AND SERVICES

Section 15.1 During the Entitlement Period. Lessor shall be solely responsible for, shall make all arrangements for, and shall pay for all utilities and services furnished to or used at the Premises during the Entitlement Period, including without limitation, gas, electricity, water, telephone, cable and other communication services, security services, sewage, sewage service fees, trash collection, and any taxes or impositions thereon. The charges for these utilities and services shall be prorated between the parties as of the expiration of the Entitlement Period in accordance with Section 9.3.

Section 15.2 During the Term. Lessee shall be solely responsible for, shall make all arrangements for, and shall pay for all utilities and services furnished to or used at the Premises during the Term, including without limitation, gas, electricity, water, telephone, cable and other communication services, security services, sewage, sewage service fees, trash collection, and any taxes or impositions thereon. All service lines of such utilities shall be installed beneath the surface of the Premises and connected and maintained during the Term at no cost or expense to Lessor.

ARTICLE 16. MECHANICS' AND OTHER LIENS

Section 16.1 No Liens. Lessee covenants and agrees to keep the Premises and every part thereof and all Improvements free and clear of and from any and all mechanics', material supplier's and other liens for: (a) work or labor done, services performed, materials, appliances, or power contributed, used or furnished, or to be used, in or about the Premises for or in connection with any operations of Lessee; (b) any Improvements; or (c) any work or construction by, for or permitted by Lessee on or about the Premises or Improvements (collectively, "**Liens**"). Lessee shall promptly and fully pay and discharge any and all claims upon which any such Lien may or could be based, and keep the Premises and Improvements free and clear of, and save and hold Lessor, the Premises and the Improvements harmless from, any and all such Liens and claims of Liens, damages, liabilities, costs (including, without limitation, attorneys' fees and costs), suits or other proceedings pertaining thereto.

Section 16.2 Lessor's Interests. In no event shall any interest of Lessor in the Premises, including without limitation, Lessor's fee interest in the Premises or reversionary interest in the Improvements or interest under this Lease, be subject or subordinate to any Lien.

Section 16.3 Lessor's Right to Cause Release of Liens. If Lessee does not cause any Lien that Lessee does not contest in accordance with Article 17 to be released of record by payment or posting of a proper bond or insured over within thirty (30) days following the imposition of such Lien, Lessor shall have the right, but not the obligation, to cause the Lien to be released by any means Lessor may deem appropriate, and the

amount paid by Lessor, together with all expenses Lessor incurs in connection therewith (including, without limitation, reasonable attorneys' fees and expenses), plus interest at the Interest Rate from the date of payment by Lessor, shall be Additional Rent, immediately due and payable by Lessee to Lessor upon demand.

ARTICLE 17. RIGHT TO CONTEST LIENS

Lessee shall have the right to contest, in good faith, the amount or validity of any Lien, provided that, before doing so, Lessee shall give Lessor written notice of Lessee's intention to do so within thirty (30) days after the recording of such Lien and provided further that Lessee shall, at its expense, defend itself and Lessor against such Lien and shall pay and satisfy any adverse judgment that may be rendered concerning such Lien before that judgment is enforced against the Premises. In addition, at the request of Lessor, Lessee shall either (a) procure and record the bond provided for in Section 3143 of the California Civil Code, or in any comparable statute hereafter enacted providing for a bond freeing the Premises from the effect of such Lien; or, (b) at Lessee's election, cause such Lien to be insured over for the benefit of Lessor; or (c) post alternative security that is reasonably acceptable to Lessor. Lessee shall pay all reasonable attorneys' fees, consultants' fees, and other costs incurred by Lessor in connection with any such contest.

ARTICLE 18. COMPLIANCE WITH LAWS; INSURANCE REQUIREMENTS

Section 18.1 Compliance with Applicable Laws. Lessee, at Lessee's sole cost and expense, shall comply with all Applicable Laws relating to this Lease, the Premises and the Improvements during the Term. Lessee shall give Lessor prompt written notice of any violation of Applicable Laws known to Lessee and, at its sole cost and expense, Lessee shall promptly rectify any such violation. Without in any way limiting the generality of the foregoing obligation of Lessee, Lessee shall be solely responsible for compliance with, and shall make or cause to be made all such improvements and Alterations to the Premises (including, without limitation, removing barriers and providing alternative services) as shall be required by the Americans with Disabilities Act (42 USC section 12101 et seq.), as the same may be amended from time to time, and any similar or successor laws, and with any rules or regulations promulgated thereunder. Any work or installations made or performed by or on behalf of Lessee or any person or entity claiming through or under Lessee in order to conform the Premises to Applicable Laws shall be subject to and performed in compliance with the provisions of Article 12.

Section 18.2 Compliance with Insurance Requirements. Lessee shall not do anything, or permit anything to be done, in or about the Premises that would: (a) invalidate or be in conflict with the provisions of any fire or other insurance policies covering the Premises or any property located therein; or (b) result in a refusal by insurance companies of good standing to insure the Premises or any such property in amounts required hereunder. Lessee, at Lessee's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body that shall hereafter perform the function of such Association.

Section 18.3 General. Lessee shall not do any act, or allow any subtenant or other user of the Property to do any act, that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person (whether on or off the Premises), is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Premises.

ARTICLE 19. ENVIRONMENTAL ISSUES

Section 19.1 Hazardous Substances. Except as provided in this Section 19.1, no Hazardous Substance shall be used, treated, kept, stored, transported, handled, sold or Released at, on, under or from the Premises during the Entitlement Period or the Term. Notwithstanding the foregoing, (a) Lessee and Lessee's Agents and subtenants may use small quantities of standard janitorial and office products, and also such products as are incorporated into the functioning of building systems (e.g. HVAC units and elevators) which are necessary to the general office use permitted at the Premises, and then only in compliance with all Applicable Laws; and (b) in connection with any use of the Premises for research and development purposes, Lessee shall also be permitted to use, keep and store reasonable quantities of the Hazardous Substances required for activities permitted under this Lease, provided that Lessee shall deliver to Lessor a complete list of all such Hazardous Substances, and shall periodically update this list so that it remains current.

Section 19.2 Indemnities.

(a) Lessee shall indemnify, protect, defend, reimburse, and save and hold harmless Lessor and Lessor's trustees, officers, directors and employees from and against any and all Environmental Claims to the extent caused by (i) Lessee Environmental Activity, (ii) any non-compliance by Lessee with Environmental Requirements at the Premises, except to the extent arising out of or related to the Pre-Existing Environmental Condition and not included in the definition of Lessee Environmental Activity, or (iii) any other acts or omissions of Lessee or Lessee's Agents, subtenants or invitees in or about the Premises which results in the Release of Hazardous Substances which are not already on, in, or under the Premises due to the Pre-Existing Environmental Condition (as defined in Section 19.8). Lessee's obligations hereunder shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel having a minimum of twelve (12) years specialized experience in litigating matters involving environmental issues in California), even if such claims, suits or proceedings are groundless, false or fraudulent; conducting all negotiations of any description; and promptly paying and discharging when due any and all judgments, penalties, fines or other sums due against or from Lessor or the Premises.

(b) Lessor shall indemnify, protect, defend, reimburse and save and hold harmless Lessee from and against any third party claims (including, without limitation, claims of any governmental agency or authority) brought against Lessee (excluding those brought by Lessee's Agents, subtenants or invitees) to the extent caused by any Pre-Existing Environmental Condition (except to the extent caused by the

Exacerbation of any Pre-Existing Environmental Condition arising out of or resulting from the acts or omissions of Lessee or any other occupant of or visitor to the Premises). Lessor's obligations hereunder shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably approved by Lessee), even if such claims, suits or proceedings are groundless, false or fraudulent; conducting all negotiations of any description; and promptly paying and discharging when due any and all judgments, penalties, fines or other sums due against or from Lessee or the Premises; and promptly reimbursing Lessee for any costs or expenses to relocate any personnel or facilities stationed at the Premises during any period in which the Premises are not permitted to be occupied by any governmental agency in connection with any remediation (including, without limitation, rent paid for any premises to which such personnel or facilities are so relocated). Lessor's indemnification obligations hereunder shall extend only to Lessee's actual costs.

Section 19.3 Obligation to Remediate. Notwithstanding the obligation of Lessee to indemnify Lessor pursuant to this Lease, Lessee shall, upon demand of Lessor, and at Lessee's sole cost and expense, promptly commence all actions to remediate the Premises from the effects of any Lessee Environmental Activity. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Premises, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work, whether on or off of the Premises. Lessee shall take all actions necessary to remediate the Premises from the effects of such Lessee Environmental Activity to a condition allowing unrestricted use of the Premises (i.e. to a level that will allow any future use of the Premises, including residential, hospital, or day care, without any engineering controls or deed restrictions), notwithstanding any lesser standard of remediation allowable under Applicable Laws; provided that the foregoing remediation standard shall apply only to the effects of such Lessee Environmental Activity and shall not impose on Lessee any responsibility for possible restrictions on the use of the Premises resulting from the Pre-Existing Environmental Condition or the presence of other Hazardous Substances on the Premises that are not related to any Lessee Environmental Activity. All such work, including without limitation the contractor(s) performing the work and the work plan for the remediation, shall be reasonably approved in advance and in writing by Lessor. Lessee shall proceed continuously and diligently with such investigatory and remedial actions, provided that in all cases such actions shall be in accordance with all Applicable Laws. Any such actions shall be performed in a good, safe and workmanlike manner. Lessee shall pay all costs in connection with such investigatory and remedial activities, including but not limited to all power and utility costs, and any and all taxes or fees that may be applicable to such activities. Lessor's environmental consultant shall have the right to be present during any testing or investigation on the Premises, and Lessee shall promptly provide to Lessor copies of testing results and reports that are generated in connection with the above activities and any that are submitted to any governmental entity. Notwithstanding the foregoing or any provision hereof to the contrary, Lessee shall not be required to postpone or delay any testing, investigation or remedial action to accommodate Lessor's representatives or consultants provided that Lessee shall have given Lessor at least three (3) business days notice of the applicable test, investigation or remedial activity.

Promptly upon completion of such investigation and remediation, Lessee shall permanently seal or cap all monitoring wells and test holes in accordance with sound engineering practice and in compliance with Applicable Laws, remove all associated equipment, and restore the Premises to the maximum extent possible, which shall include, without limitation, the repair of any surface damage, including paving, caused by such investigation or remediation.

Section 19.4 Obligation to Notify. If Lessee or Lessor shall become aware of or receive notice or other communication in writing concerning any actual, alleged, suspected or threatened violation of Environmental Requirements, or liability for Environmental Claims in connection with the Premises, including but not limited to, notice or other communication concerning any actual or threatened investigation, inquiry, lawsuit, claims, citation, directive, summons, proceeding, complaint, notice, order, writ, or injunction, relating to same, then such party promptly shall deliver to the other party a written description of said notice or other communication, and documentation of any corrective action or mitigation measures undertaken or requested by such party.

Section 19.5 Periodic Audits. Lessee shall establish and maintain, at its sole cost and expense, a system to assure and monitor continued compliance on the Premises with Environmental Requirements related to Lessee Environmental Activity. No more than once per Lease Year, or at any time Lessor has a reasonable basis for belief that Lessee is in breach of its obligations under this Article 18, Lessor may retain a consultant selected by Lessor to undertake a detailed review of such compliance (the “**Environmental Audit**”). A copy of the Environmental Audit report shall be promptly supplied to Lessor and Lessee when it becomes available. In the event the Environmental Audit identifies any deficiencies in the compliance of the Premises with Environmental Requirements due to any Lessee Environmental Activity, Lessee shall promptly correct any such deficiencies identified in the Environmental Audit, and document to Lessor that corrective action has been taken. In such event, Lessee shall also reimburse Lessor for the reasonable cost of the Environmental Audit. If the Environmental Audit identifies any such deficiency in compliance of the Premises with Environmental Requirements due to any Lessee Environmental Activity, then, within nine (9) months of the date of the Environmental Audit, Lessor may request a detailed review of the status of such violation by a consultant selected by Lessor (the “**Supplemental Audit**”). Lessee shall pay for the reasonable cost of any Supplemental Audit. A copy of the Supplemental Audit shall be promptly supplied to Lessor and Lessee when it becomes available.

Section 19.6 Right to Inspect. In addition to Lessor’s rights under Section 19.5 above, Lessor shall have the right to enter and conduct an inspection of the Premises, including invasive tests, at any reasonable time and upon reasonable advance notice, to determine whether Lessee is complying with the terms of this Lease, including but not limited to the compliance of the Premises and the activities thereon with Environmental Requirements and the existence of Environmental Claims as a result of the condition of the Premises or surrounding properties and activities thereon. Lessor shall have the right, but not the obligation, to retain at its expense any independent professional consultant to enter the Premises to conduct such an inspection, and to review any report prepared by or for Lessee concerning such compliance. Lessee hereby grants to Lessor and Lessor’s

Agents the right to enter the Premises and to perform such tests on the Premises as are reasonably necessary in the opinion of Lessor to conduct such review and inspections. Except to the extent of Lessor's gross negligence or willful misconduct in the exercise of its rights under this Section, Lessee hereby waives and releases any claims for damages for any injury or inconvenience to or interference with Lessee's business at the Premises, any loss of occupancy or quiet enjoyment of the Premises or any other loss, damage, liability or cost occasioned by Lessor's exercise of the rights reserved to Lessor under, or granted to Lessor pursuant to this Section. Notwithstanding the foregoing, Lessor shall repair any actual damage caused by the exercise of such rights. In no event shall Lessee be entitled to terminate this Lease as a result of Lessor's exercise of such rights, notwithstanding any possible liability of Lessor for damages as a result of its gross negligence or willful misconduct.

Section 19.7 Right to Remediate. Should Lessee fail to perform or observe any of its obligations or agreements pertaining to Hazardous Substances or Environmental Requirements, then Lessor shall have the right, but not the obligation, without limitation of any other rights of Lessor hereunder, to enter the Premises personally or through Lessor's Agents and perform the same. Lessee agrees to indemnify Lessor for the costs thereof and liabilities therefrom as set forth above in this Article 19.

Section 19.8 Release of Lessor. Lessee represents and acknowledges that it is aware that, prior to the Effective Date, detectable amounts of Hazardous Substances and any byproducts thereof may have been Released to soil and groundwater beneath and/or in the vicinity of the Premises as described in the documents listed on the attached **Schedule 19.8** (the "**Pre-Existing Environmental Condition**"). Lessee further represents and acknowledges that it has made such investigations and inquiries as it deems appropriate to ascertain the effects, if any, of the Pre-Existing Environmental Condition on the Premises and on persons using the Premises. Except as set forth in the Agreement to Lease, Lessor makes no representation or warranty with regard to the Pre-Existing Environmental Condition or with regard to any aspect of the environmental condition of the Premises. Except to the extent of Lessor's indemnity set forth in Section 19.2(b), Lessee, on behalf of itself and its successors and assigns, hereby releases Lessor and the Lessor Released Parties (as defined in Section 19.10(b)) from any and all claims, demands, debts, liabilities, and causes of action of whatever kind or nature, whether known or unknown or suspected or unsuspected which Lessee, Lessee's Agents, subtenants or invitees may have, claim to have, or which may hereafter accrue, arising out of or relating to or in any way connected with the Pre-Existing Environmental Condition or the presence, suspected presence, Release or suspected Release of any Hazardous Substances in or into the air, soil, groundwater, surface water or improvements at, on, about, under or within the Premises or any portion thereof, or elsewhere in connection with the transportation of Hazardous Substances to or from the Premises, in each case prior to the Effective Date. In connection with such release, Lessee hereby waives any and all rights conferred upon it by the provisions of Section 1542 of the California Civil Code, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

or by the provisions of any similar statute.

Nothing in the foregoing shall be deemed to release Lessor from any obligations or indemnities it has expressly agreed to or assumed under this Lease or under the Agreement to Lease.

Section 19.9 Release of Lessee. Lessor hereby releases Lessee from any and all claims, demands, debts, liabilities, and causes of action of whatever kind or nature, whether known or unknown or suspected or unsuspected which Lessor may have, claim to have, or which may hereafter accrue against Lessee, arising out of or relating to or in any way connected with the Pre-Existing Environmental Condition. In connection with such release, Lessor hereby waives any and all rights conferred upon it by the provisions of Section 1542 of the California Civil Code, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

or by the provisions of any similar statute.

Nothing in the foregoing shall be deemed to release Lessee from any obligations or indemnities it has expressly agreed to or assumed under this Lease or under the Agreement to Lease.

Section 19.10 General Provisions.

(a) The obligations of Lessee under this Article 18 shall not be affected by any investigation by or on behalf of Lessor, or by any information which Lessor may have or obtain as a result of any such investigation.

(b) As used in this Article 19 and in Article 21, the term “ **Lessor Released Parties** ” shall include The Board of Trustees of The Leland Stanford Junior University, and all of its affiliated organizations, and their respective trustees, directors, officers, employees, faculty, students, agents, and insurance carriers.

(c) The provisions of this Article 19 shall survive any termination of this Lease.

(d) The provisions of Article 20 (Insurance) shall not limit in any way Lessee’s obligations under this Article 19; provided that the provisions of Section 20.2(f) shall apply.

ARTICLE 20. INSURANCE

Section 20.1 Entitlement Period. At all times during the Entitlement Period and at its sole cost and expense, Lessee shall obtain and keep in force for the benefit of Lessee and Lessor comprehensive general liability insurance, through one or more primary and umbrella liability policies, covering the activities of Lessee in connection with obtaining the Entitlements in the amount of not less than Three Million Dollars (\$3,000,000) combined single limit per occurrence. Such insurance shall meet the requirements set forth in Sections 20.2(d) and 20.3.

Section 20.2 Required Insurance. At all times during the remainder of the Term after the Entitlement Period and at its sole cost and expense, Lessee shall obtain and keep in force for the benefit of Lessee and Lessor the following insurance:

(a) **Property Insurance.** All risk, fire, earthquake, flood and other perils, including extended coverage insurance on all Improvements. The amount of such insurance shall be the Full Insurable Replacement Value. Each such policy shall specify that proceeds shall be payable whether or not any improvements are actually rebuilt. Each such policy shall include an endorsement protecting the named and additional insureds against becoming a co-insured under the policy. Notwithstanding the foregoing, during the construction of the Replacement Improvements, the provisions of Section 12.4(c)(i) shall apply.

“ **Full Insurable Replacement Value** ” means 100% of the actual costs to replace the Improvements (without deduction for depreciation but with standard exclusions such as foundations, excavations, paving and landscaping, as applicable to specific perils), including the costs of demolition and debris removal and including materials and equipment not in place but in transit to or delivered to the Premises. The Full Insurable Replacement Value initially shall be determined at Lessee’s expense by an appraiser or an insurer, selected by Lessee and acceptable to Lessor. Lessor or Lessee may at any time, but not more frequently than once in any twelve (12) month period, by written notice to the other, require the Full Insurable Replacement Value to be redetermined, at Lessee’s expense, by an appraiser or insurer selected by Lessee and reasonably acceptable to Lessor. Lessee shall maintain coverage at the current Full Insurable Replacement Value throughout the Term, subject to reasonable deductibles approved by Lessor pursuant to Section 20.2(a).

(b) **Rental and Business Interruption Insurance.** Insurance against loss of rental from the Premises, under a rental value insurance policy, or against loss from business interruption under a business interruption policy, covering risk of loss due to causes insured against under subsection (a), in an amount not less than twelve (12) months of projected revenues from the Premises.

(c) **Worker’s Compensation and Employer’s Liability Insurance.** Worker’s Compensation Insurance in the amounts and coverages required under worker’s compensation, disability and similar employee benefit laws applicable to the Premises, and Employer’s Liability Insurance with limits not less than \$1,000,000 or such higher amounts as may be required by law.

(d) **Comprehensive General Liability Insurance.** Comprehensive general liability insurance through one or more primary and umbrella liability policies against claims, including but not limited to, bodily injury and property damage occurring on the Premises, with such limits as may be reasonably required by Lessor from time to time, but in any event not less than \$10,000,000, combined single limit and annual aggregate for the Premises, which Lessee shall increase as necessary during the Term to maintain adequate coverage over time that is comparable to the requirements in effect as of the execution of this Lease. Such insurance shall insure the performance by Lessee of the indemnity agreements contained in this Lease. If any governmental agency or department requires insurance or bonds with respect to any proposed or actual use, storage, treatment or disposal of Hazardous Substances by Lessee or any sublessee, tenant, or licensee of Lessee, Lessee shall be responsible for such insurance and bonds and shall pay all premiums and charges connected therewith; provided, however, that this provision shall not and shall not be deemed to modify the provisions of this Article 20.

Such insurance shall (i) delete any employee exclusion on personal injury coverage; (ii) include employees as additional insureds; (iii) provide blanket contractual coverage, including liability assumed by and the obligations of Lessee under Article 21 for personal injury, death and/or property damage; (iv) provide Products and Completed Operations and Independent Contractors coverage and Broad Form Property Damage liability coverage without exclusions for collapse, explosion, demolition, underground coverage and excavating, including blasting; (v) provide liability coverage on all mobile equipment used by Lessee; and (vi) include a cross liability endorsement (or provision) permitting recovery with respect to claims of one insured against another. Such insurance shall insure against any and all claims for bodily injury, including death resulting therefrom, and damage to or destruction of property of any kind whatsoever and to any third party arising from Lessee's operations hereunder and whether such operations are performed by Lessee or any of its contractors, subcontractors, or by any other person.

(e) **Vehicle Insurance.** Automobile liability coverage for owned, non-owned and hired vehicles.

(f) **Other.** All other insurance that Lessee is required to maintain under Applicable Laws.

Section 20.3 Policy Form and General.

(a) All of the insurance policies required under this Lease, including without limitation, under the provisions of Article 12 and this Article 20, and all renewals thereof shall be issued by one or more companies of recognized responsibility, authorized to do business in California with a financial rating of at least a Class A- (or its equivalent successor) status, as rated in the most recent edition throughout the Term of Best's Insurance Reports (or its successor, or, if there is no equivalent successor rating,

otherwise reasonably acceptable to Lessor). Except as otherwise provided herein, the proceeds of all property damage and builder's risk policies of insurance shall be payable to Lessor for application in accordance with this Lease. Any loss adjustment or disposition of insurance proceeds by the insurer shall require the written consent of Lessor for losses in excess of One Hundred Thousand Dollars (\$100,000), such consent not to be unreasonably withheld or delayed. All property insurance hereunder shall name Lessor as an additional insured. All liability insurance shall name as additional insureds Lessor, and its directors, trustees, officers, agents, and employees, and such other parties as Lessor reasonably may request, and shall include an "additional insured" endorsement for lessors of property. Any deductibles or self-insurance retention for any of the foregoing insurance must be agreed to in advance in writing by Lessor, in its reasonable discretion. All deductibles and self-insurance retention shall be paid by Lessee. All insurance of Lessee shall be primary coverage.

(b) Each policy of property insurance and all other policies of insurance on the Improvements and/or the Premises which shall be obtained by Lessee, whether required by the provisions of this Lease or not, shall be made expressly subject to the provisions of this Article 20. All policies provided for herein expressly shall provide that such policies shall not be canceled, terminated or materially altered without thirty (30) days' prior written notice to Lessor. Each policy, or a certificate of the policy executed by the insurance company evidencing that the required insurance coverage is in full force and effect, shall be deposited with Lessor on or before the date of this Lease, shall be maintained throughout the Term, and shall be renewed not less than fifteen (15) days before the expiration of the term of the policy. Except for specific provisions described herein, no policy shall contain any provisions for exclusions from liability and no exclusion shall be permitted in any event if it conflicts with any coverage required hereby, and, in addition, no policy shall contain any exclusion from liability for personal injury or sickness, disease or death or which in any way impairs coverage under the contractual liability coverage described above.

(c) If either party shall at any time deem the limits of any of the insurance described in this Lease then carried or required to be carried to be either excessive or insufficient, that party shall deliver written notice to the other, and the parties shall endeavor to agree upon the proper and reasonable limits for such insurance then to be carried and such insurance shall thereafter be carried with the limits thus agreed upon until further change pursuant to the provisions of this subsection. If the parties have been unable to agree on the proper and reasonable limits for such insurance after thirty (30) days of good faith negotiations, then such limits shall be determined by submitting the dispute to arbitration through JAMS San Jose or San Francisco offices, and the arbitration shall be final and binding upon both parties. The costs and expenses of the prevailing party in connection with any such arbitration shall be paid by the other party within thirty (30) days after the decision in such arbitration proceeding.

(d) No approval by Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible, and Lessee assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers.

(e) Should Lessee fail to take out and keep in force each insurance policy required under this Article 20, or should such insurance not be reasonably approved by Lessor and should Lessee not rectify the situation within five (5) business days after written notice from Lessor to Lessee, Lessor shall have the right, without assuming any obligation in connection therewith, to purchase such insurance at the sole cost of Lessee, and all costs incurred by Lessor shall be payable to Lessor by Lessee within thirty (30) days after demand as Additional Rent and without prejudice to any other rights and remedies of Lessor under this Lease.

(f) Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance and to the extent of insurance proceeds received (or which would have been received had the party carried the insurance required by this Lease) with respect to the loss, Lessor and Lessee each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance with respect to the Premises or the Improvements or any portion thereof for any loss or damage sustained by such other party with respect to the Premises or the Improvements, or any portion thereof, or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. Either party shall notify the other party if the policy of insurance carried by it does not permit the foregoing waiver.

ARTICLE 21. INDEMNITY AND RELEASE

Section 21.1 Indemnity. Lessee shall indemnify, protect, defend and save and hold harmless the Lessor Released Parties from and against, and shall reimburse the Lessor Released Parties for, any and all claims, demands, losses, damages, costs, liabilities, causes of action and expenses, including, without limitation, reasonable attorneys' fees and expenses incurred in any way in connection with or arising from, in whole or in part, the following: (a) any default by Lessee in the observance or performance of any of the terms, covenants or conditions of this Lease on Lessee's part to be observed or performed; (b) the use, occupancy or manner of use or occupancy of the Premises by Lessee or any sublessee, licensee, or any other person or entity claiming by, through or under Lessee during the Term; (c) the conduct or management during the Term of any work or thing done in or on the Premises by Lessee or any sublessee, licensee or any other person or entity claiming by, through or under Lessee; (d) the design or construction of the Replacement Improvements, the MDA Improvements, or any Additional Improvements and Alterations constructed during the Term; (e) the condition of the Premises during the Term; (f) any actual or alleged acts, omissions, or negligence of Lessee or Lessee's Agents, subtenants or invitees, in, on or about the Premises or any other of Lessor's lands; and (g) any accident or other occurrence on the Premises from any cause whatsoever during the Entitlement Period or the Term. In case any claim, action or proceeding be brought, made or initiated against a Lessor Released Party relating to any of the above described events, acts, omissions, occurrences, or conditions, Lessee, upon notice from such Lessor Released Party, shall at its sole cost and

expense, resist or defend such claim, action or proceeding by attorneys reasonably approved by such Lessor Released Party. Notwithstanding the foregoing, Lessee's indemnity shall not apply to the extent of Lessor's breach of its obligations under this Lease, any negligence or willful misconduct of Lessor or Lessor's Agents, or as otherwise provided in Section 19.3, or to the extent that the act, omission, negligence or other event or circumstance giving rise to the Claim occurs after the expiration or termination of the Term; provided that Lessee's indemnity shall continue during any period after the expiration or termination of the Term during which Lessee remains in possession of the Premises, or during which Lessee is continuing to perform obligations under this Lease requiring Lessee's (or its Agents') presence on the Premises, or during which Lessee maintains equipment on the Premises (e.g. environmental monitoring or remediation equipment).

Section 21.2 Lessee's Assumption of Risk and Waiver. As a material part of the consideration to Lessor for entering into this Lease, Lessee agrees that no Lessor Indemnitee shall be liable to Lessee for, and Lessee expressly assumes the risk of and waives, releases and discharges all Lessor Released Parties from any and all claims, damages, liabilities, costs and expenses of any kind or nature relating in any manner, directly or indirectly, in whole or in part, to the Premises or this Lease, whether resulting from any act or omission of Lessor or from any other cause whatsoever, including without limitation: (a) the performance of any public or quasi public works on or near the Premises; (b) any loss or theft of, or damage to, any Improvements or personal property; and (c) any act or omission of any person accessing the Premises pursuant to an easement or right of entry reserved under this Lease or implied by Applicable Law; provided, however, that this assumption of risk and waiver and release shall not apply to the gross negligence, willful misconduct or failure by Lessor to comply with any of its express obligations under this Lease. Without limiting the generality of the foregoing provisions of this Section 21.2, and notwithstanding anything to the contrary elsewhere in this Lease, Lessor shall not under any circumstances whatsoever be liable to Lessee for: (i) consequential damages; or (ii) interference with light or other incorporeal hereditaments. The provisions of this Section 21.2 shall survive the expiration or earlier termination of this Lease.

Section 21.3 Limited Recourse.

(a) In no event shall Lessor's trustees, officers, directors or employees have any personal liability to Lessee under this Lease, and Lessor's liability under this Lease for all claims Lessee may have against Lessor shall not exceed an amount equal to the value of the Lessor's interest in the Premises. The parties agree that such value is based on the sum of the present value of (i) Lessor's reversionary fee interest in the Premises, and (ii) the rental income to be earned by Lessor during the remaining Term (measured at the time of any judgment).

(b) In no event shall any shareholder, investor, partner, employee, officer or director of Lessee have any personal liability under this Lease.

ARTICLE 22. APPROPRIATION, DAMAGE OR DESTRUCTION

Section 22.1 No Termination, No Effect on Rental Obligation. No Appropriation nor any loss or damage by any casualty resulting in either partial or total destruction of the Premises, the Improvements or any other property on the Premises shall, except as otherwise provided herein, operate to terminate this Lease. Except as expressly provided herein, no such Appropriation, loss or damage shall affect or relieve Lessee from Lessee's obligation to pay Rent, and in no event shall Lessee be entitled to any proration or refund of Rent paid hereunder. Unless this Lease is terminated pursuant to and in accordance with this Article 22, and except as expressly provided in Section 22.4 below with respect to reduction of Rent in the event of a partial Appropriation, no such Appropriation, loss or damage shall relieve or discharge Lessee from the payment of Rent, or from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Lessee to be performed and observed. Lessee hereby expressly waives the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, or any amendments thereto or any similar law, statute or ordinance now or hereafter in effect.

Section 22.2 Damage or Appropriation during the Entitlement Period. In the event the Premises or the Improvements are damaged or destroyed by any casualty during the Entitlement Period, all insurance proceeds payable for such damage shall be retained by Lessor and the obligations of Lessee and Lessor under this Lease shall continue in full force and effect, without Lessor repairing or being required to repair such damage; provided however, that Lessor shall make such emergency repairs as may be necessary to place the Premises in a safe condition and remove any debris, including without limitation, any Hazardous Substances resulting from such casualty. In the event of an Appropriation of the Premises or any portion thereof during the Entitlement Period, Lessor shall give prompt notice thereof to Lessee and Lessee shall have up to ten (10) business days to elect to either (a) terminate this Lease and receive a refund of the Deposit (as defined in the Agreement to Lease) and any interest accrued thereon, or (b) in the event of a partial Appropriation of the Premises, retain this Lease in full force and effect, in which event the Appropriation shall be handled in accordance with Section 22.4. In either event, any Award granted as a result of such Appropriation shall be retained by Lessor.

Section 22.3 Evaluation of Effect of Damage or Appropriation. Upon the occurrence of any event of damage or destruction to the Premises or the Improvements or any portion thereof during the Term, Lessee shall promptly undertake to determine the extent of the same and the estimated cost and time to repair and restore the Improvements in accordance with the provisions of this Lease. Lessee shall notify Lessor of its estimation of such cost and time not later than sixty (60) days after the occurrence of the damage or destruction. Upon any Appropriation of less than the entire Premises, Lessee shall promptly undertake to determine the effect of such Appropriation on the remaining portion of the Premises and the function of the Premises and, if this Lease is not terminated pursuant to and in accordance with this Article 22, the cost and time to make any repairs and Alterations to the remaining portion of the Premises necessary in order for the Premises to be restored to an economically viable whole capable of operation in accordance with this Lease. Lessee shall notify Lessor of its estimation of such cost and time not later than sixty (60) days after the occurrence of the Appropriation.

Section 22.4 Partial Appropriation; Amendment; Duty to Restore. If less than the entire Premises is subject to an Appropriation and this Lease is not terminated by either party pursuant to and in accordance with this Article 22, this Lease shall be deemed terminated as to the part so Appropriated as of the date of Appropriation and shall be deemed amended, effective as of the effective date of such Appropriation, such that the definition of the “Premises” shall include only that portion of the Premises that is not subject to such Appropriation. As of the effective date of such Appropriation, the Minimum Annual Rent shall be adjusted proportionately, based on the portion of the Premises that has been Appropriated and the value of such portion. Lessee, as promptly as practicable and with all due diligence, shall cause the repair or reconstruction of or the making of Alterations to the Improvements as necessary to restore the Improvements to an economically viable whole capable of operation in accordance with this Lease.

Section 22.5 Damage or Destruction; Duty to Restore. If the Premises or the Improvements, or any portion thereof, are damaged or destroyed at any time during the Term and this Lease is not terminated by either party pursuant to and in accordance with this Article 22, Lessee, as promptly as practicable and with all due diligence (given the time required to obtain insurance proceeds and to obtain construction permits), shall cause the repair, reconstruction and replacement of the Improvements as nearly as possible given the circumstances and then-Applicable Law to their condition immediately prior to such damage or destruction and, except as otherwise approved in writing by Lessor or precluded by then-Applicable Law, to their same general appearance. Notwithstanding the foregoing, Lessee shall have the right to elect not to restore any building that is damaged where the cost to repair and restore such building to substantially the same condition as existed immediately prior to such damage exceeds thirty-three percent (33%) of the Full Replacement Insurable Value of such building; provided, however, that Lessee shall be obligated to repair or restore the Premises such that at least seventy-five percent (75%) of the Entitled Square Footage in existence immediately prior to such damage is available for occupancy. If Lessee elects not to restore any such building(s) pursuant to the foregoing right, then the following shall apply: (a) Lessee shall cause such building(s) to be demolished and removed in accordance with Applicable Law, and shall clear, level and landscape the area of such building(s) in a manner comparable to the remainder of the Premises; and (b) the amount of Minimum Annual Rent shall not be changed or abated. In addition, if any damage or destruction occurs less than twenty (20) but more than five (5) years before the expiration of the Term, then

(i) Lessee shall be obligated to repair and restore the Premises pursuant to this Article 22 (such that at least seventy-five percent (75%) of the Entitled Square Footage in existence immediately prior to such damage is available for occupancy) only in the event Lessor agrees to extend the Term so that twenty (20) years remains of the Term as of the date such restoration of the Premises is completed; and

(ii) if Lessor elects not to so extend the Term, Lessee shall: (x) make such repairs as may be necessary to place the Premises in a safe condition by repairing any partially damaged buildings and demolishing any buildings that cannot be repaired, (y) clear, level and landscape the area of any demolished buildings, and (z) remove any debris (including without limitation, any Hazardous Substances resulting from the casualty); provided, however, that in the event Lessee does not restore the Improvements (such that at least seventy-five percent (75%) of the Entitled Square Footage in existence immediately prior to such damage is available for occupancy) within eighteen (18) months after the date of such damage (subject to extension for Force Majeure), Lessor may terminate this Lease upon ninety (90) days notice to Lessee; provided, further however, that if Lessor fails to exercise its right to terminate this Lease under the foregoing provisions of this clause (ii) on or before the date which is ninety (90) days after the earlier of (A) the date of the expiration of such eighteen (18) month period, as same may be extended for Force Majeure, or (B) the date of written notice from Lessee that Lessee does not intend to so restore the Premises, then Lessor shall be deemed to have waived its right to terminate this Lease pursuant to this clause (ii).

Section 22.6 Performance of Repairs and Restoration. All repairs and restoration shall be performed in accordance with the provisions of Article 12 of this Lease (as applicable). Except as otherwise provided herein, all insurance proceeds and all Awards received by or payable to any party with respect to any casualty or to the repairs needed to repair the Premises following a partial Appropriation (except proceeds of insurance carried by sublessees under Permitted Subleases covering loss or damage of their personal property), less actual costs and expenses incurred in connection with the collection thereof, shall be applied to the costs of repair and restoration (or demolition) of the Premises and the Improvements in accordance with the provisions of this Article 22 and in compliance with Article 12 (as applicable). All such insurance proceeds shall be held by Lessee (if and for so long as Lessee is 3401 Hillview LLC or an Affiliate thereof, and otherwise such proceeds shall be held by a trust company reasonably satisfactory to Lessor and Lessee), or at the request of the holder of any Leasehold Mortgage, by a trust company reasonably satisfactory to Lessor and such holder. Insurance proceeds shall be made available to Lessee in monthly draws during the repair of the Premises, which shall be available upon submission by Lessee of written request accompanied by reasonably detailed invoices and customary lien releases from Lessee's contractor. Lessee shall pay any amount by which the Award or insurance proceeds received by Lessee as a result of the applicable damage or Appropriation, less the costs and expenses incurred in connection with the collection thereof, are insufficient to pay the entire cost of such repair and restoration.

Section 22.7 Option to Terminate Upon Damage or Destruction. Notwithstanding any provision hereof to the contrary, in the event of (a) any damage to or destruction of the Premises or the Improvements or any portion thereof at any time during the Term and the cost to repair and restore the same to substantially the same condition as existed immediately prior to such occurrence is reasonably estimated to exceed thirty-three percent (33%) of full replacement cost of all Improvements on the Premises and is not covered by any insurance obtained or required to be obtained by Lessee pursuant to Article 20, (b) any damage to or destruction of the Premises or the

Improvements occurring during the last five (5) Lease Years, or (c) any damage to or destruction of the Premises or the Improvements costing more than thirty-three percent (33%) of the full replacement cost of the Improvements, which Lessee is unable to repair or restore within five (5) years after the date of the casualty (despite diligent efforts to do so) due to the physical condition of the Premises or governmental restrictions, then Lessee shall have the option to terminate this Lease, exercisable as provided below.

Section 22.8 Option to Terminate upon Appropriation. If during the Term the entire Premises or such portion thereof shall be Appropriated such that the Appropriation makes the continued operation of the remaining portion of the Premises not capable of being restored to an economically viable whole for the purposes permitted hereunder, then, in either such case, Lessee shall have the option to terminate this Lease.

Section 22.9 Termination; Lessee's Obligation to Restore. Lessee may exercise its option to terminate this Lease during the Term pursuant to this Article 22 by giving written notice to Lessor within ninety (90) days after the occurrence of the event of damage or destruction, any other date that triggers Lessee's termination right, or the Appropriation, as the case may be. If Lessee elects to terminate this Lease pursuant to this Article 22, Lessee shall surrender the Premises to Lessor in accordance with the provisions of Article 28, except to the extent the damage or destruction prevents Lessee from so doing, shall demolish any partially destroyed Improvements, and shall make such other repairs as may be necessary to place the Premises in a safe condition, remove any debris and clean and level the area of any demolished buildings (it being agreed, however, that Lessee shall not be required to landscape the area of any demolished buildings in the case of termination of this Lease). Lessee's obligations under this Article 22 shall survive the termination of this Lease. Except as provided in Section 22.2, all proceeds of insurance payable with respect to damage to, or destruction of the Improvements and other property located on the Premises, after payment of costs and expenses of collection thereof, shall first be applied to the costs of any demolition, removal, restoration, and remediation required under this Article 22, depending on the extent of the damage or destruction, with the balance, if any, of such insurance proceeds, to be distributed as provided in Section 22.11. Except as provided in Section 22.2, all Awards with respect to Lessee's interests with respect to such Appropriation shall be distributed as provided in Section 22.11. Notwithstanding any provision hereof to the contrary, if Lessee elects to not restore any portion of the Premises pursuant to its rights under this Article 22, or Lessee or Lessor elects to terminate this Lease pursuant to their respective rights under this Article 22, then all insurance proceeds with respect to the applicable fire or other casualty, less the amount, if any, required to cure any default on the part of Lessee with respect to its obligations under the foregoing provisions of this Article 22 in connection with the applicable fire or other casualty shall belong (and be paid) to Lessee.

Section 22.10 Determination of Award. Except as provided in Section 22.2, the amount of the Award due to Lessor and Lessee as a result of Appropriation shall be separately determined by the court having jurisdiction over such proceedings based on the following: Lessor shall be entitled to that portion of the Award attributable to the value of the fee interest in the Premises (or portion thereof subject to Appropriation, in

case of a partial Appropriation) subject to this Lease, and to the value of Lessor's reversionary interest in the Improvements (or portion thereof subject to Appropriation, in case of a partial Appropriation), as determined by the court; Lessee shall be entitled to that portion of the Award attributable to the value of Lessee's leasehold interest in the Premises (or portion thereof subject to Appropriation, in case of a partial Appropriation) and to the value of Lessee's interest in the Improvements (or portion thereof subject to Appropriation, in case of a partial Appropriation), as determined by the court.

Section 22.11 Excess Proceeds and Awards for Lessee's Interests. Except as provided in Section 22.2, if the total Award made in connection with any Appropriation for Lessee's interests, and for severance damages to both Lessee's and Lessor's interests, exceeds the amount necessary to repair, restore, reconstruct or demolish the Improvements to the extent required under this Article 22 in a case where this Lease is not terminated, or if there are proceeds of insurance in excess of that required to repair, restore, reconstruct or demolish the Premises and the Improvements to the extent required under this Article 22, upon receipt by Lessor of satisfactory evidence that the work of repair, restoration, reconstruction or demolition required under this Article 22 has been fully completed to the extent required under this Section 22 and paid for in accordance with the provisions of Article 12 and that the last day for filing any mechanic's or materialmen's liens has passed without the filing of any, or if filed, any such lien has been released, any remaining Award or proceeds of insurance shall be paid to Lessee and the holders of Leasehold Mortgages as their interests may appear. Except as provided in Section 22.2, in case of an Award with respect to Lessee's interests with respect to an Appropriation in a case where this Lease is terminated, any such Award shall be paid to Lessee and the holders of Leasehold Mortgages as their interests may appear.

Section 22.12 Right to Participate in Settlement. Except for any damage or Appropriation occurring during the Entitlement Period, Lessor and Lessee shall both have the right to participate in the settlement or compromise of any insurance proceeds and Awards. To the extent applicable, if in any Appropriation the court does not make the allocation of Awards referred to in Section 22.10, the parties shall endeavor to agree upon the proper and reasonable allocation of Awards. If the parties have been unable to agree on the proper and reasonable allocation of Awards after thirty (30) days of good faith negotiations, then such allocation shall be determined by submitting the dispute to arbitration through JAMS San Jose or San Francisco offices, and the arbitration shall be final and binding upon both parties. The costs and expenses of the prevailing party in connection with any such arbitration shall be paid by the other party within thirty (30) days after the decision in such arbitration proceeding.

Section 22.13 Emergency Repairs. If a casualty occurs there is a substantial possibility that immediate emergency repairs will be required to eliminate defective or dangerous conditions and to comply with Applicable Laws pending settlement of insurance claims and prior to procuring bids for performance of restoration work. Except as provided in Section 22.2, notwithstanding any other provision of this Article 22 to the contrary, Lessee shall promptly undertake such emergency repair work after a casualty as is necessary or appropriate under the circumstances to eliminate defective or dangerous conditions and to comply with Applicable Laws and any proceeds of insurance shall first be applied to reimburse Lessee for the cost of such emergency repair work.

ARTICLE 23. ASSIGNMENT

Section 23.1 Consent Required. Except as otherwise permitted in this Article 23 or in Articles 24 or 25, Lessee shall not directly or indirectly, in whole or in part, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer or hypothecate its interest in or rights with respect to the Premises or Lessee's leasehold estate therein or the Improvements (any of the foregoing being herein referred to as a "**Transfer**") without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Any sale or other transfer of voting stock, partnership interests or membership interests, or any consolidation or reorganization that results in a change in control of Lessee, shall be deemed a Transfer hereunder; provided, however, that the sale of voting stock of Lessee shall not be deemed a Transfer if Lessee is a publicly traded company, nor shall any assignment by Lessee to an Affiliate of Lessee or to a successor-in-interest to Lessee that acquires Lessee through a merger or sale of substantially all of the assets of Lessee be deemed a Transfer hereunder. For this purpose, "control" shall mean the sale or other transfer of more than fifty percent (50%) of the beneficial interest in Lessee, whether directly or by sales or transfers of underlying interests, and whether in a single transaction or a series of transactions. Lessor shall approve or disapprove any proposed Transfer within fifteen (15) business days after receipt of Lessee's written request for approval (except as otherwise provided in Section 23.5), which request shall be deemed complete and delivered only if it (a) identifies the proposed assignee, (b) includes a copy of the proposed assignment documentation, and (c) includes reasonably detailed information regarding the financial condition of the proposed assignee.

Section 23.2 Conditions to Approval. Without limiting any other reasonable basis for denial of consent to a Transfer, Lessee agrees that it shall be conclusively presumed to be reasonable for Lessor to consider the following requirements in determining whether or not to consent to a proposed Transfer:

- (a) No Event of Default shall have occurred and remain uncured under this Lease;
- (b) Lessee shall have complied with all provisions of this Article 23, including Section 23.5;
- (c) The use of the Premises by the transferee shall comply with the provisions of this Lease and shall not materially increase the risk of an Environmental Claim arising from any Lessee Environmental Activity to be conducted by the transferee at the Premises;
- (d) The proposed transferee shall be (or shall commit to hiring a manager or operator that is) experienced in the ownership, management and operation of First Class properties similar to the Premises,

(e) The proposed transferee shall not have filed a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of any government or any subdivision within five (5) years prior to the date of the proposed Transfer;

(f) The proposed transferee shall not (i) be under formal investigation by the Securities and Exchange Commission (the “**SEC**”) or subject to any SEC proceedings disclosed (or required to be disclosed) on the proposed transferee’s periodic filings with the SEC on the date of the proposed transfer or (ii) subject to a material enforcement action issued by the SEC against the proposed transferee within two (2) years prior to the date of the proposed Transfer;

(g) The proposed transferee shall not have been a party to litigation adverse to Lessor, or the subject of any default proceedings instituted by Lessor as landlord of property leased by the proposed transferee; and

(h) The proposed transferee shall be capable financially of performing Lessee’s obligations under this Lease and all other obligations relating to the Premises.

Section 23.3 Assumption in Writing. Upon any Transfer, Lessee shall deliver to Lessor a fully executed copy of the assignment instrument, pursuant to which the proposed transferee shall unconditionally assume and agree to perform and observe all covenants and conditions to be performed and observed by Lessee under this Lease. The consent by Lessor to any Transfer shall not relieve Lessee from the obligation to obtain Lessor’s express consent to any other Transfer requiring Lessor’s consent. Any Transfer or attempted Transfer that fails to comply with this Article 22 shall be void and, at the option of Lessor, shall constitute an Event of Default. No Transfer shall relieve Lessee from liability under this Lease; provided, however, that in the event an approved transferee has, together with its affiliates, either (i) not less than 500,000 square feet under its management or control at any given time, and has, together with its affiliates at least \$250 million in real estate assets (as increased or decreased during the Term by percentage changes in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics (San Francisco Bay Area, All Items (1982-84 = 100), or a successor or substitute index reasonably designated by Lessor); or (ii) Tangible Net Worth of at least \$500,000,000, then Lessor shall release Lessee from liability under this Lease one (1) year after the date of such Transfer, so long as no Event of Default has occurred under the Lease between the date of the Transfer and the date which is one (1) year after the date of such Transfer. The foregoing release from liability shall be automatic and shall not require any further action, or the execution of any document, instrument or agreement, by Lessor or Lessee to be binding and effective. Notwithstanding the foregoing, Lessor hereby agrees to execute a release in form and substance reasonably satisfactory to Lessor and Lessee confirming such release from liability within ten (10) days after written request by Lessee. For purposes of this Lease, “**Tangible Net Worth**” means the excess of total assets over total liabilities, in each case as determined in accordance with generally accepted account principles consistently applied. Lessor hereby acknowledges and agrees that the “Tangible Net Worth” of Lessee hereinabove described shall not have any application or effect with respect to any

provision of this Lease or any of Lessee's rights or obligations hereunder except as expressly set forth in this Section 23 in connection with Lessor's review of certain Transfers.

Section 23.4 Entire Interest. Lessee shall not be entitled to Transfer less than all of its interest under this Lease or to Transfer its title to the Improvements separately from its interest under this Lease.

Section 23.5 Lessor's Rights of First Offer and Re-Offer.

(a) **Right of First Offer.** If Lessee desires to enter into a Transfer, it shall first, before commencing any marketing activity in anticipation of a Transfer, deliver to Lessor a written offer (the "**Offer**") setting forth all the material terms and conditions upon which Lessee proposes to Transfer its interest and offering to enter into a Transfer with Lessor on the same terms and conditions (except that if the terms and conditions include financing, Lessor shall have the option to acquire Lessor's interest for all cash). Lessor shall have fifteen (15) business days after receipt in which to accept the Offer by written notice to Lessee. If Lessor does not give Lessee written notice accepting the Offer within the 15 business-day period, Lessee may at any time within the 9-month period after the expiration of the 15 business-day period, subject to all of the applicable terms and conditions of this Article 23, enter into a letter of intent or lease assignment for the Transfer of its interest to a third party without reoffering the interest to Lessor, provided that the terms and conditions of such Transfer shall not be "materially more favorable" to the Transferee (as defined in Section 23.5(b)) than those set forth in the Offer, and, if Lessee shall have entered into a letter of intent but not a lease assignment within such nine (9) month period, Lessee shall proceed diligently to the execution of assignment documents as soon as reasonably possible after the expiration of such 9-month period. If Lessee does not enter into a letter of intent or lease assignment for a Transfer before the expiration of the aforesaid 9-month period, but Lessee still desires to enter into a Transfer, Lessee shall again deliver to Lessor an Offer in accordance with this Section 23.5(a) (but offering the interest to Lessor on the same terms as were being offered to a third party), and Lessor shall have the right of first offer for another period of fifteen (15) business days after receipt of such Offer. This right of first offer shall be ongoing, and shall apply to all Transfers proposed at any time during the Term.

(b) **Right of Re-Offer.** If Lessee proposes to enter into a Transfer at any time within the 9-month period after delivery of the Offer on terms and conditions materially more favorable to the proposed Transferee than those contained in the Offer, Lessee shall again deliver to Lessor an Offer in accordance with Section 23.5(a), offering the interest to Lessor on the more favorable terms, and Lessor shall have fifteen (15) business days after receipt of the better Offer to accept such Offer by written notice to Lessee. For purposes of this Lease, the terms and conditions shall be "materially more favorable" if, taking into account all terms and conditions which would affect the economics of the proposed Transfer, they would have an aggregate economic value to Lessee that is equal to or lower than 95% of the economic value of the original Offer made by Lessee to Lessor. This right of re-offer shall be ongoing, and shall apply to all Transfers proposed at any time during the Term.

(c) **Documentation and Closing of Transfer.** If Lessor accepts an Offer, Lessor and Lessee shall work in good faith to complete a purchase and sale contract, together with such other appropriate documentation as may be necessary to effect the Transfer to Lessor, within forty-five (45) days after Lessor's written notice of acceptance of the Offer, and to close such Transfer within ninety (90) days after Lessor's written notice of acceptance of the Offer; provided, however, that the closing date may be extended for an additional thirty (30) days by Lessor in the event Lessor identifies a commercially reasonable due diligence item that requires more time to resolve. If Lessor accepts such Offer, Lessor shall promptly commence and diligently pursue its due diligence investigations. The Transfer shall be consummated by Lessor's payment of the required consideration and Lessee's delivery to Lessor of such documentation as Lessor may elect consistent with the Offer, which may consist, at Lessor's election, of: (i) the documentation provided for in Section 28.2 in the case of a termination of this Lease; or (ii) (A) an assignment of lease, in recordable form, assigning to Lessor or its nominee all of Lessee's right, title and interest in, to and under the Lease, free and clear of any and all Liens except for title exceptions existing as of the Commencement Date or as otherwise permitted hereunder, (B) a good and sufficient assignment of all of Lessee's rights as landlord under any Permitted Subleases and such other agreements as Lessor may elect, and (C) a quitclaim deed to the Improvements. Lessor may elect, in its sole discretion, to assign its rights hereunder to an affiliate or nominee.

(d) **Transfer to an Affiliate.** Notwithstanding anything to the contrary contained herein, the provisions of this Section 23.5 shall not apply to any transaction that is permitted under Section 23.1 without Lessor's consent.

ARTICLE 24. SUBLETTING

Section 24.1 Conditions to Subletting. Notwithstanding the provisions of Article 23 regarding Transfers, Lessee may enter into subleases for portions of the Premises subject to the following conditions:

(a) Lessee shall obtain the prior written consent of Lessor, which consent shall not be unreasonably withheld, provided that if all other conditions of this Article 24 are satisfied, it shall be presumed unreasonable to withhold such consent (absent extraordinary circumstances justifying denial of such consent);

(b) no rent paid to Lessee under any sublease shall be based in whole or in part on the sublessee's net income or profits;

(c) no sublease shall relieve Lessee from the performance of any of its obligations under this Lease;

(d) no sublease shall extend beyond the expiration date of the Term of this Lease;

(e) each sublease shall be subject to and subordinate to the terms, covenants and conditions of this Lease and the rights of Lessor hereunder, including the use restrictions contained in Article 10 hereof;

(f) each sublease shall contain a provision that upon any termination or surrender of this Lease, either such sublease shall terminate, or, at Lessor's sole option, such sublease shall continue in full force and effect and the sublessee shall attorn to, or, at Lessor's option, enter into a direct lease on identical terms with, Lessor;

(g) the sublessee's proposed use of its space shall be permitted under this Lease and shall not materially increase the risk of an Environmental Claim arising from any Lessee Environmental Activity to be conducted by such sublessee at the Premises (it being the understanding of the parties that if Lessor approves a sublease to a research and development user, it shall be reasonable for Lessor to condition such consent on the sublessee agreeing to additional environmental requirements normally contained in Lessor's leases of research and development space (i.e. specific approval of any Hazardous Substances to be used in the Premises, the requirement of an annual inventory of Hazardous Substances, and requirements for permitting and closure);

(h) Lessor may reasonably consider the requirements set forth in Section 23.2(f) and (g); and

(i) for any sublease of over 100,000 rentable square feet, the sublessee shall demonstrate financial responsibility and resources reasonably satisfactory to Lessor (taking into consideration Lessor's continuing primary liability under this Lease, the term of the sublease and the amount of space being subleased); provided that Lessor shall have no right to base its decision on the rent to be charged to the sublessee and Lessee may redact the rent information from any documents submitted to Lessor.

Section 24.2 Required Information; Lessor's Response. Lessor agrees to approve or disapprove any proposed sublease within ten (10) business days after Lessee's written request for approval, which request shall (a) identify the proposed sublessee and sublessee's proposed use of its space, (b) state that the proposed sublease meets the conditions set forth in Section 24.1 above, (c) include the proposed form of sublease, (d) include information regarding the financial condition of the proposed sublessee, and (e) include such other information as is reasonably necessary to respond to the requirements of Section 24.1, or otherwise to allow Lessor to reasonably evaluate the proposed sublessee.

Section 24.3 Permitted Sublease. Any sublease entered into by Lessee in accordance with the provisions of this Article 24 is herein referred to as a "Permitted Sublease". Lessee shall provide Lessor with a fully executed copy of each Permitted Sublease promptly upon execution, without redaction of rent information. Within thirty (30) days after written demand by Lessor, Lessee shall furnish Lessor a schedule, certified by Lessee as true and correct, setting forth all Permitted Subleases then in effect, including in each case the name of the sublessee, a description of the space subleased, the annual rental payable by such sublessee, a list of the Permitted Subleases, if any, that have been assigned to any Leasehold Mortgagee as additional security, and any other information reasonably requested by Lessor with respect to the Permitted Subleases.

Section 24.4 3421 Hillview Premises. Upon the inclusion of the 3421 Hillview Premises into this Lease, if Lessee elects to enter into a sublease of the 3421 Hillview Premises rather than occupy the 3421 Hillview Premises for Lessee's own use or substantially demolish the improvements located on the 3421 Hillview Premises and redevelop that area of the Premises, fifty percent (50%) of the Excess Rent received by Lessee shall be paid to Lessor as and when received by Lessee. "Excess Rent" means the gross revenue received from the sublessee during the sublease term, less (a) that portion of the Minimum Annual Rent paid to Lessor by Lessee with respect to the building during the period of the sublease term; (b) any reasonably documented tenant improvement allowance or other economic concession (planning allowance, moving expenses, etc.), paid by Lessee to the sublessee; (c) any costs incurred by Lessee in making improvements to the base building; (d) customary and reasonable external brokers' commissions to the extent paid and documented; (e) reasonable attorneys' fees; and (f) reasonable costs of advertising the space for sublease (collectively, "**Transfer Costs**"). Lessee shall not have to pay any Excess Rent to Lessor until Lessee has recovered its Transfer Costs.

ARTICLE 25. LEASEHOLD MORTGAGES

Section 25.1 Leasehold Mortgage.

(a) Notwithstanding the provisions of Article 23 regarding Transfer of this Lease, but subject to the provisions of this Article 25, Lessee shall have the right at any time and from time to time to encumber the entire (but not less than the entire) leasehold estate created by this Lease and Lessee's interest in the Improvements by a mortgage, deed of trust or other security instrument (any such mortgage, deed of trust, or other security instrument that satisfies the requirements of this Article 25 being herein referred to as a "**Leasehold Mortgage**") to secure repayment of a loan (and associated obligations) made to Lessee by an Institutional Lender for the purpose of financing the construction of any Improvements made pursuant to the terms of this Lease or for the long-term financing of any such Improvements, provided that the loan secured by a Leasehold Mortgage shall be payable over not more than the remaining portion of the Term, and shall be in an amount that, when aggregated with the outstanding amount of all other Leasehold Mortgages, does not exceed seventy percent (70%) of the then fair market value of Lessee's leasehold interest in the Improvements.

(b) In no event shall any interest of Lessor in the Premises, including without limitation, Lessor's fee interest in the Premises or reversionary interest in the Improvements or interest under this Lease, be subject or subordinate to any lien or encumbrance of any mortgage, deed of trust or other security instrument.

(c) For purposes of this Article 25, "**Institutional Lender**" shall mean a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company or a foreign banking institution (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an insurance company organized and existing under the laws of the United States or any state thereof or a foreign insurance company (in each case whether acting

individually or in a fiduciary or representative (such as an agency) capacity); an institutional investor such as a publicly held real estate investment trust, an entity that qualifies as a "REMIC" under the Internal Revenue Code or other public or private investment entity (in each case whether acting as principal or agent) which at the date hereof or in the future is involved in the business of investing in real estate assets; a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an employees' welfare, benefit, pension or retirement fund; an institutional leasing company; any governmental agency or entity insured by a governmental agency, or any combination of Institutional Lenders; provided that each of the entities shall qualify as an Institutional Lender only if (at the time it becomes an Institutional Lender) it shall not be an Affiliate of Lessee.

Section 25.2 Agreement With Institutional Lender. Upon request by Lessee, Lessor agrees to enter into a tri-party agreement in the form attached hereto as **Exhibit F** with Lessee and any Institutional Lender holding a first priority Leasehold Mortgage.

ARTICLE 26. EVENTS OF DEFAULT AND REMEDIES

Section 26.1 Events of Default. The occurrence of any of the following shall be an "**Event of Default**" on the part of Lessee hereunder:

(a) Failure to pay Rent or any other sums of money that Lessee is required to pay hereunder at the times or in the manner herein provided, when such failure shall continue for a period of ten (10) days after written notice thereof from Lessor to Lessee; any such notice shall be deemed to be the notice required under California Code of Civil Procedure Section 1161. No such notice shall be deemed a forfeiture or a termination of this Lease unless Lessor expressly so elects in such notice.

(b) Failure to perform any nonmonetary provision of this Lease when, except in the case of any provision which by its terms provides for no grace period, such failure shall continue for a period of thirty (30) days, or such other period as is expressly set forth herein, after written notice thereof from Lessor to Lessee; any such notice shall be deemed to be the notice required under California Code of Civil Procedure Section 1161; provided that if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then an Event of Default shall not be deemed to have occurred if Lessee shall commence such cure within said 30-day period and thereafter diligently and continuously prosecute such cure to completion. No such notice shall be deemed a forfeiture or a termination of this Lease unless Lessor expressly so elects in such notice.

(c) The abandonment of the Premises by reason of a course of conduct by Lessee that reasonably evidences an interest permanently to relinquish its rights under this Lease and which continues for the applicable period time identified in Section 1951.3 of the California Civil Code after delivery to Lessee of a Notice of Belief of Abandonment pursuant to Section 1951.3.

(d) Lessee shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of any government or any subdivision thereof either now or hereafter in effect, make an assignment for the benefit of its creditors, consent to or acquiesce in the appointment of a receiver of itself or of the whole or any substantial part of the Premises.

(e) A court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver of Lessee or of the whole or any substantial part of the Premises and such order, judgment or decree shall not be vacated, set aside or stayed within sixty (60) days after the date of entry of such order, judgment, or decree, or a stay thereof shall be thereafter set aside.

(f) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Lessee under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute of the Federal government or any state government or any subdivision of either now or hereafter in effect, and such order, judgment or decree shall not be vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay thereof shall be thereafter set aside.

Section 26.2 Lessor's Remedies. Upon the occurrence of an Event of Default, Lessor shall have the following rights and remedies:

(a) The right to terminate this Lease, in which event Lessee shall immediately surrender possession of the Premises in accordance with Article 28, and pay to Lessor all Rent and other charges and amounts due from Lessee hereunder to the date of termination.

(b) The rights and remedies described in California Civil Code Section 1951.2, including without limitation, the right to recover from Lessee: (i) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus (ii) the worth at the time of award of the amount by which (A) the unpaid Rent which would have been earned after termination until the time of award exceeds (B) the amount of such rental loss Lessee proves could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which (X) the unpaid Rent for the balance of the Term after the time of award, exceeds (Y) the amount of such rental loss that Tenant proves could be reasonably avoided; plus (iv) any other amount reasonably necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom, which, without limiting the generality of the foregoing, includes unpaid taxes and assessments, any costs or expenses incurred by Lessor in recovering possession of the Premises, maintaining or preserving the Premises after such default, preparing the Premises for marketing to a new lessee, leasing commissions, repairs and any other costs necessary or appropriate to relet the Premises, and such amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law. As used in clauses (i) and (ii), above, the "worth at

the time of award” shall be computed by allowing interest at the Interest Rate. As used in clause (iii) above, the “worth at the time of award” shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(c) The rights and remedies described in California Civil Code Section 1951.4 that allow Lessor to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as Lessor does not terminate Lessee’s right to possession. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon Lessor’s initiative to protect its interest under this Lease shall not constitute a termination of Lessee’s right to possession. Lessee acknowledges that in the exercise of its rights under this subsection, Lessor has no duty to mitigate its damages.

(d) The right and power, as attorney-in-fact for Lessee, to enter and to sublet the Premises upon any vacancy while an Event of Default is outstanding, to collect rents from all subtenants and to provide or arrange for the provision of all services and fulfill all obligations of Lessee under the Permitted Subleases, and Lessor is hereby authorized on behalf of Lessee, but shall have absolutely no obligation, to provide such services and fulfill such obligations and to incur all such expenses and costs as Lessor deems necessary in connection therewith. Lessee shall be liable immediately to Lessor for all costs and expenses Lessor incurs in collecting such rents and arranging for or providing such services or fulfilling such obligations. Lessor is hereby authorized, but not obligated, to relet the Premises or any part thereof on behalf of Lessee, to incur such expenses as may be necessary to effect a relet and make said relet for such term or terms, upon such conditions and at such rental as Lessor in its sole discretion may deem proper. Lessee shall be liable immediately to Lessor for all reasonable costs Lessor incurs in reletting the Premises including, without limitation, brokers’ commissions, expenses of remodeling the Premises required by the reletting, and other costs. If Lessor relets the Premises or any portion thereof, such reletting shall not relieve Lessee of any obligation hereunder, except that Lessor shall apply the rent or other proceeds actually collected by it as a result of such reletting against any amounts due from Lessee hereunder to the extent that such rent or other proceeds compensate Lessor for the nonperformance of any obligation of Lessee hereunder. Such payments by Lessee shall be due at such times as are provided elsewhere in this Lease, and Lessor need not wait until the termination of this Lease, by expiration of the Term hereof or otherwise, to recover them by legal action or in any other manner. Lessor may execute any lease made pursuant hereto in its own name, and the lessee thereunder shall be under no obligation to see to the application by Lessor of any rent or other proceeds, nor shall Lessee have any right to collect any such rent or other proceeds. Lessor shall not by any reentry or other act be deemed to have accepted any surrender by Lessee of the Premises or Lessee’s interest therein, or be deemed to have otherwise terminated this Lease, or to have relieved Lessee of any obligation hereunder, unless Lessor shall have given Lessee express written notice of Lessor’s election to do so as set forth herein.

(e) The right to have a receiver appointed upon application by Lessor to take possession of the Premises and to collect the rents or profits therefrom and to exercise all other rights and remedies pursuant to Section 26.2(d).

(f) The right to enjoin, and any other remedy or right now or hereafter available to a lessor against a defaulting lessee under the laws of the State of California or the equitable powers of its courts, and not otherwise specifically reserved herein.

(g) Whether or not this Lease is terminated, the right to recover actual damages incurred by Lessor arising out of the Event of Default, or due to Lessee's failure to indemnify Lessor pursuant to Section 21.1.

Section 26.3 Waiver of Notice and Redemption. Except as otherwise expressly provided in this Article 26, Lessee hereby expressly waives, so far as permitted by law, the service of any notice of intention to enter or re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Lessee, for and on behalf of itself and all persons claiming through or under Lessee, also waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 or 1179, or under any other present or future law, if Lessee is evicted or Lessor takes possession of the Premises by reason of any default by Lessee hereunder.

Section 26.4 Rights Cumulative. The various rights and remedies reserved to Lessor herein, including those not specifically described herein, shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity and the exercise of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity shall not preclude the simultaneous or later exercise by Lessor of any or all other rights and remedies.

Section 26.5 Lessor's Default. Lessor shall be in default under this Lease if Lessor fails to cure any breach of its obligations under this Lease within thirty (30) days after receipt of written notice from Lessee specifying in reasonable detail the nature of Lessor's breach; provided, however, that if the nature of Lessor's breach is such that more than thirty (30) days are required for performance, then Lessor shall not be in default if Lessor commences the cure of such breach within such thirty (30) day period and thereafter diligently prosecutes the same to completion. Lessee shall be entitled to actual (but not consequential) damages in the event of an uncured default by Landlord, but shall not have any right to terminate this Lease as a result of any Landlord default.

ARTICLE 27. LESSOR'S RIGHT TO CURE DEFAULTS

If Lessee shall fail or neglect to do or perform any act or thing herein provided by it to be done or performed and such failure shall not be cured within any applicable grace period provided in Article 26, then Lessor shall have the right, but shall have no obligation, to pay any amounts payable by Lessee to third parties hereunder, discharge any lien, take out, pay for and maintain any insurance required under Article 20, or do or perform or cause to be done or performed any such other act or thing (entering upon the Premises for such purposes, if Lessor shall so elect), and Lessor shall not be or be held

liable or in any way responsible for any loss, disturbance, inconvenience, annoyance or damage resulting to Lessee on account thereof (except to the extent of Lessor's gross negligence or willful misconduct), and Lessee shall repay to Lessor upon demand the entire cost and expense thereof, including, without limitation, compensation to the agents, consultants and contractors of Lessor and attorneys' fees and expenses. Lessor may act upon shorter notice or no notice at all if necessary in Lessor's judgment to meet an emergency situation or governmental or municipal time limitation. Lessor shall not be required to inquire into the correctness of the amount or validity of any payable or lien that may be paid by Lessor, and Lessor shall be duly protected in paying the amount of any such payable or lien claimed, and, in such event, Lessor shall also have the full authority, in Lessor's sole judgment and discretion and without prior notice to or approval by Lessee, to settle or compromise any such lien or payable. Any act or thing done by Lessor pursuant to the provisions of this Article 27 shall not be or be construed as a waiver of any default by Lessee, or as a waiver of any term, covenant, agreement or condition herein contained or of the performance thereof.

ARTICLE 28. SURRENDER OF THE PREMISES

Section 28.1 Surrender. In the event this Lease is terminated during the Entitlement Period by Lessee in accordance with Section 5.3, Lessee shall surrender the Premises to Lessor in the same condition it was as of the Effective Date, reasonable wear and tear excepted. Upon the termination of this Lease after the Commencement Date, whether at the expiration of the Term or prior thereto, Lessee shall surrender the Premises to Lessor in good order and repair, and in keeping with the then-current standards of the Stanford Research Park (but subject to the age of the Improvements), reasonable wear and tear excepted, free and clear of all letting and occupancies other than any Permitted Subleases that, pursuant to the provisions of this Lease, Lessor has elected to recognize after such termination, and free and clear of all Liens or any other encumbrances and any other encumbrances.

Section 28.2 Ownership of Improvements; Contracts. Upon any termination of this Lease, all Improvements shall automatically and without further act by Lessor or Lessee, become the property of Lessor, free and clear of any claim or interest therein on the part of Lessee or anyone claiming under Lessee, and without payment therefor by Lessor. Upon or at any time after the Termination Date, if requested by Lessor, Lessee shall, without charge to Lessor, promptly execute, acknowledge and deliver to Lessor a good and sufficient quitclaim deed of all of Lessee's right, title, and interest in and to the Premises and the Improvements and a good and sufficient assignment to Lessor of Lessee's interest in any Permitted Subleases which Lessor has elected to recognize after the Termination Date, and in any contracts, as designated by Lessor, relating to the operation, management, maintenance or leasing of the Premises or any part thereof, and shall deliver to Lessor all such other instruments, records and documents relating to the operation, management, maintenance or leasing of the Premises or any part thereof, including but not limited to all leases, lease files, plans and specifications, records, registers, permits, and all other papers and documents which may be necessary or appropriate for the proper operation and management of the Premises. Lessee hereby irrevocably appoints Lessor as its lawful attorney-in-fact to execute and deliver for, on

behalf of and in the name of Lessee, any such deed, assignment or other instrument referred to in this Article 28 or otherwise, required to document the transfer or reversion to Lessor of such interests of Lessee, and Lessee and Lessor agree that such power of attorney shall be a power coupled with an interest. Lessee agrees to indemnify, protect, defend, and hold harmless Lessor from and against any and all losses, costs, damages, claims, liabilities and expenses arising directly or indirectly, in whole or in part, out of any obligations or liabilities incurred by Lessee prior to the Termination Date with respect to any such items so assigned to Lessor. Any contracts, agreements or other obligations of Lessee relating to the Premises not designated by Lessor and assigned by Lessee to Lessor pursuant to this Article 28 shall immediately terminate and be of no further force or effect as of the Termination Date.

Section 28.3 Personal Property. Any personal property of Lessee that remains on the Premises after the Termination Date may, at the option of Lessor, be deemed to have been abandoned by Lessee and may either be retained by Lessor as its property or disposed of, without accountability, at Lessee's expense in such manner as Lessor may determine in its sole discretion.

Section 28.4 Holding Over. If Lessee remains in possession of all or any part of the Premises after the Termination Date with Lessor's prior written consent: (a) Lessee's occupancy of the Premises shall be deemed a month-to-month tenancy (not a renewal or extension of the Term), terminable by either party upon thirty (30) days' written notice to the other; (b) the Minimum Annual Rent during the holdover period shall be one hundred fifty percent (150%) of the respective Minimum Annual Rent in effect during the last month of the Term (and Lessor's acceptance of Rent without all or any part of the 50% increase shall not be deemed or constructed as a waiver by Lessor of its right to collect the entire 50% increase in Rent); and (c) Lessee's occupancy of the Premises otherwise shall be subject to all applicable terms and conditions of the Lease as if the Term had not expired or the Lease had not been terminated, as the case may be. Nothing in this Section 28.4 shall be deemed or construed as a consent by Lessor to any holding over by Lessee. If Lessee remains in possession of all or any part of the Premises after the Termination Date without Lessor's written consent: (i) Lessee's occupancy of the Premises shall be solely as a tenant at sufferance and no notice of termination shall be necessary in order to recover possession; (ii) Lessee's occupancy of the Premises otherwise shall be subject to all applicable terms and conditions of this Lease; and (iii) in addition to such other remedies as may be available to Lessor at law or in equity, Lessee shall indemnify, defend and hold Lessor harmless from and against any and all claims, damages, liabilities and costs arising from or related to Lessee's continued possession, including without limitation claims, damages or losses incurred in connection with prospective or actual successor tenants, lost rents, lost development opportunities and reasonable attorneys', brokers' and consultants' fees, costs and expenses.

ARTICLE 29. USE OF NAME

Lessee acknowledges and agrees that the names "The Leland Stanford Junior University," "Stanford" and "Stanford University," and all variations thereof, are proprietary to Lessor. Lessee shall not use any such name or any variation thereof or

identify Lessor in any promotional advertising or other promotional materials to be disseminated to the public or any portion thereof or use any trademark, service mark, trade name or symbol of Lessor or that is associated with it, without Lessor's prior written consent, which may be given or withheld in Lessor's sole discretion.

ARTICLE 30. SIGNS

Lessee shall have the right to install any signs on the Premises that are permitted under Applicable Laws.

ARTICLE 31. REPRESENTATIONS AND WARRANTIES

Section 31.1 Lessee's Representations and Warranties. Lessee hereby represents and warrants to Lessor as follows:

(a) Lessee is a corporation duly formed and validly existing under the laws of the state identified in the Basic Lease Information and is qualified to do business under the laws of the State of California. Lessee has full corporate power and authority to enter into and perform its obligations under this Lease and to develop, construct and operate the Premises as contemplated by this Lease.

(b) Lessee has taken all necessary action to authorize the execution, delivery and performance of this Lease and this Lease constitutes the legal, valid, and binding obligation of Lessee.

(c) Lessee has the right, power, legal capacity and authority to enter into and perform its obligations under this Lease and no approvals or consents of any person are required in connection with the execution and performance of this Lease. The execution and performance of this Lease will not result in or constitute any default or event that with notice or the lapse of time or both, would be a default, breach or violation of the organizational instruments governing Lessee or any agreement or any order or decree of any court or other governmental authority to which Lessee is a party or to which it is subject.

Section 31.2 Lessor's Representations and Warranties. Lessor hereby represents and warrants to Lessee as follows:

(a) Lessor is a body having corporate powers under the laws of the State of California.

(b) Lessor has taken all necessary action to authorize the execution, delivery and performance of this Lease and this Lease constitutes the legal, valid, and binding obligation of Lessor.

(c) Lessor has the right, power, legal capacity and authority to enter into and perform its obligations under this Lease and no approvals or consents of any person are required in connection with the execution and performance of this Lease. The execution and performance of this Lease will not result in or constitute any default or

event that with notice or the lapse of time or both, would be a default, breach or violation of the organizational instruments governing Lessor or any agreement or any order or decree of any court or other governmental authority to which Lessor is a party or to which it is subject.

ARTICLE 32. NO WAIVER BY LESSOR

No failure by Lessor to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease or to exercise any right or remedy upon a breach thereof, and no acceptance by Lessor of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such term, covenant, agreement, provision, condition or limitation. No term, covenant, agreement, provision, condition or limitation of this Lease and no breach thereof may be waived, altered or modified except by a written instrument executed by Lessor. No waiver of any breach shall affect or alter this Lease but each and every term, covenant, agreement, provision, condition and limitation of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

ARTICLE 33. NO PARTNERSHIP

It is expressly understood that neither Lessee nor Lessor is or becomes, in any way or for any purpose, a partner of the other in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with the other, or agent of the other by reason of this Lease or otherwise. Lessee is and shall be an independent contractor with respect to the Lease and Premises.

ARTICLE 34. NO DEDICATION

This Lease shall not be, nor be deemed or construed to be, a dedication to the public of the Premises, the areas in which the Premises are located or the Improvements, or any portion thereof.

ARTICLE 35. NO THIRD PARTY BENEFICIARIES

This Lease shall not confer nor be deemed nor construed to confer upon any person or entity, other than the parties hereto, any right or interest, including, without limiting the generality of the foregoing, any third party beneficiary status or any right to enforce any provision of this Lease.

ARTICLE 36. NOTICES

Any notice, consent or other communication required or permitted under this Lease shall be in writing and shall be delivered by hand, sent by air courier, sent by prepaid registered or certified mail with return receipt requested, or sent by facsimile, and shall be deemed to have been given on the earliest of (a) receipt or refusal of receipt; (b) one business day after delivery to an air courier for overnight expedited delivery service; (c) five (5) business days after the date deposited in the United States mail, registered or certified, with postage prepaid and return receipt requested (provided that such return

receipt must indicate receipt at the address specified); or (d) on the day of its transmission by facsimile if transmitted during the business hours of the place of receipt, otherwise on the next business day, provided that a copy of such notice, consent or other communication is also delivered pursuant to clause (b) or (c) above. All notices shall be addressed as appropriate to the addresses given in the Basic Lease Information (or to such other or further addresses as the parties may designate by notice given in accordance with this section).

ARTICLE 37. INTENTIONALLY OMITTED

ARTICLE 38. INTENTIONALLY OMITTED

ARTICLE 39. MEMORANDUM OF LEASE

This Lease shall not be recorded. However, at the request of either party, the parties hereto shall execute and acknowledge a memorandum hereof in recordable form that Lessor shall file for recording in the Official Records of Santa Clara County.

ARTICLE 40. GENERAL PROVISIONS

Section 40.1 Broker's Commissions. Lessee's broker in this transaction is CRESA Partners, and Lessor shall be responsible for any commission due to its broker in connection with this Lease. Each party represents to the other party that the representing party has incurred no liability for any brokerage commission or finder's fee arising from or relating to the negotiation or execution of this Lease, other than as set forth in this Section 40.1. Each party hereby indemnifies and agrees to protect, defend and hold harmless the other party from and against all liability, cost, damage or expense (including, without limitation, attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which the indemnifying party has agreed to pay or which is claimed to be due as a result of the actions of the indemnifying party. This Section 40.1 is intended to be solely for the benefit of the parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a party to this Lease.

Section 40.2 Severability. In case any one or more of the provisions of this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, and this Lease shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

Section 40.3 Time of the Essence. Time is hereby expressly declared to be of the essence of this Lease and of each and every term, covenant, agreement, condition and provision hereof.

Section 40.4 Headings. Article, Section and subsection headings in this Lease are for convenience only and are not to be construed as a part of this Lease or in any way limiting or amplifying the provisions hereof.

Section 40.5 Lease Construed as a Whole. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Lessor or Lessee. The parties acknowledge that each party and its counsel have reviewed this Lease and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed nor applied in the interpretation of this Lease.

Section 40.6 Meaning of Terms. Whenever the context so requires, the neuter gender shall include the masculine and the feminine, and the singular shall include the plural, and vice versa.

Section 40.7 Attorneys' Fees. In the event of any action or proceeding at law or in equity between Lessor and Lessee to enforce or interpret any provision of this Lease or to protect or establish any right or remedy of either party hereunder, the party not prevailing in such action or proceeding shall pay to the prevailing party all costs and expenses, including without limitation, reasonable attorneys' fees and expenses (including attorneys' fees and expenses of in-house attorneys), incurred therein by such prevailing party and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included in and as a part of such judgment.

Section 40.8 California Law; Forum. The laws of the State of California, other than those laws denominated choice of law rules which would require the application of the laws of another forum, shall govern the validity, construction and effect of this Lease. This Lease is made and all obligations hereunder arise and are to be performed in the County of Santa Clara, State of California. Any action which in any way involves the rights, duties and obligations of the parties hereto may (and if against Lessor, shall) be brought in the courts of the State of California located in Santa Clara County or in the United States District Court for the Northern District of California, and the parties hereto hereby submit to the personal jurisdiction of said courts.

Section 40.9 Binding Agreement. Subject to the provisions of Articles 22, 23 and 24 of this Lease, the terms, covenants and agreements contained in this Lease shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 40.10 Entire Agreement. This instrument, together with the exhibits hereto, all of which are incorporated herein by reference, constitutes the entire agreement between Lessor and Lessee with respect to the subject matter hereof and supersedes all prior offers, negotiations, oral and written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Lessor and Lessee.

Section 40.11 Quiet Enjoyment. Lessor agrees that Lessee, upon paying the Rent and all other sums due hereunder and upon keeping and observing all of the covenants, agreement and provisions of this Lease on its part to be observed and kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term without hindrance or molestation by anyone claiming by, through, or under Lessor.

Section 40.12 Termination Not Merger. The voluntary sale or other surrender of this Lease by Lessee to Lessor, or a mutual cancellation thereof, or the termination thereof by Lessor pursuant to any provision contained herein, shall not work a merger, but at the option of Lessor shall either terminate any or all existing subleases or subtenancies hereunder, or operate as an assignment to Lessor of any or all of such subleases or subtenancies.

Section 40.13 Modification of Lease. In the event of any ruling or threat by the Internal Revenue Service, or opinion of counsel, that all or part of the Rent paid or to be paid to Lessor under this Lease will be subject to the income tax on unrelated business taxable income, Lessee agrees to modify this Lease to avoid such tax; provided that such modifications will not result in any increase in Rent, or any increased obligations of Lessee under this Lease. Lessor will pay all Lessee's reasonable costs incurred in reviewing and negotiating any such lease modification, including reasonable attorneys' and accountants' fees.

Section 40.14 Survival. The obligations of this Lease shall survive the expiration or earlier termination of this Lease to the extent necessary to implement any requirement for the performance of obligations or forbearance of an act by either party hereto which has not been completed prior to the termination of this Lease. Such survival shall be to the extent reasonably necessary to fulfill the intent thereof, or if specified, to the extent of such specification, as same is reasonably necessary to perform the obligations and/or forbearance of an act set forth in such term, covenant or condition. Notwithstanding the foregoing, in the event a specific term, covenant or condition is expressly provided for in such a clear fashion as to indicate that such performance of an obligation or forbearance of an act is no longer required, then the specific shall govern over this general provisions of this Lease.

Section 40.15 Estoppel Certificates. Either party, at any time and from time to time within ten (10) business days after receipt of written notice from the other party, shall execute, acknowledge and deliver to the requesting party a certificate stating (to the responding party's best knowledge where applicable): (a) that Lessee has accepted the Premises (if true); (b) the Commencement Date and Expiration Date of this Lease; (c) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that same is in full force and effect as modified and stating the modifications); (d) to Lessee's knowledge, whether or not there are then existing any defenses against the enforcement of any of the obligations of Lessee under this Lease (and, if so, specifying same); (e) whether or not there are then existing any defaults on the part of Lessee, or, to Lessee's knowledge, on the part of Lessor in the performance of their respective obligations under this Lease (and, if so, specifying same); and (f) any other factual information relating to the rights and obligations under this Lease that may reasonably be required by requesting party.

Section 40.16 Consequential Damages. Notwithstanding any provision hereof to the contrary, except as provided in Article 19 and in Section 28.4, in no event shall either party have any liability to the other for any indirect or consequential damages suffered or incurred as a result of any breach or default by such party of its obligations hereunder, nor shall any party be obligated to indemnify, defend or hold the other party harmless from or against any indirect or consequential damages.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease by proper persons thereunto duly authorized as of the date first above written.

THE BOARD OF TRUSTEES OF THE LELAND
STANFORD JUNIOR UNIVERSITY

By: Stanford Management Company

By: /s/ Jean Snider

Its: Managing Director, SRP

3401 HILLVIEW LLC,
a Delaware limited liability company

By: EMC Corporation,
a Massachusetts corporation,
its member

By: /s/ Dan Fitzgerald

Its: Senior Vice President

Schedules and Exhibits

<u>Schedule</u>	<u>Description</u>
7.1(c)	Municipal Code Excerpt
19.8	Environmental Reports

<u>Exhibit</u>	<u>Description</u>
A	Legal Description of Premises
B	Determination of Fair Market Land Value
C	3421 Hillview Premises
D	Lease Amendment
E	Demolition Scope of Work
F	Tri-Party Agreement

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

All that certain Real Property in the City of Palo Alto, County of Santa Clara, State of California, described as follows:

Exh. A - p. 1 of 1

EXHIBIT B

DETERMINATION OF FAIR MARKET LAND VALUE

(a) If within the 30-day negotiating period Lessor and Lessee cannot reach agreement as to the Fair Market Land Value, they shall each select one appraiser to determine the Fair Market Land Value. Each such appraiser shall arrive at a determination of the Fair Market Land Value and submit his or her conclusions to Lessor and Lessee within thirty (30) days after the expiration of the initial 30-day negotiating period.

(b) If only one appraisal is submitted within the requisite time period, it shall be deemed to be the Fair Market Land Value. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten (10) percent of the higher of the two, the average of the two shall be the Fair Market Land Value. If the two appraisals differ by more than ten (10) percent of the higher of the two, then the two appraisers shall immediately select a third appraiser who will within thirty (30) days of his or her selection make a determination of the Fair Market Land Value and submit such determination to Lessor and Lessee. This third appraisal will then be averaged with the closer of the previous two appraisals and the result shall be the Fair Market Land Value.

(c) All appraisers specified pursuant hereto shall be members of the American Institute of Real Estate Appraisers with not less than ten (10) years experience appraising office, research and development and industrial properties in California. Each party shall pay the cost of the appraiser selected by such party and one-half of the cost of the third appraiser plus one-half of any other costs incurred in the determination.

EXHIBIT C

[plan showing 3421 Hillview Premises]

Exh. C - p. 1 of 1

EXHIBIT D

FIRST AMENDMENT OF LEASE

This First Amendment of Lease (the “ ***Amendment*** ”) is made and entered into as of _____, 200 ____ (the “ ***Effective Date*** ”), by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California (“ ***Lessor*** ”), and 3401 HILLVIEW LLC, a Delaware limited liability company (“ ***Lessee*** ”).

RECITALS

A. Lessor and Lessee are the parties to that certain Ground Lease dated as of _____, 2004 between Lessor and Lessee (the “ ***Lease*** ”). Capitalized terms used herein and not defined shall have the meanings given to them in the Lease.

B. Lessor and Lessee desire to modify the Lease as set forth in this Amendment.

NOW, THEREFORE, the parties hereby mutually promise, covenant and agree as follows:

1. Additional Parcel . As of and following the Effective Date, the parcel of land commonly known as 3421 Hillview Avenue, Palo Alto and more particularly described in **Exhibit A** attached hereto shall be added to the description of the real property leased to Lessee pursuant to the Lease and shall thereafter be subject to the terms and provisions of the Lease.

2. Effect of Amendment . As specifically amended by this Amendment, the Lease shall remain in full force and effect.

3. Counterparts . This Amendment may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one instrument.

* * * * *

Exh. D - p. 1 of 2

IN WITNESS WHEREOF, the parties hereto have executed this instrument by proper persons thereunto duly authorized the day and year first herein written at Santa Clara County, California.

LESSOR: THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,
a body having corporate powers under the laws of the State of California

By: The Stanford Management Company

By: _____

Its: _____

LESSEE: 3401 HILLVIEW LLC,
a Delaware limited liability company

By: EMC Corporation,
a Massachusetts corporation,
its member

By: _____

Its: _____

EXHIBIT A (to Exhibit D)

ADDITIONAL PARCEL

Exh. D - p. 1 to Exh. A

EXHIBIT E

DEMOLITION SCOPE OF WORK

Exh. E - p. 1

EXHIBIT F

TRI-PARTY AGREEMENT

THIS AGREEMENT is entered into as of _____, _____, by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California (“**Lessor**”), _____, a _____ (“**Lessee**”) and _____, a _____ (“**Lender**”).

RECITALS

A. Lessor is the owner of that certain real property, being a portion of the lands of The Leland Stanford Junior University, located in the County of Santa Clara, State of California, and more particularly described in attached Exhibit A (the “Premises”) and the lessor under that certain ground lease of the Premises dated as of _____, 2003, by and between Lessor and Lessee (the “**Lease**”).

B. Lessee desires to obtain a loan from Lender in the principal amount [of] [not to exceed] _____ Dollars (\$ _____) (the “**Loan**”) and to encumber its leasehold interest under the Lease as security for the Loan.

C. Lender is willing to make the Loan to Lessee secured by Lessee’s leasehold interest under the Lease provided that Lessor consents thereto and agrees to the provisions of this Agreement.

D. Lessor is willing to consent to the encumbering of Lessee’s leasehold interest under the Lease as security for the Loan on the terms and conditions set forth in this Agreement. Lender is an approved “Institutional Lender” as that term is defined in the Lease.

AGREEMENT

NOW THEREFORE, in consideration of the premises and other mutual valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

A. Encumbrance of Leasehold Interest. Subject to the terms and conditions of this Agreement, Lessor hereby consents to the encumbering of Lessee’s leasehold interest under the Lease pursuant to a mortgage or deed of trust as security for the Loan provided that the outstanding amount of the Loan secured thereby shall not exceed \$ _____ (the mortgage, deed of trust or other security instrument permitted hereunder being herein referred to as the “**Leasehold Mortgage**”). In no event shall any interest of Lessor in the Premises be subject or subordinate to any lien or encumbrance of the Leasehold Mortgage or any other mortgage, deed of trust, or other security instrument.

B. Parties' Obligations. During the continuance of the Leasehold Mortgage until such time as the lien of the Leasehold Mortgage shall have been extinguished, the parties agree as follows:

(a) **Modifications to Lease.** Lessor shall not agree to any mutual termination nor accept any surrender of the Lease, except upon the expiration of the term of the Lease or its termination pursuant to any express provision of the Lease, nor shall any material amendment or modification of the Lease be binding upon Lender or any purchaser in foreclosure from Lender, unless Lender has given its prior written consent to such amendment or modification, which consent shall not be unreasonably withheld and shall be deemed given if a written refusal to consent together with a written explanation of the reasons for such refusal to consent is not received by Lessor from Lender within ten (10) days after receipt by Lender of a written request for Lender's consent to a proposed amendment or modification.

(b) **Insurance.** Lender may be a named insured on any fire and other hazard insurance policies carried by Lessee and covering the Premises. All proceeds of any such insurance policies shall be held by Lessor, or at the request of Lender, by a trust company satisfactory to Lessor and Lender. In the event that at any time prior to expiration of the term of the Lease there shall be a partial or total destruction of the buildings and improvements then on the Premises from any cause, Lessee shall not have the right to terminate the Lease but shall diligently restore and rehabilitate said buildings and improvements pursuant to plans and specifications first approved by Lessor and Lender in writing, and, except as hereinafter provided, all proceeds of all property damage insurance shall be disbursed to Lessee upon such terms as Lessor and Lender may agree, for the purpose of restoring and rehabilitating said buildings and improvements. Should the proceeds of such insurance exceed the cost of such restoration and rehabilitation, the balance shall be paid to Lender to be credited by Lender as a payment on account of the Loan, and the remaining balance, if any, shall be paid in accordance with the Lease. Proceeds of any business or rental interruption insurance carried by Lessee with respect to the Premises shall be applied first to any unpaid obligations of Lessee under the Lease, then to any unpaid obligations under the Leasehold Mortgage and any remaining balance may be paid to Lessee.

(c) **Lender's Right to Perform.** Lender shall have the right, but not the obligation, at any time prior to termination of the Lease to pay all rental due thereunder, to provide any insurance and make any other payments, to make any repairs and improvements and do any other act or thing required of Lessee thereunder, and to do any act or thing which may be necessary and proper to be done in the performance and observance of the covenants, conditions and agreements thereof to prevent the termination of the Lease. All payments so made and all things so done and performed by Lender shall be as effective to prevent a termination of the Lease as the same would have been if made, done and performed by Lessee instead of by Lender.

(d) **Lessee's Default.** Should any default occur under the Lease, Lender shall have thirty (30) days after receipt of notice from Lessor setting forth the nature of such default, and, if the default is such that possession of the Premises may be necessary to remedy the default, a reasonable time after the expiration of such thirty (30) day period within which to remedy such default, provided that (i) Lender shall have fully cured any default in the payment of any monetary obligations of Lessee under the Lease, within such thirty (30) day period and shall continue to pay currently such monetary obligations as and when the same are due, and (ii) Lender shall have given Lessor written notice that Lender intends to take action to acquire Lessee's leasehold estate, and, subject to the provisions of Section 2(i) below, commenced foreclosure or other appropriate proceedings in the nature thereof, and shall thereafter diligently and continuously prosecute such proceedings to completion. Lender shall not be liable for any indemnities set forth in the Lease unless and until Lender assumes the obligations of Lessee thereunder; provided, however, that in the event the default under the Lease relates to Lessee's failure to make any payment due on an indemnity set forth in the Lease, Lender acknowledges that its failure to cure such default may result in the termination of the Lease and the loss of Lender's security.

(e) **Lender's Right to Cure.** A default under the Lease which in the nature thereof cannot be remedied by Lender shall be deemed to be remedied if (i) within thirty (30) days after receiving written notice from Lessor of such default, Lender shall have given Lessor written notice that Lender intends to take action to acquire Lessee's interest under the Lease and, subject to the provisions of Section 2(i) below, commenced foreclosure or other appropriate proceedings in the nature thereof, and Lender shall thereafter diligently and continuously prosecute any such proceedings to completion, (ii) Lender shall have fully cured any default in the payment of any monetary obligations of Lessee under the Lease within such thirty (30) day period and shall thereafter continue to faithfully perform all such monetary obligations, and (iii) after gaining possession of the Premises, Lender shall perform all of the obligations of Lessee under the Lease as and when the same are due and cure any defaults that are curable by Lender but that require possession of the Premises to cure, such cure to be effected within thirty (30) days after gaining possession, or such longer period of time as is reasonably necessary to effect such cure using all due diligence.

(f) **Notices.** Lessor shall mail to Lender a duplicate copy by certified mail of any and all notices which Lessor may from time to time give to or serve upon Lessee pursuant to the provisions of the Lease; and no notice by Lessor to Lessee hereunder shall be deemed to have been given as to Lender unless and until a copy thereof has been mailed to Lender.

(g) **Foreclosure.** Subject to the provisions of this subsection (g) and subsection (i) below, foreclosure of a Leasehold Mortgage or any sale thereunder, whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage, or any conveyance of the leasehold interest under the Lease from Lessee to Lender by virtue or in lieu of foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Lessor or constitute a breach of any provision of or a default under the Lease and upon such foreclosure, sale or conveyance, Lessor shall recognize Lender, or any other foreclosure sale purchaser or recipient of any deed in lieu, as the Lessee under the Lease; provided:

(i) Lender shall have fully complied with the provisions of this Agreement applicable prior to gaining possession of the Premises and Lender or the foreclosure sale purchaser or deed in lieu recipient, as the case may be, who is to become the Lessee under the Lease shall comply with the provisions of this Agreement applicable after gaining possession of the Premises;

(ii) Lender, or the foreclosure sale purchaser or deed in lieu recipient, as the case may be, who is to become the Lessee under the Lease shall be responsible for taking such actions as shall be necessary to obtain possession of the Premises; and

(iii) Lender, or the foreclosure sale purchaser or deed in lieu recipient, as the case may be, who is to become the Lessee under the Lease shall execute, acknowledge and deliver to Lessor an instrument in form satisfactory to Lessor pursuant to which Lender or the foreclosure sale purchaser or deed in lieu recipient, as the case may be, expressly assumes all obligations of the Lessee under the Lease, which instrument shall contain the same representation and release by the entity assuming the Lessee's obligations under the Lease as are made by Lender pursuant to Section 3 of this Agreement.

If there are two or more Leasehold Mortgages or foreclosure sale purchasers (whether of the same or different Leasehold Mortgages), Lessor shall have no duty or obligation whatsoever to determine the relative priorities of such Leasehold Mortgages or the rights of the different holders thereof and/or foreclosure sale purchasers. If Lender becomes the Lessee under the Lease, or under any new lease obtained pursuant to subsection (h) below, Lender shall not be personally liable for the obligations of the Lessee under the Lease accruing prior to or after the period of time that Lender is the Lessee thereunder.

(h) **Rejection of Lease.** Should the Lease be terminated by reason of any rejection of the Lease in a bankruptcy proceeding, Lessor shall, subject to the terms and conditions of this subsection (h) and subsection (i) below, upon written request by Lender to Lessor made within thirty (30) days after such termination, execute and deliver a new lease of the Premises to Lender for the remainder of the term of the Lease with the same covenants, conditions and agreements (except for any requirements which have been satisfied by the Lessee prior to termination) as are contained therein; provided, however, that Lessor's execution and delivery of such new lease of the Premises shall be made without representation or warranty of any kind or nature whatsoever, either express or implied, including without limitation, any representation or warranty regarding title to the Premises or the priority of such new lease; Lessor's obligations and liability under such new lease shall not be greater than if the Lease had not terminated and Lender had become the Lessee thereunder, and the new lease shall contain the

same representation and release made by the entity that is the lessee thereunder as are made by Lender under Section 3 of this Agreement. Lessor's delivery of the Premises to Lender pursuant to such new lease shall be made without representation or warranty of any kind or nature whatsoever, either express or implied; and Lender shall take the Premises "as is" in their then current condition. Upon execution and delivery of such new lease, Lender, at its sole cost and expense, shall be responsible for taking such action as shall be necessary to cancel and discharge the Lease and to remove the Lessee named therein and any other occupant from the Premises. Lessor's obligation to enter into such new lease of the Premises with Lender shall be conditioned as follows:

- (i) Lender shall have complied with the provisions of this Agreement applicable prior to the gaining of possession and shall comply with the provisions of this Agreement applicable after gaining possession of the Premises;
- (ii) if more than one holder of a Leasehold Mortgage claims to be the Lender and requests such new lease, Lessor shall have no duty or obligation whatsoever to determine the relative priority of such Leasehold Mortgages, and in the event of any dispute between or among the holders thereof, Lessor shall have no obligation to enter into any such new lease if such dispute is not resolved to the sole satisfaction of Lessor within ninety (90) days after the date of termination of the Lease; and
- (iii) Lender shall pay all costs and expenses of Lessor, including without limitation, reasonable attorneys' fees, real property transfer taxes and any escrow fees and recording charges, incurred in connection with the preparation and execution of such new lease and any conveyances related thereto.

(i) **Transfer of Leasehold Interest.** In the event Lender desires to transfer the leasehold interest in the Premises by foreclosure sale, accept a deed in lieu of foreclosure, or acquire Lessee's interest in the Lease by any other means, Lender shall provide Lessor not less than thirty (30) days prior written notice of its intention to exercise any such right and Lessor shall have the right, exercisable within thirty (30) days after receipt of such written notice to elect to acquire the entire interest in the Loan and the Leasehold Mortgage for a price equal to the sum of the outstanding unpaid balance of the Loan secured by the Leasehold Mortgage, together with any other amounts due and unpaid under the Leasehold Mortgage. In the event Lender desires to sell the Loan to a third party, Lender shall provide Lessor not less than thirty (30) days prior written notice of its intention to do so, identifying in reasonable detail the terms upon which the third party is willing to purchase the Loan, and Lessor shall have the right, exercisable within thirty (30) days after receipt of such written notice, to elect to purchase the Loan and the Leasehold Mortgage for a price equal to that which would have been paid by the third party. The closing of the acquisition of the Loan (the "**Closing**") shall occur within thirty (30) days after the date of such election through escrow at a title company selected by Lessor and reasonably acceptable to Lender (the "**Title Company**"). At the Closing Lessor shall deliver to Lender

through escrow the purchase price for the Loan and Lender shall assign to Lessor all of its right, title and interest in the Loan and the Leasehold Mortgage pursuant to documentation satisfactory to Lessor and the Title Company. If Lessor fails to deliver into escrow the required funds within said thirty (30) day period with instructions to deliver said funds to Lender conditioned only upon receipt of the documentation necessary to enable the Title Company to insure Lessor as the sole Beneficiary of the Leasehold Mortgage, Lender shall be entitled to pursue its rights to acquire or transfer the leasehold estate pursuant to this Agreement. If Lessor delivers said funds as required herein, Lender's rights under this Agreement shall terminate and be of no further force or effect.

C. Hazardous Substances. By execution of this Agreement, Lender hereby represents to Lessor as follows: Lender is aware that detectable amounts of hazardous substances and groundwater contaminants have come to be located beneath and/or in the vicinity of the Premises. (See, for example, Remedial Action Order(s) _____ issued by the Department of Toxic Substances Control, Cal EPA, formerly known as the California Department of Health Services, Toxic Substances Division, and Regional Water Quality Control Board Orders No. _____.) Lender has made such investigations and inquiries as it deems appropriate to ascertain the effects, if any, of such substances and contaminants on the Premises and persons using the Premises. Lessor makes no representation or warranty with regard to the environmental condition of the Premises. Lender hereby covenants and agrees not to sue and forever releases and discharges Lessor, and its trustees, officers, directors, agents and employees for and from any and all claims, losses, damages, causes of action and liabilities, arising out of hazardous substances or groundwater contamination presently existing on, under, or emanating from or onto the Premises. Lender understands and expressly waives any rights or benefits available under Section 1542 of the Civil Code of California or any similar provision in any other jurisdiction. Section 1542 provides substantially as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

D. Notices. Any notice or demand required or given hereunder shall be in writing and shall be considered to have been duly and properly given upon personal delivery to the party or an officer of the party being served, or if mailed, upon the first to occur of actual receipt or 48 hours after deposit in United States registered or certified mail, postage prepaid, addressed to the parties as follows :

Lessor: The Board of Trustees of the Leland Stanford Junior University
c/o Stanford Management Company
2770 Sand Hill Road
Menlo Park, Ca 94025
Attention: Director, Stanford Research Park

Lessee: _____

Attention: _____

Lender: _____

Attention: _____

Such addresses may be changed by notice to the other parties given in the same manner as provided herein, such changes to be effective only upon receipt of notice thereof.

E. **Assignment.** Neither this Agreement nor any of the rights or obligation of the parties hereto may be assigned in whole or in part to any other party without the consent of the other parties hereto and any attempted assignment without such consent shall be null and void. Nothing contained in this Agreement shall constitute the consent of Lessor to any other or future encumbrance of Lessee's leasehold interest under the Lease.

F. **Counterparts.** This Agreement may be executed in any number of counterparts and each of the counterparts shall be considered an original and all counterparts shall constitute but one and the same instrument.

G. **Entire Agreement; Modifications; Waiver.** This Agreement and the exhibits hereto, which are incorporated herein by this reference, shall constitute the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be changed or modified orally or in any manner other than by any agreement in writing signed by the parties hereto. No waiver of any of the terms or conditions of this Agreement and no waiver of any default or failure of compliance shall be effective unless in writing, and no waiver furnished in writing shall be deemed to be a waiver of any other term or provision or any future condition of this Agreement.

H. **Governing Law.** This Agreement shall be governed by California law.

I. **Attorneys' Fees.** In the event of any litigation arising out of any dispute or controversy concerning this Agreement, the party or parties not prevailing in such dispute shall pay any and all costs and expenses incurred by the prevailing party or parties, including, without limitation, reasonable attorneys' fees and expenses, which shall include fees and expenses of in-house attorneys.

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

THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR UNIVERSITY

By Stanford Management Company

By: _____
Its: _____

By _____
Its: _____

By: _____
Its _____

FIRST AMENDMENT TO GROUND LEASE

This First Amendment to Ground Lease (this "Amendment"), dated October 1, 2007 for reference purposes only, is made by and between The Board of Trustees of the Leland Stanford Junior University, a body having corporate powers under the laws of the State of California ("Lessor") and 3401 Hillview LLC, a Delaware limited liability company ("Lessee") in the following factual context:

A. Lessor and Lessee entered into that certain Ground Lease dated February 2, 2006 (the "Lease"), for real property commonly known as 3401 Hillview Avenue, Palo Alto, California, as legally described in Exhibit "A" to the Lease (the "Land").

B. Lessor and Roche Palo Alto LLC ("Roche") are parties to a ground lease dated July 1, 1968 (the "Roche Lease") for real property commonly known as 3431 Hillview Avenue, Palo Alto, California, as legally described in the Roche Lease (the "Roche Land").

C. The Land and the Roche Land share a common boundary, and Lessor and Lessee desire to slightly modify the Land to make the parking more efficient on the Land along the common boundary with the Roche Land;

D. The parties now wish to amend the Lease as set forth below.

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

1. Effective Date. This Amendment shall be effective as of October 1, 2007.

2. Amended Premises. Exhibit "A" attached to the Lease is hereby deleted in its entirety and Exhibit "A" attached to this Amendment is substituted therefor (such that the legal description of the Land and the Premises under the Lease shall be as set forth in Exhibit "A" attached hereto). Lessor and Lessee shall promptly upon request by either of them to the other execute an amendment to the memorandum of the Lease recorded in the Official Records of Santa Clara County to reflect this revised legal description.

3. Amendment of Roche Lease. This Amendment is conditioned upon and shall become effective only upon the amendment of the Roche Lease to conform the legal description of the Roche Land to the legal description of the Land. Lessor shall provide to Lessee a fully executed copy of an amendment of the Roche Lease that modifies the legal description of the Roche Land within ten (10) days after such execution.

4. Miscellaneous. All capitalized terms used but not defined herein shall have the meanings set forth in the Lease. The Lease, as amended by this Amendment, contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Amendment. No prior agreement, understanding, or representation pertaining to any such matter shall be effective for any purpose. Except as amended hereby, the Lease shall in all other particulars, terms and conditions remain in full force and effect and is hereby ratified and

confirmed by the parties hereto. In the event of any inconsistency between the Lease, as amended, and this Amendment, the provisions of this Amendment shall prevail. The covenants, agreements, terms, provisions and conditions contained in this Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and, except as otherwise provided in the Lease, their respective assigns. From and after the date hereof, the term "Lease" as used in the Lease shall mean the Lease, as modified by this Amendment. The captions of the paragraphs and subparagraphs in this Amendment are inserted and included solely for convenience and shall not be considered or given any effect in construing the provisions hereof. All exhibits hereto are incorporated herein by reference. This Amendment may be executed in one or more counterparts that, when taken together, shall constitute one original. If any one or more of the provisions contained in this Amendment shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. No subsequent change or addition to this Amendment shall be binding unless in writing and duly executed by both Lessor and Lessee. Each of Lessor and Lessee shall be solely responsible for its own costs and expenses (including attorneys' fees) in connection with the preparation and execution of this Amendment and any amendment to the memorandum of Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the respective dates set forth below.

LESSOR:

**THE BOARD OF TRUSTEES OF THE LELAND
STANFORD JUNIOR UNIVERSITY,**

a body having corporate powers under
the laws of the State of California

By: /s/ Jean Snider

Its: Managing Director, Real Estate

LESSEE:

3401 HILLVIEW LLC,
a Delaware limited liability company

By: /s/ Mark Peek

Its: Chief Financial Officer

Exhibit "A"
Legal Description

HILLVIEW SITE
3401 Hillview Avenue, Palo Alto, CA 94304

Real property situate in the City of Palo Alto, County of Santa Clara, State of California, described as follows:

Being a portion of Parcel A, as shown on that certain Parcel Map, filed April 27, 1979 in Book 440 of Maps at Page 37, Records of Santa Clara County, described as follows:

Beginning at a point on the northeasterly line of said Parcel A, distant thereon South 53°09'05" East, 409.70 feet along said line, from the northwesterly terminus of the northeasterly line of said Parcel A, shown on said Parcel Map (440 M 37) as "S 53°09'05" E 1410.04'';

Thence leaving said northeasterly line, the following twenty-seven (27) courses:

- 1) South 36°50'55" West, 67.33 feet to the beginning of a non-tangent curve, concave to the southwest, having a radius of 251.00 feet, from which a radial line bears South 34°14'40" West;
- 2) Northwesterly, along said curve, through a central angle of 07°34'55" and an arc length of 33.21 feet to the beginning of a compound curve, concave to the southwest, having a radius of 246.00 feet;
- 3) Northwesterly, along said curve, through a central angle of 07°42'11" and an arc length of 33.07 feet to the beginning of a reverse curve, concave to the northeast, having a radius of 444.00 feet;
- 4) Northwesterly, along said curve, through a central angle of 08°00'14" and an arc length of 62.02 feet to the beginning of a compound curve, concave to the northeast, having a radius of 275.00 feet;
- 5) Northwesterly, along said curve, through a central angle of 20°11'57" and an arc length of 96.95 feet;
- 6) South 44°08'23" West, 32.27 feet to the beginning of a non-tangent curve, concave to the south, having a radius of 19.00 feet, from which a radial line bears South 07°56'38" West;
- 7) Westerly and southwesterly, along said curve, through a central angle of 63°19'01" and an arc length of 21.00 feet;
- 8) South 34°37'37" West, 11.51 feet to the beginning of a curve to the right, having a radius of 100.00 feet;
- 9) Southwesterly, along said curve, through a central angle of 43 °40'46" and an arc length of 76.24 feet;
- 10) South 78°18'23" West, 15.55 feet to the beginning of a curve to the left, having a radius of 58.00 feet;

- 11) Southwesterly, along said curve, through a central angle of 32°06'19" and an arc length of 32.50 feet to the beginning of a compound curve, concave to the southeast, having a radius of 33.00 feet;
- 12) Southwesterly, along said curve, through a central angle of 42°21'17" and an arc length of 24.39 feet to the beginning of a compound curve, concave to the east, having a radius of 85.00 feet;
- 13) Southerly and southeasterly, along said curve, through a central angle of 31°53'43" and an arc length of 47.32 feet;
- 14) South 28°02'56" East, 13.27 feet to the beginning of a curve to the left, having a radius of 661.00 feet;
- 15) Southeasterly, along said curve, through a central angle of 05°47'03" and an arc length of 66.73 feet;
- 16) South 33 °49'59" East, 41.66 feet to the beginning of a curve to the right, having a radius of 450.00 feet;
- 17) Southeasterly, along said curve, through a central angle of 23°35'50" and an arc length of 185.33 feet;
- 18) South 10°14'09" East, 132.03 feet;
- 19) South 79°45'51" West, 86.26 feet;
- 20) South 07°29'54" East, 17.21 feet to the beginning of a non-tangent curve, concave to the southeast, having a radius of 25.00 feet, from which a radial line bears South • 18°39'09" East;
- 21) Westerly and southwesterly, along said curve, through a central angle of 78°31'49" and an arc length of 34.27 feet;
- 22) South 84°26'47" West, 282.62 feet;
- 23) South 09°38'42" West, 126.61 feet;
- 24) South 84°43'19" West, 291.54 feet;
- 25) North 05°07'47" West, 284.07 feet to the beginning of a curve to the left, having a radius of 370.00 feet;
- 26) Northwesterly, along said curve, through a central angle of 34°26'52" and an arc length of 222.45 feet;
- 27) South 85 °20'05" West, 255.73 feet to the southwesterly line of said Parcel A (440 M 37);

Thence along said southwesterly line and along the general northwesterly, northerly, and northeasterly lines of said Parcel A, the following seven (7) courses:


- 1) North 15°27'55" West, 945.97 feet to the beginning of a curve to the right, having a radius of 590.22 feet;
- 2) Northeasterly, along said curve, through a central angle of 17°06'01" and an arc length of 176.15 feet to the beginning of a compound curve, concave to the southeast, having a radius of 80.00 feet;
- 3) Northeasterly, easterly and southeasterly, along said curve, through a central angle of 110°14'53" and an arc length of 153.94 feet to the beginning of a compound curve, concave to the southwest, having a radius of 4930.00 feet;
- 4) Southeasterly, along said curve, through a central angle of 07°53'16" and an arc length of 678.70 feet;
- 5) South 86°00'00" East, 11.48 feet to the beginning of a non-tangent curve, concave to the southwest, having a radius of 4935.00 feet, from which a radial line bears South 29°53'27" West;
- 6) Southeasterly, along said curve, through a central angle of 06°57'28" and an arc length of 599.29 feet;
- 7) South 53°09'05" East, 409.70 feet to the point of Beginning.

Containing an area of 28.958 acres, more or less.

As shown on Exhibit "B" attached hereto and made a part hereof.

This description was prepared by me or under my direction.

For: BKF Engineers



Davis Thresh, P.I.S. No. 6868

License expires 9-30-2008

07-26-2007

Date



SECOND AMENDMENT TO GROUND LEASE

This Second Amendment to Ground Lease (this “**Amendment**”), is dated as of June 13, 2011 for reference purposes only, is made by and between The Board of Trustees of the Leland Stanford Junior University, a body having corporate powers under the laws of the State of California (“**Lessor**”) and 3401 Hillview LLC, a Delaware limited liability company (“**Lessee**”) in the following factual context:

A. Lessor and Lessee entered into that certain Ground Lease dated February 2, 2006, covering real property commonly known as 3401 Hillview Avenue, Palo Alto, California, and legally described in **Exhibit “A”** to that certain First Amendment to Ground Lease dated as of October 1, 2007. Together, the Ground Lease and First Amendment to Ground Lease are referred to in this Amendment as the “**Lease**”.

B. VMware, Inc., an affiliate of Lessee, has assumed the leasehold interest of Roche Palo Alto LLC with respect to certain real property commonly known as 3431 Hillview Avenue, which is adjacent to the Premises (the “**Adjacent Premises**”). In connection therewith, Lessor and VMware, Inc. have entered into that certain Amended and Restated Ground Lease dated of even date herewith (the “**3431 Hillview Lease**”).

C. Lessor and Lessee now desire to further amend the Lease to modify its term and to make certain other changes, as set forth below. Capitalized terms not otherwise defined in this Amendment shall have the meanings set forth in the Lease.

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

1. Modification of Term. Lessor and Lessee acknowledge and agree that the Expiration Date of the Lease is currently February 28, 2057. The Lease is hereby amended to change the Expiration Date of the Lease to May 13, 2046 (the “**Modified Expiration Date**”). All references to the Expiration Date in the Lease shall mean the Modified Expiration Date.

2. Non-R&D Subleases. Lessee agrees and acknowledges that based on the square footage of Improvements on the Premises, the provision in the last sentence of Section 10.2 allowing Lessee to sublease up to twenty-five percent (25%) of the rentable square footage comprising the Premises for general office use unrelated to research and development (“**Non-R&D Use**”) means that Lessee may sublet up to 115,000 rentable square feet for Non R&D Use. Pursuant to the 3431 Hillview Lease, provided that the Premises and the Adjacent Premises continue to be leased or entirely occupied (except for the proposed sublease space or space previously subleased in accordance with this Lease or the 3431 Hillview Lease) by the same entity, and/or an Affiliate of such entity, a portion of such square footage may be used for subleases for Non-R&D Use in the Adjacent Premises. During such time as the Premises and the Adjacent Premises continue to be leased or entirely occupied (except for the proposed sublease space or space previously subleased in accordance with this Lease or the 3431 Hillview Lease) by the same entity, and/or an Affiliate of such entity, (a) Lessee may, subject to the requirements of Article 24, only enter into Permitted Subleases for Non-R&D Use if the aggregate of all Non-R&D Use of space at the Premises and the Adjacent Premises does not exceed a total of 115,000 rentable square feet, (b) at any time that the maximum amount of square footage subject to Non-R&D Use is subleased on the Premises and/or the Adjacent Premises, Lessee shall have no right to enter into subleases for Non-R&D Use and (c) Lessee shall notify Lessor in its request for approval of all proposed subleases pursuant to Section 24.2 whether or not the proposed sublease will be for Non-R&D Use, and if the proposed sublease is approved by Lessor, how many rentable square feet space in the Premises and the Adjacent Premises combined will be subleased for Non-R&D Use. Notwithstanding the foregoing, upon

any change of ownership that results in the Premises and the Adjacent Premises no longer being leased or entirely occupied (except for space previously subleased in accordance with this Lease or the 3431 Hillview Lease) by the same entity and/or an Affiliate of such entity, Lessee's right to sublease the Premises for Non-R&D Use shall be reduced to the extent subtenants for Non-R&D Use remain in the Adjacent Premises, until such time as their subleases expire, whereupon the square footage used by such subtenants shall again become available for subleases on the Premises.

3. Independent Leases. Lessee and Lessor agree that neither the terms and conditions of the Lease nor the terms and conditions of the 3431 Hillview Lease shall be applicable or admissible as evidence in the interpretation of the other document.

4. Separate Parcels. The Premises and the Adjacent Premises shall be maintained as separate and independent leasehold parcels. Lessee shall seek separate entitlements for each parcel, and in no event shall the Premises or the Adjacent Premises be developed or redeveloped so that either the Premises or the Adjacent Premises fails to meet City zoning requirements, including without limitation parking requirements, on a stand-alone basis. Lessee shall not enter into any agreement with VMware, Inc. or the City that burdens either the Premises or the Adjacent Premises for the benefit of the other premises. Notwithstanding the foregoing, Lessor recognizes that the roadways, sidewalks and landscaping located on the Premises are and will continue to be integrated with the Adjacent Premises, subject to Lessor's approval rights for Additional Improvements and Alterations as provided in Article 12. Lessee may propose to Lessor a parcel line adjustment between the Premises and the Adjacent Premises for the purpose of accommodating its proposed Improvements on the Premises; provided that each of the proposed parcels resulting from the lot line adjustment meets all City zoning requirements on a stand-alone basis. Lessor shall give a request for a lot line adjustment reasonable consideration, but shall have no obligation to consent thereto.

5. Miscellaneous. All capitalized terms used but not defined herein shall have the meanings set forth in the Lease. The Lease, as amended by this Amendment, contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Amendment. No prior agreement, understanding, or representation pertaining to any such matter shall be effective for any purpose. As amended hereby, the Lease shall in all other particulars, terms and conditions remain in full force and effect and is hereby ratified and confirmed by the parties hereto. In the event of any inconsistency between the Lease, as amended, and this Amendment, the provisions of this Amendment shall prevail. The covenants, agreements, terms, provisions and conditions contained in this Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and, except as otherwise provided in the Lease, their respective assigns. From and after the date hereof, the term "Lease" as used in the Lease shall mean the Lease, as modified by this Amendment. The captions of the paragraphs and subparagraphs in this Amendment are inserted and included solely for convenience and shall not be considered or given any effect in construing the provisions hereof. All exhibits hereto are incorporated herein by reference. If any one or more of the provisions contained in this Amendment shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. No subsequent change or addition to this Amendment shall be binding unless in writing and duly executed by both Lessor and Lessee. Each of Lessee and Lessee shall be solely responsible for its own costs and expenses (including attorneys' fees) in connection with the preparation and execution of this Amendment and any amendment to the memorandum of Lease.

6. Counterparts. This Amendment may be executed in one or more counterparts that, when taken together, shall constitute one original.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the respective dates set forth below.

LESSOR:

**THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR UNIVERSITY,**
a body having corporate powers under
the laws of the State of California

By: /s/ Jean Snider

Its: Jean Snider Managing Director, Real Estate

LESSEE:

3401 HILLVIEW LLC,
a Delaware limited liability company

By: VMware, Inc.

By: Mark S. Peek

Its: CFO and Co-President, Business Operations

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Paul A. Maritz, certify that:

1. I have reviewed this quarterly report on Form 10-Q of VMware, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 3, 2011

By: /s/ PAUL A. MARITZ

Paul A. Maritz
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Mark S. Peek, certify that:

1. I have reviewed this quarterly report on Form 10-Q of VMware, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 3, 2011

By: /s/ MARK S. PEEK

Mark S. Peek

Chief Financial Officer and Co-President, Business Operations
(Principal Financial 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**

I, Paul A. Maritz, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of VMware, Inc. on Form 10-Q for the fiscal quarter ended June 30, 2011 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and the information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of VMware, Inc.

Date: August 3, 2011

By: /s/ PAUL A. MARITZ
Paul A. Maritz
Chief Executive Officer
(Principal Executive Officer)

**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**

I, Mark S. Peek, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of VMware, Inc. on Form 10-Q for the fiscal quarter ended June 30, 2011 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and the information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of VMware, Inc.

Date: August 3, 2011

By: /s/ MARK S. PEEK

Mark S. Peek

Chief Financial Officer and Co-President, Business Operations
(Principal Financial Officer)