

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

FORM 10-Q

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

For the quarterly period ended June 30, 2019

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

For the transition period from _____ to _____

Commission file number: 001-37862

PHUNWARE, INC.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

**7800 Shoal Creek Blvd, Suite 230-S
Austin, TX**

(Address of principal executive offices)

26-4413774

(I.R.S. Employer
Identification Number)

78757

(Zip Code)

Registrant's telephone number, including area code: **512-693-4199**

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

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

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

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

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

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

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

Title of Each Class:	Trading Symbol(s)	Name of Each Exchange on Which Registered:
Common Stock, par value \$0.0001 per share	PHUN	The NASDAQ Capital Market
Warrants to purchase one share of Common Stock	PHUNW	The NASDAQ Capital Market

As of August 8, 2019, 38,966,575 shares of common stock, par value \$0.0001 per share, were issued and outstanding.

EXPLANATORY NOTE

On December 26, 2018, Stellar Acquisition III, Inc., a Republic of the Marshall Islands corporation incorporated in December 2015 (“Stellar”), deregistered as a corporation in the Republic of the Marshall Islands and domesticated as a corporation incorporated under the laws of the State of Delaware upon the filing with and acceptance by the Secretary of State of Delaware of the certificate of domestication in accordance with Section 388 of the Delaware General Corporation Law (the “Domestication”). Upon the effectiveness of the Domestication, Stellar became a Delaware corporation and, upon the consummation of the Business Combination (as defined below), Stellar changed its corporate name to “Phunware, Inc.” (the “Successor” or the “Company”) and all outstanding securities of Stellar were deemed to constitute outstanding securities of the Successor. Also on December 26, 2018, STLR Merger Subsidiary Inc., a wholly-owned subsidiary of Stellar (“Merger Sub”), merged with and into Phunware, Inc. (“Phunware”), a corporation incorporated in Delaware in February 2009, with Phunware surviving the merger (the “Merger”) and becoming a wholly-owned subsidiary of the Successor (the “Business Combination” or “Reverse Merger and Recapitalization”). Upon the consummation of the Business Combination, Phunware changed its corporate name to “Phunware OpCo, Inc.” As of the open of trading on December 28, 2018, the common stock and warrants of the registrant began trading on the Nasdaq Capital Market as “PHUN” and “PHUNW,” respectively.

In connection with the consummation of the Business Combination, on December 26, 2018, the board of directors of the Successor approved a change of its fiscal year end from November 30 to a calendar year ending December 31, effective immediately. Accordingly, the new fiscal year will begin on January 1 and end on December 31.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Report includes forward-looking statements. All statements other than statements of historical facts contained in this Report, including statements regarding our future results of operations and financial position, business strategy and plans, and our objectives for future operations, are forward-looking statements. The words “anticipate,” “believe,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “might,” “plan,” “possible,” “potential,” “predict,” “project,” “should,” “will,” “would” and similar expressions that convey uncertainty of future events or outcomes are intended to identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking.

The forward-looking statements contained in this Report are based on our current expectations and beliefs concerning future developments and their potential effects on us. Future developments affecting us may not be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) and other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described under the heading “Risk Factors.” Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. We undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws. These risks and others described under “Risk Factors” may not be exhaustive.

By their nature, forward-looking statements involve risks and uncertainties because they relate to events and depend on circumstances that may or may not occur in the future. We caution you that forward-looking statements are not guarantees of future performance and that our actual results of operations, financial condition and liquidity, and developments in the industry in which we operate may differ materially from those made in or suggested by the forward-looking statements contained in this Report. In addition, even if our results of operations, financial condition and liquidity, and developments in the industry in which we operate are consistent with the forward-looking statements contained in this Report, those results or developments may not be indicative of results or developments in subsequent periods.

PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

Phunware, Inc. Condensed Consolidated Balance Sheet (In thousands, except per share information)

	June 30, 2019 (Unaudited)	December 31, 2018
Assets:		
Current assets:		
Cash	\$ 248	\$ 844
Accounts receivable, net	3,546	3,606
Prepaid expenses and other current assets	740	272
Total current assets	4,534	4,722
Property and equipment, net	36	66
Goodwill	25,817	25,821
Intangible assets, net	378	521
Deferred tax asset – long term	64	64
Restricted Cash	—	5,500
Other assets	187	187
Total assets	\$ 31,016	\$ 36,881
Liabilities, redeemable convertible preferred stock, and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 9,083	\$ 9,890
Accrued expenses	3,357	3,028
Deferred revenue	2,101	2,629
PhunCoin deposits	1,181	—
Factored receivables payable	1,775	2,434
Short term notes payable - related party	—	1,993
Total current liabilities	17,497	19,974
Convertible note payable (see Note 5)	250	—
Deferred tax liability	64	64
Deferred revenue	5,048	5,622
Deferred rent	14	17
Total liabilities	22,873	25,677
Commitments and contingencies (see Note 6)	—	—
Redeemable convertible preferred stock, \$0.0001 par value (see Note 8)	—	5,377
Stockholders' equity		
Common stock, \$0.0001 par value (see Note 9)	4	3
Additional paid in capital	125,854	118,062
Accumulated other comprehensive loss	(421)	(418)
Accumulated deficit	(117,294)	(111,820)
Total stockholders' equity	8,143	5,827
Total liabilities, redeemable convertible preferred stock, and stockholders' equity	\$ 31,016	\$ 36,881

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

Phunware, Inc.
Condensed Consolidated Statements of Operations and Comprehensive Income (Loss)
(In thousands, except per share information)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Net revenues	\$ 5,510	\$ 14,185	\$ 10,825	\$ 19,165
Cost of revenues	2,722	3,069	5,339	5,936
Gross profit	2,788	11,116	5,486	13,229
Operating expenses:				
Sales and marketing	665	1,414	1,389	3,332
General and administrative	3,970	3,318	7,945	7,807
Research and development	1,077	1,718	2,386	4,018
Total operating expenses	5,712	6,450	11,720	15,157
Operating (loss) income	(2,924)	4,666	(6,234)	(1,928)
Other income (expense):				
Interest expense	(151)	(183)	(339)	(385)
Fair value adjustment for warrant liabilities	—	—	—	(54)
Impairment of digital currencies	—	(21)	—	(334)
Other income	13	10	17	9
Total other expense	(138)	(194)	(322)	(764)
(Loss) income before taxes	(3,062)	4,472	(6,556)	(2,692)
Income tax expense	(5)	—	(5)	—
Net (loss) income	(3,067)	4,472	(6,561)	(2,692)
Other comprehensive loss				
Cumulative translation adjustment	(30)	(81)	(3)	(27)
Comprehensive (loss) income	\$ (3,097)	\$ 4,391	\$ (6,564)	\$ (2,719)
Net (loss) income per share, basic	\$ (0.08)	\$ 0.18	\$ (0.19)	\$ (0.11)
Net (loss) income per share, diluted	\$ (0.08)	\$ 0.17	\$ (0.19)	\$ (0.11)
Weighted-average shares used to compute net (loss) income per share, basic	38,810	25,396	34,537	25,174
Weighted-average shares used to compute net (loss) income per share, diluted	38,810	26,164	34,537	25,174

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

Phunware, Inc.
Condensed Consolidated Statements of Changes in Convertible Preferred Stock and Stockholders' Equity
(In thousands)
(Unaudited)

	Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance - March 31, 2019	—	—	38,331	\$ 4	\$ 125,421	\$ (114,227)	\$ (391)	\$ 10,807
Exercise of stock options, net of vesting of restricted shares	—	—	58	—	17	—	—	17
Exercise of common stock warrants pursuant to cashless provisions	—	—	513	—	—	—	—	—
Stock-based compensation expense	—	—	—	—	416	—	—	416
Cumulative translation adjustment	—	—	—	—	—	—	(30)	(30)
Net loss	—	—	—	—	—	(3,067)	—	(3,067)
Balance - June 30, 2019	—	—	38,902	4	125,854	(117,294)	(421)	8,143
Balance - December 31, 2018	6	5,377	27,253	\$ 3	\$ 118,062	\$ (111,820)	\$ (418)	\$ 5,827
Exercise of stock options, net of vesting of restricted shares	—	—	119	—	52	—	—	52
Exercise of common stock warrants for cash	—	—	617	—	6,184	—	—	6,184
Exercise of common stock warrants pursuant to cashless provisions	—	—	10,913	1	(1)	—	—	—
Series A convertible preferred stock redeemed for cash	(6)	(5,377)	—	—	(863)	—	—	(863)
Waiver of sponsor promissory note originally issued in conjunction with Reverse Merger and Recapitalization	—	—	—	—	1,993	—	—	1,993
Stock-based compensation expense	—	—	—	—	427	—	—	427
Cumulative-effect adjustment resulting from the adoption of ASU 2014-09 (Note 2)	—	—	—	—	—	1,087	—	1,087
Cumulative translation adjustment	—	—	—	—	—	—	(3)	(3)
Net loss	—	—	—	—	—	(6,561)	—	(6,561)
Balance - June 30, 2019	—	—	38,902	4	125,854	(117,294)	(421)	\$ 8,143

	Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance - March 31, 2018	—	—	25,135	\$ 3	\$ 115,243	\$ (109,181)	\$ (293)	\$ 5,772
Exercise of stock options, net of vesting of restricted shares	—	—	193	—	102	—	—	102
Issuance of common stock, net of issuance costs	—	—	543	—	4,770	—	—	4,770
Stock-based compensation expense	—	—	—	—	62	—	—	62
Cumulative translation adjustment	—	—	—	—	—	—	(81)	(81)
Net income	—	—	—	—	—	4,472	—	4,472
Balance - June 30, 2018	—	—	25,871	\$ 3	\$ 120,177	\$ (104,709)	\$ (374)	\$ 15,097
Balance - December 31, 2017	—	—	24,559	\$ 3	\$ 110,265	\$ (102,017)	\$ (347)	\$ 7,904
Exercise of stock options, net of vesting of restricted shares	—	—	226	—	127	—	—	127
Issuance of common stock, net of issuance costs	—	—	1,086	—	9,574	—	—	9,574
Stock-based compensation expense	—	—	—	—	211	—	—	211
Cumulative translation adjustment	—	—	—	—	—	—	(27)	(27)
Net loss	—	—	—	—	—	(2,692)	—	(2,692)
Balance - June 30, 2018	—	—	25,871	\$ 3	\$ 120,177	\$ (104,709)	\$ (374)	\$ 15,097

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

Phunware, Inc.
Condensed Consolidated Statements of Cash Flows
(In thousands)
(Unaudited)

	Six Months Ended June 30,	
	2019	2018
Operating activities		
Net loss	\$ (6,561)	\$ (2,692)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation	30	32
Loss (gain) on sale of digital currencies	4	(10)
Bad debt expense	132	68
Amortization of acquired intangibles	143	211
Change in fair value of warrants	—	54
Impairment of digital currencies	—	334
Stock-based compensation	427	211
Changes in operating assets and liabilities:		
Accounts receivable	(71)	1,505
Prepaid expenses and other assets	(99)	118
Deferred merger costs	—	(857)
Accounts payable	(807)	2,067
Accrued expenses	330	(6,504)
Warrant liability	—	450
Deferred revenue	606	(1,006)
Net cash used in operating activities	(5,866)	(6,019)
Investing activities		
Proceeds received from sale of digital currencies	88	175
Payments for note receivable	—	(325)
Net cash provided by (used in) investing activities	88	(150)
Financing activities		
Proceeds from convertible note	250	—
Proceeds from PhunCoin deposits	191	—
Net (repayments) proceeds from factoring agreement	(659)	521
Proceeds from common stock subscriptions, net of issuance costs	—	5,459
Proceeds from warrant exercises	6,092	—
Proceeds from exercise of options to purchase common stock	52	128
Series A convertible preferred stock redemptions and dividend payments	(6,240)	—
Net cash (used in) provided by financing activities	(314)	6,108
Effect of exchange rate on cash and restricted cash	(4)	(26)
Net decrease in cash and restricted cash	(6,096)	(87)
Cash and restricted cash at the beginning of the period	6,344	308
Cash and restricted cash at the end of the period	\$ 248	\$ 221
Supplemental disclosure of cash flow information		
Interest paid	\$ 361	\$ 370
Common stock issuances from subscription payable, net of fair value convertible stock warrants issued	\$ —	\$ 9,604

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

Phunware, Inc
Notes to Unaudited Condensed Consolidated Financial Statements
(In thousands, except share and per share information)
(unaudited)

1. The Company and Basis of Presentation

The Company

Phunware, Inc. (the “Company”) is a provider of Multiscreen as a Service (MaaS) solutions, an integrated customer engagement platform that enables organizations to develop customized, immersive, branded mobile applications. The Company sells its services in vertical markets, including health care, retail, hospitality, transportation, sports, and entertainment. The Company enables brands to engage, manage, and monetize their anytime-anywhere mobile users. The Company’s MaaS technology is available in software development kit form for organizations developing their own application, via customized development services, and prepackaged solutions. Through its integrated mobile advertising platform of publishers and developers, the Company also maximizes mobile monetization through an advertising product suite including real-time bidding, publisher mediation and yield optimization, cross-platform ad creation, and dynamic ad serving. Founded in 2009, the Company is a Delaware corporation headquartered in Austin, Texas.

Business Combination

On February 27, 2018, Phunware entered into an Agreement and Plan of Merger, as amended (collectively, the “Merger Agreement”) with Stellar Acquisition III, Inc. (“Stellar”). On December 26, 2018, the Company consummated the transaction contemplated by the Merger Agreement (the “Reverse Merger and Recapitalization”). In connection with the closing of the Reverse Merger and Recapitalization, the registrant changed its name from Stellar Acquisition III, Inc. to Phunware, Inc. (“Successor”). Furthermore, the holders of Phunware’s preferred stock converted all of their issued and outstanding shares of preferred stock into shares of Phunware common stock at a conversion ratio of one share of common stock for each share of preferred stock (the “Preferred Stock Exchange”). Subject to the terms and conditions set forth in the Merger Agreement, at the effective time of the Reverse Merger and Recapitalization (the “Effective Time”): (i) all shares of Phunware common stock and preferred stock (the “Phunware Stock”) issued and outstanding immediately prior to the Effective Time (after giving effect to the Preferred Stock Exchange) converted into the right to receive the Stockholder Merger Consideration (as defined below); (ii) each outstanding warrant to acquire shares of Phunware Stock was cancelled, retired and terminated in exchange for the right to receive from the Successor a new warrant for shares of Successor common stock with its price and number of shares equitably adjusted based on the conversion of the shares of Phunware Stock into the Stockholder Merger Consideration, but with terms otherwise the same as the Phunware warrant (each, a “Replacement Warrant”); and (iii) each outstanding option to acquire Phunware Stock (whether vested or unvested) was assumed by the Successor and automatically converted into an option to acquire shares of Successor common stock, with its price and number of shares equitably adjusted based on the conversion of the shares of Phunware Stock into the Stockholder Merger Consideration (each, an “Assumed Option”). The shares of Successor common stock and the Transferred Sponsor Warrants (as defined in Amendment No. 5 to the Registration Statement on Form S-4 filed with the Securities and Exchange Commission (“SEC”) on November 13, 2018) transferred to Phunware stockholders are collectively referred to as “Stockholder Merger Consideration”. The per share Merger Consideration paid to Phunware Stockholders was 0.459 shares of Successor stock for each share of Phunware Stock.

Unless otherwise noted, the financial statements, footnotes, and basic and dilutive net (loss) income per share presented give retroactive effect of the Reverse Merger and Recapitalization.

Basis of Presentation

The consolidated financial statements have been prepared in conformity with generally accepted accounting principles in the United States (“U.S. GAAP”) and include the Company’s accounts and those of its wholly owned subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

The balance sheet at December 31, 2018 was derived from the Company’s audited consolidated financial statements, but these interim condensed consolidated financial statements do not include all the annual disclosures required by U.S. GAAP. These interim condensed consolidated financial statements should be read in conjunction with the Company’s audited consolidated financial statements and the notes thereto for the year ended December 31, 2018, which are referenced herein. The accompanying interim condensed consolidated financial statements as of June 30, 2019 and for the three and six months ended June 30, 2019 and 2018, are unaudited. The unaudited interim condensed consolidated financial statements have been prepared on a basis consistent with the audited financial statements, pursuant to the rules and regulations of the SEC for interim financial

statements. Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. GAAP have been condensed or omitted pursuant to such rules and regulations. In the opinion of management, the financial statements reflect all adjustments (consisting of normal recurring adjustments) considered necessary to fairly state the Company's financial position as of June 30, 2019 and the results of operations for the three and six months ended June 30, 2019 and 2018, and cash flows for the six months ended June 30, 2019 and 2018. The results for the three and six months ended June 30, 2019 are not necessarily indicative of the results to be expected for the year ending December 31, 2019 or for any future interim period.

Going Concern

Accounting Standards Codification ("ASC") Topic 205-40, Presentation of Financial Statements - Going Concern (ASC 205-40) requires management to assess the Company's ability to continue as a going concern for one year after the date the financial statements are issued. Under ASC 205-40, management has the responsibility to evaluate whether conditions and/or events raise substantial doubt about the Company's ability to meet future financial obligations as they become due within one year after the date the financial statements are issued. As required by this standard, management's evaluation shall initially not take into consideration the potential mitigating effects of management's plans that have not been fully implemented as of the date the financial statements are issued.

The Company has a history of operating losses and negative operating cash flows. Although the Company continues to focus on growing its revenues, it expects these trends to continue into the foreseeable future.

The Company's assessment included the preparation of a detailed cash forecast that included all projected cash inflows and outflows. Future plans may include utilizing existing credit lines and/or obtaining new credit lines, expanding credit lines, issuing additional equity securities, including the exercise of warrants, issuing convertible notes payable or other debt instruments and reducing overhead expenses. Despite a history of successfully implementing similar plans to alleviate the adverse financial conditions, these sources of working capital are not currently assured, and consequently do not sufficiently mitigate the risks and uncertainties disclosed above. There can be no assurance that the Company will be able to obtain additional funding on satisfactory terms or at all. In addition, no assurance can be given that any such financing, if obtained, will be adequate to meet the Company's capital needs and support its growth. If additional funding cannot be obtained on a timely basis and on satisfactory terms, its operations would be materially negatively impacted. The Company has concluded there is substantial doubt about its ability to continue as a going concern through one year from the issuance of these financial statements.

The accompanying condensed consolidated financial statements have been prepared on a going-concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The accompanying condensed consolidated financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from uncertainty related to the Company's ability to continue as a going concern.

2. Summary of Significant Accounting Policies

There have been no changes in significant accounting policies as described in our Annual Report on Form 10-K filed with the SEC on March 20, 2019 for the year ended December 31, 2018, other than those described below.

Changes in Accounting Policies

On January 1, 2019, we adopted Financial Accounting Standards Board ("FASB") Accounting Standards Update ("ASU") No. 2014-09, *Revenue from Contracts with Customers*, as amended ("ASU 2014-09" or "ASC 606"), and have revised certain related accounting policies in connection with revenue recognition and deferred costs, as follows:

Revenue Recognition

Revenue is recognized upon transfer of control of promised products or services in an amount that reflects the consideration we expect to receive in exchange for those products or services. The Company enters into contracts that can include various combinations of products and services, which are generally capable of being distinct, distinct within the context of the contract, and accounted for as separate performance obligations.

Our contracts with customers often include promises to transfer multiple products and services to a customer. Determining whether products and services are considered distinct performance obligations that should be accounted for separately versus

together may require significant judgment. Judgment is required to determine whether a software license is considered distinct and accounted for separately, or not distinct and accounted for together with the software support and services and recognized over time.

Platform Subscriptions and Services Revenue

The Company derives subscription revenue from software license fees, which comprise subscription fees from customers licensing the Company's Software Development Kits (SDKs), which includes accessing the MaaS platform and/or MaaS platform data; application development service revenue from the development of customer applications, or apps, which are built and delivered to customers; and support fees. The Company's contract terms generally range from 6 to 60 months.

Subscription revenue from SDK licenses gives the customer the right to access the Company's MaaS platform. In accordance with ASC 606, a 'right to access' license is recognized over the license period.

Application development revenue is derived from development services around designing and building new applications or enhancing existing applications. The Company plans to recognize application development revenue upon the transfer of control of the completed application or application development services.

Support and maintenance revenue comprises support fees for customer applications, software updates, and technical support for application development services for a support term. Support revenue is recognized ratably over the support term.

From time to time, the Company also provides professional services by outsourcing employees' time and materials to customers. Such amounts are typically recorded as the services are delivered.

Application Transaction Revenue

The Company also generates revenue by charging advertisers to deliver advertisements (ads) to users of mobile connected devices. Depending on the specific terms of each advertising contract, the Company generally recognizes revenue based on the activity of mobile users viewing these ads. Fees from advertisers are commonly based on the number of ads delivered or views, clicks, or actions by users on mobile advertisements delivered, and the Company recognizes revenue at the time the user views, clicks, or otherwise acts on the ad. The Company sells ads through several offerings: cost per thousand impressions, on which advertisers are charged for each ad delivered to 1,000 consumers; cost per click, on which advertisers are charged for each ad clicked or touched on by a user; and cost per action, on which advertisers are charged each time a consumer takes a specified action, such as downloading an app. In addition, the Company generates application transaction revenue thru in-app purchases from an application on our platform.

In the normal course of business, the Company acts as an intermediary in executing transactions with third parties. The determination of whether revenue should be reported on a gross or net basis is based on an assessment of whether the Company is acting as the principal or an agent in its transactions with advertisers. Control is a determining factor in assessing principal versus agent relation. The determination of whether the Company is acting as a principal or an agent in a transaction involves judgment and is based on an evaluation of the terms of each arrangement. ASC 606 provides indicators of when an entity controls specified goods or services and is therefore acting as a principal. Based on the indicators of control, the Company has determined that it is the principal in all advertising arrangements because it is responsible for fulfilling the promise to provide the specified advertisements to advertising agencies or companies; establishing the selling prices of the advertisements sold; and credit risk with its advertising traffic providers. Accordingly, the Company acts as the principal in all advertising arrangements and therefore reports revenue earned and costs incurred related to these transactions on a gross basis.

The Company records deferred revenue when it receives cash payments from advertiser clients in advance of when the services are performed under the arrangements with the customer. The Company recognizes deferred revenue as revenue only when revenue recognition criteria are met.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates. Items subject to the use of estimates include revenue recognition for contract completion, useful lives of long-lived assets including intangibles, valuation of intangible assets acquired in business combinations, reserves and certain accrued liabilities, determination of the provision for income taxes, and fair value of equity instruments.

Earnings (Loss) per Common Share

Basic earnings (loss) per share is computed by dividing net income (loss) by the weighted-average number of shares of common stock outstanding during the period. Restricted shares subject to repurchase provisions relating to early exercises under the Company's 2009 Equity Incentive Plan were excluded from basic shares outstanding.

For the three months ended June 30, 2018, diluted earnings per share was computed by giving effect to all potential shares of common stock, including those related to the Company's outstanding warrants and options, to the extent dilutive. For all other periods presented, these shares were excluded from the calculation of diluted loss per share of common stock because their inclusion would have been anti-dilutive. As a result, diluted loss per common share is the same as basic loss per common share for those periods.

Fair Value of Financial Instruments

Authoritative guidance on fair value measurements defines fair value, establishes a consistent framework for measuring fair value, and expands disclosures for each major asset and liability category measured at fair value on either a recurring or non-recurring basis. 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 should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, the authoritative guidance establishes a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value as follows:

Level 1 — Observable inputs such as quoted prices in active markets.

Level 2 — Inputs, other than the quoted prices in active markets, that are observable either directly or indirectly.

Level 3 — Unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

The carrying value of accounts receivable, prepaid expenses, other current assets, accounts payable, and accrued expenses are considered to be representative of their respective fair values because of the short-term nature of those instruments.

Concentrations of Credit Risk

The Company's financial instruments that are exposed to concentrations of credit risk consist primarily of cash and trade accounts receivable. Although the Company limits its exposure to credit loss by depositing its cash with established financial institutions that management believes have good credit ratings and represent minimal risk of loss of principal, its deposits, at times, may exceed federally insured limits. Collateral is not required for accounts receivable, and the Company believes the carrying value approximates fair value.

The following table sets forth the Company's concentration of revenue sources as a percentage of total net revenues.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Fox Networks Group	57%	22%	59%	33%
Fetch Media, Ltd.	—%	45%	—%	33%
Houston Methodist	8%	—%	11%	—%
Cisco	—%	12%	—%	9%

The following table sets forth the Company's concentration of accounts receivable, net of specific allowances for doubtful accounts.

	June 30, 2019	December 31, 2018
Fox Networks Group	46 %	66 %
American Made Media	15 %	— %

Cash, Cash Equivalents, and Restricted Cash

The Company considers all investments with a maturity of three months or less from the date of acquisition to be cash equivalents. The Company had no cash equivalents at June 30, 2019.

As a result of the Series A Financing (defined and discussed further below), the Company had \$5,500 in restricted cash as of December 31, 2018. The Company did not have any restricted cash as of June 30, 2019.

Accounts Receivable and Reserves

Accounts receivable are presented net of allowances. The Company considers receivables past due based on the contractual payment terms. The Company makes judgments as to its ability to collect outstanding receivables and records a bad debt allowance for receivables when collection becomes doubtful. The allowances are based upon historical loss patterns, current and prior trends in its aged receivables, credit memo activity, and specific circumstances of individual receivable balances.

Accounts receivable consisted of the following:

	June 30, 2019	December 31, 2018
Accounts receivable	\$ 6,882	\$ 6,882
Less allowances for doubtful accounts	(3,336)	(3,276)
Balance	<u>\$ 3,546</u>	<u>\$ 3,606</u>

Allowance for doubtful accounts related to the Company's litigation with Uber was \$3,089 as of June 30, 2019 and December 31, 2018. (See Note 6 for more discussion on the Uber litigation.)

Long-Lived Assets

In accordance with authoritative guidance, the Company periodically re-evaluates the original assumptions and rationale utilized in the establishment of the carrying value and estimated lives of all of its long-lived assets, including property and equipment. The determinants used for this evaluation include management's estimate of the asset's ability to generate positive income from operations and positive cash flow in future periods as well as the strategic significance of the asset to the Company's business objective. The Company did not recognize any impairment losses during the three and six months ended June 30, 2019 or 2018, respectively.

Deferred Revenue

The Company's deferred revenue balance consisted of the following:

	June 30, 2019	December 31, 2018
Current deferred revenue		
Platform subscriptions and services revenue	\$ 2,008	\$ 1,506
Application transaction revenue	93	133
PhunCoin deposits	—	990
Total current deferred revenue	<u>\$ 2,101</u>	<u>\$ 2,629</u>
Non-current deferred revenue		
Platform subscriptions and services revenue	\$ 5,048	\$ 5,622
Total non-current deferred revenue	<u>\$ 5,048</u>	<u>\$ 5,622</u>
Total deferred revenue	<u>\$ 7,149</u>	<u>\$ 8,251</u>

During the second quarter of 2019, Phunware announced the launch of a separate token, Phun, in addition to its current token, PhunCoin. As a result of this expanded dual token structure, the Company believes the economic substance and business characteristics of all previously issued PhunCoin Rights changed such that PhunCoin would be the investment vehicle in the Company's blockchain-enabled data exchange. As a result, the Company has reclassified all PhunCoin deposits from deferred revenue to a separate line item, "PhunCoin deposits," on its condensed consolidated balance sheet as of June 30, 2019.

Emerging Growth Company

Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such an election to opt out is irrevocable. The Company has elected not to opt out of such extended transition period which means that when a standard is issued or revised and it has different application dates for public or private companies, the Company, as an emerging growth company, can adopt the new or revised standard at the time private companies adopt the new or revised standard.

Recently Adopted Accounting Policies

In May 2014, the FASB and the International Accounting Standards Board jointly issued Accounting Standards Update ("ASU") No. 2014-09 *Revenue from Contracts with Customers*, which supersedes the revenue recognition requirements in ASC 605, *Revenue Recognition*. ASU 2014-09 is a comprehensive new revenue recognition standard that will supersede nearly all existing revenue recognition guidance under U.S. GAAP and International Financial Reporting Standards. The standard's core principle is that a company will recognize revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. In doing so, companies will need to use more judgment and make more estimates than under current authoritative guidance. These may include identifying performance obligations in the contract, estimating the amount of variable consideration to include in the transaction price, and allocating the transaction price to each separate performance obligation.

The Company elected to take advantage of the extended transition period provided in Securities Act Section 7(a)(2)(B) for complying with new or revised accounting standards. As a result, we adopted the ASU and related guidance as of January 1, 2019 using the modified retrospective method.

The most significant impact of the standard relates to the elimination of the requirement to have vendor specific objective evidence, or VSOE, of fair value to separate and recognize revenue for products and services in a contract. The elimination of the VSOE requirement causes a significant change to the timing of revenue recognition for multiple-element arrangements with our MaaS subscriptions, application development services and related support and maintenance on the development services that lacked VSOE of fair value. Under ASC 606, we recognize the application development services at the time of delivery to our customer and recognize the license subscription and support services ratably over the term of the subscription agreements. Under ASC 605, we recognized all revenue from those arrangements ratably over the term of the subscription or support agreements. Due to the complexity of our revenue contracts, the actual revenue recognition treatment required under the new standard depends on contract-specific terms and in some instances may vary from recognition at the time of delivery. The timing of revenue recognized from professional services for our MaaS licenses, professional services, support and maintenance and hardware remains substantially unchanged.

In addition, Accounting Standards Codification Subtopic 340-40, Other Assets and Deferred Costs - Contracts with Customers, or ASC 340, requires us to recognize an asset for the incremental costs of obtaining a contract with a customer if our sales incentive programs meet the requirements for capitalization. Previously we recorded these incremental costs of obtaining a contract as commission expense when we booked a sales transaction; whereas under ASC 340, we record an asset for the incremental cost to obtain a contract and recognize the cost over the period commensurate with revenue recognition.

When implementing ASC 606, the Company applied the practical expedient to reflect the aggregate effect of all contracts that were not completed as of January 1, 2019 when identifying satisfied and unsatisfied performance obligations, determining the transaction price, and allocating the transaction price to the satisfied and unsatisfied performance obligations.

The following table sets forth the cumulative impact of the adoption of the new revenue standard for select condensed consolidated balance sheet line items:

	Balance at December 31, 2018	Adjustments due to ASU 2014-09	Balance at January 1, 2019
Assets:			
Prepaid expenses and other current assets	\$ 272	\$ 369	\$ 641
Liabilities:			
Deferred revenue short-term	\$ 2,629	\$ (465)	\$ 2,164
Deferred revenue long-term	\$ 5,622	\$ (253)	\$ 5,369
Stockholders' deficit:			
Accumulated deficit	\$ (111,820)	\$ 1,087	\$ (110,733)

The following tables summarize the significant impacts of adopting ASC 606 on our financial statements as of and for the three and six months ended June 30, 2019:

Condensed Consolidated Balance Sheet

	June 30, 2019		
	As reported	Impact of Adoption	Balances Without Adoption of ASC 606
Assets:			
Prepaid expenses and other current assets	\$ 740	\$ (374)	\$ 366
Liabilities:			
Deferred revenue short-term	\$ 2,101	\$ 218	\$ 2,319
Deferred revenue long-term	\$ 5,048	\$ 209	\$ 5,257
Stockholders' deficit:			
Accumulated deficit	\$ (117,294)	\$ (801)	\$ (118,095)

Condensed Consolidated Statement of Operations

	Three Months Ended June 30, 2019		
	As reported	Impact of Adoption	Amounts Without Adoption of ASC 606
Net revenue	\$ 5,510	\$ 109	\$ 5,619
Sales and marketing	\$ 665	\$ 50	\$ 715
Net loss	\$ (3,067)	\$ 59	\$ (3,008)
Net loss per share, basic and diluted	\$ (0.08)	\$ —	\$ (0.08)

	Six Months Ended June 30, 2019		
	As reported	Impact of Adoption	Amounts Without Adoption of ASC 606
Net revenue	\$ 10,825	\$ 291	\$ 11,116
Sales and marketing	\$ 1,389	\$ 5	\$ 1,394
Net loss	\$ (6,561)	\$ 286	\$ (6,275)
Net loss per share, basic and diluted	\$ (0.19)	\$ 0.01	\$ (0.18)

In connection with our adoption of ASC 606 on January 1, 2019, there was an increase to the Company's deferred income tax liabilities and an offsetting reduction in the valuation allowance recorded against deferred tax assets. No income tax impact was recorded to retained earnings upon adoption as a result of the full valuation allowance on United States deferred tax assets. During the three and six months ended June 30, 2019, there is no income tax expense or benefit recorded as a result of the adoption of the ASC 606.

In November 2016, the FASB issued ASU 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash* ("ASU 2016-18"), which provides amendments to current guidance to address the classification and presentation of changes in restricted cash in the statement of cash flows. We adopted ASU 2016-18 effective January 1, 2019 on a retrospective basis. The adoption of this guidance changed the presentation of restricted cash on the Company's condensed consolidated statement of cash flows for the six months ended June 30, 2019. There was no impact to the Company's condensed consolidated statement of cash flows for the six months ended June 30, 2018.

In August 2018, the SEC adopted the final rule under SEC Release No. 33-10532, "Disclosure Update and Simplification," amending certain disclosure requirements that were redundant, duplicative, overlapping, outdated or superseded. In addition, the amendments expanded the disclosure requirements on the analysis of stockholders' equity for interim financial statements. Under the amendments, an analysis of changes in each caption of stockholders' equity presented in the balance sheet must be provided in a note or separate statement. The analysis should present a reconciliation of the beginning balance to the ending balance of each period for which a statement of comprehensive income is required to be filed. This final rule is effective on November 5, 2018. The Company adopted this disclosure beginning with its quarterly report on Form 10-Q for the quarter ended March 31, 2019.

Recent Accounting Pronouncements Not Yet Adopted

In February 2016, the FASB issued ASU No. 2016-02, *Leases* (Topic 842). The core principle of Topic 842 is that a lessee should recognize the assets and liabilities that arise from leases. For operating leases, a lessee is required to recognize a right-of-use asset and a lease liability, initially measured at the present value of the lease payments, in the statement of financial position. For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. Under current U.S. GAAP, the Company recognizes rent expense on a straight-line basis for all operating leases, taking into account fixed accelerations, as well as reasonably assured renewal periods. The accounting applied by a lessor is largely unchanged from that applied under previous generally accepted accounting principles. This ASU is effective for the Company for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. Earlier application is permitted. In transition, lessees and lessors are required to recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. The Company is currently evaluating the effect that the adoption of this ASU will have on its financial statements.

In January 2017, the FASB issued ASU 2017-01 Business Combinations (Topic 805): Clarifying the Definition of a Business. ASU 2017-01 provides a new framework for entities to determine whether a set of assets and activities (together referred to as "a set") is a business. The amendments in the ASU will assist entities when they evaluate whether transactions should be accounted for as acquisitions (or disposals) either of businesses or of assets. This distinction is important since there are significant differences between the accounting for business combinations and the accounting for acquisitions of assets. Public business entities should apply the amendments to Topic 805 to annual periods beginning after December 15, 2017, including interim periods within those periods. All other entities should apply the amendments to annual periods beginning after December 15, 2018, and interim periods within annual periods beginning after December 15, 2019. As the Company is an emerging growth company, it has elected to defer implementation. The Company does not believe there will be a material impact to the consolidated financial statements upon adoption.

In January 2017, the FASB issued ASU 2017-04 Intangibles—Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment. ASU 2017-04 simplifies how all entities assess goodwill for impairment by eliminating Step 2 from the goodwill impairment test. As amended, the goodwill impairment test will consist of one step; comparing the fair value of a reporting unit with its carrying amount. An entity should recognize a goodwill impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value. Public business entities that are SEC filers should adopt the amendments in this ASU for their annual or any interim goodwill impairment tests in fiscal years beginning after December 15, 2019. A public business entity that is not an SEC filer should adopt the amendments in this Update for its annual or any interim goodwill impairment tests in fiscal years beginning after December 15, 2020. All other entities, including not-for-profit entities, that are adopting the amendments in this Update should do so for their annual or any interim goodwill impairment tests in fiscal years beginning after December 15, 2021. Early adoption is permitted for interim or annual goodwill impairment tests performed on testing dates after January 1, 2017. We do not anticipate the adoption of ASU 2017-04 will have a material impact on our consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13—Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement. ASU 2018-13 improves the effectiveness of disclosures about fair value measurements required under ASC 820. ASU 2018-13 is effective for all entities for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. The amendments on changes in unrealized gains and losses, the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and the narrative description of measurement uncertainty should be applied prospectively for only the most recent interim or annual period presented in the initial fiscal year of adoption. All other amendments should be applied retrospectively to all periods presented upon their effective date. Early adoption is permitted upon issuance of this Update. An entity is permitted to early adopt any removed or modified disclosures upon issuance of this Update and delay adoption of the additional disclosures until their effective date. The Company is currently evaluating the impact this ASU has on its consolidated financial statements.

3. Reverse Merger

On February 27, 2018, Phunware entered into an Agreement and Plan of Merger, as amended (collectively, the “Merger Agreement”) with Stellar Acquisition III, Inc. (“Stellar”). On December 26, 2018, the Company consummated the transaction contemplated by the Merger Agreement (the “Reverse Merger and Recapitalization”). In connection with the closing of the Reverse Merger and Recapitalization, the registrant changed its name from Stellar Acquisition III, Inc. to Phunware, Inc. (“Successor”). Furthermore, the holders of Phunware’s preferred stock converted all of their issued and outstanding shares of preferred stock into shares of Phunware common stock at a conversion ratio of one share of common stock for each share of preferred stock (the “Preferred Stock Exchange”). Subject to the terms and conditions set forth in the Merger Agreement, at the effective time of the Reverse Merger and Recapitalization (the “Effective Time”): (i) all shares of Phunware common stock and preferred stock (the “Phunware Stock”) issued and outstanding immediately prior to the Effective Time (after giving effect to the Preferred Stock Exchange) converted into the right to receive the Stockholder Merger Consideration (as defined below); (ii) each outstanding warrant to acquire shares of Phunware Stock was cancelled, retired and terminated in exchange for the right to receive from the Successor a new warrant for shares of Successor common stock with its price and number of shares equitably adjusted based on the conversion of the shares of Phunware Stock into the Stockholder Merger Consideration, but with terms otherwise the same as the Phunware warrant (each, a “Replacement Warrant”); and (iii) each outstanding option to acquire Phunware Stock (whether vested or unvested) was assumed by the Successor and automatically converted into an option to acquire shares of Successor common stock, with its price and number of shares equitably adjusted based on the conversion of the shares of Phunware Stock into the Stockholder Merger Consideration (each, an “Assumed Option”). The shares of Successor common stock and the Transferred Sponsor Warrants transferred to Phunware stockholders are collectively referred to as “Stockholder Merger Consideration”. The aggregate merger consideration paid pursuant to the Merger Agreement to Phunware stockholders amounted to approximately \$301 million plus adjustments for cash on-hand as of the date of Closing. The merger consideration paid to Phunware stockholders was paid in the form of shares of Successor common stock. In addition, each holder of Phunware common and convertible preferred stock was entitled to elect to receive such holder’s pro rata share of up to an aggregate of 3,985,244 warrants (the “Transfer Sponsor Warrants”) to purchase shares of Successor common stock that were held by certain shareholders of Stellar. The Transfer Sponsor Warrants have the same terms as the Private Placement Warrants described in more detail in Note 9 below. The per share Merger Consideration paid to Phunware Stockholders was 0.459 shares of Successor stock for each share of Phunware Stock.

As consideration for the Transfer Sponsor Warrants transferred to Phunware shareholders, a promissory note was issued to the Sponsors (the “Transfer Sponsor Warrant Note”). The amount of the note was approximately \$1,993, which represented \$0.50 per warrant transferred to former stockholders of Phunware. The Transfer Sponsor Warrant Note bore no interest and was to mature on December 26, 2019. Shareholders of Phunware forfeited 187,188 shares to receive 3,985,244 Transfer Sponsor Warrants. On January 15, 2019, the Transfer Sponsor Warrant Note was waived and forgiven by the noteholders.

The Company issued 2,211,572 Private Placement Warrants to the Sponsors as repayment in full for certain promissory notes (not the Transfer Sponsor Warrant Note) at the closing of the Reverse Merger and Recapitalization. In connection with the consummation of the Reverse Merger and Recapitalization, certain holders of shares of Stellar common stock sold in its initial public offering (“Public Shares”) exercised their right to redeem their Public Shares for cash. As a result of these redemptions, the cash proceeds to the Company as a result of the Reverse Merger and Recapitalization was \$0.4 million before transaction costs.

In addition, 6,000 shares for aggregate cash proceeds of \$6.0 million from the Series A 8% convertible preferred stock financing (“Series A Financing”) were issued in conjunction with the Reverse Merger and Recapitalization. In connection with the Series A Financing, certain Stellar shareholders transferred an aggregate of 250,000 shares of Stellar common stock and 250,000 warrants to purchase shares of Stellar common stock to the Series A Financing investor, and 81,391 shares to certain service providers. See Note 8 for additional discussion on the Series A Financing.

The Sponsors are Astra Maritime Inc. and Dominion Investments Inc., affiliated with the Company's Chairman of the board of directors and Magellan Investments Corp. and Firmus Investments Inc., affiliated with a member of our board of directors.

4. Factoring Agreement

On June 15, 2016 the Company entered into a factoring agreement with CSNK Working Capital Finance Corp. (d/b/a Bay View Funding) ("Bay View") whereby it sells select accounts receivable with recourse.

Under the terms of the agreement, Bay View may make advances to the Company of amounts representing up to 80% of the net amount of eligible accounts receivable. The factor facility is collateralized by a general security agreement over all the Company's personal property and interests. Fees paid to Bay View for factored receivables are 1.80% for the first 30 days and 0.65% for every ten days thereafter, to a maximum of 90 days total outstanding. The Company bears the risk of credit loss on the receivables. These receivables are accounted for as a secured borrowing arrangement and not as a sale of financial assets.

The Company's factor expense is recorded as interest expense in the condensed consolidated statement of net income (loss). Factor expense totaled \$146 and \$332 for the three and six months ended June 30, 2019, respectively, and \$179 and \$380 for the three and six months ended June 30, 2018, respectively.

The amount of factored receivables outstanding was \$1,775 and \$2,434 as of June 30, 2019 and December 31, 2018, respectively. There was \$1,225 and \$566 available for future advances as of June 30, 2019 and December 31, 2018, respectively.

5. Convertible Notes

During the second quarter of 2019, the Company's board of directors authorized the issuance of \$20 million of convertible promissory notes (the "Notes"), which may be paid by investors in the form of cash or, in the Company's sole discretion, cryptocurrency, such as Bitcoin or Ethereum. The Notes will be sold and issued only to accredited investors, in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506 of Regulation D promulgated thereunder.

The Notes bear ordinary interest at a rate of 7% per annum. Interest under the Notes is payable quarterly beginning on September 30, 2019, and interest and principal under the Notes is payable monthly beginning on June 30, 2021. However, at the holder's election, interest payments may be deferred until the earlier of (i) repayment in full of all remaining unpaid principal, and (ii) conversion. The notes mature on June 3, 2024.

The Notes are convertible into shares of the Company's common stock at a price of \$11.50 per share. Each Note will convert voluntarily upon a holder's election, or automatically upon the occurrence of the following events: (a) the closing sale price of the Company's common stock equals or exceeds \$17.25 per share for 20 out of 30 consecutive trading days, and (b) a registration statement is then in effect covering the disposition of the converted shares.

On June 3, 2019, the Company entered into a Note Purchase Agreement with an investor for the sale of a Note. The sale of this Note constituted an initial closing on June 3, 2019, and the Company issued a Note in the principal amount of \$250. The Company may hold subsequent closings until June 2, 2020. The Company may not issue Notes under the Purchase Agreement in excess of \$20 million, in the aggregate, unless otherwise agreed by the holders of a majority in interest of the principal outstanding under the Notes.

The balance of outstanding Notes is \$250 as of June 30, 2019. Interest expense related to the Note for the three and six months ended June 30, 2019, and interest payable under the Note as of June 30, 2019 is immaterial.

6. Commitments and Contingencies

Leases

The Company has operating office space leases in Austin, Texas; Newport Beach (Orange County), California; San Diego, California; and Miami, Florida. Rent expense under operating leases totaled \$166 and \$331 for the three and six months ended June 30, 2019, respectively, and \$153 and \$305 for the three and six months ended June 30, 2018, respectively.

Future minimum annual lease payments as of June 30, 2019 under the Company's operating leases are set forth as follows:

Future minimum lease obligations years ended December 31,	Lease Obligations
2019 (Remainder)	\$ 242
2020	164
2021	119
2022	119
2023	59
Thereafter	—
Total	\$ 703

Litigation

On September 26, 2017, we filed a breach of contract complaint against Uber Technologies, Inc. seeking approximately \$3 million (plus interest) for unpaid invoices for advertising campaign services provided for Uber in the first quarter of 2017. The case, captioned Phunware, Inc. v. Uber Technologies, Inc., Case No. CGC-17-561546 was filed in the Superior Court of the State of California County of San Francisco. On November 13, 2017, Uber generally denied the allegations in our complaint and also filed a cross-complaint against us and Fetch - the advertising agency Uber retained to run its mobile advertising campaign for the period 2014 through the first quarter of 2017 (the "Fetch Campaign"), asserting numerous fraud and contract-based claims. All the claims stem from Uber's allegation that Fetch and/or we (and/or other-as-yet-unidentified ad networks and publishers) are liable for the Fetch Campaign, under which Uber allegedly overpaid Fetch and mobile advertising providers due to allegedly fraudulent attribution for installments of the Uber application. Uber did not allege any specific dollar amount that it is seeking in damages against either of the named cross-defendants (Fetch and Phunware). We filed a motion to dismiss the cross-complaint, which was heard on February 7, 2018. The motion was granted in part and denied in part by the Court. On April 16, 2018, the action was designated complex, and the matter was assigned for all purposes to Judge Wiss of the Superior Court of California, San Francisco County (Department 305). In March 2019, Uber and Fetch settled Uber's claims against Fetch on terms that have not been disclosed to Phunware at this time. On May 7, 2019, we retained new counsel. In June 2019, the Court set a new trial date of April 20, 2020. Discovery is continuing. On June 26, 2019, the case was reassigned for all purposes to Judge Jackson of the Superior Court of California, San Francisco County (Department 613). On July 12, 2019, Uber filed its First Amended Cross-Complaint, naming new individual cross-defendants (Phunware Chief Executive Officer Alan S. Knitowski, and former Phunware employees D. Stasiuk, M. Borotsik, and A. Cook) accused of civil RICO violations and civil conspiracy to violate RICO, in addition to fraud, negligence, and unfair competition-based claims, and adding a fraud-based claim against Phunware. Uber's First Amended Cross-Complaint alleges that cross-defendants fraudulently obtained approximately \$17 million from Uber, and claims treble damages, general and punitive damages, and attorneys' fees and costs. We maintain that our claims against Uber are meritorious and that Uber's claims against us are not. However, we make no predictions on the likelihood of success of prevailing on our contract action against Uber or on the likelihood of defeating Uber's claims against us.

From time to time, the Company is and may become involved in various legal proceedings in the ordinary course of business. The outcomes of our legal proceedings are inherently unpredictable, subject to significant uncertainties, and could be material to our operating results and cash flows for a particular reporting period. In addition, for the matters disclosed above that do not include an estimate of the amount of loss or range of losses, such an estimate is not possible, and we may be unable to estimate the possible loss or range of losses that could potentially result from the application of non-monetary remedies.

7. PhunCoin & PhunToken

PhunCoin

In June 2018, PhunCoin, Inc., the Company's wholly-owned subsidiary, launched an offering pursuant to Rule 506(c) of Regulation D (the "Reg D Offering") as promulgated under the Securities Act of 1933 (the "Rights") to acquire a security token denominated as "PhunCoin". In addition, in 2019, we commenced an offering of Rights pursuant to Regulation CF (the "Reg CF Offering").

PhunCoin, Inc. accepts payment in the form of cash and digital currencies for purchases of the Rights. PhunCoin, Inc. plans to sell between \$10 million and \$100 million of the Rights, which will entitle the Rights holders to receive between approximately 8 billion and 30.5 billion of PhunCoin. The amount of PhunCoin to be issued to the purchaser is equal to the dollar amount paid by the purchaser divided by the price of PhunCoin at the time of issuance of the PhunCoin during the Token Generation Event (as defined below) before taking into consideration an applicable discount rate, which is based on the time of the purchase (early purchasers will receive a larger discount rate).

As of June 30, 2019, the Company has received aggregate cash proceeds from the Reg D Offering and Reg CF Offering of \$1.2 million, pursuant to which the holders of the Rights will receive an aggregate of approximately 577.9 million PhunCoin if the Token Generation Event occurs. The Reg CF Offering closed May 1, 2019, while the Reg D Offering is ongoing.

The rights, privileges, and obligations of Rights holders are set forth as follows:

Issuance of PhunCoin

PhunCoin is expected to be issued to Rights holders the earlier of (i) the launch (the "Token Generation Event") of PhunCoin, Inc.'s blockchain technology enabled data exchange (the "Token Ecosystem"), or (ii) the date PhunCoin, Inc. determines that it has the ability to enforce resale restrictions with respect to PhunCoin pursuant to applicable federal securities laws. Proceeds from the Rights offering are generally not refundable if the Token Generation Event is not consummated; however, the Company believes PhunCoin, Inc. has a contractual obligation to use good faith efforts to issue PhunCoin to Rights holders under the Token Rights Agreement.

The Company currently anticipates that PhunCoin will be issued to the holders of the Rights after the one year period from when the earliest Rights were acquired by the holders (which was June 2018). Holders of the Rights may be issued PhunCoin even if the Token Ecosystem is not yet operational. PhunCoin will have no usefulness until the Token Ecosystem is operational because PhunCoin is expected to only be useable on the Token Ecosystem.

There can be no assurance as to when (or if) the Company will be able to successfully launch the Token Ecosystem. The Company is currently developing multiple aspects of the Token Ecosystem and expects that a review (beta) period will likely conclude during the third quarter of 2019. The final software readiness date of the Token Ecosystem may be adjusted based on user feedback provided in the review (beta) period and thus a specific launch date is difficult to determine at this time, as it is based on many external factors outside of our control.

Termination of the Token Rights Agreement

Termination of the Token Rights Agreement occurs on the earlier of (i) PhunCoin being issued to the Rights holder pursuant to the provisions noted above, (ii) the payment, or setting aside of payment with respect to a dissolution event (as described below), or (iii) twelve months from the date of the Token Rights Agreement with the Rights holder, which PhunCoin, Inc. may extend at its sole discretion if a Token Generation Event has not occurred. Upon termination of the Token Rights Agreement, PhunCoin, Inc. has no further obligation to the Rights holder. PhunCoin, Inc. has extended the termination date of the Token Rights Agreement.

Dissolution Event

A dissolution event occurs if there has been (i) a voluntary termination of PhunCoin, Inc.'s operations, (ii) a general assignment for the benefit of PhunCoin, Inc.'s creditors, (iii) a change of U.S. laws that makes the use or issuance of PhunCoin or the Token Generation Event impractical or unfeasible, or (iv) any other liquidation, dissolution or winding up of PhunCoin, Inc.

In the event a dissolution event occurs prior to the termination of the Token Rights Agreement, if there are any remaining proceeds from the Rights offering that have not been utilized by PhunCoin, Inc. in its operations or for the development of the PhunCoin Ecosystem, such remaining proceeds would be distributed pro rata to purchasers in the Rights offering following any distributions to holders of PhunCoin, Inc.'s capital stock or debt, if any.

No Voting Rights or Profit Share

Rights holders (and eventual PhunCoin holders) have no voting rights and are not entitled to share in the profits or residual interest of Phunware, PhunCoin, Inc. or any subsidiaries of the Company. However, PhunCoin holders will be provided fractional interests in the Token Ecosystem, including ongoing monthly PhunCoin dividends to PhunCoin holders, based on their respective pro rata ownership percentage of PhunCoin, totaling 2.5% of the monthly credits purchased by Phunware customers.

PhunToken ("Phun")

During the second quarter of 2019, Phunware announced the launch of a separate token, Phun, which is meant to act as a medium of exchange within the Token Ecosystem. Phun will be issued through a separate, wholly-owned subsidiary, Phun Token International, available initially only to persons outside of the United States and Canada. Consumers may receive Phun

for actively engaging in marketing campaigns; developers and publishers may receive Phun for utilizing Phunware's loyalty software development kit in order to better engage, manage and monetize their consumers; and brands will gain access to more relevant, verifiable data by accessing Phunware's data exchange and using Phun for their own loyalty programs. As of June 30, 2019, the Company has not sold any Phun.

8. Series A Convertible Preferred Stock

In connection with the consummation of the Reverse Merger and Recapitalization, Phunware issued 6,000 shares to a single investor for aggregate cash proceeds of \$6.0 million from the Series A 8% convertible preferred stock financing ("Series A Financing") with stated value of \$1,000 per share. The Company deposited \$5.5 million of the \$6 million proceeds into a restricted escrow account in accordance with the securities purchase agreement entered into with the investor.

The shares were mandatorily redeemable in cash at the following schedule; (i) 104% of the aggregate value of three thousand (3,000) shares on the 30 day anniversary of the issuance; (ii) 104% of the aggregate value of two thousand five hundred (2,500) shares on the 60th anniversary of the original issue; and (iii) 104% of the aggregate value of five hundred (500) shares of the 90th anniversary of the original issue.

The Preferred Stock was also convertible into shares of the Company's common stock at the option of the holder at a price of \$11.50 per share, subject to adjustments for stock dividends, stock splits and other recapitalization type events and antidilutive events which would include subsequent issuances of equity or equity linked securities at prices more favorable than the conversion price of these preferred shares. Generally, the Preferred Stock does not have voting rights. The holder did not convert any of the Series A convertible preferred stock prior to the redemption dates.

On the 30-day, 60-day, and 90-day anniversaries of the issuance, the holder redeemed an aggregate of 6,000 shares of the Series A convertible preferred stock for total proceeds of \$6,240, representing \$6,000 original issue price and \$240 of dividends. Of the proceeds paid to the holder, \$5.5 million was paid from the restricted cash account, and \$740 from the Company's operating account.

In the event of liquidation, dissolution or winding up of the Company the Preferred Stock would be entitled to receive assets ahead of the Company's common stockholders. Total preferred stock authorized to be issued as of June 30, 2019 was 100,000,000, with a par value of \$0.0001 per share. There were 0 and 6,000 shares of preferred stock outstanding as of June 30, 2019 and December 31, 2018, respectively.

9. Stockholders' Equity

Common Stock

Total common stock authorized to be issued as of June 30, 2019 was 1,000,000,000, with a par value of \$0.0001 per share. At June 30, 2019 and December 31, 2018, there were 38,927,776 and 27,294,164 shares outstanding, inclusive of 25,230 and 40,707 restricted shares subject to repurchase for unvested shares related to early option exercises under the Company's stock equity plans, respectively.

During fiscal year 2018, the Company completed several closings of stock financings resulting in the issuance of 1,085,096 shares for aggregate cash proceeds of \$9,565, net of issuance costs.

During 2019, the Company issued an aggregate of 11,530,442 shares of common stock related to various cash and cashless (net) exercises of warrants for common stock. Cash exercises for warrants for 617,296 shares of common stock resulted in aggregate gross proceeds of approximately \$6,184, of which \$6,092 was received in cash, \$92 was received in digital currencies. Furthermore, there were 13,975,359 warrants exercised under cashless (net) provisions resulting in the issuance of 10,913,146 shares of common stock. See further discussion regarding details of the Company's various warrants below.

Dividends

Dividends are paid on a when-and-if-declared basis. The Company has not declared any dividends through June 30, 2019.

Warrants

A summary of the Company's warrant activity by warrant type is as follows:

Warrant Type	Cash Exercise Price per share	Warrants/UPO's Outstanding December 31, 2018	Warrants issued for UPO exercises	Warrants/UPO's Exercised		Warrants Outstanding June 30, 2019
				Cash	Cashless	
Common stock warrant (Series D-1)	\$ 5.54	14,866	—	—	—	14,866
Common stock warrants (Series F)	\$ 9.22	1,085,059	—	(400,740)	(306,917)	377,402
Public Warrants (PHUNW)	\$ 11.50	6,900,610	—	—	(5,139,319)	1,761,291
Private Placement Warrants	\$ 11.50	10,182,060	—	(216,556)	(8,307,123)	1,658,381
Unit Purchase Options (UPOs)	\$ 11.50	130,000	—	—	(130,000)	—
Unit Purchase Option Warrants	\$ 11.50		116,172	—	(92,000)	24,172
Total		18,312,595	116,172	(617,296)	(13,975,359)	3,836,112

In 2012, the Company issued a warrant to purchase an aggregate of 14,866 shares of the Company's common stock with an exercise price of \$5.54 per share to a banking institution with which the Company previously had a revolving line of credit. The term of the warrant is the earlier of (i) the tenth anniversary of the date of issuance, (ii) the closing of the initial registered public offering of the Company's common stock, or (iii) the closing of an acquisition (as defined in the warrant) where the consideration consisting of cash or publicly traded securities payable in connection with the acquisition for each share is at least three (3) times the exercise price. The Reverse Merger and Recapitalization did not trigger an expiration of the warrant pursuant to term (ii) or (iii) above. The warrant is fully vested.

In 2018, but prior to the Reverse Merger and Recapitalization, the Company issued warrants to purchase an aggregate of 1,085,059 shares of the Company's common stock with an exercise price of \$9.22 per share. The term of the warrants is the earlier of (i) the fifth anniversary of the date of issuance, (ii) an acquisition, merger, or consolidation of the Company or a sale, lease or other disposition of all or substantially all of the assets of Phunware and its subsidiaries, except (a) any sale of stock for capital raising purposes, (b) purpose of changing the Company's state of incorporation, and (c) where the shareholders of Phunware immediately before such transaction retain at least a majority of the voting power immediately following such transaction; or (iii) immediately prior to an initial public offering. The Reverse Merger and Recapitalization did not trigger an expiration of the warrant pursuant to term (ii) or (iii) above. These warrants are fully vested.

The Company has common stock warrants trading under the Nasdaq ticker symbol PHUNW (the "Public Warrants"). Each Public Warrant entitles the holder to purchase one share of common stock at an exercise price of \$11.50 per share. No fractional shares will be issued upon exercise of the Public Warrants. The Public Warrants became exercisable for cash 30 days after the completion of the Reverse Merger and Recapitalization. In addition, if a registration statement covering the shares of common stock issuable upon exercise of the Public Warrants was not filed with the SEC and declared effective within 90 days from the consummation the Reverse Merger and Recapitalization, holders were entitled to exercise warrants on a cashless basis pursuant to an available exemption from registration under the Securities Act. The Company was unable to have the registration statement declared effective by the 90-day deadline, although it was declared effective on May 14, 2019. As of June 30, 2019, 5,139,319 Public Warrants have been exercised on a cashless basis that resulted in the issuance of 2,951,741 shares. The Public Warrants will expire five years after the completion of the Reverse Merger and Recapitalization or earlier upon redemption or liquidation.

The Company also has Private Placement Warrants outstanding (the "Private Placement Warrants"). Each Private Placement Warrant entitles the holder to purchase one share of common stock at \$11.50 per share. The Private Placement Warrants became exercisable 30 days after the completion of the Reverse Merger and Recapitalization. The Private Placement Warrants are exercisable for cash (even if a registration statement covering the common stock issuable upon exercise of such warrants is not effective) or on a cashless basis, at the holder's option and will not be redeemable in each case so long as they are still held by the initial purchasers or their affiliates.

Unit Purchase Option ("UPOs")

The Company sold to the underwriters for its initial public offering in 2016 an option to purchase up to a total of 130,000 units, at an exercise price of \$11.50 per unit. The units are comprised of one share of common stock and one warrant to purchase common stock. The unit purchase option may be exercised for cash or on a cashless basis, at the holder's option, at any time during the period commencing on the closing of the Reverse Merger and Recapitalization and terminating on the fifth anniversary of the Reverse Merger and Recapitalization. The units issuable upon exercise of this option are identical to those offered in the Company's initial public offering in 2016. The unit purchase option may be exercised for cash or on a cashless basis, at the holder's option, such that the holder may use the appreciated value of the unit purchase option (the difference between the exercise prices of the unit purchase option and the underlying Warrants and the market price of the UPO and underlying ordinary shares) to exercise the unit purchase option without the payment of cash. As of June 30, 2019, all UPOs had been exercised, and 24,172 warrants related to the UPO exercise remained outstanding.

PhunCoin Warrant

In 2018, the Company issued warrants to sixty-eight (68) stockholders to receive an aggregate of approximately 27.4 billion PhunCoin. Should the Company complete a Token Generation Event, the stockholders would receive their requisite amount of PhunCoin. The Company believes there is no traditional "exercise period" or "term" as with other typical embedded features, and the PhunCoin warrants were originally issued in conjunction with the Company's Series F Preferred Stock financing. The PhunCoin warrants lack characteristics of financial instruments and derivatives. In addition, the PhunCoin warrants do not obligate the Company to achieve the Token Generation Event or launch and distribute PhunCoin to the warrant holders. At the time of the PhunCoin warrant issuance, there was no market for PhunCoin, and they did not exist. Accordingly, the Company determined there was no value assigned to the PhunCoin warrants issued to the stockholders. As of June 30, 2019, no PhunCoin had been issued to the PhunCoin warrant holders.

10. Stock-Based Compensation

2018 Equity Incentive Plan

In connection with the consummation of the Reverse Merger and Recapitalization, our board of directors adopted, and our stockholders approved, the 2018 Equity Incentive Plan (the "2018 Plan"). The purposes of the 2018 Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentives to employees, directors and consultants who perform services to the Company, and to promote the success of our business. These incentives are provided through the grant of stock options, stock appreciation rights, restricted stock, restricted stock units, performance units and performance shares.

The number of shares of common stock available for issuance under the 2018 Plan will also include an annual increase on the first day of each fiscal year, equal to the lesser of: (i) 10% of the post-closing outstanding shares of common stock; (ii) 5% of the outstanding shares of common stock on the last day of the immediately preceding fiscal year; or (iii) such other amount as our board of directors may determine.

In addition, the shares of common stock reserved for issuance under the 2018 Plan also will include any shares of common stock subject to stock options, restricted stock units or similar awards granted under the 2009 Equity Incentive Plan (the "2009 Plan"), that, on or after the Reverse Merger and Recapitalization, are assumed in connection with the Reverse Merger and Recapitalization, expire or otherwise terminate without having been exercised in full and shares of common stock issued pursuant to awards granted under the 2009 Plan that, on or after the Reverse Merger and Recapitalization, are forfeited to or repurchased by us. As of June 30, 2019, the maximum number of shares of common stock that may be added to the 2018 Plan pursuant to the foregoing equals 1,954,306.

During the second quarter of 2019, we granted 620,363 restricted stock units to employees and 45,000 restricted stock units to non-employee directors, each with a grant date fair value of \$7.34 per share. The awards granted to team members vest over eighteen months in three equal installments on May 18, 2020, August 18, 2020, and November 18, 2020, respectively, and are subject to service conditions. The awards granted to non-employee directors vest in two equal installments on July 1, 2019 and December 26, 2019, respectively, and are subject to service conditions.

A summary of the Company's restricted stock unit activity under the 2018 Plan is set forth below:

	Shares	Weighted Average Grant Date Fair Value
Outstanding as of December 31, 2018	—	\$ —
Granted	665,363	7.34
Released	—	—
Forfeited	—	—
Outstanding as of June 30, 2019	665,363	\$ 7.34

The 2018 Plan had 2,403,321 and 2,729,416 shares of common stock reserved for issuance as of June 30, 2019 and December 31, 2018, respectively.

2018 Employee Stock Purchase Plan

Also, in connection with the consummation of the Reverse Merger and Recapitalization, our board of directors adopted, and our stockholders approved, the 2018 Employee Stock Purchase Plan (the “2018 ESPP”). The 2018 ESPP will be administered by our board of directors or a committee appointed by the board (the “administrator”). The purpose of the 2018 ESPP is to provide eligible employees with an opportunity to purchase shares of our common stock through accumulated contributions. The 2018 ESPP permits participants to purchase shares of common stock through contributions (generally in the form of payroll deductions) of up to an amount of their eligible compensation determined by the administrator. Subject to certain other limitations or unless otherwise determined by the administrator, a participant may purchase a maximum of 2,000 shares of common stock during a purchase period. The offering periods under the 2018 ESPP will begin on such date as determined by the administrator and expire on the earliest to occur of (a) the completion of the purchase of shares on the last exercise date occurring within 27 months of the applicable enrollment date of the offering period on which the purchase right was granted, or (b) a shorter period established by the administrator prior to an enrollment date for all options to be granted on such enrollment date. Amounts deducted and accumulated by the participant are used to purchase shares of common stock on each exercise date. The purchase price of the shares will be determined by the administrator but in no event will be less than 85% of the lower of the fair market value of common stock on the enrollment date or on the exercise date. Participants may end their participation at any time during an offering period and will be paid their accrued contributions that have not yet been used to purchase shares of common stock. Participation ends automatically upon termination of employment with the Company.

The number of shares of common stock that may be made available for sale under the 2018 ESPP also includes an annual increase on the first day of each fiscal year beginning for the fiscal year following the fiscal year in which the first enrollment date (if any) occurs equal to the lesser of (i) 3% of the expected post-closing outstanding shares of common stock; (ii) 1.5% of the outstanding shares of common stock on the last day of the immediately preceding fiscal year; or such other amount as the administrator may determine.

As of June 30, 2019, the Company has not consummated an enrollment or offering period related to the 2018 ESPP. The 2018 ESPP had 272,942 shares of common stock available for sale and reserved for issuance as of June 30, 2019 and December 31, 2018.

2009 Equity Incentive Plan

In 2009, the Company adopted its 2009 Equity Incentive Plan (the “Plan”), which allowed for the granting of incentive and non-statutory stock options, as defined by the Internal Revenue Code, to employees, directors, and consultants. The exercise price of the options granted was generally equal to the value of the Company’s common stock on the date of grant, as determined by the Company’s board of directors. The awards are exercisable and vest, generally over four years, in accordance with each option agreement. The term of each option is no more than ten years from the date of the grant. The Plan allows for options to be immediately exercisable, subject to the Company’s right of repurchase for unvested shares at the original exercise price. The total amount received in exchange for these shares has been included in accrued expenses on the accompanying consolidated balance sheets and is reclassified to equity as the shares vest. As of June 30, 2019 and December 31, 2018, 25,230 and 40,707 shares were unvested amounting to \$17 and \$34 in accrued expenses, respectively. Effective with the Reverse Merger and Recapitalization, no additional grants will be made under the Plan.

A summary of the Company’s stock option activity under the Plan and related information is as follows:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Outstanding as of December 31, 2018	2,364,823	\$ 0.90	8.12	\$ 71,332
Granted	—	—		
Released	(106,397)	0.68		
Forfeited	(329,350)	1.69		
Outstanding as of June 30, 2019	1,929,076	\$ 0.78	7.07	\$ 4,492
Exercisable as of June 30, 2019	1,258,784	\$ 0.67	6.31	\$ 3,067

For the six months ended June 30, 2019, the aggregate intrinsic value of options exercised was \$7,324 and the total fair value of options vested was \$229.

The fair value of stock options granted is estimated on the date of grant using the Black-Scholes option-pricing model. The following table sets forth information relating to stock options granted:

	Three Months Ended June 30, 2018	Six Months Ended June 30, 2018
Weighted average risk-free rate	2.75%	2.51%
Expected dividend yield	—	—
Weighted average expected life (years)	6.08	6.08
Weighted average volatility	56.87%	56.87%

The Company did not grant any options during the three and six months ended June 30, 2019.

Stock-Based Compensation

Compensation costs that have been included on the Company's consolidated statements of operations and comprehensive income (loss) for all stock-based compensation arrangements are detailed as follows:

	Three Months Ended June 30, 2019		Six Months Ended June 30, 2019	
Stock-based compensation	2019	2018	2019	2018
Cost of revenues	\$ 24	\$ 14	\$ 38	\$ 18
Sales and marketing	9	13	(16)	15
General and administrative	349	27	372	151
Research and development	34	8	33	27
Total stock-based compensation	\$ 416	\$ 62	\$ 427	\$ 211

The Company recognizes forfeitures as they occur. As of June 30, 2019, the unamortized fair value of the restricted stock units under the 2018 Plan was approximately \$4.5 million. The weighted-average remaining recognition period over which these costs will be amortized was approximately 1.3 years. Unrecognized stock compensation expense for options granted under the 2009 Plan was \$334, as of June 30, 2019.

11. Domestic and Foreign Operations

Identifiable long-lived assets attributed to the United States and international geographies are based upon the country in which the asset is located or owned. As of June 30, 2019 and December 31, 2018, all of the Company's identifiable long-lived assets were in the United States.

We derived over 99% of our net revenues from within the United States for the three and six months ended June 30, 2019. During the three and six months ended June 30, 2018, the Company derived 45% and 33% of its net revenues from outside the United States, respectively.

12. Related-Party Transactions

As consideration for the Transfer Sponsor Warrants transferred to Phunware shareholders, a promissory note was issued to the Sponsors (the “Transfer Sponsor Warrant Note”). The amount of the note was approximately \$1,993, which represented \$0.50 per warrant transferred to former stockholders of Phunware. The Transfer Sponsor Warrant Note bore no interest. The Transfer Sponsor Warrants have an exercise price of \$11.50 per share. The Transfer Sponsor Warrant Note was to mature on December 26, 2019. The Transfer Sponsor Warrant Note was waived and forgiven by the noteholders on January 15, 2019.

With the Reverse Merger and Recapitalization, the Company assumed \$255 in payables from Stellar to Nautilus Energy Management Corporation, an affiliate of two members of the Company’s board of directors. This balance remains outstanding and is recorded in accounts payable as of June 30, 2019.

13. Subsequent Events

The Company has evaluated subsequent events through August 8, 2019.

On July 16, 2019, the Company entered into a lease agreement with BRE CA Office Owner, LLC for new office space in Irvine, California, for the lease of approximately 8,687 rentable square feet located at 16845 Von Karman Avenue (the “Lease”). The Lease commences on November 1, 2019, and terminates on March 31, 2025, subject to one five-year renewal option. Under the Lease, the Company will pay monthly rent of approximately \$354 per year for the first year, with such rent increasing by a specified amount every year thereafter. The Lease also obligates the Company to pay its proportionate share of certain cost increases incurred by the landlord. The Company may receive certain abatements subject to the terms and conditions of the Lease. The Company is also obligated to pay a security deposit of approximately \$118.

Future minimum annual lease payments under the Lease are as follows:

Future minimum lease obligation under the Lease for the years ended December 31,	Lease Obligation
2019	\$ 30
2020	326
2021	336
2022	346
2023	356
Thereafter	502
Total	\$ 1,896

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

References in this section to “we,” “us,” “our,” or “the Company” refer to Phunware. References to “management” or “management team” refer to Phunware’s officers and directors.

The following discussion and analysis of Phunware’s financial condition and results of operations should be read in conjunction with Phunware’s consolidated financial statements and the related notes to those statements presented in “Part I – Item 1. Financial Statements.” In addition to historical financial information, the following discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. Phunware’s actual results and timing of selected events may differ materially from those anticipated in these forward-looking statements as a result of many factors, including those discussed in the section titled “Risk Factors” and elsewhere in this Report.

Certain figures, such as interest rates and other percentages, included in this section have been rounded for ease of presentation. Percentage figures included in this section have not in all cases been calculated on the basis of such rounded

figures but on the basis of such amounts prior to rounding. For this reason, percentage amounts in this section may vary slightly from those obtained by performing the same calculations using the figures in our condensed consolidated financial statements or in the associated text. Certain other amounts that appear in this section may similarly not sum due to rounding.

Overview

Phunware, Inc. offers a fully integrated software platform that equips companies with the products, solutions and services necessary to engage, manage and monetize their mobile application portfolios globally at scale. Phunware's Multiscreen as a Service (MaaS) platform provides the entire mobile lifecycle of applications, media and data in one login through one procurement relationship. Its offerings include:

- Enterprise mobile software including content management, location-based services, marketing automation, business intelligence and analytics, alerts, notifications and messaging, audience engagement, audience monetization, vertical solutions and cryptonetworking, MaaS software application framework that pre-integrates all of our MaaS software ingredients for use within mobile application portfolios, solutions and services;
- Application transactions for mobile audience building, user acquisition, application discovery, audience engagement, audience monetization; and
- Data for data enrichment expanding connections and attributes of a Phunware ID and building custom audience for use in mobile media campaigns.

Additionally, we plan to launch PhunCoin and Phun, blockchain-powered tokens, and our associated Token Ecosystem which will enable consumers, brands and application developers to transact directly and create a value-based and voluntary data exchange.

We intend to continue investing for long-term growth. We have invested and expect to continue investing in expanding our ability to market, sell and provide our current and future products and services to customers globally. We also expect to continue investing in the development and improvement of new and existing products and services to address customers' needs. We currently do not expect to be profitable in the near future.

Key Business Metrics

Our management regularly monitors certain financial measures to track the progress of its business against internal goals and targets. We believe that the most important of these measures include backlog and deferred revenue and dollar-based revenue retention rate.

Backlog and Deferred Revenue. Backlog represents future amounts to be invoiced under our current agreements. At any point in the contract term, there can be amounts that we have not yet been contractually able to invoice. Until such time as these amounts are invoiced, they are not recorded in revenues, deferred revenue, accounts receivable or elsewhere in our consolidated financial statements, and are considered by us to be backlog. We expect backlog to fluctuate up or down from period to period for several reasons, including the timing and duration of customer contracts, varying billing cycles and the timing and duration of customer renewals.

In addition, our deferred revenue consists of amounts that have been invoiced but that have not yet been recognized as revenues as of the end of a reporting period. Together, the sum of deferred revenue and backlog represents the total billed and unbilled contract value yet to be recognized in revenues, and provides visibility into future revenue streams.

The following table sets forth the backlog and deferred revenue:

	Period Ended	
	June 30, 2019	December 31, 2018
	(in thousands)	
Backlog	\$ 11,352	\$ 16,730
Deferred revenue	7,149	8,251
Total backlog and deferred revenue	\$ 18,501	\$ 24,981

Dollar-based Revenue Retention Rate, based on platform subscriptions and services revenue. Phunware calculated dollar-based revenue retention rate, based on platform subscriptions and services revenue, expressed as a percentage, by dividing total revenue in the current 12-month period from those customers who were customers during the prior 12-month period by total revenue from the customers in the prior 12-month period. Phunware believes that our ability to retain our customers and expand their use of our solutions over time is an indicator of the stability of our revenue base and the long-term value of our customer relationships. Our revenue retention rate provides insight into the impact on current period revenue of the number of new customers acquired during the prior 12-month period, the timing of our implementation of those new customers, growth in the usage of our solutions by our existing customers and customer attrition. If our revenue retention rate for a period exceeds 100%, this means that the revenue retained during the period including expansion and upsells more than offset the revenue that we lost from customers that did not renew their contracts during the period. Our revenue retention rate may decline or fluctuate as a result of a number of factors, including customers' satisfaction or dissatisfaction with our platform, pricing, economic conditions or overall reductions in our customers' spending levels.

The following table sets forth the dollar-based revenue retention rates:

	Period Ended June 30,	
	2019	2018
Dollar-based revenue retention rate	89 %	132 %

Non-GAAP Financial Measures

Adjusted Net Revenues, Adjusted Gross Profit, Adjusted Gross Margin and Adjusted EBITDA

Adjusted Net Revenues, Adjusted Gross Profit, Adjusted Gross Margin and Adjusted EBITDA are non-GAAP financial measures. Management uses these measures (i) to compare operating performance on a consistent basis, (ii) to calculate incentive compensation for its employees, (iii) for planning purposes including the preparation of its internal annual operating budget, and (iv) to evaluate the performance and effectiveness of operational strategies. Accordingly, we believe that these measures provide useful information to investors and others in understanding and evaluating our operating performance in the same manner as management.

For more information about Adjusted Net Revenues, Adjusted Gross Profit, Adjusted Gross Margin and Adjusted EBITDA and a reconciliation of net revenues, gross profit and net income (loss), the most directly comparable financial measure calculated and presented in accordance with generally accepted accounting principles in the United States ("GAAP"), to Adjusted Net Revenues, Adjusted Gross Profit, Adjusted Gross Margin and Adjusted EBITDA, see the section titled "Use of Non-GAAP Financial Measures."

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
	(in thousands)		(in thousands)	
Adjusted net revenues ⁽¹⁾	\$ 5,510	\$ 5,757	\$ 10,825	\$ 10,737
Adjusted gross profit ⁽²⁾	2,822	2,715	5,545	4,847
Adjusted gross margin ⁽²⁾	51.2%	47.2%	51.2%	45.1%
Adjusted EBITDA ⁽³⁾	\$ (2,411)	\$ (3,593)	\$ (5,615)	\$ (10,282)

- (1) Adjusted Net Revenues is a non-GAAP financial measure. We believe that Adjusted Net Revenues provides helpful information for management and investors regarding past performance and future results. We define Adjusted Net Revenues by excluding items from net revenues that are one-time in nature including, but not limited to, forfeited customer deposits and contract settlements.
- (2) Adjusted Gross Profit and Adjusted Gross Margin are non-GAAP financial measures. We believe that Adjusted Gross Profit and Adjusted Gross Margin provide supplemental information with respect to gross profit and gross margin regarding ongoing performance. We define Adjusted Gross Profit as net revenues less cost of revenue, adjusted to exclude one-time revenue adjustments, stock-based compensation and amortization of intangible assets. We define Adjusted Gross Margin as Adjusted Gross Profit as a percentage of Adjusted Net Revenues.

- (3) Adjusted EBITDA is a non-GAAP financial measure. We believe Adjusted EBITDA provides helpful information with respect to operating performance as viewed by management, including a view of our business that is not dependent on (i) the impact of our capitalization structure and (ii) items that are not part of day-to-day operations. We define Adjusted EBITDA as net income (loss) plus (i) interest expense, (ii) income tax expense, (iii) depreciation, (iv) amortization, and further adjusted for (v) one-time revenue adjustments, and (vi) stock-based compensation expense.

The following tables present a reconciliation of Adjusted Net Revenues, Adjusted Gross Profit, Adjusted Gross Margin and Adjusted EBITDA to net revenues, gross profit and net income (loss), the most directly comparable financial measures calculated in accordance with GAAP:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
	(in thousands)		(in thousands)	
Net revenues	\$ 5,510	\$ 14,185	\$ 10,825	\$ 19,165
Less: One-time revenue adjustments	—	(8,428)	—	(8,428)
Adjusted net revenues	\$ 5,510	\$ 5,757	\$ 10,825	\$ 10,737

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
	(in thousands)		(in thousands)	
Gross profit	\$ 2,788	\$ 11,116	\$ 5,486	\$ 13,229
Less: One-time revenue adjustments	—	(8,428)	—	(8,428)
Add back: Amortization of intangibles	10	13	21	28
Add back: Stock-based compensation	24	14	38	18
Adjusted gross profit	\$ 2,822	\$ 2,715	\$ 5,545	\$ 4,847
Adjusted gross margin	51.2%	47.2%	51.2%	45.1%

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
	(in thousands)		(in thousands)	
Net (loss) income	\$ (3,067)	\$ 4,472	\$ (6,561)	\$ (2,692)
Add back: Depreciation and amortization	84	118	175	242
Add back: Interest expense	151	183	339	385
Add back: Income tax expense	5	—	5	—
EBITDA	(2,827)	4,773	(6,042)	(2,065)
Less: One-time revenue adjustments	—	(8,428)	—	(8,428)
Add Back: Stock-based compensation	416	62	427	211
Adjusted EBITDA	\$ (2,411)	\$ (3,593)	\$ (5,615)	\$ (10,282)

Use of Non-GAAP Financial Measures

Adjusted Net Revenues, Adjusted Gross Profit, Adjusted Gross Margin and Adjusted EBITDA should be considered in addition to, not as a substitute for, or superior to, financial measures calculated in accordance with GAAP. They are not measurements of our financial performance under GAAP and should not be considered as alternatives to net revenue or net income (loss), as applicable, or any other performance measures derived in accordance with GAAP and may not be comparable to other similarly titled measures of other businesses. Adjusted Net Revenues, Adjusted Gross Profit, Adjusted Gross Margin

and Adjusted EBITDA have limitations as analytical tools and should not be considered in isolation or as a substitute for analysis of our operating results as reported under GAAP. Some of these limitations include:

- Non-cash compensation is and will remain a key element of our overall long-term incentive compensation package, although we exclude it as an expense when evaluating its ongoing operating performance for a particular period;
- Adjusted Net Revenues, Adjusted Gross Profit, Adjusted Gross Margin and Adjusted EBITDA do not reflect the impact of certain cash charges resulting from matters we consider not to be indicative of ongoing operations, and;
- other companies in our industry may calculate Adjusted Net Revenues, Adjusted Gross Profit, Adjusted Gross Margin and Adjusted EBITDA differently than we do, limiting their usefulness as comparative measures.

We compensate for these limitations to Adjusted Net Revenues, Adjusted Gross Profit, Adjusted Gross Margin and Adjusted EBITDA by relying primarily on GAAP results and using Adjusted Net Revenues, Adjusted Gross Profit, Adjusted Gross Margin and Adjusted EBITDA only for supplemental purposes. Adjusted Net Revenues, Adjusted Gross Profit, Adjusted Gross Margin and Adjusted EBITDA include adjustments for items that may not occur in future periods. However, we believe these adjustments are appropriate because the amounts recognized can vary significantly from period to period, do not directly relate to the ongoing operations of our business and complicate comparisons of our internal operating results and operating results of other peer companies over time. For example, it is useful to exclude non-cash, stock-based compensation expenses because the amount of such expenses in any specific period may not directly correlate to the underlying performance of our business operations and these expenses can vary significantly across periods due to timing of new stock-based awards. We may also exclude certain discrete, unusual, one-time, or non-cash costs, including transaction costs and the income tax impact of adjustments in order to facilitate a more useful period-over-period comparison of our financial performance. Each of the normal recurring adjustments and other adjustments described in this paragraph help management with a measure of our operating performance over time by removing items that are not related to day-to-day operations or are non-cash expenses.

Components of Results of Operations

There are a number of factors that impact the revenue and margin profile of the services and technology offerings we provide, including, but not limited to, solution and technology complexity, technical expertise requiring the combination of products and types of services provided, as well as other elements that may be specific to a particular client solution.

Revenue and Gross Profit

Platform Subscriptions and Services Revenue. Subscription revenue is derived from software license fees, which comprise subscription fees from customers licensing the Company's Software Development Kits (SDKs), which includes accessing the MaaS platform and/or MaaS platform data; application development service revenue from the development of customer applications, or apps, which are built and delivered to customers; and support fees.

Subscription revenue from SDK licenses gives the customer the right to access the Company's MaaS platform. Application development revenue is derived from development services around designing and building new applications or enhancing existing applications. Support revenue comprises of support and maintenance fees of customer applications, software updates, and technical support for application development services for a support term.

From time to time, the Company also provides professional services by outsourcing employees' time and materials to customers.

Platform subscriptions and services gross profit is equal to subscriptions and services revenue less the cost of personnel and related costs for our support and professional services employees, external consultants, stock-based compensation and allocated overhead. Costs associated with our development and project management teams are generally recognized as incurred. Costs directly attributable to the development or support of applications relating to platform subscription customers are included in cost of sales, whereas costs related to the ongoing development and maintenance of Phunware's MaaS platform are expensed in research and development. As a result, platform subscriptions and services gross profit may fluctuate from period to period.

Application Transaction Revenue. We also generate revenue by charging advertisers to deliver advertisements (ads) to users of mobile connected devices. Depending on the specific terms of each advertising contract, we generally recognize revenue based on the activity of mobile users viewing these ads. Fees from advertisers are commonly based on the number of

ads delivered or views, clicks, or actions by users on mobile advertisements delivered, and we recognize revenue at the time the user views, clicks, or otherwise acts on the ad. We sell ads through several offerings: cost per thousand impressions, cost per click, and cost per action. In addition, we generate application transaction revenue thru in-app purchases from application on our platform.

Application transaction gross profit is equal to application transaction revenue less cost of revenue associated with application transactions. Application transaction gross profit is impacted by the cost of direct premium, performance and network cost as well as based on the activity of mobile users viewing ads and marketing engagements through mobile applications. As a result, our application transaction gross profit may fluctuate from period to period due to variable activity of mobile users.

Gross Margin

Gross margin measures gross profit as a percentage of revenue. Gross margin is generally impacted by the same factors that affect changes in the mix of subscriptions and services and application transactions.

Operating Expenses

Our operating expenses include sales and marketing expenses, general and administrative expenses, research and development expenses and amortization of acquired intangible assets.

Sales and Marketing Expense. Sales and marketing expense is comprised of compensation, commission expense, variable incentive pay and benefits related to sales personnel, along with travel expenses, other employee related costs, including share based compensation and expenses related to marketing programs and promotional activities.

General and Administrative Expense. General and administrative expense is comprised of compensation and benefits of administrative personnel, including variable incentive pay and share-based compensation, bad debt expenses and other administrative costs such as facilities expenses, professional fees and travel expenses. We expect to incur additional general and administrative expenses as a result of operating as a public company, including expenses related to compliance with the rules and regulations of the SEC and listing standards of Nasdaq, additional insurance expenses, investor relations activities and other administrative and professional services. We also expect to increase the size of our general and administrative function to support the growth of our business. As a result, we expect that our general and administrative expenses will increase in absolute dollars but may fluctuate as a percentage of our total revenue from period to period.

Research and Development Expense. Research and development expenses consist primarily of employee compensation costs and overhead allocation. We believe that continued investment in our platform is important for our growth. We expect our research and development expenses will increase as our business grows.

Interest and Other Expense

Interest expense and other income (expense) include interest expense associated with our factoring financing arrangement. We also may seek financing arrangements (including our convertible notes) in the future with the proceeds from additional debt incurrences, which may have an impact on our interest expense.

Income Tax Benefit

We are subject to U.S. federal income taxes, state income taxes net of federal income tax effect and nondeductible expenses. Our effective tax rate will vary depending on permanent non-deductible expenses and other factors.

Results of Operations (In thousands, except per share information)

The following tables set forth our condensed consolidated financial data in dollar amounts and as a percentage of total revenue.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Net revenues	\$ 5,510	\$ 14,185	\$ 10,825	\$ 19,165
Cost of revenues	2,722	3,069	5,339	5,936
Gross profit	2,788	11,116	5,486	13,229
Operating expenses:				
Sales and marketing	665	1,414	1,389	3,332
General and administrative	3,970	3,318	7,945	7,807
Research and development	1,077	1,718	2,386	4,018
Total operating expenses	5,712	6,450	11,720	15,157
Operating (loss) income	(2,924)	4,666	(6,234)	(1,928)
Other income (expense):				
Interest expense	(151)	(183)	(339)	(385)
Fair value adjustment for warrant liabilities	—	—	—	(54)
Impairment of digital currencies	—	(21)	—	(334)
Other income	13	10	17	9
Total other expense	(138)	(194)	(322)	(764)
(Loss) income before taxes	(3,062)	4,472	(6,556)	(2,692)
Income tax expense	(5)	—	(5)	—
Net (loss) income	(3,067)	4,472	(6,561)	(2,692)
Other comprehensive (loss) income				
Cumulative translation adjustment	(30)	(81)	(3)	(27)
Comprehensive (loss) income	\$ (3,097)	\$ 4,391	\$ (6,564)	\$ (2,719)
Net (loss) income per share, basic	\$ (0.08)	\$ 0.18	\$ (0.19)	\$ (0.11)
Net (loss) income per share, diluted	\$ (0.08)	\$ 0.17	\$ (0.19)	\$ (0.11)
Weighted-average shares used to compute net (loss) income per share, basic	38,810	25,396	34,537	25,174
Weighted-average shares used to compute net (loss) income per share, diluted	38,810	26,164	34,537	25,174

Comparison of three and six months ended June 30, 2019 and 2018

Net Revenues

	Three Months Ended June 30,		Change	
	2019	2018	Amount	%
	(in thousands)			
Net Revenues				
Platform subscriptions and services	\$ 5,092	\$ 6,448	\$ (1,356)	(21.0)%
Application transaction	418	7,737	(7,319)	(94.6)%
Net revenues	\$ 5,510	\$ 14,185	\$ (8,675)	(61.2)%
Platform subscriptions and services as a percentage of net revenues	92.4%	45.5%		
Application transactions as a percentage of net revenues	7.6%	54.5%		

	Six Months Ended June 30,		Change	
	2019	2018	Amount	%
	(in thousands)			
Net Revenues				
Platform subscriptions and services	\$ 9,913	\$ 10,452	\$ (539)	(5.2)%
Application transaction	912	8,713	(7,801)	(89.5)%
Net revenues	\$ 10,825	\$ 19,165	\$ (8,340)	(43.5)%
Platform subscriptions and services as a percentage of net revenues	91.6%	54.5%		
Application transactions as a percentage of net revenues	8.4%	45.5%		

Net revenues decreased \$8.7 million, or (61.2)%, for the three months ended June 30, 2019 compared to the corresponding period in 2018. Platform subscriptions and services revenue decreased \$1.4 million, or (21.0)%, primarily because the Company recorded revenue in the corresponding period of 2018 related to two one-time items: \$1.6 million related to a partner arrangement, and \$0.5 million related to a customer contract settlement. The decrease was partially offset by the fulfillment of contracts related to new and existing customers. Application transaction revenue decreased \$7.3 million, or (94.6)%, for the three months ended June 30, 2019, compared to the corresponding period in 2018, primarily because in the corresponding period in 2018, an application transaction partner released the Company from a liability of \$6.3 million (which the Company then recorded as revenue), and various decreased or ceased advertising campaigns.

Net revenues decreased \$8.3 million, or (43.5)%, for the six months ended June 30, 2019 compared to the corresponding period in 2018. Platform subscriptions and services revenue decreased \$0.5 million, or (5.2)%, primarily because, as discussed above, the Company recorded revenue in the corresponding period in 2018 related to two one-time items: \$1.6 million related to a partner arrangement, and \$0.5 million related to a customer contract settlement. The decreases for the six months ended June 30, 2019 were mostly offset by an increase of \$1.6 million related to the fulfillment of contracts related to new and existing customers. Application transaction revenue decreased \$7.8 million, or (89.5)%, six months ended June 30, 2019, compared to the corresponding period in 2018, primarily because in the corresponding period in 2018, an application transaction partner released the Company from a liability of \$6.3 million (which the Company then recorded as revenue), and various decreased or ceased advertising campaigns.

The Company has a concentration of net revenues with key customers. See Note 2, the section titled, "Concentrations of Credit Risk."

Cost of Revenues, Gross Profit and Gross Margin

	Three Months Ended June 30,		Change	
	2019	2018	Amount	%
(in thousands)				
Cost of Revenues				
Platform subscriptions and services	\$ 2,600	\$ 2,369	\$ 231	9.8 %
Application transaction	122	700	(578)	(82.6)%
Total cost of revenues	\$ 2,722	\$ 3,069	\$ (347)	(11.3)%
Gross Profit				
Platform subscriptions and services	2,492	\$ 4,079	\$ (1,587)	(38.9)%
Application transaction	296	7,037	(6,741)	(95.8)%
Total gross profit	\$ 2,788	\$ 11,116	\$ (8,328)	(74.9)%
Gross Margin				
Platform subscriptions and services	48.9%	63.3%		
Application transaction	70.8%	91.0%		
Total gross margin	50.6%	78.4%		

	Six Months Ended June 30,		Change	
	2019	2018	Amount	%
(in thousands)				
Cost of Revenues				
Platform subscriptions and services	\$ 5,108	\$ 4,768	\$ 340	7.1 %
Application transaction	231	1,168	(937)	(80.2)%
Total cost of revenues	\$ 5,339	\$ 5,936	\$ (597)	(10.1)%
Gross Profit				
Platform subscriptions and services	\$ 4,805	\$ 5,684	\$ (879)	(15.5)%
Application transaction	681	7,545	(6,864)	(91.0)%
Total gross profit	\$ 5,486	\$ 13,229	\$ (7,743)	(58.5)%
Gross Margin				
Platform subscriptions and services	48.5%	54.4%		
Application transaction	74.7%	86.6%		
Total gross margin	50.7%	69.0%		

Total gross profit decreased \$8.3 million, or (74.9)%, for the three months ended June 30, 2019 compared to the corresponding period of 2018, primarily due to the one-time revenue items described above.

Total gross profit decreased \$7.7 million, or (58.5)%, for the six months ended June 30, 2019 compared to the corresponding period of 2018, primarily due to the one-time revenue items described above, offset by a decrease in cost of media related to ceased or decreased advertising campaigns.

Operating Expenses

	Three Months Ended June 30,		Change	
	2019	2018	Amount	%
(in thousands)				
Operating expenses				
Sales and marketing	\$ 665	\$ 1,414	\$ (749)	(53.0)%
General and administrative	3,970	3,318	652	19.7 %
Research and development	1,077	1,718	(641)	(37.3)%
Total operating expenses	\$ 5,712	\$ 6,450	\$ (738)	(11.4)%

	Six Months Ended June 30,		Change	
	2019	2018	Amount	%
(in thousands)				
Operating expenses				
Sales and marketing	\$ 1,389	\$ 3,332	\$ (1,943)	(58.3)%
General and administrative	7,945	7,807	138	1.8 %
Research and development	2,386	4,018	(1,632)	(40.6)%
Total operating expenses	\$ 11,720	\$ 15,157	\$ (3,437)	(22.7)%

Sales and Marketing

Sales and marketing expense decreased \$0.7 million, or (53.0)% and \$1.9 million, or (58.3)% for the three and six months ended June 30, 2019, respectively, compared to the corresponding period of 2018, primarily due to reduced employee compensation costs due to lower headcount.

General and Administrative

General and administrative expense increased \$0.7 million, or 19.7% and \$0.1 million, or 1.8% for the three and six months ended June 30, 2019, respectively, compared to the corresponding period of 2018, primarily due to increase in stock-based compensation expense from awards granted during 2019 and other professional costs of going public such as auditing, legal and insurance.

Research and Development

Research and development expense decreased \$0.6 million, or (37.3)% and \$1.6 million, or (40.6)% for the three and six months ended June 30, 2019, respectively, compared to the corresponding period of 2018, primarily due to reduced employee compensation costs due to lower headcount.

Other expense

	Three Months Ended June 30,		Change	
	2019	2018	Amount	%
	(in thousands)			
Other expense				
Interest expense	\$ (151)	\$ (183)	\$ 32	(17.5)%
Fair value adjustment for warrant liabilities	—	—	—	— %
Impairment of digital currencies	—	(21)	21	(100.0)%
Other income	13	10	3	30.0 %
Total other expense	\$ (138)	\$ (194)	\$ 56	(28.9)%

	Six Months Ended June 30,		Change	
	2019	2018	Amount	%
	(in thousands)			
Other expense				
Interest expense	\$ (339)	\$ (385)	\$ 46	(11.9)%
Fair value adjustment for warrant liabilities	—	(54)	54	(100.0)%
Impairment of digital currencies	—	(334)	334	(100.0)%
Other income	17	9	8	88.9 %
Total other expense	\$ (322)	\$ (764)	\$ 442	(57.9)%

Other expense decreased \$56 thousand for the three months ended June 30, 2019 compared to the corresponding period of 2018 primarily due to a decrease in factoring expense. Other expense decreased \$442 thousand for the six months ended June 30, 2019 compared to the corresponding period of 2018, primarily due to expenses related to the impairment of digital currencies. As of June 30, 2019, the Company did not hold any digital currencies.

Liquidity and Capital Resources

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

	Six Months Ended June 30,		Change	
	2019	2018	Amount	%
<i>(in thousands, except percentages)</i>				
Consolidated statement of cash flows				
Net cash used in operating activities	\$ (5,866)	\$ (6,019)	\$ 153	(2.5)%
Net cash provided by (used in) investing activities	88	(150)	238	(158.7)%
Net cash (used in) provided by financing activities	(314)	6,108	(6,422)	(105.1)%

Operating Activities

The primary source of cash from operating activities is receipts from the sale of platform subscriptions and services and application transactions to customers. The primary uses of cash from operating activities are payments to employees for compensation and related expenses, publishers and other vendors for the purchase of digital media inventory and related costs, sales and marketing expenses and general operating expenses.

The Company utilized \$5.9 million of cash from operating activities during the six months ended June 30, 2019, primarily resulting from a net loss of \$6.6 million, as adjusted \$0.1 million for depreciation and amortization, \$0.1 million for allowance for doubtful receivables and \$0.4 million for stock-based compensation. In addition, certain changes in our operating

assets and liabilities resulted in significant cash increases (decreases) as follows: \$(0.8) million from a decrease in accounts payable, \$0.3 million from an increase in accrued expenses, and \$0.6 million from an increase in deferred revenue.

The Company utilized \$6.0 million of cash from operating activities during the six months ended June 30, 2018, primarily resulting from a net loss of \$2.7 million, as adjusted for non-cash charges related to the impairment of digital currencies of \$0.3 million, \$0.2 million for depreciation and amortization, \$0.1 million for change in fair value of warrants, \$0.2 million for stock-based compensation and \$0.1 million for allowance for doubtful receivables. In addition, certain changes in our operating assets and liabilities resulted in significant cash increases (decreases) as follows: \$2.1 million from an increase in accounts payable and \$(6.5) million from a decrease in accrued expenses, \$1.5 million from an increase in accounts receivable, \$(1.0) million from a decrease in deferred revenue, \$0.5 million from an increase in warrant liability, \$0.1 million from an increase in prepaid expenses and other assets and \$(0.9) million from a decrease of deferred merger cost.

Investing Activities

Investing activities for the six months ended June 30, 2019 consisted of the sale of digital currencies received for warrant exercises. Investing activities for the six months ended June 30, 2018 consisted of an issuance of a note receivable and sale of digital currencies.

Financing Activities

Financing activities during the six months ended June 30, 2019 consisted primarily of the proceeds from warrant exercises, and utilizations of the Company's financing factoring agreement, as well as redemptions and dividends of the Series A convertible preferred stock. The Company utilized \$0.3 million of cash from financing activities, primarily as follows: \$(6.2) million from redemptions and dividend payments of Series A convertible preferred stock, \$(0.7) million of repayments from the Company's factoring financing agreement; offset by \$6.1 million provided by warrant exercise, \$0.3 million provided from convertible notes borrowings and \$0.2 million from PhunCoin deposits.

Financing activities during the six months ended June 30, 2018 consisted primarily of the proceeds from common stock subscriptions and the Company's financing factoring agreement. The Company acquired \$6.1 million of cash from financing activities, primarily as follows: \$5.5 million provided by common stock subscriptions, \$0.5 million provided by net proceeds from the Company's factoring financing agreement, and \$0.1 million provided from exercises of stock options.

The Company has a history of operating losses and negative operating cash flows. Although the Company continues to focus on growing its revenues, it expects these trends to continue into the foreseeable future. We will be required to raise additional capital through debt or equity financings or reduce operating expenses. Despite a history of successfully implementing similar plans to alleviate adverse financial conditions, these sources of working capital are not currently assured. There can be no assurance that we will be able to consummate such financings on favorable terms or at all. These conditions raise substantial doubt about our ability to continue as a "going concern".

Off-Balance Sheet Arrangements

During the periods ended June 30, 2019 and December 31, 2018, the Company did not have any off-balance sheet arrangements, as defined in Item 303(a)(4)(ii) of SEC Regulation S-K, such as the use of unconsolidated subsidiaries, structured finance, special purpose entities or variable interest entities.

Indemnification Agreements

In the ordinary course of business, the Company provides indemnifications of varying scope and terms to customers, vendors, lessors, business partners and other parties with respect to certain matters, including, but not limited to, losses arising out of breach of such agreements, solutions to be provided by the Company or from intellectual property infringement claims made by third parties. In addition, the Company has entered into indemnification agreements with directors and certain officers and employees that will require the Company, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors, officers or employees.

Recent Accounting Pronouncements

Refer to Note 2, "Significant Accounting Policies" in the notes to our condensed consolidated financial statements for analysis of recent accounting pronouncements that are applicable to our business.

Summary of Significant Accounting Policies

Management's discussion and analysis of our financial condition and results of operations is based on our financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenues generated and expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

With the exception of changes described within Note 2, "Significant Accounting Policies" due to the adoption of ASU No. 2014-09, there have been no material changes to our critical accounting policies and estimates as compared to the critical accounting policies and estimates disclosed in our Annual Report on Form 10-K filed with the SEC on March 20, 2019 for the year ended December 31, 2018.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Not applicable

Item 4. Controls and Procedures.

Limitations on Effectiveness of Controls

In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer (together, the "Certifying Officers"), we carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Based on the foregoing, our Certifying Officers concluded that our disclosure controls and procedures were effective as of the end of the period covered by this Report.

Disclosure controls and procedures are controls and other procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our Certifying Officers, or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

During the six months ended covered by this Report on Form 10-Q, we implemented new controls which enabled us to prepare our financial statements under ASC 606 on a modified retrospective basis effective for us on January 1, 2019. There were no other changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

On September 26, 2017, we filed a breach of contract complaint against Uber Technologies, Inc. seeking approximately \$3 million (plus interest) for unpaid invoices for advertising campaign services provided for Uber in the first quarter of 2017. The case, captioned *Phunware, Inc. v. Uber Technologies, Inc.*, Case No. CGC-17-561546 was filed in the Superior Court of the State of California County of San Francisco. On November 13, 2017, Uber generally denied the allegations in our complaint and also filed a cross-complaint against us and Fetch - the advertising agency Uber retained to run its mobile advertising campaign for the period 2014 through the first quarter of 2017 (the "Fetch Campaign"), asserting numerous fraud and contract-based claims. All the claims stem from Uber's allegation that Fetch and/or we (and/or other-as-yet-unidentified ad networks and publishers) are liable for the Fetch Campaign, under which Uber allegedly overpaid Fetch and mobile advertising providers due to allegedly fraudulent attribution for installments of the Uber application. Uber did not allege any specific dollar amount that it is seeking in damages against either of the named cross-defendants (Fetch and Phunware). We filed a motion to dismiss the cross-complaint, which was heard on February 7, 2018. The motion was granted in part and denied in part by the Court. On April 16, 2018, the action was designated complex, and the matter was assigned for all purposes to Judge Wiss of the Superior Court of California, San Francisco County (Department 305). In March 2019, Uber and Fetch settled Uber's claims against Fetch on terms that have not been disclosed to Phunware at this time. On May 7, 2019, we retained new counsel. In June 2019, the Court set a new trial date of April 20, 2020. Discovery is continuing. On June 26, 2019, the case was reassigned for all purposes to Judge Jackson of the Superior Court of California, San Francisco County (Department 613). On July 12, 2019, Uber filed its First Amended Cross-Complaint, naming new individual cross-defendants (Phunware Chief Executive Officer Alan S. Knitowski, and former Phunware employees D. Stasiuk, M. Borotsik, and A. Cook) accused of civil RICO violations and civil conspiracy to violate RICO, in addition to fraud, negligence, and unfair competition-based claims, and adding a fraud-based claim against Phunware. Uber's First Amended Cross-Complaint alleges that cross-defendants fraudulently obtained approximately \$17 million from Uber, and claims treble damages, general and punitive damages, and attorneys' fees and costs. We maintain that our claims against Uber are meritorious and that Uber's claims against us are not. However, we make no predictions on the likelihood of success of prevailing on our contract action against Uber or on the likelihood of defeating Uber's claims against us.

From time to time, the Company is and may become involved in various legal proceedings in the ordinary course of business. The outcomes of our legal proceedings are inherently unpredictable, subject to significant uncertainties, and could be material to our operating results and cash flows for a particular reporting period. In addition, for the matters disclosed above that do not include an estimate of the amount of loss or range of losses, such an estimate is not possible, and we may be unable to estimate the possible loss or range of losses that could potentially result from the application of non-monetary remedies.

Item 1A. Risk Factors

Important risk factors that could affect our operations and financial performance, or that could cause results or events to differ from current expectations, are described in "Part I, Item 1A — Risk Factors" of our Annual Report on Form 10-K filed with the SEC on March 20, 2019 for the year ended December 31, 2018, as supplemented by the "Risk Factors" section in our prospectus filed with the SEC on May 14, 2019 and the information set forth below. An investment in our securities involves a high degree of risk. The risks and uncertainties described below and within our Form 10-K for the year ended December 31, 2018 and the prospectus are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that adversely affect our business or results of operations.

Our financial results may be adversely affected by changes in accounting principles applicable to us.

U.S. generally accepted accounting principles ("GAAP") is subject to interpretation by the Financial Accounting Standards Board ("FASB"), the SEC, and other various bodies formed to promulgate and interpret appropriate accounting principles. For example, in May 2014, the FASB issued Accounting Standards Update No. ("ASU") No. 2014-09 (Topic 606), *Revenue from Contracts with Customers*, which supersedes nearly all existing revenue recognition guidance under GAAP. We implemented this guidance in the first quarter of our fiscal year 2019. The most significant impact relates to our accounting for subscriptions to our MaaS licenses and application development services, which may potentially make revenue more volatile and difficult to predict. In addition, accounting for commissions is impacted significantly as we have to capitalize and amortize most commissions under the new standard instead of expensing commissions as incurred. Due to the complexity of certain of our contracts, the revenue recognition treatment required under the new standard is dependent on contract-specific terms.

To adopt the new standards, we may have to implement new modules in our accounting system, hire consultants and increase our spending on audit fees, thereby increasing our general and administrative expense. Increased spending related to

the new revenue standard will continue through at least the first half of 2019 and will likely increase our audit fees on an ongoing basis thereafter. Any difficulties in implementing changes in accounting pronouncements or adequately accounting after adoption could cause us to fail to meet our financial reporting obligations, which could result in regulatory discipline and harm investors' confidence in us.

We may experience quarterly fluctuations in our operating results due to a number of factors, which makes our future results difficult to predict and could cause our operating results to fall below expectations.

Our quarterly operating results have fluctuated in the past and we expect them to fluctuate in the future due to a variety of factors, many of which are outside of our control. As a result, our past results may not be indicative of our future performance and comparing our operating results on a period-to-period basis may not be meaningful. In addition to the other risks described herein, factors that may affect our quarterly operating results include, without limitation:

- changes in spending on subscriptions, services and application transactions media offerings and services by our current or prospective customers;
- pricing our technology offerings and services effectively so that we are able to attract and retain customers without compromising our operating results;
- one-time, non-recurring revenue generating events.

There has been limited precedent set for financial accounting of digital assets. It is unclear how the Company will be required to account for digital assets transactions in the future.

There has been limited precedent set for the financial accounting of digital assets, including accounting for the issuance of our digital assets, PhunCoin and Phun. It is unclear how the Company will be required to account for issuances of its own digital assets and the digital assets it holds on its balance sheet. Furthermore, a change in regulatory or financial accounting standards could result in the necessity to restate the Company's financial statements. Such a restatement could negatively impact the Company's business, prospects, financial condition and results of operations. Such circumstances would have a material adverse effect on the ability of the Company to continue as a going concern or to pursue this segment at all, which would have a material adverse effect on the business, prospects or operations of the Company and potentially the value of any cryptocurrencies the Company holds or expects to acquire for its own account, including PhunCoin and Phun, to the detriment of the Company's investors.

We intend to raise additional capital to fund a Token Generation Event, pursuant to a Rule 506(c) of Regulation D offering by our wholly-owned subsidiary, PhunCoin, Inc., of rights to receive future PhunCoin. We further intend for our wholly-owned subsidiary, Phun Token International, to sell Phun. There can be no assurance that PhunCoin or Phun will ever be issued and, any significant difficulties we, PhunCoin, Inc., or Phun Token International may experience with the offerings of PhunCoin or Phun could result in claims against us. Additionally, the Token Generation Event and the offerings of PhunCoin and Phun could subject us to various other business and regulatory uncertainties.

In June 2018, PhunCoin, Inc. launched an offering to raise capital by offering investors the right to acquire PhunCoin ("Rights") pursuant to Rule 506(c) of Regulation D as promulgated under the Securities Act. In addition, in 2019, PhunCoin, Inc. commenced an offering of Rights pursuant to Regulation CF, which closed May 1, 2019. As of August 1, 2019, a total of \$1.2 million has been raised in both Rights offerings.

During the second quarter of 2019, Phunware announced the launch of a separate token, Phun, by its wholly owned subsidiary, Phun Token International, which enables consumers to participate in our blockchain-enabled data exchange and mobile loyalty ecosystem. As of June 30, 2019, no Phun has been sold.

We will use our commercially reasonable efforts to cause PhunCoin, Inc. and Phun Token International to develop and issue PhunCoin and Phun, but there is no assurance that such efforts will be successful. If the Token Generation Event, defined as the launch of the Token Ecosystem, is not consummated or the Rights offerings of PhunCoin or sales of Phun do not result in substantial proceeds, it could have a material adverse effect on our cash position. If the Token Generation Event is not consummated or Phun is not adopted commercially, we would have to reduce our planned expenditures and/or would require additional funding from other sources in order to carry out our business plan. Also, any significant difficulties we may experience with the Token Generation Event or the development of PhunCoin or Phun could result in claims against us and could have a material adverse effect on the Company and its stockholders.

The further development and acceptance of blockchain networks, which are part of a new and rapidly changing industry, are subject to a variety of factors that are difficult to evaluate. The slowing or stopping of the development or acceptance of blockchain networks and blockchain assets would have a material adverse effect on PhunCoin, Inc.'s and Phun Token International's business plans, which would have a material adverse effect on the Company and its stockholders.

The growth of the blockchain industry in general, as well as the networks on which PhunCoin will rely to consummate the Token Generation Event, is subject to a high degree of uncertainty. The cryptocurrency and cryptosecurities industries as a whole have been characterized by rapid changes and innovations and are constantly evolving. The slowing or stopping of the development, general acceptance and adoption and usage of blockchain networks and blockchain assets may materially adversely affect our business plans to launch and maintain PhunCoin and Phun. For example, given the regulatory complexity with respect to cryptocurrency and related digital assets, complying with such regulations, which could change in the future or be subject to new interpretations, could have a material and adverse effect on our ability to develop, launch and continue to operate PhunCoin, Phun and the Token Ecosystem. In addition, the tax and accounting consequences to us of the Token Generation Event, PhunCoin and Phun are uncertain, which could lead to incorrect reporting, classification or liabilities. If the Token Generation Event occurs and PhunCoin and Phun are developed, the structural foundation of PhunCoin and Phun, and the software applications and other interfaces or applications upon which PhunCoin, Phun and the Token Ecosystem rely or on which PhunCoin, Phun and the Token Ecosystem may rely in the future, are and will be unproven. There can be no assurances that PhunCoin or Phun will be fully secure, which may result in impermissible transfers, a complete loss of users' PhunCoin or Phun on the Token Ecosystem, or an unwillingness of users to access, adopt and utilize PhunCoin or Phun, whether through system faults or malicious attacks. Any such faults or attacks on PhunCoin or Phun may materially and adversely affect our business.

Because PhunCoin and Phun will be digital assets built and transacted initially on top of Stellar, an existing blockchain technology, Phunware is reliant on another blockchain network, and users are subject to the risk of wallet incompatibility and blockchain protocol risks.

We have decided to initially use the Stellar blockchain as the underlying blockchain technology to create the Token Ecosystem, although we may choose another blockchain technology in the future. Reliance upon another blockchain technology subjects us and the Token Ecosystem users to the risk of digital wallet incompatibility, or additional ecosystem malfunction, unintended function, unexpected functioning of, or attack on, the Stellar blockchain protocol, which may cause PhunCoin or Phun to malfunction or function in an unexpected manner, including, but not limited to, slowdown or complete cessation in functionality of the network.

The Token Ecosystem is designed to distribute PhunCoin and Phun to consumers in exchange for their agreement to provide certain personal information to us. Providing this data exposes us to risks of privacy data breach and cybersecurity attacks.

We utilize a substantial amount of electronic information. This includes transaction information and sensitive personal information of the users of the Token Ecosystem. The service providers used by us, may also use, store, and transmit such information. While we intend to implement detailed cybersecurity policies and procedures and an incident response plan designed to protect such information and prevent data loss and security breaches, there can be no assurances that such policies and procedures will be effective.

There can be no assurances that PhunCoin, Phun or a user's data will be fully secure, which may result in impermissible transfer, a complete loss of users' PhunCoin, Phun or data on the Token Ecosystem, and an unwillingness of users to access, adopt and utilize PhunCoin and Phun, whether through system faults or malicious attacks. Any such faults or attacks on PhunCoin, Phun or users' data may materially and adversely affect PhunCoin, Phun and the Token Ecosystem. There are a number of data protection, security, privacy and other government- and industry-specific requirements, including those that require companies to notify individuals of data security incidents involving certain types of personal data. Security compromises could harm the Token Ecosystem's reputation, erode user confidence in the effectiveness of its security measures, negatively impact its ability to attract new users, or cause existing users to stop using the Token Ecosystem, PhunCoin and Phun. We may be compelled to disclose personal information about a user or users of the Token Ecosystem to federal or state government regulators or taxation authorities. Accordingly, certain information concerning users may be shared outside Phunware.

The regulatory regime governing blockchain technologies, cryptocurrencies, digital assets, utility tokens, and offerings of digital assets and utility tokens such as PhunCoin and Phun is uncertain, and new regulations or policies may materially adversely affect the development and the value of PhunCoin and Phun.

Regulation of digital assets, like PhunCoin and Phun, cryptocurrencies, blockchain technologies and cryptocurrency exchanges, is currently undeveloped and likely to rapidly evolve as government agencies take greater interest in them. Regulation also varies significantly among international, federal, state and local jurisdictions and is subject to significant uncertainty. For example, Phun will only be initially available to residents outside of the United States and Canada. Various legislative and executive bodies in the United States and in other countries may in the future adopt laws, regulations, or guidance, or take other actions, which may severely impact the permissibility of tokens generally and the technology behind them or the means of transaction or in transferring them. In addition, any violations of laws and regulations relating to the safeguarding of private information in connection with PhunCoin or Phun could subject us to fines, penalties or other regulatory actions, as well as to civil actions by affected parties. Any such violations could adversely affect the ability of Phunware to cause its subsidiaries to maintain PhunCoin or Phun, which could have a material adverse effect on our operations and financial condition. Failure by us to comply with any laws, rules and regulations, some of which may not exist yet or are subject to interpretation and may be subject to change, could result in a variety of adverse consequences, including civil penalties and fines.

We have a concentration of sales with key customers and any substantial reduction in sales to these customers would have a material adverse effect on our results of operations and financial condition.

Revenue from Fox Networks Group (“Fox”) was 57% and 59% of total revenue for the three and six months ended June 30, 2019, respectively. Revenue from Houston Methodist was 8% and 11% of total revenue for the three and six months ended June 30, 2019, respectively. Fox and Houston Methodist are currently of key importance to our business, and our results of operations would be materially adversely affected if these relationships ceased or were reduced in any material respect. We cannot guarantee that the volume of sales will remain consistent going forward. Any substantial change in purchasing decisions by these customers, whether due to actions by our competitors, industry factors or otherwise, could have a material adverse effect on our business, financial condition and results of operations.

Current and future litigation could adversely affect us.

We, along with the Company’s Chief Executive Officer, are parties to the legal proceedings with Uber described in Item 1 of Part 2 of this Quarterly Report on Form 10-Q. We, along with our officers and directors, may also become subject to other legal proceedings in our ordinary course of business. We cannot predict with certainty the outcomes of these legal proceedings. The outcome of some of these legal proceeding could require us to take, or refrain from taking, actions which could negatively affect our operations. Such legal proceedings involve substantial costs, including the costs associated with investigation, litigation and possible settlement, judgment, penalty, or fine. As a smaller company, the collective costs of litigation proceedings represent a drain on our cash resources, and require an inordinate amount of our management’s time and attention. Moreover, an adverse ruling in respect of the Uber or any other litigation could have a material adverse effect on our results of operations and financial condition. Negative publicity surrounding such legal proceedings may also harm our reputation and adversely impact our business and results.

Our recent reduction in workforce may prevent us from executing initiatives to improve the performance of our business effectively or at all.

We have been and are currently implementing certain initiatives to improve the performance of our business, and our recent reduction in workforce could prevent us from engaging in certain initiatives we had previously considered, and could prevent us from executing such initiatives effectively. On April 12, 2019, we reduced our workforce by 23 persons, or approximately 15%. The reduction in our workforce could prevent us from engaging in certain initiatives to improve the performance of our business, due to an insufficiency of workforce size or an insufficiency of certain required skills, and could prevent us from executing initiatives effectively, which could have a material adverse effect on our financial results, business and prospects.

We require significant additional capital funding and such capital may not be available to us.

We expect that our operating expenses will be higher than our net revenues for the foreseeable future, we currently lack sufficient working capital and we do not currently have financing available to pay all liabilities as they are scheduled to come due in the next twelve months. We are working on several contingency plans within our control to conserve existing liquidity through the reduction of discretionary expenses. We are also exploring various alternatives including debt and equity financing vehicles, alternative offerings, and strategic partnerships.

Our cash requirements relate primarily to our current negative working capital balance plus working capital needed to operate and grow our business, including funding operating expenses and continued development and expansion of our products and services. We are currently unable to fund our operations without additional external financing and therefore cannot sustain future operations. As such, we may be required to delay, reduce and/or cease our operations and/or seek bankruptcy protection. Although we have successfully raised funds from investors in the past, no assurances can be made that we will be able to obtain sufficient additional capital to satisfy the current negative working capital balances and future operations. Furthermore, if adequate additional funds are not available, we will be required to delay, reduce the scope of, or eliminate material parts of the implementation of our business strategy, including potential additional acquisitions or internally-developed businesses, which could seriously harm our business and operating results.

Additionally, even if we raise sufficient capital through additional equity or debt financings, strategic alternatives or otherwise, there can be no assurance that the revenue or capital infusion will be sufficient to enable us to develop our business to a level where it will be profitable or generate positive cash flow. If we raise additional funds through the issuance of equity or convertible debt securities, the percentage ownership of our stockholders could be significantly diluted and these newly issued securities may have rights, preferences or privileges senior to those of existing stockholders. If we incur additional debt, a substantial portion of our operating cash flow may be dedicated to the payment of principal and interest on such indebtedness, thus limiting funds available for our business activities. The debt holders would have rights senior to common stockholders to make claims on our assets and the terms of any debt securities issued could also impose significant restrictions on our operations. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Our warrants may and have been exercised on a cashless basis. As a result, our stockholders bear the risk of our future securities offerings reducing the market price of our common stock and diluting their interest. Broad market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance and may adversely impact our ability to raise additional funds. If we raise additional funds through collaborations and/or licensing arrangements, we might be required to relinquish significant rights to our technologies, or grant licenses on terms that are not favorable to us.

Our subsidiary, PhunCoin, Inc., launched an offering to raise capital in 2018 by offering investors Rights to acquire PhunCoin. During the second quarter of 2019, Phunware's board of directors authorized the issuance of \$20 million of convertible promissory notes. As of June 30, 2019, \$1.2 million had been raised in the PhunCoin Rights offerings and \$250 thousand in convertible notes had been issued. There can be no assurance that the Company will be able to obtain additional funding via these capital raises or at all, and there can be no assurances that the Company will be able to obtain additional funding on satisfactory terms.

The price of our common stock and warrants has been, and may continue to be, volatile, and you could lose all or part of your investment.

Technology stocks have historically experienced high levels of volatility. The trading price and volume of our common stock and warrants has fluctuated, and may continue to fluctuate, substantially due to a variety of factors, including those described in this "Risk Factors" section and within our Form 10-K filed with the SEC on March 20, 2019 for year ended December 31, 2018, many of which are beyond our control and may not be related to our operating performance. These fluctuations could cause you to lose all or part of your investment in our common stock.

In addition, if the market for technology stocks or the stock market in general experiences a loss of investor confidence, the trading price of our common stock and/or warrants could decline for reasons unrelated to our business, results of operations or financial condition. The trading price of our common stock and warrants might also decline in reaction to events that affect other companies in our industry even if these events do not directly affect us. In the past, following periods of volatility in the trading price of a company's securities, securities class action litigation has often been brought against that company. If our stock price is volatile, we may become the target of securities litigation. Securities litigation could result in substantial costs and divert our management's attention and resources from our business. This could have an adverse effect on our business, results of operations and financial condition.

Specifically, while we cannot state with certainty what circumstances and factors are causing volatility in our stock price, such volatility may be attributable in part to the following factors:

- the periodic trading of shares by existing holders of pre-merger shares of common stock, who were not subject to any lock-up, and therefore are able to freely trade shares of common stock on the public market free of restriction;

- the lock-up of 180-days expired on June 26, 2019, which may have increased the trading activity and the supply of freely tradeable shares on the public market;
- the effectiveness of our registration statement, filed with the SEC on May 3, 2019 for the registration of additional shares of common stock, including those shares of common stock underlying outstanding warrants, which signaled that additional dilution may result in the event that such warrants are or were exercised for the underlying shares;
- short-sales and trading by public investors who may be either attempting to take advantage of the low public float or covering their short positions and, because of the low public float at times, may have had to pay relatively high prices for their shares to close out their positions;
- the cashless exercises of up to 6,900,610 in public warrants for the underlying shares of common stock, which shares may be unrestricted and available for trading immediately; and
- the public market's disproportionate focus on PhunCoin, Phun, and other ancillary activities that are speculative in nature and separate from our core operations.

As a result of the offering covered by the Registration Statement on Form S-1 (as amended), which was declared effective on May 14, 2019, the number of shares of common stock that are in the public float increased due to shares issued upon the exercise of outstanding warrants. Such shares, which are now registered are in the hands of stockholders who are not subject to lock-ups. This resulted in a larger public market for our shares, and may or may not normalize the trading price and reduce volatility in the stock price.

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

The following list sets forth information as to all Phunware securities sold which were not registered under the Securities Act.

Plan-Related Issuances

During the six months ended June 30, 2019, we issued 106,397 shares of common stock pursuant to the exercise of options previously granted under the Company's 2009 Equity Incentive Plan. The exercise prices of the options ranged from \$0.4357 to \$2.3094 per share, after giving effect to the Reverse Merger and Recapitalization's exchange ratio of 0.459. Aggregate consideration to the Company for the options exercised over this period totaled approximately \$72 thousand.

None of the foregoing transactions involved any underwriters, underwriting discounts or commissions, or any public offering. The Registrant believes these transactions were exempt from registration under the Securities Act in reliance upon Section 4(2) of the Securities Act (or Regulation D or Regulation S promulgated thereunder), or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions by an issuer not involving any public offering or pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of the securities in each of these transactions represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed upon the stock certificates issued in these transactions. All recipients had adequate access, through their relationships with us, to information about the Company.

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

On July 16, 2019, the Company entered into a lease agreement with BRE CA Office Owner, LLC for new office space in Irvine, California, for the lease of approximately 8,687 rentable square feet located at 16845 Von Karman Avenue (the "Lease"). The Lease commences on November 1, 2019, and terminates on March 31, 2025, subject to one five-year renewal option. Under the Lease, the Company will pay monthly rent of approximately \$354 thousand per year for the first year, with

such rent increasing by a specified amount every year thereafter. The Lease also obligates the Company to pay its proportionate share of certain cost increases incurred by the landlord. The Company may receive certain abatements subject to the terms and conditions of the Lease. The Company is also obligated to pay a security deposit of approximately \$118 thousand. Future minimum lease payments are set forth in Note 13 in the notes to the condensed consolidated financial statements.

The foregoing description and the description set forth in Note 13 in the notes to the condensed consolidated financial statements of the Lease is only a summary, and is qualified in its entirety by reference to the complete terms and conditions of the Lease, which is attached hereto as Exhibit 10.3 and is incorporated herein by reference.

Item 6. Exhibits

Unless otherwise noted, the exhibits listed on the accompanying Exhibit Index are filed or incorporated by reference (as stated therein) as part of this Quarterly Report on Form 10-Q.

EXHIBIT INDEX

Exhibit No.	Description
2.1	Agreement and Plan of Merger, dated February 27, 2018, by and among Stellar, STLR Merger Subsidiary Inc. and Phunware, Inc. (Incorporated by reference to Exhibit 2.1 of Stellar's Form 8-K (File No. 001-37862), filed with the SEC on February 28, 2018, and also included as Annex C to the joint proxy statement/prospectus).
2.2	First Amendment to Agreement and Plan of Merger, dated November 1, 2018, by and among Stellar, Phunware, Inc. and the Holder Representative named therein (Incorporated by reference to Annex C-1 to Stellar's Form S-4/A (File No. 333-224227), filed with the SEC on November 13, 2018).
3.1	Amended and Restated Certificate of Incorporation of the Registrant (Incorporated by reference to Exhibit 3.1 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).
3.2	Amended and Restated Bylaws of the Registrant (Incorporated by reference to Exhibit 3.2 of the Registrant's Form 8-K (File No. 001-37862), filed with the SEC on January 2, 2019).
3.3	Certificate of Designation (Incorporated by reference to Exhibit 3.3 of the Registrant's Form 8-K (File No. 001-37862) filed with the SEC on January 2, 2019).
4.1	Form of Convertible Promissory Note (Incorporated by reference to Exhibit 4.1 of the Registrant's Form 8-K (File No. 001-37862) filed with the SEC on June 5, 2019).
10.1	Form of Purchase Agreement (Incorporated by reference to Exhibit 10.1 of the Registrant's Form 8-K (File No. 001-37862) filed with the SEC on June 5, 2019).
10.2	Form of Cryptocurrency Payment Agreement (Incorporated by reference to Exhibit 10.2 of the Registrant's Form 8-K (File No. 001-37862) filed with the SEC on June 5, 2019).
10.3*	Standard office lease dated July 16, 2019, between the Company and BRE CA Office Owner, LLC.
10.4*	Lease agreement dated October 1, 2014, between the Company and Promontory Associates, GP.
10.5*	Lease agreement and first amendment thereto dated March 2013 and May 18, 2018, respectively, between the Company and 3050 Biscayne Properties, LLC.
31.1*	Certification of the Principal Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a)*
31.2*	Certification of the Principal Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a)*
32.1 ⁽¹⁾	Certification of the Principal Executive Officer required by Rule 13a-14(b) or Rule 15d-14(b) and 18 U.S.C. 1350*
101.INS	XBRL Instance Document*
101.SCH	XBRL Taxonomy Extension Schema*
101.CAL	XBRL Taxonomy Calculation Linkbase*
101.LAB	XBRL Taxonomy Label Linkbase*
101.PRE	XBRL Definition Linkbase Document*
101.DEF	XBRL Definition Linkbase Document*

* Filed
herewith

- (1) The certifications attached as Exhibit 32.1 accompany this Quarterly Report on Form 10-Q pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed “filed” by the Registrant for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

SIGNATURES

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

August 13, 2019

Phunware, Inc.

By: /s/ Alan S. Knitowski

Name: Alan S. Knitowski

Title: Chief Executive Officer
(Principal Executive Officer)

By: /s/ Matt Aune

Name: Matt Aune

Title: Chief Financial Officer
(Principal Accounting and Financial Officer)

STANDARD OFFICE LEASE

BY AND BETWEEN

BRE CA OFFICE OWNER LLC,
a Delaware limited liability company,

AS LANDLORD,

AND

PHUNWARE, INC.,
a Delaware corporation,

AS TENANT

SUITE 150

16845 Von Karman Avenue

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STANDARD OFFICE LEASE

This Standard Office Lease ("Lease") is made and entered into as of 7/16/2019, 2019, by and between BRE CA OFFICE OWNER LLC, a Delaware limited liability company ("Landlord"), and PHUNWARE, INC., a Delaware corporation ("Tenant").

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises described as Suite No. 150, as designated on the plan attached hereto and incorporated herein as Exhibit "A" ("Premises"), of the project ("Project") whose address is 16845 Von Karman Avenue, Irvine, California. The Project is part of a multi-building development known as Von Karman Creative Campus (the "Development"). This Lease shall be for the Term and upon the terms and conditions hereinafter set forth, and Landlord and Tenant hereby agree as follows:

ARTICLE 1
BASIC LEASE PROVISIONS

- A. Term: Sixty-five (65) months.
- Commencement Date: November 1, 2019.
- Expiration Date: March 31, 2025.
- B. Square Footage: 8,687 rentable square feet.
- C. Basic Rental:

Months	Annual Basic Rental	Monthly Basic Rental*	Approximate Annual Basic Rental Per Rentable Square Foot
1-12	\$354,429.60	\$29,535.80	\$40.80
13-24	\$365,062.49	\$30,421.87	\$42.02
25-36	\$376,014.36	\$31,334.53	\$43.28
37-48	\$387,294.79	\$32,274.57	\$44.58
49-60	\$398,913.64	\$33,242.80	\$45.92
61-65	N/A	\$34,240.09	\$47.30
* Subject to abatement as provided in Section 3(a) below			

- D. Base Year: 2019
- E. Tenant's Proportionate Share: 20.5206%
- F. Security Deposit: \$118,143.20. The security deposit shall be paid by Tenant in three (3) installments. The first (1st) installment of \$39,381.07 shall be due and payable by Tenant to Landlord upon Tenant's execution of this Lease. The second (2nd) installment of \$39,381.07 shall be due and payable by Tenant to Landlord on or before August 1, 2019. The third (3rd) installment of \$39,381.06 shall be due and payable by Tenant to Landlord on or before September 1, 2019. In no event shall Tenant be entitled to possession of the Premises until Tenant has paid the entire security deposit to Landlord; provided in no event shall Tenant's failure to timely pay the entire security deposit delay the Commencement Date.

- G. Permitted Use: General office use consistent with the character of the Project as a first class office project. However, at no

Project as a first-class office project. However, at no time during the Term of this Lease shall (i) Tenant's

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primary business be the operation of an executive suites service, or (ii) Tenant sell on a retail basis to the general public (a) coffee or coffee drinks, specialty coffee drinks, specialty tea drinks or specialty boba drinks, or (b) any breakfast items.

- H. Brokers: CBRE, Inc., representing the Landlord and Newmark Knight Frank, representing the Tenant.
- I. Parking Passes: Tenant shall be entitled to use fifty (50) parking passes, upon the terms and conditions and at the rate provided in Article 23 hereof.
- J. Initial Installment of Basic Rental: The first full month's Basic Rental of \$29,535.80 shall be due and payable by Tenant to Landlord upon Tenant's execution of this Lease.

ARTICLE 2

TERM/PREMISES/BENEFICIAL OCCUPANCY

(a) Term. The Term of this Lease shall commence on the Commencement Date as set forth in Article 1.A. of the Basic Lease Provisions and shall end on the Expiration Date set forth in Article 1.A. of the Basic Lease Provisions. If Landlord does not deliver possession of the Premises to Tenant on or before the anticipated Beneficial Occupancy Date (as set forth in Section 2(c) below), Landlord shall not be subject to any liability for its failure to do so, and such failure shall not affect the validity of this Lease nor the obligations of Tenant hereunder. Landlord may deliver to Tenant a Commencement Letter in a form substantially similar to that attached hereto as Exhibit "C", which Tenant shall execute and return to Landlord within five (5) days of receipt thereof. Failure of Tenant to timely execute and deliver the Commencement Letter shall constitute acknowledgment by Tenant that the statements included in such notice are true and correct, without exception.

(b) Premises. Landlord and Tenant hereby stipulate that the Premises contains the number of square feet specified in Article 1.B. of the Basic Lease Provisions, except that the rentable and usable square feet of the Premises and the Project are subject to verification from time to time by Landlord's architect/space planner. In the event that Landlord's architect/space planner determines that the amounts thereof shall be different from those set forth in this Lease, all amounts, percentages and figures appearing or referred to in this Lease based upon such incorrect amount (including, without limitation, the amount of the Basic Rental and Tenant's Proportionate Share) shall be modified in accordance with such determination. If such determination is made, it will be confirmed in writing by Landlord to Tenant.

(c) Beneficial Occupancy. Notwithstanding anything to the contrary contained herein, Tenant shall have the right to commence business from the Premises during the period, if any (the "Beneficial Occupancy Period") from the date of Substantial Completion of the Improvements in the Premises (the "Beneficial Occupancy Date") until the Commencement Date, provided that all of the terms and conditions of this Lease shall apply, including Tenant's obligations to obtain and maintain insurance pursuant to Article 14 below, during the Beneficial Occupancy Period, except that Tenant's obligation to pay monthly Basic Rental and any Direct Costs shall not apply during the Beneficial Occupancy Period. The Beneficial Occupancy Date is anticipated to be on or about the date which is six (6) weeks after the date of full execution and delivery of this Lease.

ARTICLE 3

RENTAL

(a) Basic Rental. Tenant agrees to pay to Landlord during the Term hereof, at Landlord's office or to such other person or at such other place as directed from time to time by written notice to Tenant from Landlord, the monthly and annual sums as set forth in Article 1.C. of the Basic Lease Provisions, payable in advance on the first (1st) day of each calendar month, without demand, setoff or deduction, and in the event this Lease commences or the date of expiration of this Lease occurs other than on the first (1st) day or last day of a calendar month, the rent for such month shall be prorated. Notwithstanding anything to the contrary contained herein,

rent for such month shall be prorated. Notwithstanding anything to the contrary contained herein and provided that Tenant faithfully performs all of the terms and conditions of this Lease, Landlord

hereby agrees to abate Tenant's obligation to pay monthly Basic Rental for the second (2nd), thirteenth (13th), twenty-fifth (25th), thirty-seventh (37th) and forty-ninth (49th) full calendar months of the initial Lease Term. During such abatement period, Tenant shall still be responsible for the payment of all of its other monetary obligations under this Lease. In the event of a default by Tenant under the terms of this Lease that results in early termination pursuant to the provisions of Section 20(a) of this Lease, then as a part of the recovery set forth in Article 20 of this Lease, Landlord shall be entitled to recover the monthly Basic Rental that were abated under the provisions of this Section 3(a). The amount of Basic Rental Costs to be abated pursuant to this Section 3(a) above may be referred herein as "Abated Rent Amount." Notwithstanding the foregoing or anything to the contrary contained herein, upon written notice to Tenant, Landlord shall have the option to purchase all or any portion of Tenant's Abated Rent Amount by paying the then present value of such amount to Tenant (calculated with an 8% annual discount rate), in which case the amount so paid to Tenant shall nullify the applicable future amount of abatement of Tenant's Basic Rental as to the period so designated by Landlord in Landlord's written notice to Tenant. In addition, notwithstanding the foregoing, the first full month's Basic Rental shall be paid to Landlord in accordance with Article 1.J. of the Basic Lease Provisions and, if the Commencement Date is not the first day of a month, Basic Rental for the partial month commencing as of the Commencement Date shall be prorated based upon the actual number of days in such month and shall be due and payable upon the Commencement Date.

(b) Increase in Direct Costs. The term "Base Year" means the calendar year set forth in Article 1.D. of the Basic Lease Provisions. If, in any calendar year during the Term of this Lease, the "Direct Costs" (as hereinafter defined) paid or incurred by Landlord shall be higher than the Direct Costs for the Base Year, Tenant shall pay an additional sum for each such subsequent calendar year equal to the product of the percentage set forth in Article 1.E. of the Basic Lease Provisions multiplied by such increased amount of "Direct Costs." In the event either the Premises and/or the Project is expanded or reduced, then Tenant's Proportionate Share shall be appropriately adjusted, and as to the calendar year in which such change occurs, Tenant's Proportionate Share for such calendar year shall be determined on the basis of the number of days during that particular calendar year that such Tenant's Proportionate Share was in effect. In the event this Lease shall terminate on any date other than the last day of a calendar year, the additional sum payable hereunder by Tenant during the calendar year in which this Lease terminates shall be prorated on the basis of the relationship which the number of days which have elapsed from the commencement of said calendar year to and including said date on which this Lease terminates bears to three hundred sixty five (365). Any and all amounts due and payable by Tenant pursuant to this Lease (other than Basic Rental) shall be deemed "Additional Rent" and Landlord shall be entitled to exercise the same rights and remedies upon default in these payments as Landlord is entitled to exercise with respect to defaults in monthly Basic Rental payments. Any and all amounts due and payable by Tenant to Landlord shall be in the form of (i) business checks, (ii) wire transfers, (iii) electronic funds transfers, and (iv) automated clearing house payments. Any other forms of payment are not acceptable to Landlord including, without limitation (1) cash or currency, (2) cashier's checks and money orders, (3) traveler's checks, (4) payments from credit unions or other non-bank financial institutions, (5) multiple payments for one (1) scheduled payment, and (6) third party checks.

(c) Definitions. As used herein the term "Direct Costs" shall mean the sum of the following:

(i) "Tax Costs", which shall mean any and all real estate taxes and other similar charges on real property or improvements, assessments, water and sewer charges, and all other charges assessed, reassessed or levied upon the Project and appurtenances thereto and the parking or other facilities thereof, or the real property thereunder (collectively the "Real Property") or attributable thereto or on the rents, issues, profits or income received or derived therefrom which are assessed, reassessed or levied by the United States, the State of California or any local government authority or agency or any political subdivision thereof, and shall include Landlord's reasonable legal fees, costs and disbursements incurred in connection with proceedings for reduction of Tax Costs or any part thereof; provided, however, if at any time after the date of this Lease the methods of taxation now prevailing shall be altered so that in lieu of or as a supplement to or a substitute for the whole or any part of any Tax Costs, there shall be assessed, reassessed or levied (a) a tax, assessment, reassessment, levy, imposition or charge wholly or partially as a net income, capital or franchise levy or otherwise on the rents, issues, profits or income derived

therefrom, or (b) a tax, assessment, reassessment, levy (including but not limited to any municipal, state or federal levy), imposition or charge measured by or based in whole or in part upon the Real

Property and imposed upon Landlord, then except to the extent such items are payable by Tenant under Article 6 below, such taxes, assessments, reassessments or levies or the part thereof so measured or based, shall be deemed to be included in the term "Direct Costs."

(ii) "Operating Costs", which shall mean all costs and expenses incurred by Landlord in connection with the maintenance, operation, replacement, ownership and repair of the Project, the equipment, the intrabuilding cabling and wiring, adjacent walks, malls and landscaped and common areas and the parking structure, areas and facilities of the Project. Operating Costs shall include but not be limited to, salaries, wages, fringe benefits, and employment taxes for all persons who perform duties connected with the operation, maintenance and repair of the Project, its equipment, the intrabuilding cabling and wiring and the adjacent walks and landscaped areas, including janitorial, gardening, security, parking, operating engineer, elevator, painting, plumbing, electrical, carpentry, heating, ventilation, air conditioning and window washing; hired services; a reasonable allowance for depreciation of the cost of acquiring or the rental expense of personal property used in the maintenance, operation and repair of the Project; accountant's fees incurred in the preparation of rent adjustment statements; legal fees; real estate tax consulting fees; personal property taxes on property used in the maintenance and operation of the Project; fees, costs, expenses or dues payable pursuant to the terms of any covenants, conditions or restrictions or owners' association pertaining to the Project; capital expenditures incurred to effect economies of operation of, or stability of services to, the Project and capital expenditures required by government regulations, laws, or ordinances including, but not limited to the Americans with Disabilities Act; provided, however, that capital expenditures included in Operating Costs shall be amortized (with interest at ten percent (10%) per annum) over its useful life; costs incurred (capital or otherwise) on a regular recurring basis every three (3) or more years for certain maintenance projects (e.g., parking lot slurry coat or replacement of lobby and elevator cab carpeting); costs incurred (capital or otherwise) in order for the Project, or any portion thereof, to apply for, obtain or maintain a certification pursuant to the United States Green Building Council's Leadership in Energy and Environmental Design ("LEED") rating system, or other applicable certification agency, in connection with Landlord's sustainability practices for the Project and all costs of maintaining, managing, reporting and commissioning the Project or any part thereof that was designed and/or built to be sustainable and conform with the LEED rating system (or other applicable certification standard); the cost of all charges for electricity, gas, water and other utilities furnished to the Project (including, without limitation, costs incurred in connection with Landlord's supplying of "green" or other renewable energy), and any taxes thereon; the cost of all charges for fire and extended coverage, liability and all other insurance in connection with the Project carried by Landlord; the cost of all building and cleaning supplies and materials; the cost of all charges for cleaning, maintenance and service contracts and other services with independent contractors and administration fees; a property management fee (which fee may be imputed if Landlord has internalized management or otherwise acts as its own property manager but shall in no event exceed three percent (3%) of the Project's gross revenue per annum, disregarding rent abatement) and license, permit and inspection fees relating to the Project and costs of providing to tenants of the Project and their employees (A) first-class concierge services (if any), including assistance with reservations, ticket procurement, errand running, procurement of personal services, and corporate event management, and (B) a bicycle sharing program (if any) (provided, however, that nothing contained herein shall be deemed to require Landlord to provide any such concierge services or bicycle sharing program). In the event, during any calendar year, the Project is less than ninety-five percent (95%) occupied at all times, Operating Costs shall be adjusted to reflect the Operating Costs of the Project as though ninety-five percent (95%) were occupied at all times, and the increase or decrease in the sums owed hereunder shall be based upon such Operating Costs as so adjusted.

Notwithstanding anything above to the contrary, Operating Costs shall not include (1) the cost of providing any service directly to and paid directly by any tenant (outside of such tenant's Direct Cost payments) such as where a Tenant directly contracts for electric power or other utilities with the local public services company, provided that in each such case, Landlord shall have the right to "gross up" such item as if such space was vacant; (2) the cost of any items for which Landlord is reimbursed by insurance proceeds, condemnation awards, a tenant of the Project (outside of such tenant's Direct Cost payments), or otherwise to the extent so reimbursed; (3) any real estate brokerage commissions or other costs incurred in procuring tenants, or any fee in lieu of commission; (4) amortization of principal and interest on mortgages or ground lease payments (if any); (5) costs of items considered capital repairs, replacements, improvements and equipment

(if any), (c) costs of items considered capital repairs, replacements, improvements and equipment under generally accepted accounting principles consistently applied except as expressly included

in Operating Costs pursuant to the definition above; (6) costs incurred by Landlord due to the violation by Landlord or any tenant of the terms and conditions of any lease of space in the Project or any law, code, regulation, ordinance or the like; (7) any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord (other than in the parking facility for the Project); (8) costs incurred in connection with upgrading the Project to comply with disability, life, seismic, fire and safety codes, ordinances, statutes, or other laws in effect prior to the Commencement Date, including, without limitation, the then applicable requirements of the Americans with Disabilities Act ("ADA"), including penalties or damages incurred due to such non-compliance; (9) bad debt expenses and interest, principal, points and fees on debts (except in connection with the financing of items which may be included in Operating Costs); (10) marketing costs, including those costs described in (3) above, attorneys' fees in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases and/or assignments, space planning costs, and other costs and expenses incurred in connection with lease, sublease and/or assignment negotiations and transactions with present or prospective tenants or other occupants of the Project, including attorneys' fees and other costs and expenditures incurred in connection with disputes with present or prospective tenants or other occupants of the Project; (11) costs, including permit, license and inspection costs, incurred with respect to the installation of other tenants' or occupants' improvements made for tenants or other occupants in the Project or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants in the Project; (12) any costs expressly excluded from Operating Costs elsewhere in this Lease; (13) costs of any items (including, but not limited to, costs incurred by Landlord for the repair of damage to the Project) to the extent Landlord receives reimbursement from insurance proceeds or from a third party (except that any deductible amount under any insurance policy shall be included within Operating Costs); (14) rentals and other related expenses for leasing an HVAC system, elevators, or other items (except when needed in connection with normal repairs and maintenance of the Project) which if purchased, rather than rented, would constitute a capital improvement not included in Operating Costs pursuant to this Lease; (15) depreciation, amortization and interest payments, except as specifically included in Operating Costs pursuant to the terms of this Lease and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party, where such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services, all as determined in accordance with generally accepted accounting principles, consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life; (16) expenses in connection with services or other benefits which are not offered to Tenant or for which Tenant is charged for directly but which are provided to another tenant or occupant of the Project, without charge; (17) costs incurred in connection with the operation of retail stores selling merchandise and restaurants in the Project to the extent such costs are in excess of the costs Landlord reasonably estimates would have been incurred had such space been used for general office use; (18) costs (including in connection therewith all attorneys' fees and costs of settlement, judgments and/or payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims litigation or arbitrations pertaining to Landlord and/or the Project, other than such claims or disputes respecting any services or equipment used in the operation of the Project by Landlord; (19) costs associated with the operation of the business of the partnership which constitutes Landlord as the same are distinguished from the costs of operation of the Project; (20) costs incurred in connection with the original construction of the Project; (21) costs of correcting defects in or inadequacy of the initial design or construction of the Project; and (22) costs incurred to (i) comply with laws relating to the removal of any "Hazardous Material," as that term is defined in Article 28 of this Lease, which was in existence on the Project prior to the Commencement Date, and was of such a nature that a federal, state or municipal governmental authority, if it had then had knowledge of the presence of such Hazardous Material, in the state, and under the conditions that it then existed on the Project, would have then required the removal of such Hazardous Material or other remedial or containment action with respect thereto, and (ii) remove, remedy, contain, or treat any Hazardous Material, which Hazardous Material is brought onto the Project after the date hereof by Landlord or any other tenant of the Project and is of such a nature, at that time, that a federal, state or municipal governmental authority, if it had then had knowledge of the presence of such Hazardous Material, in the state, and under the conditions, that it then exists on the Project, would have then required the removal of such Hazardous Material or other remedial or containment action with respect thereto.



(d) Determination of Payment.

(i) If for any calendar year ending or commencing within the Term, Tenant's Proportionate Share of Direct Costs for such calendar year exceeds Tenant's Proportionate Share of Direct Costs for the Base Year, then Tenant shall pay to Landlord, in the manner set forth in Sections 3(d)(ii) and (iii), below, and as Additional Rent, an amount equal to the excess (the "Excess"). Notwithstanding the foregoing, Tenant shall not be obligated to pay Tenant's Proportionate Share of Direct Costs during the first twelve (12) full calendar months of the initial Term.

(ii) Landlord shall give Tenant a yearly expense estimate statement (the "Estimate Statement") which shall set forth Landlord's reasonable estimate (the "Estimate") of what the total amount of Direct Costs for the then-current calendar year shall be and the estimated Excess (the "Estimated Excess") as calculated by comparing Tenant's Proportionate Share of Direct Costs for such calendar year, which shall be based upon the Estimate, to Tenant's Proportionate Share of Direct Costs for the Base Year. If pursuant to the Estimate Statement an Estimated Excess is calculated for the then-current calendar year, Tenant shall pay, with its next installment of Monthly Basic Rental due, a fraction of the Estimated Excess for the then-current calendar year (reduced by any amounts paid pursuant to the last sentence of this Section 3(d)(ii)). Such fraction shall have as its numerator the number of months which have elapsed in such current calendar year to the month of such payment, both months inclusive, and shall have twelve (12) as its denominator. Until a new Estimate Statement is furnished, Tenant shall pay monthly, with the Monthly Basic Rental installments, an amount equal to one-twelfth ($1/12^{\text{th}}$) of the total Estimated Excess set forth in the previous Estimate Statement delivered by Landlord to Tenant.

(iii) In addition, Landlord shall give to Tenant as soon as reasonably practicable following the end of each calendar year, a statement (the "Statement") which shall state the Direct Costs incurred or accrued for such preceding calendar year, and which shall indicate the amount, if any, of the Excess. Upon receipt of the Statement for each calendar year during the Term, if amounts paid by Tenant as Estimated Excess are less than the actual Excess as specified on the Statement, Tenant shall pay, with its next installment of monthly Basic Rental due, the full amount of the Excess for such calendar year, less the amounts, if any, paid during such calendar year as Estimated Excess. If, however, the Statement indicates that amounts paid by Tenant as Estimated Excess are greater than the actual Excess as specified on the Statement, such overpayment shall be credited against Tenant's next installments of Estimated Excess. The failure of Landlord to timely furnish the Statement for any calendar year shall not prejudice Landlord from enforcing its rights under this Article 3, once such Statement has been delivered. Even though the Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Proportionate Share of the Direct Costs for the calendar year in which this Lease terminates, if an Excess is present, Tenant shall immediately pay to Landlord an amount as calculated pursuant to the provisions of this Section 3(d). The provisions of this Section 3(d)(iii) shall survive the expiration or earlier termination of the Term.

(iv) Because the Project is a part of a multi-building Development, those Direct Costs attributable to such Development as a whole (and not attributable solely to any individual building therein) shall be allocated by Landlord to the Project and to the other buildings within such Development on an equitable basis.

(e) Audit Right. Within one hundred twenty (120) days after receipt of a Statement by Tenant ("Review Period"), if Tenant disputes the amount set forth in the Statement, Tenant's employees or an independent certified public accountant (which accountant is a member of a nationally or regionally recognized accounting firm and is not retained on a contingency fee basis), designated by Tenant, may, after reasonable notice to Landlord ("Review Notice") and at reasonable times, inspect Landlord's records at Landlord's offices, provided that Tenant is not then in default after expiration of all applicable cure periods and provided further that Tenant and such accountant or representative shall, and each of them shall use their commercially reasonable efforts to cause their respective agents and employees to, maintain all information contained in Landlord's records in strict confidence. Notwithstanding the foregoing, Tenant shall only have the right to review Landlord's records one (1) time during any twelve (12) month period. If after such inspection, but within thirty (30) days after the Review Period, Tenant notifies Landlord in writing ("Dispute Notice") that Tenant still disputes such amounts, a certification as to the proper amount

shall be made in accordance with Landlord's standard accounting practices, at Tenant's expense, by an independent certified public accountant selected by Landlord and who is a member of a

nationally or regionally recognized accounting firm. Tenant's failure to deliver the Review Notice within the Review Period or to deliver the Dispute Notice within thirty (30) days after the Review Period shall be deemed to constitute Tenant's approval of such Statement and Tenant, thereafter, waives the right or ability to dispute the amounts set forth in such Statement. If Tenant timely delivers the Review Notice and the Dispute Notice, Landlord shall cooperate in good faith with Tenant and the accountant to show Tenant and the accountant the information upon which the certification is to be based. However, if such certification by the accountant proves that the Direct Costs set forth in the Statement were overstated by more than five percent (5 %), then the cost of the accountant and the cost of such certification shall be paid for by Landlord. Promptly following the parties receipt of such certification, the parties shall make such appropriate payments or reimbursements, as the case may be, to each other, as are determined to be owing pursuant to such certification. Tenant agrees that this section shall be the sole method to be used by Tenant to dispute the amount of any Direct Costs payable by Tenant pursuant to the terms of this Lease, and Tenant hereby waives any other rights at law or in equity relating thereto.

ARTICLE 4 SECURITY DEPOSIT

Tenant is obligated to deposit with Landlord the sum set forth in Article 1.F. of the Basic Lease Provisions as security for the full and faithful performance of every provision of this Lease to be performed by Tenant. If Tenant breaches any provision of this Lease, including but not limited to the payment of rent, Landlord may use all or any part of this security deposit for the payment of any rent or any other sums in default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said deposit is so used or applied, Tenant shall, within five (5) days after written demand therefor, deposit funds with Landlord in a form acceptable under Section 3(b) above and in an amount sufficient to restore the security deposit to its full amount. Notwithstanding anything to the contrary contained in this Article 4, (a) in the event that Tenant, at the expiration of the twenty-fourth (24th) full calendar month of the initial Lease Term, is not in default of any of its obligations under this Lease, Landlord shall reduce the amount of the Security Deposit by \$31,334.53, and Landlord shall apply such amount against Tenant's monthly Basic Rental obligation for the twenty-fifth (25th) full calendar month of the initial Lease Term, and (b) in the event that Tenant, at the expiration of the thirty-sixth (36th) full calendar month of the initial Lease Term, is not in default of any of its obligations under this Lease, Landlord shall reduce the amount of the Security Deposit by \$32,274.57 and Landlord shall apply such amount against Tenant's monthly Basic Rental obligation for the thirty-seventh (37th) full calendar month of the initial Lease Term. Tenant agrees that Landlord shall not be required to keep the security deposit in trust, segregate it or keep it separate from Landlord's general funds, but Landlord may commingle the security deposit with its general funds and Tenant shall not be entitled to interest on such deposit. At the expiration of the Term, and provided there exists no default by Tenant hereunder, the security deposit or any balance thereof shall be returned to Tenant (or, at Landlord's option, to Tenant's "Transferee", as such term is defined in Article 15 below), provided that subsequent to the expiration of this Lease, Landlord may retain from said security deposit (i) an amount reasonably estimated by Landlord to cover potential Direct Cost reconciliation payments due with respect to the calendar year in which this Lease terminates or expires (such amount so retained shall not, in any event, exceed ten percent (10%) of estimated Direct Cost payments due from Tenant for such calendar year through the date of expiration or earlier termination of this Lease and any amounts so retained and not applied to such reconciliation shall be returned to Tenant within thirty (30) days after Landlord's delivery of the Statement for such calendar year), (ii) any and all amounts reasonably estimated by Landlord to cover the anticipated costs to be incurred by Landlord to remove any signage provided to Tenant under this Lease, to remove cabling and other items required to be removed by Tenant under Section 29(b) below and to repair any damage caused by such removal (in which case any excess amount so retained by Landlord shall be returned to Tenant within thirty (30) days after such removal and repair), and (iii) any and all amounts permitted by law or this Article 4. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code and all other provisions of law, now or hereafter in effect, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums specified in this Article 4 above, and all of Landlord's damages under this Lease and California law including, but not limited to, any damages accruing upon termination of this Lease under Section 1951.2 of the California Civil Code and/or those sums reasonably necessary to

under Section 1001.2 of the California Civil Code and/or those sums reasonably necessary to

compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the acts or omissions of Tenant or any officer, employee, agent, contractor or invitee of Tenant.

ARTICLE 5 HOLDING OVER

Should Tenant (or any subtenant, assignee or other party occupying the Premises by, through, under, or with the permission of Tenant), without Landlord's written consent, hold over after termination of this Lease, Tenant shall, at Landlord's option, become either a tenant at sufferance or a month-to-month tenant upon each and all of the terms herein provided as may be applicable to such a tenancy and any such holding over shall not constitute an extension of this Lease. During such holding over, Tenant shall pay in advance, monthly, Basic Rental at a rate equal to one hundred and fifty percent (150%) of the rate in effect for the last month of the Term of this Lease, in addition to, and not in lieu of, all other payments required to be made by Tenant hereunder including but not limited to Tenant's Proportionate Share of any increase in Direct Costs. Nothing contained in this Article 5 shall be construed as consent by Landlord to any holding over of the Premises by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or earlier termination of the Term. If Tenant fails to surrender the Premises upon the expiration or termination of this Lease, Tenant agrees to indemnify, defend and hold Landlord harmless from and against all costs, loss, expense or liability, including without limitation, claims made by any succeeding tenant and real estate brokers claims and attorney's fees and costs.

ARTICLE 6 OTHER TAXES

Tenant shall pay, prior to delinquency, all taxes assessed against or levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant located in the Premises. In the event any or all of Tenant's trade fixtures, furnishings, equipment and other personal property shall be assessed and taxed with property of Landlord, or if the cost or value of any leasehold improvements in the Premises exceeds the cost or value of a Project-standard buildout as determined by Landlord and, as a result, real property taxes for the Project are increased, Tenant shall pay to Landlord, within ten (10) days after delivery to Tenant by Landlord of a written statement setting forth such amount, the amount of such taxes applicable to Tenant's property or above-standard improvements. Tenant shall assume and pay to Landlord at the time Basic Rental next becomes due (or if assessed after the expiration of the Term, then within ten (10) days), any excise, sales, use, rent, occupancy, garage, parking, gross receipts or other taxes (other than net income taxes) which may be assessed against or levied upon Landlord on account of the letting of the Premises or the payment of Basic Rental or any other sums due or payable hereunder, and which Landlord may be required to pay or collect under any law now in effect or hereafter enacted. In addition to Tenant's obligation pursuant to the immediately preceding sentence, Tenant shall pay directly to the party or entity entitled thereto all business license fees, gross receipts taxes and similar taxes and impositions which may from time to time be assessed against or levied upon Tenant, as and when the same become due and before delinquency. Notwithstanding anything to the contrary contained herein, any sums payable by Tenant under this Article 6 shall not be included in the computation of "Tax Costs."

ARTICLE 7 USE

Tenant shall use and occupy the Premises only for the use set forth in Article 1.G. of the Basic Lease Provisions and shall not use or occupy the Premises or permit the same to be used or occupied for any other purpose without the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole and absolute discretion, and Tenant agrees that it will use the Premises in such a manner so as not to interfere with or infringe upon the rights of other tenants or occupants in the Project. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances, governmental regulations or requirements now in force or which may hereafter be in force relating to or affecting (i) the condition, use or occupancy of the Premises or the Project (excluding structural changes to the Project not related to Tenant's particular use of the Premises), and (ii) improvements installed or constructed in the Premises by or for the benefit of Tenant. Tenant hereby agrees and acknowledges that the manufacture, cultivation, sale, use, trade

or possession of any drugs or other substance in violation of the laws of the United States of America in the Premises shall be a material breach of this Lease (without any applicable notice

and cure period) notwithstanding that any laws of the State of California permit the manufacture, cultivation, sale, use, trade or possession of such drugs or other substances for recreational or medicinal purposes, including without limitation, cannabis, cannabinoids or any derivations thereof. Tenant shall not permit more than six and one half (6.5) people per one thousand (1,000) rentable square feet of the Premises to occupy the Premises at any time. Tenant shall not do or permit to be done anything which would invalidate or increase the cost of any insurance policy covering the Project and/or the property located therein and Tenant shall comply with all rules, orders, regulations and requirements of any organization which sets out standards, requirements or recommendations commonly referred to by major fire insurance underwriters, and Tenant shall promptly upon demand reimburse Landlord for any additional premium charges for any such insurance policy assessed or increased by reason of Tenant's failure to comply with the provisions of this Article 7. Tenant shall comply with Landlord's reasonable sustainability practices and shall not permit any use of the Premises which may affect the continued certification of the Project issued pursuant to the LEED rating system (or other applicable certification standard).

ARTICLE 8 CONDITION OF PREMISES

Tenant hereby agrees that except as provided in the Tenant Work Letter attached hereto as Exhibit "D" and made a part hereof the Premises shall be taken "as is", "with all faults", "without any representations or warranties", and Tenant hereby agrees and warrants that it has investigated and inspected the condition of the Premises and the suitability of same for Tenant's purposes, and Tenant does hereby waive and disclaim any objection to, cause of action based upon, or claim that its obligations hereunder should be reduced or limited because of the condition of the Premises or the Project or the suitability of same for Tenant's purposes. Tenant acknowledges that neither Landlord nor any agent nor any employee of Landlord has made any representations or warranty with respect to the Premises or the Project or with respect to the suitability of either for the conduct of Tenant's business and Tenant expressly warrants and represents that Tenant has relied solely on its own investigation and inspection of the Premises and the Project in its decision to enter into this Lease and let the Premises in the above-described condition. Nothing contained herein is intended to, nor shall, obligate Landlord to implement sustainability practices for the Project or to seek certification under, or make modifications in order to obtain, a certification from LEED or any other comparable certification. The Premises shall be initially improved by Landlord as provided in, and subject to, the Tenant Work Letter attached hereto as Exhibit "D" and made a part hereof. The existing leasehold improvements in the Premises as of the date of this Lease, together with the Improvements (as defined in the Tenant Work Letter) may be collectively referred to herein as the "Tenant Improvements." The taking of possession of the Premises by Tenant shall conclusively establish that the Premises and the Project were at such time in satisfactory condition. Tenant hereby waives subsection 1 of Section 1932 and Sections 1941 and 1942 of the Civil Code of California or any successor provision of law.

ARTICLE 9 REPAIRS AND ALTERATIONS

(a) Landlord's Obligations. Landlord shall maintain the structural portions of the Project, including the foundation, floor/ceiling slabs, roof, curtain wall, exterior glass, columns, beams, shafts, stairs, stairwells, elevator cabs and common areas, and shall also maintain and repair the basic mechanical, electrical, life safety, plumbing, sprinkler systems and heating, ventilating and air-conditioning systems (provided, however, that Landlord's obligation with respect to any such systems shall be to repair and maintain those portions of the systems located in the core of the Project or in other areas outside of the Premises, but Tenant shall be responsible to repair and maintain any distribution of such systems throughout the Premises).

(b) Tenant's Obligations. Except as expressly provided as Landlord's obligation in this Article 9, Tenant shall keep the Premises in good condition and repair and in compliance with Landlord's sustainability practices including, without limitation, compliance with any LEED rating system (or other certification standard) applicable to the Project. All damage or injury to the Premises or the Project resulting from the act or negligence of Tenant, its employees, agents or visitors, guests, invitees or licensees or by the use of the Premises, shall be promptly repaired by Tenant at its sole cost and expense, to the satisfaction of Landlord; provided, however, that for damage to the Project as a result of casualty or for any repairs that may impact the mechanical,

electrical, plumbing, heating, ventilation or air-conditioning systems of the Project, Landlord shall have the right (but not the obligation) to select the contractor and oversee all such repairs. Landlord

may make any repairs which are not promptly made by Tenant after Tenant's receipt of written notice and the reasonable opportunity of Tenant to make said repair within five (5) business days from receipt of said written notice, and charge Tenant for the cost thereof, which cost shall be paid by Tenant within five (5) days from invoice from Landlord. Tenant shall be responsible for the design and function of all non-standard improvements of the Premises, whether or not installed by Landlord at Tenant's request. Tenant waives all rights to make repairs at the expense of Landlord, or to deduct the cost thereof from the rent.

(c) Alterations. Tenant shall make no alterations, installations, changes or additions in or to the Premises or the Project (collectively, "Alterations") without Landlord's prior written consent, which shall not be unreasonably withheld. Without limitation as to other grounds for Landlord withholding its consent to any proposed Alteration, Landlord may withhold its consent to a proposed Alteration if Landlord determines that such Alteration is not compatible with any existing or planned future certification of the Project under the LEED rating system (or other applicable certification standard). Any Alterations approved by Landlord must be performed in accordance with the terms hereof, using only contractors or mechanics approved by Landlord in writing and upon the approval by Landlord in writing of fully detailed and dimensioned plans and specifications pertaining to the Alterations in question, to be prepared and submitted by Tenant at its sole cost and expense. Tenant shall at its sole cost and expense obtain all necessary approvals and permits pertaining to any Alterations approved by Landlord. Tenant shall cause all Alterations to be performed in a good and workmanlike manner, in conformance with all applicable federal, state, county and municipal laws, rules and regulations, pursuant to a valid building permit, and in conformance with Landlord's construction rules and regulations. If Landlord, in approving any Alterations, specifies a commencement date therefor, Tenant shall not commence any work with respect to such Alterations prior to such date. Tenant hereby agrees to indemnify, defend, and hold Landlord free and harmless from all liens and claims of lien, and all other liability, claims and demands arising out of any work done or material supplied to the Premises by or at the request of Tenant in connection with any Alterations.

(d) Insurance; Liens. Prior to the commencement of any Alterations, Tenant shall provide Landlord with evidence that Tenant carries "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of such Alterations, and such other insurance as Landlord may reasonably require, it being understood that all such Alterations shall be insured by Tenant pursuant to Article 14 of this Lease immediately upon completion thereof. In addition, Landlord may, in its discretion, require Tenant to obtain a bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien free completion of such Alterations.

(e) Costs and Fees; Removal. If permitted Alterations are made, they shall be made at Tenant's sole cost and expense and shall be and become the property of Landlord, except that Landlord may, by written notice to Tenant given concurrently with Landlord's approval of such Alteration or Improvement, require Tenant at Tenant's expense to remove all partitions, counters, railings, Improvements and other Alterations from the Premises, and to repair any damage to the Premises and the Project caused by such removal. Any and all costs attributable to or related to the applicable building codes of the city in which the Project is located (or any other authority having jurisdiction over the Project) arising from Tenant's plans, specifications, improvements, Alterations or otherwise shall be paid by Tenant at its sole cost and expense. With regard to repairs, Alterations or any other work arising from or related to this Article 9, Landlord shall be entitled to receive an administrative/coordination fee in the amount of 5% of the cost of such work unless such work is strictly cosmetic in nature (i.e. paint and re-carpeting) in which case no administrative/coordination fee shall be required to be paid by Tenant. The construction of initial improvements to the Premises shall be governed by the terms of the Tenant Work Letter and not the terms of this Article 9, except as expressly provided in the first sentence of this Section 9(e).

ARTICLE 10

LIENS

Tenant shall keep the Premises and the Project free from any mechanics' liens, vendors liens or any other liens arising out of any work performed, materials furnished or obligations incurred by Tenant, and Tenant agrees to defend, indemnify and hold Landlord harmless from and against any such lien or claim or action thereon, together with costs of suit and reasonable

attorneys' fees and costs incurred by Landlord in connection with any such claim or action. Before commencing any work of alteration, addition or improvement to the Premises, Tenant shall give

Landlord at least ten (10) business days' written notice of the proposed commencement of such work (to afford Landlord an opportunity to post appropriate notices of non-responsibility). In the event that there shall be recorded against the Premises or the Project or the property of which the Premises is a part any claim or lien arising out of any such work performed, materials furnished or obligations incurred by Tenant and such claim or lien shall not be removed or discharged within ten (10) days of filing, Landlord shall have the right but not the obligation to pay and discharge said lien without regard to whether such lien shall be lawful or correct (in which case Tenant shall reimburse Landlord for any such payment made by Landlord within ten (10) days following written demand), or to require that Tenant promptly deposit with Landlord in cash, lawful money of the United States, one hundred fifty percent (150%) of the amount of such claim, which sum may be retained by Landlord until such claim shall have been removed of record or until judgment shall have been rendered on such claim and such judgment shall have become final, at which time Landlord shall have the right to apply such deposit in discharge of the judgment on said claim and any costs, including attorneys' fees and costs incurred by Landlord, and shall remit the balance thereof to Tenant.

ARTICLE 11 PROJECT SERVICES

(a) Basic Services. Landlord agrees to furnish to the Premises, at a cost to be included in Operating Costs, from 8:00 a.m. to 6:00 p.m. Mondays through Fridays and upon request from Tenant, 8:00 a.m. to noon on Saturdays, excepting local and national holidays, air conditioning and heat all in such reasonable quantities as in the judgment of Landlord is reasonably necessary for the comfortable occupancy of the Premises. In addition, Landlord shall provide electric current for normal lighting and normal office machines, elevator service and water on the same floor as the Premises for lavatory and drinking purposes in such reasonable quantities as in the judgment of Landlord is reasonably necessary for general office use and in compliance with applicable codes. Tenant shall cooperate with Landlord's efforts to cause the utilities for the Project to comply with Landlord's sustainability practices and any LEED rating (or other applicable certification standard) applicable to the Project. Such efforts may include, without limitation, the use of energy efficient bulbs in task lighting, energy efficient lighting controls and measures to avoid over-lighting interior spaces. Janitorial and maintenance services shall be furnished five (5) days per week, excepting local and national holidays. Tenant shall comply with all rules and regulations which Landlord may establish for the proper functioning and protection of the common area air conditioning, heating, elevator, electrical, intrabuilding cabling and wiring and plumbing systems. Landlord shall not be liable for, and there shall be no rent abatement as a result of, any stoppage, reduction or interruption of any such services caused by governmental rules, regulations or ordinances, riot, strike, labor disputes, breakdowns, accidents, necessary repairs or other cause. Except as specifically provided in this Article 11, Tenant agrees to pay for all utilities and other services utilized by Tenant and any additional building services furnished to Tenant which are not uniformly furnished to all tenants of the Project, at the rate generally charged by Landlord to tenants of the Project for such utilities or services.

(b) Excess Usage. Tenant will not, without the prior written consent of Landlord, use any apparatus or device in the Premises which will in any way increase the amount of electricity or water usually furnished or supplied for use of the Premises as general office space; nor connect any apparatus, machine or device with water pipes or electric current (except through existing electrical outlets in the Premises), for the purpose of using electric current or water. Tenant shall promptly respond to all reasonable informational requests made by Landlord from time to time regarding Landlord's reporting requirements under the LEED rating system (or other applicable certification standard) including, without limitation, informational requests regarding Tenant's utility usage.

(c) Additional Electrical Service. If Tenant shall require electric current in excess of that which Landlord is obligated to furnish under Section 11(a) above, Tenant shall first obtain the written consent of Landlord, which Landlord may refuse in its sole and absolute discretion. Additionally, Landlord may cause an electric current meter or submeter to be installed in or about the Premises to measure the amount of any such excess electric current consumed by Tenant in the Premises. The cost of any such meter and of installation, maintenance and repair thereof shall be paid for by Tenant and Tenant agrees to pay to Landlord, promptly upon demand therefor by Landlord, for all such excess electric current consumed by any such use as shown by said meter at

the rates charged for such service by the city in which the Project is located or the local public

utility, as the case may be, furnishing the same, plus any additional expense incurred by Landlord in keeping account of the electric current so consumed.

(d) HVAC Balance. If any lights, machines or equipment (including but not limited to computers and computer systems and appurtenances) are used by Tenant in the Premises which materially affect the temperature otherwise maintained by the air conditioning system, or generate substantially more heat in the Premises than would be generated by the building standard lights and usual office equipment, Landlord shall have the right to install any machinery and equipment which Landlord reasonably deems necessary to restore temperature balance, including but not limited to modifications to the standard air conditioning equipment, and the cost thereof, including the cost of installation and any additional cost of operation and maintenance occasioned thereby, shall be paid by Tenant to Landlord upon demand by Landlord.

(e) Telecommunications. Upon request from Tenant from time to time, Landlord will provide Tenant with a listing of telecommunications and media service providers serving the Project, and Tenant shall have the right to contract directly with the providers of its choice. If Tenant wishes to contract with or obtain service from any provider which does not currently serve the Project or wishes to obtain from an existing carrier services which will require the installation of additional equipment, such provider must, prior to providing service, enter into a written agreement with Landlord setting forth the terms and conditions of the access to be granted to such provider. In considering the installation of any new or additional telecommunications cabling or equipment at the Project, Landlord will consider all relevant factors in a reasonable and non-discriminatory manner, including, without limitation, the existing availability of services at the Project, the impact of the proposed installations upon the Project and its operations and the available space and capacity for the proposed installations. Landlord may also consider whether the proposed service may result in interference with or interruption of other services at the Project or the business operations of other tenants or occupants of the Project. In no event shall Landlord be obligated to incur any costs or liabilities in connection with the installation or delivery of telecommunication services or facilities at the Project. All such installations shall be subject to Landlord's prior approval and shall be performed in accordance with the terms of Article 9. If Landlord approves the proposed installations in accordance with the foregoing, Landlord will deliver its standard form agreement upon request and will use commercially reasonable efforts to promptly enter into an agreement on reasonable and non-discriminatory terms with a qualified, licensed and reputable carrier confirming the terms of installation and operation of telecommunications equipment consistent with the foregoing.

(f) After-Hours Use. If Tenant requires heating, ventilation and/or air conditioning during times other than the times provided in Section 11(a) above, Tenant shall give Landlord such advance notice as Landlord shall reasonably require and shall pay Landlord's reasonable standard charge for such after-hours use, with a one (1) hour minimum. Landlord's current after-hours charge is \$45.00/hour.

(g) Reasonable Charges. Landlord may impose a reasonable charge for any utilities or services (other than electric current and heating, ventilation and/or air conditioning which shall be governed by Sections 11(c) and (f) above) utilized by Tenant in excess of the amount or type that Landlord reasonably determines is typical for general office use.

(h) Supplemental HVAC. Tenant shall be entitled to install, as an Alteration, a dedicated heating, ventilation and air conditioning unit ("Supplemental Unit") within the Premises at Tenant's sole cost and expense. The plans and specifications for any Supplemental Unit shall, as indicated in Article 9 above, be subject to Landlord's reasonable approval. If Tenant elects to install a Supplemental Unit within the Premises, Tenant shall also install, at Tenant's sole cost and expense, a separate meter or at Landlord's option, submeter, in order to measure the amount of electricity furnished to such unit and Tenant shall be responsible for Landlord's actual cost of supplying electricity to such unit as reflected by such meter or submeter, which amounts shall be payable on a monthly basis as Additional Rent. Tenant shall be solely responsible for maintenance and repair of the Supplemental Unit and such unit shall, at Landlord's option, be considered to be a fixture within the Premises and shall remain upon the Premises upon the expiration or earlier termination of the Lease Term or any applicable Option Term.

(i) Sole Electrical Representative. Tenant agrees that Landlord shall be the sole and

exclusive representative with respect to, and shall maintain exclusive control over, the reception, utilization and distribution of electrical power, regardless of point or means of origin, use or

generation. Tenant shall not have the right to contract directly with any provider of electrical power or services.

ARTICLE 12 RIGHTS OF LANDLORD

(a) Right of Entry. Landlord and its agents shall have the right to enter the Premises at all reasonable times for the purpose of cleaning the Premises, examining or inspecting the same, serving or posting and keeping posted thereon notices as provided by law, or which Landlord deems necessary for the protection of Landlord or the Project, showing the same to prospective tenants, lenders or purchasers of the Project, in the case of an emergency, and for making such alterations, repairs, improvements or additions to the Premises or to the Project as Landlord may deem necessary or desirable. If Tenant shall not be personally present to open and permit an entry into the Premises at any time when such an entry by Landlord is necessary or permitted hereunder, Landlord may enter by means of a master key, or may forcibly enter in the case of an emergency, in each event without liability to Tenant and without affecting this Lease.

(b) Maintenance Work. Landlord reserves the right from time to time, but subject to payment by and/or reimbursement from Tenant as otherwise provided herein: (i) to install, use, maintain, repair, replace, relocate and control for service to the Premises and/or other parts of the Project pipes, ducts, conduits, wires, cabling, appurtenant fixtures, equipment spaces and mechanical systems, wherever located in the Premises or the Project, (ii) to alter, close or relocate any facility in the Premises or the common areas or otherwise conduct any of the above activities for the purpose of complying with a general plan for fire/life safety for the Project or otherwise, and (iii) to comply with any federal, state or local law, rule or order. Landlord shall attempt to perform any such work with the least inconvenience to Tenant as is reasonably practicable, but in no event shall Tenant be permitted to withhold or reduce Basic Rental or other charges due hereunder as a result of same, make any claim for constructive eviction or otherwise make any claim against Landlord for interruption or interference with Tenant's business and/or operations.

(c) Rooftop. If Tenant desires to use the rooftop of the Project for any purpose, including the installation of communication equipment to be used from the Premises, such rights will be granted in Landlord's sole discretion and Tenant must negotiate the terms of any rooftop access with Landlord or the rooftop management company or lessee holding rights to the rooftop from time to time. Any rooftop access granted to Tenant will be at prevailing rates and will be governed by the terms of a separate written agreement or an amendment to this Lease.

ARTICLE 13 INDEMNITY; EXEMPTION OF LANDLORD FROM LIABILITY

(a) Indemnity. Tenant shall indemnify, defend and hold Landlord and its members, officers, directors, employees and contractors (collectively, "Landlord Parties") harmless from any loss, cost, liability, damage or expense including, but not limited to, penalties, fines, attorneys' fees and costs (collectively, "Claims") arising from Tenant's use of the Premises or the Project or from the conduct of its business or from any activity, work or thing which may be permitted or suffered by Tenant in or about the Premises or the Project and shall further indemnify, defend and hold Landlord and the Landlord Parties harmless from and against any and all Claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease or arising from any negligence or willful misconduct of Tenant or any of its agents, contractors, employees or invitees, patrons, customers or members in or about the Project and from any and all costs, attorneys' fees and costs, expenses and liabilities incurred in the defense of any Claim or any action or proceeding brought thereon, including negotiations in connection therewith. Tenant hereby assumes all risk of damage to property or injury to persons in or about the Premises from any cause, and Tenant hereby waives all claims in respect thereof against Landlord and the Landlord Parties, excepting where the damage is caused solely by the gross negligence or willful misconduct of Landlord or the Landlord Parties.

(b) Exemption of Landlord from Liability. Landlord and the Landlord Parties shall not be liable for injury to Tenant's business, or loss of income therefrom, however occurring (including, without limitation, from any failure or interruption of services or utilities or as a result of Landlord's negligence), or, except in connection with damage or injury resulting from the gross

negligence or willful misconduct of Landlord or the Landlord Parties, for damage that may be sustained by the person, goods, wares, merchandise or property of Tenant, its employees, invitees,

customers, agents, or contractors, or any other person in, on or about the Premises directly or indirectly caused by or resulting from any cause whatsoever, including, but not limited to, fire, steam, electricity, gas, water, or rain which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, light fixtures, or mechanical or electrical systems, or from intrabuilding cabling or wiring, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Project or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord and the Landlord Parties shall not be liable to Tenant for any damages arising from any willful or negligent action or inaction of any other tenant of the Project.

(c) Security. Tenant acknowledges that Landlord's election whether or not to provide any type of mechanical surveillance or security personnel whatsoever in the Project is solely within Landlord's discretion; Landlord and the Landlord Parties shall have no duty or liability in connection with the provision, or lack, of such services, and Tenant hereby agrees to hold Landlord and the Landlord Parties harmless with regard to any such potential claim. Landlord and the Landlord Parties shall not be liable for losses due to theft, vandalism, or like causes. Tenant shall defend, indemnify, and hold Landlord and the Landlord Parties harmless from and against any such claims made by any employee, licensee, invitee, contractor, agent or other person whose presence in, on or about the Premises or the Project is attendant to the business of Tenant.

ARTICLE 14 INSURANCE

(a) Tenant's Insurance. Tenant, shall at all times during the Term of this Lease, and at its own cost and expense, procure and continue in force the following insurance coverage: (i) Commercial General Liability Insurance, written on an occurrence basis, with a combined single limit for bodily injury and property damages of not less than Two Million Dollars (\$2,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate, including products liability coverage if applicable, owners and contractors protective coverage, blanket contractual coverage including both oral and written contracts, and personal injury coverage, covering the insuring provisions of this Lease and the performance of Tenant of the indemnity and exemption of Landlord from liability agreements set forth in Article 13 hereof; (ii) a policy of standard fire, extended coverage and special extended coverage insurance (all risks), including a vandalism and malicious mischief endorsement, sprinkler leakage coverage and earthquake sprinkler leakage where sprinklers are provided in an amount equal to the full replacement value new without deduction for depreciation of all (A) Tenant Improvements, Alterations, fixtures and other improvements in the Premises, including but not limited to all mechanical, plumbing, heating, ventilating, air conditioning, electrical, telecommunication and other equipment, systems and facilities, and (B) trade fixtures, furniture, equipment and other personal property installed by or at the expense of Tenant; (iii) Worker's Compensation coverage as required by law; and (iv) business interruption, loss of income and extra expense insurance covering any failure or interruption of Tenant's business equipment (including, without limitation, telecommunications equipment) and covering all other perils, failures or interruptions sufficient to cover a period of interruption of not less than twelve (12) months. Tenant shall carry and maintain during the entire Term (including any option periods, if applicable), at Tenant's sole cost and expense, increased amounts of the insurance required to be carried by Tenant pursuant to this Article 14 and such other reasonable types of insurance coverage and in such reasonable amounts covering the Premises and Tenant's operations therein, as may be reasonably required by Landlord.

(b) Form of Policies. The aforementioned minimum limits of policies and Tenant's procurement and maintenance thereof shall in no event limit the liability of Tenant hereunder. The Commercial General Liability Insurance policy shall name Landlord, the Landlord Parties, Landlord's property manager, Landlord's lender(s) and such other persons or firms as Landlord specifies from time to time, as additional insureds with an appropriate endorsement to the policy(s). All such insurance policies carried by Tenant shall be with companies having a rating of not less than A-VIII in Best's Insurance Guide. Tenant shall furnish to Landlord, from the insurance companies, or cause the insurance companies to furnish, certificates of coverage. The deductible under each such policy shall be reasonably acceptable to Landlord. No such policy shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days prior written notice to Landlord by the insurer. All such policies shall be

endorsed to agree that Tenant's policy is primary and that any insurance carried by Landlord is excess and not contributing with any Tenant insurance requirement hereunder. Tenant shall, at

least twenty (20) days prior to the expiration of such policies, furnish Landlord with renewals or binders. Tenant agrees that if Tenant does not take out and maintain such insurance or furnish Landlord with renewals or binders in a timely manner, Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and charge Tenant the cost thereof, which amount shall be payable by Tenant upon demand with interest (at the rate set forth in Section 20(e) below) from the date such sums are expended. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies obtained by Tenant, provided such blanket policies expressly afford coverage to the Premises and to Tenant as required by this Lease.

(c) Landlord's Insurance. Landlord may, as a cost to be included in Operating Costs, procure and maintain at all times during the Term of this Lease, a policy or policies of insurance covering loss or damage to the Project in the amount of the full replacement cost without deduction for depreciation thereof, providing protection against all perils included within the classification of fire and extended coverage, vandalism coverage and malicious mischief, sprinkler leakage, water damage, and special extended coverage on the building. Additionally, Landlord may carry: (i) Bodily Injury and Property Damage Liability Insurance and/or Excess Liability Coverage Insurance; and (ii) Earthquake and/or Flood Damage Insurance; and (iii) Rental Income Insurance; and (iv) any other forms of insurance Landlord may deem appropriate or any lender may require. The costs of all insurance carried by Landlord shall be included in Operating Costs.

(d) Waiver of Subrogation. Landlord and Tenant each agree to require their respective insurers issuing the insurance described in Sections 14(a)(ii), 14(a)(iv) and the first sentence of Section 14(c), to waive any rights of subrogation that such companies may have against the other party. Tenant hereby waives any right that Tenant may have against Landlord and Landlord hereby waives any right that Landlord may have against Tenant as a result of any loss or damage to the extent such loss or damage is insurable under such policies.

(e) Compliance with Insurance Requirements. Tenant agrees that it will not, at any time, during the Term of this Lease, carry any stock of goods or do anything in or about the Premises that will in any way tend to increase the insurance rates upon the Project. Tenant agrees to pay Landlord forthwith upon demand the amount of any increase in premiums for insurance that may be carried during the Term of this Lease, or the amount of insurance to be carried by Landlord on the Project resulting from the foregoing, or from Tenant doing any act in or about the Premises that does so increase the insurance rates, whether or not Landlord shall have consented to such act on the part of Tenant. If Tenant installs upon the Premises any electrical equipment which causes an overload of electrical lines of the Premises, Tenant shall at its own cost and expense, in accordance with all other Lease provisions (specifically including, but not limited to, the provisions of Article 9, 10 and 11 hereof), make whatever changes are necessary to comply with requirements of the insurance underwriters and any governmental authority having jurisdiction thereover, but nothing herein contained shall be deemed to constitute Landlord's consent to such overloading. Tenant shall, at its own expense, comply with all insurance requirements applicable to the Premises including, without limitation, the installation of fire extinguishers or an automatic dry chemical extinguishing system.

ARTICLE 15 ASSIGNMENT AND SUBLETTING

Tenant shall have no power to, either voluntarily, involuntarily, by operation of law or otherwise, sell, assign, transfer or hypothecate this Lease, or sublet the Premises or any part thereof, or permit the Premises or any part thereof to be used or occupied by anyone other than Tenant or Tenant's employees without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. If Tenant is a corporation, unincorporated association, partnership or limited liability company, the sale, assignment, transfer or hypothecation of any class of stock or other ownership interest in such corporation, association, partnership or limited liability company in excess of twenty-five percent (25%) in the aggregate shall be deemed a "Transfer" within the meaning and provisions of this Article 15. Tenant may transfer its interest pursuant to this Lease only upon the following express conditions, which conditions are agreed by Landlord and Tenant to be reasonable:

(a) That the proposed Transferee (as hereafter defined) shall be subject to the prior written consent of Landlord, which consent will not be unreasonably withheld but, without limiting

the generality of the foregoing, it shall be reasonable for Landlord to deny such consent if:

(i) The use to be made of the Premises by the proposed Transferee is (A) not generally consistent with the character and nature of all other tenancies in the Project, or (B) a use which conflicts with any so-called "exclusive" then in favor of another tenant of the Project or any other buildings which are in the same complex as the Project, or (C) a use that is not compatible with the existing certification or a planned future certification of the Project under the LEED rating system (or other applicable certification standard), or (D) a use which would be prohibited by any other portion of this Lease (including but not limited to any Rules and Regulations then in effect);

(ii) The financial responsibility of the proposed Transferee is not reasonably satisfactory to Landlord or in any event not at least equal to the financial responsibility possessed by Tenant as of the date of execution of this Lease;

(iii) The proposed Transferee is either a governmental agency or instrumentality thereof; or

(iv) Either the proposed Transferee or any person or entity which directly or indirectly controls, is controlled by or is under common control with the proposed Transferee (A) occupies space in the Project at the time of the request for consent, or (B) is negotiating with Landlord or has negotiated with Landlord during the six (6) month period immediately preceding the date of the proposed Transfer, to lease space in the Project

(b) Upon Tenant's submission of a request for Landlord's consent to any such Transfer, Tenant shall pay to Landlord Landlord's then standard processing fee and reasonable attorneys' fees and costs incurred in connection with the proposed Transfer, which the parties hereby stipulate to be \$1,500.00, unless Landlord provides to Tenant evidence that Landlord has incurred greater costs in connection with the proposed Transfer;

(c) That the proposed Transferee shall execute an agreement pursuant to which it shall agree to perform faithfully and be bound by all of the terms, covenants, conditions, provisions and agreements of this Lease applicable to that portion of the Premises so transferred; and

(d) That an executed duplicate original of said assignment and assumption agreement or other Transfer on a form reasonably approved by Landlord, shall be delivered to Landlord within five (5) days after the execution thereof, and that such Transfer shall not be binding upon Landlord until the delivery thereof to Landlord and the execution and delivery of Landlord's consent thereto. It shall be a condition to Landlord's consent to any subleasing, assignment or other transfer of part or all of Tenant's interest in the Premises ("Transfer") that (i) upon Landlord's consent to any Transfer, Tenant shall pay and continue to pay Landlord fifty percent (50%) of any "Transfer Premium" (defined below), received by Tenant from the transferee; (ii) any sublessee of part or all of Tenant's interest in the Premises shall agree that in the event Landlord gives such sublessee notice that Tenant is in default under this Lease, such sublessee shall thereafter make all sublease or other payments directly to Landlord, which will be received by Landlord without any liability whether to honor the sublease or otherwise (except to credit such payments against sums due under this Lease), and any sublessee shall agree to attorn to Landlord or its successors and assigns at their request should this Lease be terminated for any reason, except that in no event shall Landlord or its successors or assigns be obligated to accept such attornment; (iii) any such Transfer and consent shall be effected on forms supplied by Landlord and/or its legal counsel; (iv) Landlord may require that Tenant not then be in default hereunder in any respect; and (v) Tenant or the proposed subtenant or assignee (collectively, "Transferee") shall agree to pay Landlord, upon demand, as Additional Rent, a sum equal to the additional costs, if any, incurred by Landlord for maintenance and repair as a result of any change in the nature of occupancy caused by such subletting or assignment. "Transfer Premium" shall mean all rent, Additional Rent or other consideration payable by a Transferee in connection with a Transfer in excess of the Basic Rental and Direct Costs payable by Tenant under this Lease during the term of the Transfer and if such Transfer is for less than all of the Premises, the Transfer Premium shall be calculated on a rentable square foot basis. In any event, the Transfer Premium shall be calculated after deducting the reasonable expenses incurred by Tenant for (1) any changes, alterations and improvements to the Premises paid for by Tenant and approved by Landlord in connection with the Transfer, (2) any other out-of-pocket monetary concessions provided by Tenant to the Transferee, and (3) any brokerage commissions paid for by Tenant in connection with the Transfer. The calculation of "Transfer Premium" shall also include, but not be limited to, key money, bonus money or other

cash consideration paid by a Transferee to Tenant in connection with such Transfer, and any payment in excess of fair market value for services rendered by Tenant to the Transferee and any

payment in excess of fair market value for assets, fixtures, inventory, equipment, or furniture transferred by Tenant to the Transferee in connection with such Transfer. Any Transfer of this Lease which is not in compliance with the provisions of this Article 15 shall be voidable by written notice from Landlord and shall, at the option of Landlord, terminate this Lease. In no event shall the consent by Landlord to any Transfer be construed as relieving Tenant or any Transferee from obtaining the express written consent of Landlord to any further Transfer, or as releasing Tenant from any liability or obligation hereunder whether or not then accrued and Tenant shall continue to be fully liable therefor. No collection or acceptance of rent by Landlord from any person other than Tenant shall be deemed a waiver of any provision of this Article 15 or the acceptance of any Transferee hereunder, or a release of Tenant (or of any Transferee of Tenant). Notwithstanding anything to the contrary in this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent under this Article 15 or otherwise has breached or acted unreasonably under this Article 15, their sole remedies shall be a declaratory judgment and an injunction for the relief sought without any monetary damages, and Tenant hereby waives all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed Transferee.

Notwithstanding anything to the contrary contained in this Article 15, Landlord shall have the option, by giving written notice to Tenant within thirty (30) days after Landlord's receipt of a request for consent to a proposed Transfer, to grant or deny consent to the proposed Transfer or to terminate this Lease as to the portion of the Premises that is the subject of the proposed Transfer. If this Lease is so terminated with respect to less than the entire Premises, the Basic Rental and Tenant's Proportionate Share shall be prorated based on the number of rentable square feet retained by Tenant as compared to the total number of rentable square feet previously contained in the Premises, and this Lease as so amended shall continue thereafter in full force and effect, and upon the request of either party, the parties shall execute written confirmation of the same.

ARTICLE 16 DAMAGE OR DESTRUCTION

If the Project is damaged by fire or other insured casualty and the insurance proceeds have been made available therefor by the holder or holders of any mortgages or deeds of trust covering the Premises or the Project, the damage shall be repaired by Landlord to the extent such insurance proceeds are available therefor and provided such repairs can, in Landlord's sole opinion, be completed within two hundred seventy (270) days after the necessity for repairs as a result of such damage becomes known to Landlord, without the payment of overtime or other premiums, and until such repairs are completed rent shall be abated in proportion to the part of the Premises which is unusable by Tenant in the conduct of its business (but there shall be no abatement of rent by reason of any portion of the Premises being unusable for a period equal to one (1) day or less). However, if the damage is due to the fault or neglect of Tenant, its employees, agents, contractors, guests, invitees and the like, there shall be no abatement of rent, unless and to the extent Landlord receives rental income insurance proceeds. Upon the occurrence of any damage to the Premises, Tenant shall assign to Landlord (or to any party designated by Landlord) all insurance proceeds payable to Tenant under Section 14(a)(ii)(A) above; provided, however, that if the cost of repair of improvements within the Premises by Landlord exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, as so assigned by Tenant, such excess costs shall be paid by Tenant to Landlord prior to Landlord's repair of such damage. If repairs cannot, in Landlord's opinion, be completed within two hundred seventy (270) days after the necessity for repairs as a result of such damage becomes known to Landlord without the payment of overtime or other premiums, Landlord may, at its option, either (i) make such repairs in a reasonable time and in such event this Lease shall continue in effect and the rent shall be abated, if at all, in the manner provided in this Article 16, or (ii) elect not to effect such repairs and instead terminate this Lease, by notifying Tenant in writing of such termination within sixty (60) days after Landlord learns of the necessity for repairs as a result of damage, such notice to include a termination date giving Tenant sixty (60) days to vacate the Premises. In addition, Landlord may elect to terminate this Lease if the Project shall be damaged by fire or other casualty or cause, whether or not the Premises are affected, if the damage is not fully covered, except for deductible amounts, by Landlord's insurance policies. Finally, if the Premises or the Project is damaged to any substantial extent during the last twelve (12) months of the Term, then notwithstanding anything contained in this Article 16 to the contrary, Landlord shall have the option to terminate this Lease by giving

and, where applicable, Landlord shall have the option to terminate the Lease by giving written notice to Tenant of the exercise of such option within sixty (60) days after Landlord learns of the necessity for repairs as the result of such damage. A total destruction of the Project shall

automatically terminate this Lease. Except as provided in this Article 16, there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business or property arising from such damage or destruction or the making of any repairs, alterations or improvements in or to any portion of the Project or the Premises or in or to fixtures, appurtenances and equipment therein. Tenant understands that Landlord will not carry insurance of any kind on Tenant's furniture, furnishings, trade fixtures or equipment, and that Landlord shall not be obligated to repair any damage thereto or replace the same. Tenant acknowledges that Tenant shall have no right to any proceeds of insurance carried by Landlord relating to property damage. With respect to any damage which Landlord is obligated to repair or elects to repair, Tenant, as a material inducement to Landlord entering into this Lease, irrevocably waives and releases its rights under the provisions of Sections 1932 and 1933 of the California Civil Code.

ARTICLE 17 SUBORDINATION

This Lease is subject to, and Tenant agrees to comply with, all matters of record affecting the Real Property. This Lease is also subject and subordinate to all existing and future ground or underlying leases, mortgages and deeds of trust which affect the Real Property, including all renewals, modifications, consolidations, replacements and extensions thereof; provided, however, if the lessor under any such lease or the holder or holders of any such mortgage or deed of trust shall advise Landlord that they desire or require this Lease to be prior and superior thereto, upon written request of Landlord to Tenant, Tenant agrees to promptly execute, acknowledge and deliver any and all documents or instruments which Landlord or such lessor, holder or holders deem necessary or desirable for purposes thereof. Tenant agrees that in the event any proceedings are brought for the foreclosure of any mortgage or deed of trust or any deed in lieu thereof, to attorn to the mortgagee under such mortgage or deed of trust, such mortgagee's successor purchaser or any of their successors or assigns upon any such foreclosure sale or deed in lieu thereof as so requested to do so by such purchaser and to recognize such purchaser as the lessor under this Lease; provided, however, that such mortgagee or its successor shall not be liable for or bound by (i) any payment of any rent installment which may have been made more than thirty (30) days before the due date of such installment, (ii) any act or omission of or default by Landlord under this Lease (but such mortgagee, or such successor, shall be subject to the continuing obligations of Landlord under this Lease to the extent arising from and after such succession to the extent of such mortgagee's or such successor's interest in the Project), (iii) any credit, claims, setoffs or defenses which Tenant may have against Landlord, (iv) any modification or amendment to this Lease for which such mortgagee's consent is required, but has not been obtained, under a mortgage or deed of trust or (v) any obligation under this Lease to maintain a fitness facility at the Project, if any. Tenant, upon the reasonable request by such mortgagee or such successor in interest, shall execute and deliver within five (5) days of such request an instrument or instruments confirming such attornment. Tenant agrees to provide copies of any notices of Landlord's default under this Lease to any mortgagee, deed of trust beneficiary and mezzanine lender whose address has been provided to Tenant and Tenant shall provide such mortgagee, deed of trust beneficiary and mezzanine lender a commercially reasonable time after receipt of such notice within which to cure any such default. Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of the Tenant hereunder in the event of any foreclosure proceeding or sale.

ARTICLE 18 EMINENT DOMAIN

If the whole of the Premises or the Project or so much thereof as to render the balance unusable by Tenant shall be taken under power of eminent domain, or is sold, transferred or conveyed in lieu thereof, this Lease shall automatically terminate as of the date of such condemnation, or as of the date possession is taken by the condemning authority, at Landlord's option. No award for any partial or entire taking shall be apportioned, and Tenant hereby assigns to Landlord any award which may be made in such taking or condemnation, together with any and all rights of Tenant now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Landlord any interest in or to require Tenant to assign to Landlord any award made to Tenant for the taking of personal property and trade fixtures belonging to Tenant and removable by Tenant at the expiration of the Term

hereof as provided hereunder or for the interruption of, or damage to, Tenant's business. In the event of a partial taking described in this Article 18, or a sale, transfer or conveyance in lieu

thereof, which does not result in a termination of this Lease, the rent shall be apportioned according to the ratio that the part of the Premises remaining useable by Tenant bears to the total area of the Premises. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure.

ARTICLE 19 DEFAULT

Each of the following acts or omissions of Tenant or of any guarantor of Tenant's performance hereunder, or occurrences, shall constitute an "Event of Default":

(a) Failure or refusal to pay Basic Rental, Additional Rent or any other amount to be paid by Tenant to Landlord hereunder within three (3) calendar days after notice that the same is due or payable hereunder; said three (3) day period shall be in lieu of, and not in addition to, the notice requirements of Section 1161 of the California Code of Civil Procedure or any similar or successor law;

(b) Except as set forth in items (a) above and (c) through and including (g) below, failure to perform or observe any other covenant or condition of this Lease to be performed or observed within thirty (30) days following written notice to Tenant of such failure. Such thirty (30) day notice shall be in lieu of, and not in addition to, any required under Section 1161 of the California Code of Civil Procedure or any similar or successor law;

(c) Abandonment or vacating or failure to accept tender of possession of the Premises or any significant portion thereof;

(d) The taking in execution or by similar process or law (other than by eminent domain) of the estate hereby created;

(e) The filing by Tenant or any guarantor hereunder in any court pursuant to any statute of a petition in bankruptcy or insolvency or for reorganization or arrangement for the appointment of a receiver of all or a portion of Tenant's property; the filing against Tenant or any guarantor hereunder of any such petition, or the commencement of a proceeding for the appointment of a trustee, receiver or liquidator for Tenant, or for any guarantor hereunder, or of any of the property of either, or a proceeding by any governmental authority for the dissolution or liquidation of Tenant or any guarantor hereunder, if such proceeding shall not be dismissed or trusteeship discontinued within thirty (30) days after commencement of such proceeding or the appointment of such trustee or receiver; or the making by Tenant or any guarantor hereunder of an assignment for the benefit of creditors. Tenant hereby stipulates to the lifting of the automatic stay in effect and relief from such stay for Landlord in the event Tenant files a petition under the United States Bankruptcy laws, for the purpose of Landlord pursuing its rights and remedies against Tenant and/or a guarantor of this Lease;

(f) Tenant's failure to cause to be released any mechanics liens filed against the Premises or the Project within twenty (20) days after the date the same shall have been filed or recorded; or

(g) Tenant's failure to observe or perform according to the provisions of Articles 7, 14, 17 or 25 within two (2) business days after notice from Landlord.

All defaults by Tenant of any covenant or condition of this Lease shall be deemed by the parties hereto to be material.

ARTICLE 20 REMEDIES

(a) Upon the occurrence of an Event of Default under this Lease as provided in Article 19 hereof, Landlord may exercise all of its remedies as may be permitted by law, including but not limited to the remedy provided by Section 1951.4 of the California Civil Code, and including without limitation, terminating this Lease, reentering the Premises and removing all persons and property therefrom, which property may be stored by Landlord at a warehouse or elsewhere at the risk, expense and for the account of Tenant. If Landlord elects to terminate this

Lease, Landlord shall be entitled to recover from Tenant the aggregate of all amounts permitted by law, including but not limited to (i) the worth at the time of award of the amount 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 the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, tenant improvement expenses, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and (v) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law. The term "rent" as used in this Section 20(a) shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in items (i) and (ii), above, the "worth at the time of award" shall be computed by allowing interest at the rate set forth in item (e), below, but in no case greater than the maximum amount of such interest permitted by law. As used in item (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%).

(b) Nothing in this Article 20 shall be deemed to affect Landlord's right to indemnification for liability or liabilities arising prior to the termination of this Lease for personal injuries or property damage under the indemnification clause or clauses contained in this Lease.

(c) Notwithstanding anything to the contrary set forth herein, Landlord's re-entry to perform acts of maintenance or preservation of or in connection with efforts to relet the Premises or any portion thereof, or the appointment of a receiver upon Landlord's initiative to protect Landlord's interest under this Lease shall not terminate Tenant's right to possession of the Premises or any portion thereof and, until Landlord does elect to terminate this Lease, this Lease shall continue in full force and effect and Landlord may enforce all of Landlord's rights and remedies hereunder including, without limitation, the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

(d) All rights, powers and remedies of Landlord hereunder and under any other agreement now or hereafter in force between Landlord and Tenant shall be cumulative and not alternative and shall be in addition to all rights, powers and remedies given to Landlord by law, and the exercise of one or more rights or remedies shall not impair Landlord's right to exercise any other right or remedy.

(e) Any amount due from Tenant to Landlord hereunder which is not paid when due shall bear interest at the lower of eighteen percent (18%) per annum or the maximum lawful rate of interest from the due date until paid, unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Tenant under this Lease. In addition to such interest: (i) if Basic Rental is not paid on or before the fifth (5th) day of the calendar month for which the same is due, a late charge equal to ten percent (10%) of the amount overdue or \$100, whichever is greater, shall be immediately due and owing and shall accrue for each calendar month or part thereof until such rental, including the late charge, is paid in full, which late charge Tenant hereby agrees is a reasonable estimate of the damages Landlord shall suffer as a result of Tenant's late payment and (ii) an additional charge of \$25 shall be assessed for any check given to Landlord by or on behalf of Tenant which is not honored by the drawee thereof; which damages include Landlord's additional administrative and other costs associated with such late payment and unsatisfied checks and the parties agree that it would be impracticable or extremely difficult to fix Landlord's actual damage in such event. Such charges for interest and late payments and unsatisfied checks are separate and cumulative and are in addition to and shall not diminish or represent a substitute for any or all of Landlord's rights or remedies under any other provision of this Lease. Notwithstanding the foregoing, Tenant shall be entitled to notice

and the expiration of a five (5) day cure period prior to imposition of any late charge or interest charge under this Section 20(e) one (1) time per calendar year; after such written notice has been

provided to Tenant in a calendar year, Tenant shall not be entitled to any further notice prior to imposition of a late charge or interest under this Section 20(e) in such calendar year.

(f) In the event of any default, breach or violation of Tenant's rights under this Lease by Landlord, Tenant's exclusive remedies shall be an action for specific performance or action for actual damages. Without limiting any other waiver by Tenant which may be contained in this Lease, Tenant hereby waives the benefit of any law granting it the right to perform Landlord's obligation, or the right to terminate this Lease on account of any Landlord default.

ARTICLE 21 TRANSFER OF LANDLORD'S INTEREST

In the event of any transfer or termination of Landlord's interest in the Premises or the Project by sale, assignment, transfer, foreclosure, deed-in-lieu of foreclosure or otherwise whether voluntary or involuntary, Landlord shall be automatically relieved of any and all obligations and liabilities on the part of Landlord from and after the date of such transfer or termination, including furthermore without limitation, the obligation of Landlord under Article 4 and California Civil Code 1950.7 above to return the security deposit, provided said security deposit is transferred to said transferee. Tenant agrees to attorn to the transferee upon any such transfer and to recognize such transferee as the lessor under this Lease and Tenant shall, within five (5) days after request, execute such further instruments or assurances as such transferee may reasonably deem necessary to evidence or confirm such attornment.

ARTICLE 22 BROKER

In connection with this Lease, Tenant warrants and represents that it has had dealings only with firm(s) set forth in Article 1.H. of the Basic Lease Provisions and that it knows of no other person or entity who is or might be entitled to a commission, finder's fee or other like payment in connection herewith and does hereby indemnify and agree to hold Landlord, its agents, members, partners, representatives, officers, affiliates, shareholders, employees, successors and assigns harmless from and against any and all loss, liability and expenses that Landlord may incur should such warranty and representation prove incorrect, inaccurate or false.

ARTICLE 23 PARKING

Commencing on the Beneficial Occupancy Date, Tenant shall be entitled to use the number of parking passes set forth in Article 1.I. of the Basic Lease Provisions, which parking passes shall pertain to the Project parking facility. All of such parking passes shall be for unreserved parking, except that Tenant may, upon thirty (30) days prior written notice to Landlord, convert up to two (2) of such unreserved parking passes to reserved stalls at locations designated by Landlord. Tenant shall not be required to pay to Landlord any fee for such unreserved parking during the initial Term and reserved parking shall be at the rate of \$75 per reserved stall per month throughout the initial Term. Tenant shall be responsible for the full amount of any taxes imposed by any governmental authority in connection with the use of such parking by Tenant. Tenant's continued right to use the parking passes is conditioned upon Tenant abiding by all rules and regulations which are prescribed from time to time for the orderly operation and use of the parking facility where the parking passes are located, including any sticker or other identification system established by Landlord, Tenant's cooperation in seeing that Tenant's employees and visitors also comply with such rules and regulations, and Tenant not being in default under this Lease. Landlord specifically reserves the right to (i) designate certain areas of the parking facility as reserved for certain occupants or visitors, or (ii) change the size, configuration, design, layout and all other aspects of the Project parking facility at any time and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of rent under this Lease, from time to time, close-off or restrict access to the Project parking facility for purposes of permitting or facilitating any such construction, alteration or improvements. In addition, Landlord hereby reserves the right to implement unreserved parking charges after the initial Lease Term. Landlord may, from time to time, relocate any reserved parking spaces (if any) rented by Tenant to another location in the Project parking facility but in a reasonable distance from the Premises. Landlord may delegate its responsibilities hereunder to a parking operator or a lessee

of the parking facility in which case such parking operator or lessee shall have all the rights of control attributed hereby to the Landlord. The parking passes rented by Tenant pursuant to this

Article 23 are provided to Tenant solely for use by Tenant's own personnel and such passes may not be transferred, assigned, subleased or otherwise alienated by Tenant without Landlord's prior approval. Tenant's visitor parking shall be free of charge during the initial Term.

ARTICLE 24 WAIVER

No waiver by Landlord of any provision of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. No provision of this Lease may be waived by Landlord, except by an instrument in writing executed by Landlord. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act of Tenant, whether or not similar to the act so consented to or approved. No act or thing done by Landlord or Landlord's agents during the Term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by Landlord. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. Any payment by Tenant or receipt by Landlord of an amount less than the total amount then due hereunder shall be deemed to be in partial payment only thereof and not a waiver of the balance due or an accord and satisfaction, notwithstanding any statement or endorsement to the contrary on any check or any other instrument delivered concurrently therewith or in reference thereto. Accordingly, Landlord may accept any such amount and negotiate any such check without prejudice to Landlord's right to recover all balances due and owing and to pursue its other rights against Tenant under this Lease, regardless of whether Landlord makes any notation on such instrument of payment or otherwise notifies Tenant that such acceptance or negotiation is without prejudice to Landlord's rights.

ARTICLE 25 ESTOPPEL CERTIFICATE

Tenant shall, at any time and from time to time, upon not less than ten (10) days' prior written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying the following information, (but not limited to the following information in the event further information is requested by Landlord): (i) that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as modified, is in full force and effect); (ii) the dates to which the rental and other charges are paid in advance, if any; (iii) the amount of Tenant's security deposit, if any; and (iv) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, and no events or conditions then in existence which, with the passage of time or notice or both, would constitute a default on the part of Landlord hereunder, or specifying such defaults, events or conditions, if any are claimed. It is expressly understood and agreed that any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Real Property. Tenant's failure to deliver such statement within such time shall constitute an admission by Tenant that all statements contained therein are true and correct. Furthermore, if Tenant fails to timely deliver an estoppel certificate to Landlord pursuant to the terms of this Article 25, then without limiting any other rights and remedies of Landlord, Landlord shall have the right to charge Tenant an amount equal to \$500 per day for each day thereafter until Tenant delivers to Landlord an estoppel certificate pursuant to the terms hereof. Tenant acknowledges and agrees that (A) such charge compensates Landlord for the administrative costs caused by the delinquency, and (B) Landlord's damage would be difficult to compute and the amount stated above represents a reasonable estimate of such damage. Tenant hereby irrevocably appoints Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead to execute any and all documents described in this Article 25 if Tenant fails to do so within the specified time period.

ARTICLE 26 LIABILITY OF LANDLORD

Notwithstanding anything in this Lease to the contrary, any remedy of Tenant for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord

in the event of any default by Landlord hereunder or any claim, cause of action or obligation, contractual, statutory or otherwise by Tenant against Landlord or the Landlord Parties concerning,

arising out of or relating to any matter relating to this Lease and all of the covenants and conditions or any obligations, contractual, statutory, or otherwise set forth herein, shall be limited solely and exclusively to an amount which is equal to the lesser of (i) the interest of Landlord in and to the Project, and (ii) the interest Landlord would have in the Project if the Project were encumbered by third party debt in an amount equal to ninety percent (90%) of the then current value of the Project (as such value is reasonably determined by Landlord). No other property or assets of Landlord or any Landlord Party shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, Landlord's obligations to Tenant, whether contractual, statutory or otherwise, the relationship of Landlord and Tenant hereunder, or Tenant's use or occupancy of the Premises.

ARTICLE 27 INABILITY TO PERFORM

This Lease and the obligations of Tenant hereunder shall not be affected or impaired because Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of any prevention, delay, stoppage due to strikes, lockouts, acts of God, terrorism, evacuation or any other cause previously, or at such time, beyond the reasonable control or anticipation of Landlord (collectively, a "Force Majeure") and Landlord's obligations under this Lease shall be forgiven and suspended by any such Force Majeure.

ARTICLE 28 HAZARDOUS WASTE

(a) Tenant shall not cause or permit any Hazardous Material (as defined in Section 28(d) below) to be brought, kept or used in or about the Project by Tenant, its agents, employees, contractors, or invitees. Tenant indemnifies Landlord and the Landlord Parties from and against any breach by Tenant of the obligations stated in the preceding sentence, and agrees to defend and hold Landlord and the Landlord Parties harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Project, damages for the loss or restriction or use of rentable or usable space or of any amenity of the Project, damages arising from any adverse impact or marketing of space in the Project, and sums paid in settlement of claims, attorneys' fees and costs, consultant fees, and expert fees) which arise during or after the Term of this Lease as a result of such breach. This indemnification of Landlord and the Landlord Parties by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Project. Without limiting the foregoing, if the presence of any Hazardous Material on the Project caused or permitted by Tenant results in any contamination of the Project, then subject to the provisions of Articles 9, 10 and 11 hereof, Tenant shall promptly take all actions at its sole expense as are necessary to return the Project to the condition existing prior to the introduction of any such Hazardous Material and the contractors to be used by Tenant for such work must be approved by Landlord, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Project and so long as such actions do not materially interfere with the use and enjoyment of the Project by the other tenants thereof; provided however, Landlord shall also have the right, by written notice to Tenant, to directly undertake any such mitigation efforts with regard to Hazardous Materials in or about the Project due to Tenant's breach of its obligations pursuant to this Section 28(a), and to charge Tenant, as Additional Rent, for the costs thereof.

(b) Landlord and Tenant acknowledge that Landlord may become legally liable for the costs of complying with Laws (as defined in Section 28(e) below) relating to Hazardous Material which are not the responsibility of Landlord or the responsibility of Tenant, including the following: (i) Hazardous Material present in the soil or ground water on the Project of which Landlord has no knowledge as of the effective date of this Lease; (ii) a change in Laws which relate to Hazardous Material which make that Hazardous Material which is present on the Real Property as of the effective date of this Lease, whether known or unknown to Landlord, a violation of such new Laws; (iii) Hazardous Material that migrates, flows, percolates, diffuses, or in any way moves on to, or under, the Project after the effective date of this Lease; or Hazardous Material

present on or under the Project as a result of any discharge, dumping or spilling (whether accidental or otherwise) on the Project by other lessees of the Project or their agents, employees, contractors,

or invitees, or by others. Accordingly, Landlord and Tenant agree that the cost of complying with Laws relating to Hazardous Material on the Project for which Landlord is legally liable and which are paid or incurred by Landlord shall be an Operating Cost (and Tenant shall pay Tenant's Proportionate Share thereof in accordance with Article 3) unless the cost of such compliance as between Landlord and Tenant, is made the responsibility of Tenant pursuant to Section 28(a) above. To the extent any such Operating Cost relating to Hazardous Material is subsequently recovered or reimbursed through insurance, or recovery from responsible third parties or other action, Tenant shall be entitled to a proportionate reimbursement to the extent it has paid its share of such Operating Cost to which such recovery or reimbursement relates.

(c) It shall not be unreasonable for Landlord to withhold its consent to any proposed Transfer if (i) the proposed transferee's anticipated use of the Premises involves the generation, storage, use, treatment, or disposal of Hazardous Material; (ii) the proposed Transferee has been required by any prior landlord, lender, or governmental authority to take remedial action in connection with Hazardous Material contaminating a property if the contamination resulted from such Transferee's actions or use of the property in question; or (iii) the proposed Transferee is subject to an enforcement order issued by any governmental authority in connection with the use, disposal, or storage of a Hazardous Material.

(d) As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as "Hazardous Waste," "Extremely Hazardous Waste," or "Restricted Hazardous Waste" under Sections 25115, 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 25316 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 a "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. §1317), (ix) defined as a "Hazardous Waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), or (x) defined as a "Hazardous Substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601).

(e) As used herein, the term "Laws" means any applicable federal, state or local law, ordinance, or regulation relating to any Hazardous Material affecting the Project, including, without limitation, the laws, ordinances, and regulations referred to in Section 28(d) above.

ARTICLE 29 SURRENDER OF PREMISES; REMOVAL OF PROPERTY

(a) The voluntary or other surrender of this Lease by Tenant to Landlord, or a mutual termination hereof, shall not work a merger, and shall at the option of Landlord, operate as an assignment to it of any or all subleases or subtenancies affecting the Premises.

(b) Upon the expiration of the Term of this Lease, or upon any earlier termination of this Lease, Tenant shall quit and surrender possession of the Premises to Landlord in good order and condition, reasonable wear and tear and repairs which are Landlord's obligation excepted, and shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, all furniture, equipment, business and trade fixtures, free-standing cabinet work, moveable partitioning, telephone and data cabling and other articles of personal property in the Premises except to the extent (i) Landlord elects by notice to Tenant to exercise its option to have any subleases or subtenancies assigned to it, and/or (ii) Landlord elects by notice to Tenant not to require Tenant to remove any data cabling servicing the Premises (in which event Tenant shall pay

to Landlord the estimated cost [as determined by Landlord] to be incurred by Landlord in connection with removing said data cabling within three (3) business days following written

demand therefor from Landlord). Tenant shall be responsible for the cost to repair all damage to the Premises resulting from the removal of any of such items from the Premises, provided that Landlord shall have the right to either (I) cause Tenant to perform said repair work, or (II) perform said repair work itself, at Tenant's expense (with any such costs incurred by Landlord to be reimbursed by Tenant to Landlord within three (3) business days following written demand therefor from Landlord).

(c) Whenever Landlord shall reenter the Premises as provided in Article 20 hereof, or as otherwise provided in this Lease, any property of Tenant not removed by Tenant upon the expiration of the Term of this Lease (or within forty-eight (48) hours after a termination by reason of Tenant's default), as provided in this Lease, shall be considered abandoned and Landlord may remove any or all of such items and dispose of the same in any manner or store the same in a public warehouse or elsewhere for the account and at the expense and risk of Tenant, and if Tenant shall fail to pay the cost of storing any such property after it has been stored for a period of thirty (30) days or more, Landlord may sell any or all of such property at public or private sale, in such manner and at such times and places as Landlord, in its sole discretion, may deem proper, without notice to or demand upon Tenant, for the payment of all or any part of such charges or the removal of any such property, and shall apply the proceeds of such sale as follows: first, to the cost and expense of such sale, including reasonable attorneys' fees and costs for services rendered; second, to the payment of the cost of or charges for storing any such property; third, to the payment of any other sums of money which may then or thereafter be due to Landlord from Tenant under any of the terms hereof; and fourth, the balance, if any, to Tenant.

(d) All fixtures, Tenant Improvements, Alterations and/or appurtenances attached to or built into the Premises prior to or during the Term, whether by Landlord or Tenant and whether at the expense of Landlord or Tenant, or of both, shall be and remain part of the Premises and shall not be removed by Tenant at the end of the Term unless otherwise expressly provided for in this Lease or unless such removal is required by Landlord. Such fixtures, Tenant Improvements, Alterations and/or appurtenances shall include but not be limited to: all floor coverings, drapes, paneling, built-in cabinetry, molding, doors, plumbing systems, security systems, electrical systems, lighting systems, all fixtures and outlets for the systems mentioned above and for all telephone, radio and television purposes, and any special flooring or ceiling installations.

ARTICLE 30 MISCELLANEOUS

(a) SEVERABILITY; ENTIRE AGREEMENT. ANY PROVISION OF THIS LEASE WHICH SHALL PROVE TO BE INVALID, VOID, OR ILLEGAL SHALL IN NO WAY AFFECT, IMPAIR OR INVALIDATE ANY OTHER PROVISION HEREOF AND SUCH OTHER PROVISIONS SHALL REMAIN IN FULL FORCE AND EFFECT. THIS LEASE AND THE EXHIBITS AND ANY ADDENDUM ATTACHED HERETO CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO WITH REGARD TO TENANT'S OCCUPANCY OR USE OF ALL OR ANY PORTION OF THE PROJECT, AND NO PRIOR AGREEMENT OR UNDERSTANDING PERTAINING TO ANY SUCH MATTER SHALL BE EFFECTIVE FOR ANY PURPOSE. NO PROVISION OF THIS LEASE MAY BE AMENDED OR SUPPLEMENTED EXCEPT BY AN AGREEMENT IN WRITING SIGNED BY THE PARTIES HERETO OR THEIR SUCCESSOR IN INTEREST. THE PARTIES AGREE THAT ANY DELETION OF LANGUAGE FROM THIS LEASE PRIOR TO ITS MUTUAL EXECUTION BY LANDLORD AND TENANT SHALL NOT BE CONSTRUED TO HAVE ANY PARTICULAR MEANING OR TO RAISE ANY PRESUMPTION, CANON OF CONSTRUCTION OR IMPLICATION INCLUDING, WITHOUT LIMITATION, ANY IMPLICATION THAT THE PARTIES INTENDED THEREBY TO STATE THE CONVERSE, OBVERSE OR OPPOSITE OF THE DELETED LANGUAGE.

(b) Attorneys' Fees; Waiver of Jury Trial.

(i) In any action to enforce the terms of this Lease, including any suit by Landlord for the recovery of rent or possession of the Premises, the losing party shall pay the successful party a reasonable sum for attorneys' fees and costs in such suit and such attorneys' fees and costs shall be deemed to have accrued prior to the commencement of such action and shall be

paid whether or not such action is prosecuted to judgment. Tenant shall also reimburse Landlord for all costs incurred by Landlord in connection with enforcing its rights under this Lease against

Tenant following a bankruptcy by Tenant or otherwise, including, without limitation, legal fees, experts' fees and expenses, court costs and consulting fees.

(ii) Should Landlord, without fault on Landlord's part, be made a party to any litigation instituted by Tenant or by any third party against Tenant, or by or against any person holding under or using the Premises by license of Tenant, or for the foreclosure of any lien for labor or material furnished to or for Tenant or any such other person or otherwise arising out of or resulting from any act or transaction of Tenant or of any such other person, Tenant covenants to save and hold Landlord harmless from any judgment rendered against Landlord or the Premises or any part thereof and from all costs and expenses, including reasonable attorneys' fees and costs incurred by Landlord in connection with such litigation.

(iii) TO THE EXTENT PERMITTED BY LAW, EACH PARTY HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION SEEKING SPECIFIC PERFORMANCE OF ANY PROVISION OF THIS LEASE, FOR DAMAGES FOR ANY BREACH UNDER THIS LEASE, OR OTHERWISE FOR ENFORCEMENT OF ANY RIGHT OR REMEDY HEREUNDER.

(c) Time of Essence. Each of Tenant's covenants herein is a condition and time is of the essence with respect to the performance of every provision of this Lease.

(d) Headings; Joint and Several. The article headings contained in this Lease are for convenience only and do not in any way limit or amplify any term or provision hereof. The terms "Landlord" and "Tenant" as used herein shall include the plural as well as the singular, the neuter shall include the masculine and feminine genders and the obligations herein imposed upon Tenant shall be joint and several as to each of the persons, firms or corporations of which Tenant may be composed.

(e) Reserved Area. Tenant hereby acknowledges and agrees that the exterior walls of the Premises and the area between the finished ceiling of the Premises and the slab of the floor of the Project thereabove have not been demised hereby and the use thereof together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wiring and cabling leading through, under or above the Premises or throughout the Project in locations which will not materially interfere with Tenant's use of the Premises and serving other parts of the Project are hereby excepted and reserved unto Landlord.

(f) NO OPTION. THE SUBMISSION OF THIS LEASE BY LANDLORD, ITS AGENT OR REPRESENTATIVE FOR EXAMINATION OR EXECUTION BY TENANT DOES NOT CONSTITUTE AN OPTION OR OFFER TO LEASE THE PREMISES UPON THE TERMS AND CONDITIONS CONTAINED HEREIN OR A RESERVATION OF THE PREMISES IN FAVOR OF TENANT, IT BEING INTENDED HEREBY THAT THIS LEASE SHALL ONLY BECOME EFFECTIVE UPON THE EXECUTION HEREOF BY LANDLORD AND TENANT AND DELIVERY OF A FULLY EXECUTED LEASE TO TENANT.

(g) Use of Project Name; Improvements. Tenant shall not be allowed to use the name, picture or representation of the Project, or words to that effect, in connection with any business carried on in the Premises or otherwise (except as Tenant's address) without the prior written consent of Landlord. In the event that Landlord undertakes any additional improvements on the Real Property including but not limited to new construction or renovation or additions to the existing improvements, Landlord shall not be liable to Tenant for any noise, dust, vibration or interference with access to the Premises or disruption in Tenant's business caused thereby.

(h) Rules and Regulations. Tenant shall observe faithfully and comply strictly with the rules and regulations ("Rules and Regulations") attached to this Lease as Exhibit "B" and made a part hereof, and such other Rules and Regulations as Landlord may from time to time reasonably adopt for the safety, care and cleanliness of the Project, the facilities thereof, or the preservation of good order therein. Landlord shall not be liable to Tenant for violation of any such Rules and Regulations, or for the breach of any covenant or condition in any lease by any other tenant in the Project. A waiver by Landlord of any Rule or Regulation for any other tenant shall not constitute nor be deemed a waiver of the Rule or Regulation for this Tenant.



(i) Quiet Possession. Upon Tenant's paying the Basic Rental, Additional Rent and other sums provided hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire Term hereof, subject to all of the provisions of this Lease.

(j) Rent. All payments required to be made hereunder to Landlord shall be deemed to be rent, whether or not described as such.

(k) Successors and Assigns. Subject to the provisions of Article 15 hereof, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

(l) Notices. Any notice required or permitted to be given hereunder shall be in writing and may be given by personal service evidenced by a signed receipt (or refusal to accept delivery) or sent by registered or certified mail, return receipt requested, or via overnight courier, and shall be effective upon proof of delivery (or refusal to accept delivery), addressed to Tenant at the Premises or to Landlord as follows:

BRE CA OFFICE OWNER LLC
c/o EQ Office
19191 South Vermont, Suite 100
Torrance, California 90502
Attn: Regional Finance Group – MLA

with copies to:

BRE CA OFFICE OWNER LLC
c/o EQ Office
3100 Bristol Street, Suite 200
Costa Mesa, California 92626
Attn: Managing Counsel

and:

BRE CA OFFICE OWNER LLC
c/o EQ Office
233 South Wacker Drive, Suite 4700
Chicago, IL 60606
Attn: Lease Administration

Either party may by notice to the other specify a different address for notice purposes except that, upon Tenant's taking possession of the Premises, the Premises shall constitute Tenant's address for notice purposes. A copy of all notices to be given to Landlord hereunder shall be concurrently transmitted by Tenant to such party hereafter designated by notice from Landlord to Tenant. Any notices sent by Landlord regarding or relating to eviction procedures, including without limitation three (3) day notices, may be sent by regular mail.

(m) Persistent Delinquencies. In the event that Tenant shall be delinquent by more than fifteen (15) days in the payment of rent on three (3) separate occasions in any twelve (12) month period, Landlord shall have the right to terminate this Lease by thirty (30) days written notice given by Landlord to Tenant within thirty (30) days of the last such delinquency.

(n) Right of Landlord to Perform. All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of rent. If Tenant shall fail to pay any sum of money, other than rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue beyond any applicable cure period set forth in this Lease, Landlord may, but shall not be obligated to, without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such other act on Tenant's part to be made or performed as is in this Lease provided. All sums so paid by Landlord and all reasonable incidental costs, together with interest thereon at the rate specified in Section 20(e)

above from the date of such payment by Landlord, shall be payable to Landlord on demand and Tenant covenants to pay any such sums, and Landlord shall have (in addition to any other right or

remedy of Landlord) the same rights and remedies in the event of the nonpayment thereof by Tenant as in the case of default by Tenant in the payment of the rent.

(o) Access, Changes in Project, Facilities, Name.

(i) Every part of the Project except the inside surfaces of all walls, windows and doors bounding the Premises (including exterior building walls, the rooftop, core corridor walls and doors and any core corridor entrance), and any space in or adjacent to the Premises or within the Project used for shafts, stacks, pipes, conduits, fan rooms, ducts, electric or other utilities, sinks or other building facilities, and the use thereof, as well as access thereto through the Premises for the purposes of operation, maintenance, decoration and repair, are reserved to Landlord.

(ii) Landlord reserves the right, without incurring any liability to Tenant therefor, to make such changes in or to the Project and the fixtures and equipment thereof, as well as in or to the street entrances, halls, passages, elevators, stairways and other improvements thereof, as it may deem necessary or desirable.

(iii) Landlord may adopt any name for the Project and Landlord reserves the right, from time to time, to change the name and/or address of the Project at any time.

(p) Signing Authority. If Tenant is a corporation, partnership or limited liability company, each individual executing this Lease on behalf of said entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity in accordance with: (i) if Tenant is a corporation, a duly adopted resolution of the Board of Directors of said corporation or in accordance with the By-laws of said corporation, (ii) if Tenant is a partnership, the terms of the partnership agreement, and (iii) if Tenant is a limited liability company, the terms of its operating agreement, and that this Lease is binding upon said entity in accordance with its terms. Concurrently with Tenant's execution of this Lease, Tenant shall provide to Landlord a copy of: (A) if Tenant is a corporation, such resolution of the Board of Directors authorizing the execution of this Lease on behalf of such corporation, which copy of resolution shall be duly certified by the secretary or an assistant secretary of the corporation to be a true copy of a resolution duly adopted by the Board of Directors of said corporation and shall be in a form reasonably acceptable to Landlord, (B) if Tenant is a partnership, a copy of the provisions of the partnership agreement granting the requisite authority to each individual executing this Lease on behalf of said partnership, and (C) if Tenant is a limited liability company, a copy of the provisions of its operating agreement granting the requisite authority to each individual executing this Lease on behalf of said limited liability company. In the event Tenant fails to comply with the requirements set forth in this subparagraph (p), then each individual executing this Lease shall be personally liable, jointly and severally along with Tenant, for all of Tenant's obligations in this Lease.

(q) Identification of Tenant.

(i) If Tenant constitutes more than one person or entity, (A) each of them shall be jointly and severally liable for the keeping, observing and performing of all of the terms, covenants, conditions and provisions of this Lease to be kept, observed and performed by Tenant, (B) the term "Tenant" as used in this Lease shall mean and include each of them jointly and severally, and (C) the act of or notice from, or notice or refund to, or the signature of, any one or more of them, with respect to the tenancy of this Lease, including, but not limited to, any renewal, extension, expiration, termination or modification of this Lease, shall be binding upon each and all of the persons or entities executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or so given or received such notice or refund or so signed.

(ii) If Tenant is a partnership (or is comprised of two or more persons, individually and as co-partners of a partnership) or if Tenant's interest in this Lease shall be assigned to a partnership (or to two or more persons, individually and as co-partners of a partnership) pursuant to Article 15 hereof (any such partnership and such persons hereinafter referred to in this Section 30(q)(ii) as "Partnership Tenant"), the following provisions of this Lease shall apply to such Partnership Tenant:

(A) The liability of each of the parties comprising Partnership Tenant

(A) The liability of each of the parties comprising Partnership Tenant shall be joint and several.

(B) Each of the parties comprising Partnership Tenant hereby consents in advance to, and agrees to be bound by, any written instrument which may hereafter be executed, changing, modifying or discharging this Lease, in whole or in part, or surrendering all or any part of the Premises to the Landlord, and by notices, demands, requests or other communication which may hereafter be given, by the individual or individuals authorized to execute this Lease on behalf of Partnership Tenant under Subparagraph (p) above.

(C) Any bills, statements, notices, demands, requests or other communications given or rendered to Partnership Tenant or to any of the parties comprising Partnership Tenant shall be deemed given or rendered to Partnership Tenant and to all such parties and shall be binding upon Partnership Tenant and all such parties.

(D) If Partnership Tenant admits new partners, all of such new partners shall, by their admission to Partnership Tenant, be deemed to have assumed performance of all of the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed.

(E) Partnership Tenant shall give prompt notice to Landlord of the admission of any such new partners, and, upon demand of Landlord, shall cause each such new partner to execute and deliver to Landlord an agreement in form satisfactory to Landlord, wherein each such new partner shall assume performance of all of the terms, covenants and conditions of this Lease on Partnership Tenant's part to be observed and performed (but neither Landlord's failure to request any such agreement nor the failure of any such new partner to execute or deliver any such agreement to Landlord shall terminate the provisions of clause (D) of this Section 30(q)(ii) or relieve any such new partner of its obligations thereunder).

(r) Intentionally Deleted.

(s) Survival of Obligations. Any obligations of Tenant occurring prior to the expiration or earlier termination of this Lease shall survive such expiration or earlier termination.

(t) Confidentiality. Tenant acknowledges that the content of this Lease and any related documents are confidential information. Tenant shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity other than Tenant's financial, legal and space planning consultants and any proposed Transferees.

(u) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of California. No conflicts of law rules of any state or country (including, without limitation, California conflicts of law rules) shall be applied to result in the application of any substantive or procedural laws of any state or country other than California. All controversies, claims, actions or causes of action arising between the parties hereto and/or their respective successors and assigns, shall be brought, heard and adjudicated by the courts of the State of California, with venue in the county in which the Project is located. Each of the parties hereto hereby consents to personal jurisdiction by the courts of the State of California in connection with any such controversy, claim, action or cause of action, and each of the parties hereto consents to service of process by any means authorized by California law and consent to the enforcement of any judgment so obtained in the courts of the State of California on the same terms and conditions as if such controversy, claim, action or cause of action had been originally heard and adjudicated to a final judgment in such courts. Each of the parties hereto further acknowledges that the laws and courts of California were freely and voluntarily chosen to govern this Lease and to adjudicate any claims or disputes hereunder.

(v) Office of Foreign Assets Control. Tenant certifies to Landlord that (i) Tenant is not entering into this Lease, nor acting, for or on behalf of any person or entity named as a terrorist or other banned or blocked person or entity pursuant to any law, order, rule or regulation of the United States Treasury Department or the Office of Foreign Assets Control, and (ii) Tenant shall not assign this Lease or sublease to any such person or entity or anyone acting on behalf of any such person or entity. Landlord shall have the right to conduct all reasonable searches in order to ensure compliance with the foregoing. Tenant hereby agrees to indemnify, defend and hold Landlord and the Landlord Parties harmless from any and all claims arising from or related to any breach of the foregoing certification.

(w) Financial Statements. Within ten (10) days after Tenant's receipt of Landlord's

(w) ~~Financial Statements.~~ Within ten (10) days after Tenant's receipt of Landlord's written request but no more frequently than once per calendar year, Tenant shall provide Landlord

with current financial statements of Tenant and financial statements for the three (3) calendar or fiscal years (if Tenant's fiscal year is other than a calendar year) prior to the current financial statement year. Any such statements shall be prepared in accordance with generally accepted accounting principles and, if the normal practice of Tenant, shall be audited by an independent certified public accountant.

(x) Exhibits. The Exhibits attached hereto are incorporated herein by this reference as if fully set forth herein.

(y) Independent Covenants. This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent (and not dependent) and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to set off of any of the rent or other amounts owing hereunder against Landlord.

(z) Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement.

(aa) Non-Discrimination. Tenant herein covenants that Tenant and its heirs, executors, administrators and assigns, and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises, nor shall Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises."

(bb) California Certified Access Specialist Inspection. Pursuant to California Civil Code §1938, Landlord hereby states that the Premises have not undergone inspection by a Certified Access Specialist (CAsp) (defined in California Civil Code §55.52(a)(3)). Pursuant to Section 1938 of the California Civil Code, Landlord hereby provides the following notification to Tenant: "A Certified Access Specialist (CAsp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CAsp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CAsp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CAsp inspection, the payment of the fee for the CAsp inspection, and the cost of making any repairs necessary to correct violations of construction related accessibility standards within the premises." If Tenant requests to perform a CAsp inspection of the Premises, (i) Tenant shall, at its cost, retain a CAsp approved by Landlord (provided that Landlord may designate the CAsp, at Landlord's option) to perform the inspection of the Premises at a time agreed upon by the parties, (ii) Tenant shall provide Landlord with a copy of any report or certificate issued by the CAsp (the "CAsp Report"), and (iii) Tenant shall, at its cost, promptly complete any modifications necessary to correct violations of construction related accessibility standards identified in the CAsp Report, which modifications will be completed as part of the Improvements or as an Alteration, as applicable, notwithstanding anything to the contrary in this Lease. Tenant agrees to keep the information in the CAsp Report confidential except as necessary for the Tenant to complete such modifications.

(cc) Pet-Friendly Environment. Notwithstanding any contrary provision of this Lease, Landlord, at its option and in its sole and absolute discretion, may permit tenants of the Project to bring dogs and other pets into the Project, subject to such rules, regulations, policies and procedures as Landlord may establish in good faith from time to time in order to promote a pet-friendly work environment consistent with a contemporary, first-class office project (collectively

"Pet-Friendly Rules"). Tenant acknowledges and agrees that the presence of dogs and other pets in the Project in conformity with Pet-Friendly Rules will not be incompatible with a first-class

office project and will not breach any covenant or quiet enjoyment or other obligation of Landlord under or relating to this Lease. Tenant shall comply with any Pet-Friendly Rules established by Landlord from time to time. For the avoidance of doubt, Tenant shall not bring into the Project or the Premises any dog or other pet (other than a service animal legally required to be admitted) unless and except to the extent, if any, that such activity is permitted under any then-existing Pet-Friendly Rules.

(dd) Relocation Allowance. Landlord hereby agrees to reimburse Tenant for costs up to \$8,687.00 (based on \$1.00 per rentable square foot of the Premises) (the "Relocation Allowance") that Tenant actually incurs in relocating from Tenant's current office space to the Premises (collectively "Moving Costs"). Landlord shall reimburse Tenant for Moving Costs within thirty (30) days after the later of (i) Landlord's receipt of invoices evidencing Tenant's Moving Costs, and (ii) the Commencement Date. Notwithstanding the foregoing, upon written notice to Landlord, Tenant may elect to apply all or any portion of the Relocation Allowance (A) to reimburse Tenant for costs incurred for furniture, fixtures or equipment ("FF&E") to be installed in the Premises, or (B) as a credit against Tenant's monthly Basic Rental obligation. In the event Tenant elects to apply the Relocation Allowance to reimburse Tenant for FF&E, Landlord shall reimburse Tenant for FF&E within thirty (30) days after the later of (1) Landlord's receipt of invoices evidencing Tenant's FF&E costs, and (2) the Commencement Date. If Tenant elects to apply all or any portion of the Relocation Allowance as a credit against monthly Basic Rental, such credit shall be applied as a credit toward Tenant's monthly Basic Rental obligation for the third (3rd) full calendar month of the Term. In no event shall Landlord be obligated to make disbursements pursuant to this Section 30(dd) in a total amount which exceeds the Relocation Allowance and in no event shall Tenant be entitled to any credit for any portion of the Relocation Allowance not used by Tenant or applied as a credit against monthly Basic Rental within ninety (90) days after the Commencement Date.

ARTICLE 31 OPTION TO EXTEND

(a) Option Right. Landlord hereby grants the Tenant named in this Lease (the "Original Tenant") one (1) option ("Option") to extend the Term for the entire Premises for a period of five (5) years (an "Option Term"), which Option shall be exercisable only by written notice delivered by Tenant to Landlord as set forth below. The rights contained in this Article 31 shall be personal to the Original Tenant and may only be exercised by the Original Tenant (and not any assignee, sublessee or other transferee of the Original Tenant's interest in this Lease) if the Original Tenant occupies the entire Premises as of the date of Tenant's Acceptance (as defined in Section 31(c) below).

(b) Option Rent. The rent payable by Tenant during the Option Term ("Option Rent") shall be equal to the "Market Rent" (defined below). "Market Rent" shall mean the applicable Monthly Basic Rental, and all escalations, Direct Costs, additional rent and other charges at which tenants, as of the commencement of the Option Term, are entering into leases for non-sublease space which is not encumbered by expansion rights and which is comparable in size, location and quality to the Premises in renewal transactions for a term comparable to the Option Term which comparable space is located in the Development and in office buildings comparable to the Project in the John Wayne Airport Area of Irvine, California, taking into consideration the value of the existing improvements in the Premises to Tenant, as compared to the value of the existing improvements in such comparable space, with such value to be based upon the age, quality and layout of the improvements and the extent to which the same could be utilized by Tenant with consideration given to the fact that the improvements existing in the Premises are specifically suitable to Tenant.

(c) Exercise of Option. The Option shall be exercised by Tenant only in the following manner: (i) Tenant shall not be in default, and shall not have been in default under this Lease more than once, on the delivery date of the Interest Notice and Tenant's Acceptance; (ii) Tenant shall deliver written notice ("Interest Notice") to Landlord not more than twelve (12) months nor less than nine (9) months prior to the expiration of the Term, stating that Tenant is interested in exercising the Option; (iii) within fifteen (15) business days of Landlord's receipt of Tenant's written notice, Landlord shall deliver notice ("Option Rent Notice") to Tenant setting forth the Option Rent; and (iv) if Tenant desires to exercise such Option, Tenant shall provide Landlord

written notice within five (5) business days after receipt of the Option Rent Notice ("Tenant's Acceptance"). Tenant's failure to deliver the Interest Notice or Tenant's Acceptance on or before

the dates specified above shall be deemed to constitute Tenant's election not to exercise the Option. If Tenant timely and properly exercises its Option, the Term shall be extended for the Option Term upon all of the terms and conditions set forth in this Lease, except that the rent for the Option Term shall be as indicated in the Option Rent Notice.

ARTICLE 32
SIGNAGE/DIRECTORY

Provided Tenant is not in default hereunder, Tenant, at Landlord's sole cost and expense, shall have the right to Project standard suite entry signage and one (1) line in the lobby directory during the Term.

ARTICLE 33
FURNITURE

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord hereby transfers to Tenant ownership of the furniture and equipment currently located within the Premises and listed on Exhibit "E" attached hereto (collectively, the "Furniture"). Landlord has made no representations or warranties, expressed, implied or otherwise regarding the condition or working order of the Furniture and Tenant confirms that it has had the reasonable opportunity to inventory and inspect the furniture and to accept the Furniture in its "as-is" condition.

[Signature page follows]



IN WITNESS WHEREOF, the parties have executed this Lease, consisting of the foregoing provisions and Articles, including all exhibits and other attachments referenced therein, as of the date first above written.

"LANDLORD"

BRE CA OFFICE OWNER LLC,
a Delaware limited liability company

By: Spencer Rose
Print Name: Spencer Rose
Title: Managing Director

"TENANT"

PHUNWARE, INC.,
a Delaware corporation

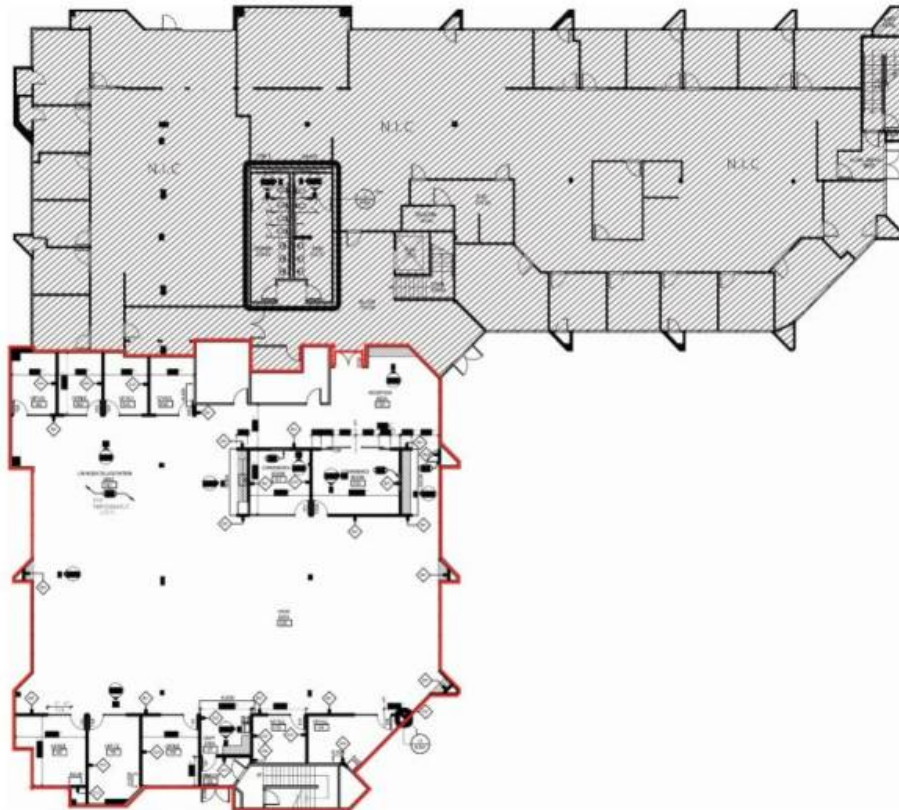
By: Matt Aune
Print Name: Matt Aune
Title: Chief Financial Officer

By: _____
Print Name: _____
Title: _____



EXHIBIT "A"

PREMISES



This Exhibit "A" is provided for informational purposes only and is intended to be only an approximation of the layout of the Premises and shall not be deemed to constitute any

representation by Landlord as to the exact layout or configuration of the Premises.

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EXHIBIT " B"

RULES AND REGULATIONS

1. No sign, advertisement or notice shall be displayed, printed or affixed on or to the Premises or to the outside or inside of the Project or so as to be visible from outside the Premises or Project without Landlord's prior written consent. Landlord shall have the right to remove any non-approved sign, advertisement or notice, without notice to and at the expense of Tenant, and Landlord shall not be liable in damages for such removal. All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at the expense of Tenant by Landlord or by a person selected by Landlord and in a manner and style acceptable to Landlord.

2. Tenant shall not obtain for use on the Premises ice, waxing, cleaning, interior glass polishing, rubbish removal, towel or other similar services, or accept barbering or bootblackening, or coffee cart services, milk, soft drinks or other like services on the Premises, except from persons authorized by Landlord and at the hours and under regulations fixed by Landlord. No vending machines or machines of any description shall be installed, maintained or operated upon the Premises without Landlord's prior written consent.

3. The sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by Tenant or used for any purpose other than for ingress and egress from Tenant's Premises. Under no circumstances is trash to be stored in the corridors. Notice must be given to Landlord for any large deliveries. Furniture, freight and other large or heavy articles, and all other deliveries may be brought into the Project only at times and in the manner designated by Landlord, and always at Tenant's sole responsibility and risk. Landlord may impose reasonable charges for use of freight elevators after or before normal business hours. All damage done to the Project by moving or maintaining such furniture, freight or articles shall be repaired by Landlord at Tenant's expense. Tenant shall not take or permit to be taken in or out of entrances or passenger elevators of the Project, any item normally taken, or which Landlord otherwise reasonably requires to be taken, in or out through service doors or on freight elevators. Tenant shall move all supplies, furniture and equipment as soon as received directly to the Premises, and shall move all waste that is at any time being taken from the Premises directly to the areas designated for disposal.

4. Toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein.

5. Tenant shall not overload the floor of the Premises or mark, drive nails, screw or drill into the partitions, ceilings or floor or in any way deface the Premises. Tenant shall not place typed, handwritten or computer generated signs in the corridors or any other common areas. Should there be a need for signage additional to the Project standard tenant placard, a written request shall be made to Landlord to obtain approval prior to any installation. All costs for said signage shall be Tenant's responsibility.

6. In no event shall Tenant place a load upon any floor of the Premises or portion of any such flooring exceeding the floor load per square foot of area for which such floor is designed to carry and which is allowed by law, or any machinery or equipment which shall cause excessive vibration to the Premises or noticeable vibration to any other part of the Project. Prior to bringing any heavy safes, vaults, large computers or similarly heavy equipment into the Project, Tenant shall inform Landlord in writing of the dimensions and weights thereof and shall obtain Landlord's consent thereto. Such consent shall not constitute a representation or warranty by Landlord that the safe, vault or other equipment complies, with regard to distribution of weight and/or vibration, with the provisions of this Rule 6 nor relieve Tenant from responsibility for the consequences of such noncompliance, and any such safe, vault or other equipment which Landlord determines to constitute a danger of damage to the Project or a nuisance to other tenants, either alone or in combination with other heavy and/or vibrating objects and equipment, shall be promptly removed by Tenant, at Tenant's cost, upon Landlord's written notice of such determination and demand for removal thereof.

7. Tenant shall not use or keep in the Premises or Project any kerosene, gasoline or inflammable, explosive or combustible fluid or material, or use any method of heating or air-

inflammable, explosive or combustible fluid or material, or use any method of heating or air-conditioning other than that supplied by Landlord.

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8. Tenant shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Landlord.

9. Tenant shall not install or use any blinds, shades, awnings or screens in connection with any window or door of the Premises and shall not use any drape or window covering facing any exterior glass surface other than the standard drapes, blinds or other window covering established by Landlord.

10. Tenant shall cooperate with Landlord in obtaining maximum effectiveness of the cooling system by closing window coverings when the sun's rays fall directly on windows of the Premises. Tenant shall not obstruct, alter, or in any way impair the efficient operation of Landlord's heating, ventilating and air-conditioning system. Tenant shall not tamper with or change the setting of any thermostats or control valves. Tenant shall participate in recycling programs undertaken by Landlord as part of Landlord's sustainability practices including, without limitation, the sorting and separation of its trash and recycling into such categories as required by such sustainability practices.

11. The Premises shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the permitted use of the Premises. Tenant shall not, without Landlord's prior written consent, occupy or permit any portion of the Premises to be occupied or used for the manufacture or sale of liquor or tobacco in any form, or a barber or manicure shop, or as an employment bureau. The Premises shall not be used for lodging or sleeping or for any improper, objectionable or immoral purpose. No auction shall be conducted on the Premises.

12. Tenant shall not make, or permit to be made, any unseemly or disturbing noises, or disturb or interfere with occupants of Project or neighboring buildings or premises or those having business with it by the use of any musical instrument, radio, phonographs or unusual noise, or in any other way.

13. No vehicles or animals (except as provided in Section 30(cc) of the Lease) of any kind shall be brought into or kept in or about the Premises, and no cooking shall be done or permitted by any tenant in the Premises, except that the preparation of coffee, tea, hot chocolate and similar items for tenants, their employees and visitors shall be permitted. No tenant shall cause or permit any unusual or objectionable odors to be produced in or permeate from or throughout the Premises. The foregoing notwithstanding, Tenant shall have the right to use a microwave and to heat microwavable items typically heated in an office. No hot plates, toasters, toaster ovens or similar open element cooking apparatus shall be permitted in the Premises unless authorized by Landlord in writing.

14. The sashes, sash doors, skylights, windows and doors that reflect or admit light and air into the halls, passageways or other public places in the Project shall not be covered or obstructed by any tenant, nor shall any bottles, parcels or other articles be placed on the window sills. All electrical ceiling fixtures hung in the Premises or spaces along the perimeter of the Project must be of a quality, type, design and bulb color approved in advance by Landlord.

15. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any tenant, nor shall any changes be made in existing locks or the mechanisms thereof unless Landlord is first notified thereof, gives written approval, and is furnished a key therefor. Each tenant must, upon the termination of his tenancy, give to Landlord all keys and key cards of stores, offices, or toilets or toilet rooms, either furnished to, or otherwise procured by, such tenant, and in the event of the loss of any keys so furnished, such tenant shall pay Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such change. If more than two keys for one lock are desired, Landlord will provide them upon payment therefor by Tenant. Tenant shall not key or re-key any locks. All locks shall be keyed by Landlord's locksmith only.

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

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17. Landlord reserves the right to control access to the Project by all persons after reasonable hours of generally recognized business days and at all hours on Sundays and legal holidays and may at all times control access to the equipment areas of the Project outside the Premises. Each tenant shall be responsible for all persons for whom it requests after hours access and shall be liable to Landlord for all acts of such persons. Landlord shall have the right from time to time to establish reasonable rules and charges pertaining to freight elevator usage, including the allocation and reservation of such usage for tenants' initial move-in to their premises, and final departure therefrom. Landlord may also establish from time to time reasonable rules and charges for accessing the equipment areas of the Project, including the risers, rooftops and telephone closets.

18. Any person employed by any tenant to do janitorial work shall, while in the Project and outside of the Premises, be subject to and under the control and direction of the Office of the Project or its designated representative such as security personnel (but not as an agent or servant of Landlord, and the Tenant shall be responsible for all acts of such persons).

19. All doors opening on to public corridors shall be kept closed, except when being used for ingress and egress. Tenant shall cooperate and comply with any reasonable safety or security programs, including fire drills and air raid drills, and the appointment of "fire wardens" developed by Landlord for the Project, or required by law. Before leaving the Premises unattended, Tenant shall close and securely lock all doors or other means of entry to the Premises and shut off all lights and water faucets in the Premises.

20. The requirements of tenants will be attended to only upon application to the management office of the Project.

21. Canvassing, soliciting and peddling in the Project are prohibited and each tenant shall cooperate to prevent the same.

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

23. No air-conditioning unit or other similar apparatus shall be installed or used by any tenant without the prior written consent of Landlord. Tenant shall pay the cost of all electricity used for air-conditioning in the Premises if such electrical consumption exceeds normal office requirements, regardless of whether additional apparatus is installed pursuant to the preceding sentence.

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

25. All electrical ceiling fixtures hung in offices or spaces along the perimeter of the Project must be fluorescent and/or of a quality, type, design and bulb color approved by Landlord. Tenant shall not permit the consumption in the Premises of more than 2½ watts per net usable square foot in the Premises in respect of office lighting nor shall Tenant permit the consumption in the Premises of more than 1½ watts per net usable square foot of space in the Premises in respect of the power outlets therein, at any one time. In the event that such limits are exceeded, Landlord shall have the right to require Tenant to remove lighting fixtures and equipment and/or to charge Tenant for the cost of the additional electricity consumed.

26. Parking.

(a) Subject to Landlord's reasonable security requirements, repairs made by Landlord to the Project and Articles 16 and 18 of the Lease, Tenant shall have access to the Project parking facility twenty-four (24) hours per day, seven (7) days per week throughout the Term.

(b) Automobiles must be parked entirely within the stall lines on the floor.

(c) All directional signs and arrows must be observed.

(d) The speed limit shall be 5 miles per hour.

- (e) Parking is prohibited in areas not striped for parking.

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(f) Parking cards or any other device or form of identification supplied by Landlord (or its operator) shall remain the property of Landlord (or its operator). Such parking identification device must be displayed as requested and may not be mutilated in any manner. The serial number of the parking identification device may not be obliterated. Devices are not transferable or assignable and any device in the possession of an unauthorized holder will be void. There will be a replacement charge to the Tenant or person designated by Tenant of \$30.00 for loss of any parking card. There shall be a security deposit of \$30.00 due at issuance for each card key issued to Tenant.

(g) The monthly rate for reserved parking is payable one (1) month in advance and must be paid by the third business day of each month. Failure to do so will automatically cancel parking privileges and a charge at the prevailing daily rate will be due. No deductions or allowances from the monthly rate will be made for days parker does not use the parking facilities.

After the initial term and in the event Landlord implements charges for unreserved parking, the monthly rate for unreserved parking will be payable one (1) month in advance and must be paid by the third business day of each month. Failure to do so will automatically cancel parking privileges and a charge at the prevailing daily rate will be due. No deductions or allowances from the monthly rate will be made for days parker does not use the parking facilities.

(h) Tenant may validate visitor parking by such method or methods as the Landlord may approve, at the validation rate from time to time generally applicable to visitor parking.

(i) Landlord (and its operator) may refuse to permit any person who violates the within rules to park in the Project parking facility, and any violation of the rules shall subject the automobile to removal from the Project parking facility at the parker's expense. In either of said events, Landlord (or its operator) shall refund a prorata portion of the current monthly parking rate and the sticker or any other form of identification supplied by Landlord (or its operator) will be returned to Landlord (or its operator).

(j) Project parking facility managers or attendants are not authorized to make or allow any exceptions to these Rules and Regulations.

(k) All responsibility for any loss or damage to automobiles or any personal property therein is assumed by the parker.

(l) Loss or theft of parking identification devices from automobiles must be reported to the Project parking facility manager immediately, and a lost or stolen report must be filed by the parker at that time.

(m) The parking facilities are for the sole purpose of parking one automobile per space. Washing, waxing, cleaning or servicing of any vehicles by the parker or his agents is prohibited.

(n) Landlord (and its operator) reserves the right to refuse the issuance of monthly stickers or other parking identification devices to any Tenant and/or its employees who refuse to comply with the above Rules and Regulations and all City, State or Federal ordinances, laws or agreements.

(o) Tenant agrees to acquaint all employees with these Rules and Regulations.

(p) No vehicle shall be stored in the Project parking facility for a period of more than one (1) week.

27. The Project is a non-smoking Project. Smoking or carrying lighted cigars or cigarettes in the Premises or the Project, including the elevators in the Project, is prohibited.

28. Tenant shall not, without Landlord's prior written consent (which consent may be granted or withheld in Landlord's absolute discretion), allow any employee or agent to carry any type of gun or other firearm in or about any of the Premises or Project.

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EXHIBIT "C"

NOTICE OF TERM DATES
AND TENANT'S PROPORTIONATE SHARE

TO: _____ DATE: _____

RE: Lease dated _____, 20____, between _____
_____, ("Landlord"), and _____
_____, ("Tenant"), concerning Suite _____, located at
_____.

Ladies and Gentlemen:

In accordance with the Lease, Landlord wishes to advise and/or confirm the following:

1. That the Premises have been accepted herewith by the Tenant as being substantially complete in accordance with the Lease and that there is no deficiency in construction.

2. That the Tenant has taken possession of the Premises and acknowledges that under the provisions of the Lease the Term of said Lease shall commence as of _____ for a term of _____ ending on _____.

3. That in accordance with the Lease, Basic Rental commenced to accrue on _____.

4. If the Commencement Date of the Lease is other than the first day of the month, the first billing will contain a prorata adjustment. Each billing thereafter shall be for the full amount of the monthly installment as provided for in said Lease.

5. Rent is due and payable in advance on the first day of each and every month during the Term of said Lease. Your rent checks should be made payable to _____ at _____.

6. The exact number of rentable square feet within the Premises is _____ square feet.

7. Tenant's Proportionate Share, as adjusted based upon the exact number of rentable square feet within the Premises is _____%.

AGREED AND ACCEPTED:

TENANT:

_____,
a _____

By: _____
Its: _____

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EXHIBIT "D"

TENANT WORK LETTER

[PHUNWARE, INC.]

This Tenant Work Letter shall set forth the terms and conditions relating to the renovation of the tenant improvements in the Premises. This Tenant Work Letter is essentially organized chronologically and addresses the issues of the construction of the Premises, in sequence, as such issues will arise.

SECTION 1

CONSTRUCTION DRAWINGS FOR THE PREMISES

Landlord shall construct the improvements in the Premises (the "Improvements") pursuant to that certain plans attached hereto as Schedule 1 (collectively, the "Plans"). Unless specifically noted to the contrary on the Plans, the Improvements shall be constructed using Project-standard quantities, specifications and materials as determined by Landlord. If determined by Landlord to be necessary, based upon the Plans, Landlord shall cause the Architect to prepare detailed plans and specifications for the Improvements ("Working Drawings"). Landlord shall then forward the Working Drawings to Tenant for Tenant's approval. Tenant shall approve or reasonably disapprove any draft of the Working Drawings within three (3) business days after Tenant's receipt thereof; provided, however, that (i) Tenant shall not be entitled to disapprove any portion, component or aspect of the Working Drawings which are consistent with the Plans unless Tenant agrees to pay for the additional cost resulting from such change in the Plans as part of the Over-Allowance Amount pursuant to Section 2 below, and (ii) any disapproval of the Working Drawings by Tenant shall be accompanied by a detailed written explanation of the reasons for Tenant's disapproval. Failure of Tenant to reasonably disapprove any draft of the Working Drawings within said three (3) business day period shall be deemed to constitute Tenant's approval thereof. The Working Drawings, as approved by Landlord and Tenant, may be referred to herein as the "Approved Working Drawings." Tenant shall make no changes or modifications to the Plans or the Approved Working Drawings without the prior written consent of Landlord.

SECTION 2

OVER-ALLOWANCE AMOUNT

In the event any revisions, changes, or substitutions are made with Tenant's consent to the Plans or the Approved Working Drawings or the Improvements, any additional costs which arise in connection with such revisions, changes or substitutions shall be considered to be an "Over-Allowance Amount." The Over-Allowance Amount shall be paid by Tenant to Landlord, as Additional Rent, within ten (10) days after Tenant's receipt of invoice therefor. The Over-Allowance Amount shall be disbursed by Landlord prior to the disbursement of any portion of Landlord's contribution to the construction of the Improvements.

SECTION 3

RETENTION OF CONTRACTOR;
WARRANTIES AND GUARANTIES

Landlord hereby assigns to Tenant all warranties and guaranties by the contractor who constructs the Improvements (the "Contractor") relating to the Improvements, and Tenant hereby waives all claims against Landlord relating to, or arising out of the construction of, the Improvements. The Contractor shall be designated and retained by Landlord to construct the Improvements.

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SECTION 4

TENANT'S COVENANTS

Tenant shall, at no cost to Tenant, cooperate with Landlord and the space planner or architect retained by Landlord ("Architect") to cause a Notice of Completion to be recorded in the office of the Recorder of the County of Orange in accordance with Section 8182 of the Civil Code of the State of California or any successor statute upon completion of construction of the Improvements.

SECTION 5

COMPLETION OF THE IMPROVEMENTS

5.1 Substantial Completion. For purposes of this Lease, "Substantial Completion" of the Improvements in the Premises shall occur upon the completion of construction of the Improvements in the Premises pursuant to the Approved Working Drawings, with the exception of any punch list items and any tenant fixtures, work-stations, built-in furniture, or equipment to be installed by Tenant.

5.2 Delay of the Substantial Completion of the Premises. Except as provided in this Section 5.2, the Beneficial Occupancy Date and the Commencement Date shall occur as set forth in the Lease. If there shall be a delay or there are delays in the Substantial Completion of the Improvements in the Premises as a result of the following (collectively, "Tenant Delays"):

5.2.1 Tenant's failure to timely approve any matter requiring Tenant's approval;

5.2.2 A breach by Tenant of the terms of this Tenant Work Letter or the Lease;

5.2.3 Tenant's request for changes in the Plans, Working Drawings or Approved Working Drawings;

5.2.4 Changes in any of the Plans, Working Drawings or Approved Working Drawings because the same do not comply with applicable laws;

5.2.5 Tenant's requirement for materials, components, finishes or improvements which are not available in a commercially reasonable time given the anticipated date of Substantial Completion of the Improvements in the Premises, or which are different from, or not included in, Landlord's standard improvement package items for the Project;

5.2.6 Changes to the base, shell and core work of the Project required by the Approved Working Drawings or any changes thereto; or

5.2.7 Any other acts or omissions of Tenant, or its agents, or employees;

then, notwithstanding anything to the contrary set forth in the Lease or this Tenant Work Letter and regardless of the actual date of the Substantial Completion of the Improvements in the Premises, the date of Substantial Completion thereof shall be deemed to be the date that Substantial Completion would have occurred if no Tenant Delay or Delays, as set forth above, had occurred.

SECTION 6

MISCELLANEOUS

6.1 Tenant's Representative. Tenant has designated Tracy Nolasco as its sole representative with respect to the matters set forth in this Tenant Work Letter, who, until further notice to Landlord, shall have full authority and responsibility to act on behalf of the Tenant as required in this Tenant Work Letter.

6.2 Landlord's Representative. Prior to commencement of construction of the Improvements, Landlord shall designate a representative with respect to the matters set forth in

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this Tenant Work Letter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Tenant Work Letter.

6.3 Time of the Essence in This Tenant Work Letter. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days.

6.4 Tenant's Entry into the Premises Prior to Substantial Completion. Provided that Tenant and its agents do not interfere with Landlord's work in the Premises, Landlord shall allow Tenant access to the Premises prior to the date of Substantial Completion of the Improvements for the purpose of Tenant installing furniture and equipment in the Premises. Prior to Tenant's entry into the Premises as permitted by the terms of this Section 6.4, Tenant shall submit certificates of insurance reasonably acceptable to Landlord and shall submit a schedule to Landlord (and the Contractor, if so requested by Landlord), for their approval, which schedule shall detail the timing and purpose of Tenant's entry. Tenant shall hold Landlord harmless from and indemnify, protect and defend Landlord against any loss or damage to the Project or Premises and against injury to any persons caused by Tenant's actions pursuant to this Section 6.4.

EXHIBIT "D"

-3-

4825-0360-7189.6

SCHEDULE 1

PLANS



PRICING NOTES

1. REMOVE NEW RUGS & DASH IN TEAM RM'S & REAR ZONE / OFS CONSTRUCTION REMOVE BRICKS IN WITH COMPLETE EXTERIOR CURTAIN & 2' CONCRETE SLAB WITH INSULATION DASH EFFECT WITH CONSTRUCTION
2. REMOVE ABOVE 2' UP OF UPPER CLOSETS TO WITH DASH
3. REMOVE (3) CLOSET FURNITURE FLOORS & DASH WITH GLASS UP WITH DASH OF CLOSET
4. SHAW CUT FROM EXTERIOR CLOSETS TO INTERIOR ROAD OF CLOSETS
5. EXTERIOR MURDER TO DASH
6. EXTERIOR DASH TO DASH
7. RECEPTION DASH BY TENANT

PHAWRE / VKC B013
2.1.19

SCHEDULE 1
-1-

4825-0360-7189.6



PROPOSAL

Date: April 4, 2019
Project: 16845 - #150- Phunware
Address: 16845 von Karman #150
Bid #: 17-B-253 - R2
Estimator: ES
Based on: Walk thru and notes 02/22/2019

To: Equity Office
Contact: Ken Zielinski

Approved: Equity Office
Ken Zielinski

Date

SCHEDULE 1
-2-

4825-0360-7189.6



To:	Equity Office	Date:	April 4, 2019
Contact:	Ken Zielinski	Project:	16845 - #150- Phunware
Bid #:	17-B-253 - R2	Address:	16845 von Karman #150
Estimator:	ES		

1.011 Project Superintendent

1.710 Final Clean-up

Clean-up, progressive & final

2.010 Site Prep / Site Work

Site protection, plastic prep

2.050 Demolition / Hauling / Dumpsters

Remove carpet and scrape @ server room.	120 SF
Project dumpsters:	1 EA
Haul & dump debris off-site	

3.000 Concrete

GPR scanning and trenching for electrical
Pour back and finish concrete

4.400 Stone

5.100 Metals

6.100 Rough Carpentry

6.220 Millwork

Provide 8' new upper cabinets to match existing

7.200 Insulation

SCHEDULE 1
-3-

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7.500 Roofing

8.200 Doors / Frames / Hardware

8.800 Glazing

Film - 4" frosted band at conference rooms. (allowance)

Add adhesive applied weatherstripping to conference room doors

9.250 Framing & Drywall

TV backing 4 EA

Electrical patches 10 EA

9.300 Tile

9.500 Acoustical Ceilings

9.680 Flooring

Burnish Concrete open area

Exposed concrete server room

4" rubber base

9.900 Painting & Wall Finishes

Paint columns and feature wall

Allowance to touch up ceilings after cabling

10.400 Identifying Devices / Signage

10.520 Fire Protection Specialties

10.800 Toilet Partitions & Accessories

11.450 Appliances

12.610 Window Coverings

Allowance \$6/SF - Frosted Film at conference

13.900 Fire & Life Safety Systems

SCHEDULE 1
-4-

4825-0360-7189.6





15.300 Fire Sprinklers		
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15.400 Plumbing		
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15.700 HVAC		
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16.000 Electrical		
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4" Furniture feed floor box	4	EA
Dedicated 20A duplex	1	EA
15A Duplex receptacle	1	EA
TV Av/Duplex/data	4	EA
Wall furniture feed	2	EA
Convenience outlet office 1	1	EA

SCHEDULE 1
-5-

4825-0360-7189.6



Alternates, Qualifications & Exclusions

Based on: Walk thru and notes 02/22/2019

Alternates:

1.)

Qualifications:

- 1.) All alternates to be performed concurrently with main scope of work
- 2.) Allowance for window film \$6/SF
- 3.) Allowance for ceiling touch ups, Does not include repaint fo entire ceiling
- 4.) Excludes soundproofing of conference room doors / glass

Exclusions:

- 1.) Building permit fees and permit fees for any and all trades, unless specifically noted in proposal
- 2.) Engineered plans, plan check or plan check fees, unless specifically noted in proposal
- 3.) Any City/County/State agency permit fees; these will be reimbursed at cost
- 4.) Demolition, handling or removal of Hazardous Materials. Testing or abatement of Asbestos. U.N.O.
- 5.) Unforeseen structural, mechanical or electrical items in walls or ceilings to be removed
- 6.) Structural upgrades to existing suite or property, structural engineering observation fees
- 7.) ADA upgrades to existing suite or property
- 8.) HVAC control systems (DDC) or fire dampers, U.N.O.
- 9.) Parking fees, or permit fees for dumpsters or vehicles to be located on public streets
- 10.) Repairs to lightweight concrete, slab X-ray for cores or cutting
- 11.) Telephone/data cabling or equipment, security / alarm / monitoring systems
- 12.) Fire and life safety systems, changes, relocation or upgrades, U.N.O
- 13.) Furring walls at perimeter U.N.O
- 14.) Granite or tile finishes U.N.O.
- 15.) Window or wall coverings U.N.O
- 16.) Additional plastic prep or protection outside the path of travel for construction traffic
- 17.) Signage except as required by code
- 18.) Off hours labor U.N.O.
- 19.) Machine hardscape slab U.N.O.
- 20.) Major floor prep or leveling, costs can be determined after demolition and performed on T&M basis
- 21.) Moisture testing, moisture remediation
- 22.) Any scope related to furniture, cubicles, equipment or other, U.N.O
- 23.) Code upgrades to existing ceilings, if required
- 24.) Excludes keying of door hardware. To be completed by tenant and property management.
- 25.) Proposal includes MC Cable with EMT only in open ceiling areas U.N.O.
- 26.) Proposal excludes project phasing U.N.O.

SCHEDULE 1
-6-

4825-0360-7189.6

EXHIBIT " E"

FURNITURE LIST

- 6 Bar Stools
- 1 Wood Table – Bar Height
- 4 Multicolored Lounge Chairs – 2 by the sofa and two by the entry
- 1 Teal Velvet Sofa
- 1 Round End Table
- 1 Coffee Table
- 1 Shuffleboard Table Game
- 1 Area Rug
- 7 Decorative Pillows

EXHIBIT "E"
-1-

4825-0360-7189.6

PROMONTORY LEASE AGREEMENT

This LEASE AGREEMENT ("Lease") is entered into and effective as of July 23, 2014 by and between Promontory Associates, a California General Partnership ("Landlord"), and Phunware Inc., a ~~Texas~~ ^{DELAWARE} Corporation ("Tenant").

LEASE OF PREMISES

In consideration of the rent and other provisions of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, subject to all of the terms and conditions set forth herein, the premises ("Premises") described in Section 1.4, as shown on the Floor Plan attached hereto as Exhibit "A". The Premises are located in an office building constructed on real property ("Land") in the City of San Diego, County of San Diego more particularly described on Exhibit "B" attached hereto. The Land is also improved with landscaping, parking facilities and other improvements. The Land, the office building, the landscaping, the parking facilities and the other improvements are referred to collectively herein as the "Project" and are shown on the Site Plan attached hereto as Exhibit "C". The Premises will be improved by Landlord with the improvements ("Leasehold improvements") described in the Work Letter Agreement attached hereto as Exhibit "D".

ARTICLE 1 SUMMARY OF BASIC LEASE PROVISIONS

- 1.1 Landlord's Address: c/o Carleton Management, Inc., 11440 West Bernardo Court Suite 240, San Diego, CA 92127
- 1.2 Tenant's Address: At the Premises: 11440 West Bernardo Court Suite 170, San Diego, CA 92127
- Tenant's address for notices prior to the Commencement Date: 5414 Oberlin Drive, Suite 220, San Diego, CA 92121
- 1.3 Project Address: 11440 West Bernardo Court, San Diego, CA 92127
- 1.4 Description of Premises:
Building A three-story, 97,507 rentable square-foot office building
Floor or Level ground floor
Suite No. 170
- 1.5 Rentable Square Feet of Premises: 5,284
- 1.6 Lease Term: five (5) years and four (4) month(s), beginning on the Commencement Date
- 1.7 Target Commencement Date: October 1, 2014
- 1.8 Initial Basic Annual Rent \$142,668.00
- 1.9 Initial Monthly Installment of Basic Annual Rent: \$11,889.00 (\$2.25 per Rentable Square Foot).
- 1.10 Tenant's Percentage of Operating Expenses: 5.42%
- 1.11 Security Deposit: \$ See Rider to Lease, Rider No. 2, Paragraph 6
- 1.12 Broker(s): Landlord: Colliers International, Gary Williams
Tenant: Cal-Sorrento, LTD, Sam Higgins
- 1.13 Permitted Use: General office use permitted in City of San Diego IP-2-1 zoning formerly MIP
- 1.14 Deadline for Tenant's Approvals:
Space Plan: ten (10) working days after receipt.
Working Drawings: ten (10) working days after receipt.
- 1.15 Parking: twenty-one (21) spaces. See Rider to Lease, Rider No. 2, Paragraph 4
- 1.16 Operating Expenses: Base Year 2014. See Rider to Lease Rider No. 2, Paragraph 8.
- 1.17 Exhibits and Riders: This Lease contains Exhibits "A" through "H", and Riders 1 through 2, all of which are incorporated herein and made a part hereof.

ARTICLE 2 TERM

2.1 **Lease Term.** The term of this Lease ("Lease Term") shall commence on the Commencement Date, as defined in Section 2.2 and, unless terminated earlier pursuant to the provisions of this Lease, shall continue for the period identified in Section 1.6. Upon commencement of the Lease Term, Landlord and Tenant shall confirm the Commencement Date and the expiration date by completing a "Notice of Lease Term Dates" in the form of Exhibit "E" attached hereto.

2.2 **Commencement Date.** The Commencement Date shall be the date Landlord delivers the Premises to Tenant in a substantially complete condition, provided Landlord gives Tenant at least (30) days prior written notice of such date of substantial completion if it is other than the Target Commencement Date identified in Section 1.7. If Landlord is unable to deliver possession of the Premises to Tenant by the Target Commencement Date Landlord shall not be liable to Tenant for any loss or damage resulting therefrom, but Tenant shall not be liable for any rent until the actual Commencement Date. Notwithstanding the foregoing, if Landlord cannot deliver the Premises in a substantially complete condition on the Target Commencement Date as a result of delays caused by Tenant, then the Commencement Date shall be the Target Commencement Date.

2.3 **Possession.** By taking possession of the Premises, Tenant accepts the Premises and the Leasehold Improvements as completed or substantially completed. If the Premises are substantially completed, Landlord shall provide Tenant, upon delivery of possession, with a list of items to be completed or corrected, and Landlord shall complete or correct all such items promptly thereafter.



2.4 **Holding Over.** If, after expiration of the Term, Tenant remains in possession of the Premises with Landlord's permission (expressed or implied), Tenant shall become a tenant from month-to-month only. All the provisions of this Lease shall remain in full force and effect (except as to Term and Base Rent), but the "Monthly Installments of Base Rent" payable by Tenant shall be increased to one hundred twenty-five percent (125%) of the Monthly Installments of Base Rent, payable by Tenant at the expiration of the Term. Such monthly rent shall be in advance on or before the first (1st) day of each month. If either party desires to terminate such month-to-month tenancy, it shall give the other party not less than thirty (30) days written notice of the date of termination.

ARTICLE 3 BASIC ANNUAL RENT

3.1 **Payment by Tenant.** Tenant agrees to pay to Landlord, as Basic Annual Rent for the Premises, the initial amount specified in Section 1.8 subject to increases as provided in Section 3.2. The Basic Annual Rent shall be payable in advance in equal monthly installments in the initial amount specified in Section 1.9, without deduction or offset, beginning on the Commencement Date and continuing thereafter on or before the first (1st) day of each calendar month during the Lease Term. If the Lease Term commences (or ends) on a day other than the first (or last) day of a calendar month, the rent for such partial month shall be prorated on a per Diem basis and shall be due on the first day of such partial month.

3.2 **Cost-of-Living Increase.** The Basic Annual Rent provided for in Section 3.1 shall be increased, but not decreased, annually on the anniversary date of the Commencement of the Lease Term (the "Adjustment Date"), to reflect increases described in Rider to Lease, Rider No. 2, Paragraph 3.

3.3 **Rentable Square Feet Defined.** The Rentable Square Feet of the Premises shall be determined and certified by Landlord's architect, using the standard BOMA definition of rentable square feet consistently applied throughout the Building. The Rentable Square Feet of the Premises shall be adjusted by Landlord's architect upon the completion of the working drawings for the build out of the Premises pursuant to the Work Letter Agreement (Exhibit D attached hereto) and the exact amount of the Rentable Square Feet of the Premises shall be determined by Landlord's architect upon completion of the improvements pursuant to the Work Letter Agreement. Said calculations shall be made in accordance with the method of measuring rentable office space specified in the American National Standard Institute Publication ANSI Z65. 1-1996 (the "BOMA Standard"). Basic Annual Rent shall be adjusted upon the determination of the exact number of Rentable Square Feet within the Premises.

ARTICLE 4 ADDITIONAL RENT

4.1 **Additional Rent.** Tenant shall pay as Additional Rent for the Premises, Tenant's Proportionate Share (as defined in Section 4.3) of "Operating Expenses" (as defined in Section 4.2).

4.2 **Operating Expenses Defined.** The term "Operating Expenses" means:

(a) All costs of operation and maintenance of the Project, determined by generally accepted accounting practices consistently applied including but not limited to the following: water and sewer charges; insurance premiums; license, permit, and inspection fees; utilities; waste disposal; elevator maintenance; heating, ventilating and air conditioning; janitorial and security services; repair, replacement and maintenance of common areas and facilities, structural parts of the building(s) and other portions of the Project maintained by Landlord, including the plumbing, heating, ventilating, air conditioning and electrical systems and all parking, driveways and landscaped areas, including appropriate reserves; labor, employee compensation (including employment taxes and fringed benefits); supplies, materials, equipment and tools; property management costs and fees; reasonable legal, accounting and other professional fees incurred in connection with the operations, maintenance and management of the Project and the cost of any capital improvements made to the Project by Landlord which reduce Operating Expenses and/or are required under any governmental law or regulation, not applicable to the Project at the time it was constructed, such cost to be amortized over such reasonable period as Landlord shall determine and to include a return on capital at the rate of ten percent (10%) per annum on the unamortized balance or at such higher rate as may have been paid by Landlord on funds borrowed for the purpose of constructing such capital improvements; and

(b) All property taxes levied on the Project or any part thereof including, without limitation; (i) all real estate taxes, personal property taxes, and other taxes, charges and assessments which are levied with respect to the Project or any improvements, fixtures and equipment and other property of Landlord, real or personal located in the Project and used in connection with the operation of the Project; (ii) all taxes, surcharges, fees, or general or special assessments levied by any authority having the direction power to tax in addition to or in lieu of real estate or personal property taxes other than taxes to be paid by Tenant under the provisions of this Lease; (iii) all service charges or other fees collected by governmental agencies in addition to or in lieu of property taxes for services provided by such agencies; (iv) all transfer, transaction, rental, gross receipts or similar taxes or levies, however denominated, imposed upon or measured by the rent reserved hereunder or on Landlord's business of leasing the Premise, other than net income taxes; and (v) all costs and expenses, including reasonable attorney's fees, expended in contesting the amount or validity of any property tax by appropriate proceeding. Tenant and Landlord acknowledge that Proposition 13 was adopted by the voters of the State of California in the June 1978 election and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal, and for other governmental services formerly provided without charge to property owners or occupants. All such new and increased assessments, taxes, fees, levies and charges shall be included within the definition of "Operating Expenses".

(c) For purposes of this Lease, "real estate taxes" means and shall include any form of assessment, license tax, special tax, business license fee, commercial rental tax, levy, charge penalty (not resulting from failure of the Landlord), tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement assessment or special district thereof, as against any legal or equitable interest of Landlord in the Premises, Building and Project, or a combination of the foregoing including, but not limited to the following: (i) any tax, special tax, on Landlord's right to other income from the Premises, Building or Project or as against Landlord's business of leasing the Premises, Building or Project, (ii) any assessment, tax, special tax, fee, levy or charge, in substitution or addition, partial or total, to or regarding any assessment, tax, special tax, fee, levy, or charge previously included or not included within the definition of real estate tax, including but not limited to any assessment, taxes, fees, levies and charges that may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. Tenant and Landlord intend that all such new and increased assessments, taxes, special taxes, fees levies and charges be included within the definition of real estate taxes for the purposes of this Lease; (iii) any assessment, tax, special tax, fee, levy or charges allocable to or measured by the area of the Premises, Building or Project or the rent payable hereunder or the providing of parking, including, without limitation, any gross income tax or excise tax levied by the State, city or federal government, or any political subdivision



thereof, with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair use or occupancy by Tenant of the Premises, Building or Project or any portion thereof; (iv) any assessment, tax, special tax, fee, levy or charge upon this transaction or a document to which Tenant is a party creating or transferring an interest or an estate in the Premises, Building or Project.

Notwithstanding any contrary provision of this Section 4.2 (c), real estate taxes shall not include Landlord's federal or state income, franchise, inheritance or estate taxes. Real estate taxes constitute a portion of the Operating Expenses.

4.3 Tenant's Proportionate Share. Tenant shall pay, as Additional Rent for the Premises, Tenant's Proportionate Share of Operating Expenses. Tenant's Proportionate Share shall be the amount obtained by multiplying the Operating Expenses for the Project times Tenant's Percentage of Operating Expenses as set forth in Section 1.10. Tenant's Percentage is equal to a fraction, the numerator of which is the Rentable Square Feet of the Premises and the denominator of which is the Rentable Square Feet included in the Project, as determined by Landlord. For any partial calendar year, Operating Expenses shall be determined by prorating the annualized figures.

4.4 Payment of Additional Rent. Prior to the commencement of the Lease Term, Landlord shall give Tenant a written estimate of Operating Expenses and Tenant's Proportionate Share thereof for the current year. Tenant shall pay its estimated Proportionate Share of Operating Expenses in equal monthly installments, in advance, concurrently with installments of Basic Annual Rent. Prior to March 1 of each calendar year thereafter, Landlord shall furnish to Tenant a statement ("Expense Statement") showing in reasonable detail: (a) the actual Operating Expenses incurred by Landlord during the preceding calendar year, and Tenant's actual Proportionate Share thereof; (b) the amount (if any) by which Tenant's Proportionate Share of actual Operating Expenses for the preceding calendar year exceeded Tenant's total estimated payments made during such year, which amount shall be due to Landlord; (c) the estimated Operating Expenses for the current calendar year and Tenant's Proportionate Share of Operating Expenses; and (d) the amount of any increase in Tenant's estimated monthly payments for the current calendar year times the number of monthly payments due during such calendar year prior to the date of the Expense Statement, which amount shall be due to Landlord. Tenant shall pay to Landlord as Additional Rent, all amounts owing to Landlord as shown on the Expense Statement, within twenty (20) days of receipt thereof. Any overpayment by Tenant as shown on Expense Statement, shall be credited against the next installments of rent due hereunder commencing with the next installment of Additional Rent due after receipt of the Expense Statement. Tenant shall pay the estimated monthly amount of the current year specified in the Expense Statement. If the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Proportionate Share of Operating Expense of the year in which this Lease is made. Tenant shall pay any increase due over the estimated expenses paid within twenty (20) days after receipt of a notice from Landlord and conversely, any overpayment by Tenant shall be immediately rebated by Landlord.

4.5 Increased Operating Expenses. If at any time during any calendar year of the Lease Term the "property taxes", as defined in Section 4.2(b), "real estate taxes" as defined in Section 4.2(c) and/or the rates for any utility or janitorial services to the Project are increased to a rate or amount in excess of the rate or amount used in calculating the estimated Operating Expenses for such calendar year, Landlord may give Tenant written notice of the amount or estimated amount of the increase, the month in which it is effective, and any resulting increase in Tenant's Proportionate Share. Tenant shall pay such increase to Landlord as a part of Tenant's monthly payment of Additional Rent, commencing with the month in which it is effective.

4.6 Definition of Rent. Basic Annual Rent, Additional Rent, and all other monetary sums to be paid by Tenant hereunder are sometimes referred to as, and shall constitute, "rent". All remedies available to Landlord in the event of nonpayment of this rent shall apply in the event on nonpayment of any component included in rent.

ARTICLE 5 SECURITY DEPOSIT

5.1 Concurrently with execution of this Lease, Tenant will pay to Landlord the amount set forth in Section 1.11 ("Security Deposit"), as security for Tenant's performance of the terms of this Lease. Landlord shall not be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to interest thereon. If Tenant defaults with respect to any provision of this Lease, including, but not limited to, the provisions relating to the payment of rent, Landlord may (but shall not be required to) use, apply or retain all or any part of this Security Deposit the payment of any rent or any other sums in default, or for the payment of any other amount which Landlord may spend to remedy Tenant's default in or become obligated to spend by reason of Tenant's default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall within (10) days after demand therefore, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount, and Tenant's failure to do so shall constitute a default hereunder by Tenant. If Tenant fully and faithfully performs each of its obligations under this Lease, the Security Deposit or any balance thereof shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within fourteen (14) days following the expiration of the Lease Term provided that Landlord may retain the Security Deposit until such time as any amount due from Tenant in accordance with Article 4 hereof has been determined and paid in full. If Landlord sells its interest in the Premises during the term hereof and if Landlord deposits with the purchaser the balance of such Security Deposit, Landlord shall be discharged from any further liability with respect to such Security Deposit and the Purchaser shall instead be responsible for all liability with respect to such Security Deposit.

ARTICLE 6 REPAIRS AND MAINTENANCE

6.1 Landlord's Repairs. Landlord shall repair and maintain the common areas and the structural portions of the Building in which the Premises are located, including the exterior walls, exterior doors and windows, and the basic plumbing, heating, ventilation, air conditioning and electrical systems installed or furnished by Landlord; provided, however, Tenant shall pay for the cost of any repairs made necessary by any fault or negligence of Tenant or its assignees or subtenants or their respective agents, employees, contractors, licensees or invitees, or other persons permitted in the Project by Tenant. Landlord shall not be liable for any failure to make any repairs or to perform any maintenance unless such failure persists for an unreasonable time after written notice of the need for such repairs or maintenance is given to Landlord by Tenant. Except as provided in Section 13.2, there shall be no abatement of rent and liability to Landlord by reason of any injury to or interference with Tenant's business arising from making of any repair, alterations or improvements in or to any portion of the Project or the fixtures, appurtenances and equipment therein. Tenant waives the right to make repairs at Landlord's expense under Section 1942 of the California Civil Code, or under any law statute or ordinance now or hereafter in effect.

6.2 Tenant's Repairs. By taking possession of the Premises under this Lease, Tenant accepts the Premises as being in good order, condition and repair. During the Lease Term, Tenant at its sole cost, shall maintain and make

Initial(s): MA
JA

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repairs to the Premises in order to keep the Premises in first class condition and repair, except for reasonable wear and tear and the repairs and maintenance which are the responsibility of the Landlord under Section 6.1.

6.3 Surrender. Upon expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord in good order, condition and repair. Tenant, at its sole cost, shall remove from the Premises, and repair any damage to the Premises caused by or in connection with such removal, all personal property, business or trade fixtures, machinery and alterations, improvements or additions which Tenant has the right to remove or which Landlord requires Tenant to remove. In addition, Tenant shall surrender the Premises freshly painted, carpet shampooed, and windows treatments cleaned.

6.4 Suitability. Tenant acknowledges that neither Landlord nor Landlord's agent have made any representations or warranty as to the suitability of the Premises or the Project for the conduct of Tenant's business.

ARTICLE 7 IMPROVEMENTS AND ALTERATIONS

7.1 Landlord's Obligation. Landlord's sole obligations to improve and alter the Premises under this Lease are as set forth in the Work Letter Agreement attached hereto as Exhibit "D".

7.2 Alterations to the Project by Landlord. Landlord has the right, at any time, and without incurring any liability to Tenant, and without any abatement of rent to make changes, alterations, additions, improvements and replacements in or to the Project or to the Building in which the Premises are located and the fixtures and equipment used therein, including changes in the arrangement, number and/or location of entrances and exits, corridors, door and doorways, elevators, stairs, toilets, parking spaces, parking area, driveways, walkways, loading areas of the Project and the Building. Upon reasonable notice to Tenant, Landlord may also change the name, number or designation by which the Project or the Building is commonly known.

7.3 Alterations By Tenant. Tenant shall not make any alterations, additions or improvements to the Premises without the prior written consent of Landlord. All such alterations, additions or improvements (except moveable furniture, trade fixtures and equipment) shall become the property of Landlord and shall be surrendered with the Premises, as a part thereof, at the expiration or earlier termination of this Lease; Provided, however, Landlord may, at its option, require Tenant to remove alterations, additions or improvements, at Tenant's expense, upon the expiration or earlier termination of this Lease and to repair and restore the Premises to their original condition, reasonable wear and tear excepted. All permitted alterations, additions or improvements shall be made at Tenant's sole cost and expense by a contractor or other person first approved in writing by Landlord. As a condition to giving its consent, Landlord may require Tenant to submit plans and specifications. Any change approved by Landlord based upon such plans and specifications shall be performed strictly in accordance therewith and no amendments or additions thereto shall be made without the prior written consent of the Landlord. Tenant, at its sole cost, shall: (a) secure all necessary governmental permits and approvals required in connection with any alterations, additions or improvements; (b) comply with all applicable laws, rules, ordinances, regulations and all conditions to such required permits or approvals; (c) perform the work so as not to interfere with the use and occupancy of any other tenant in the Project; (d) provide and maintain workman's compensation and general liability insurance in amounts and with insurers as Landlord shall reasonably approve; and (e) at Landlord's request, provide a completion and lien indemnity bond or other surety satisfactory to Landlord prior to commencing any work relating to any alterations, improvements or additions approved by Landlord. Tenant shall give Landlord not less than ten (10) days' prior written notice of the expected date of commencement. Landlord shall have the right at any time thereafter to post and maintain on the Premises such notices as Landlord reasonably deems necessary to protect Landlord and the Premises from mechanics' liens, materialmen's liens or any other liens. Upon the completion of any alterations, additions or improvements by Tenant, Tenant shall provide Landlord with a complete copy of "as built" plans for the same.

7.4 Furniture, Fixtures and Equipment. All personal property, business and trade fixtures, machinery and equipment, furniture, and moveable partitions owned or installed by Tenant at its expense shall remain the property of Tenant and may be removed from the Premises at any time during the Lease Term provided Tenant repairs any damage caused by such removal. If Tenant fails to remove all such items from the Premises upon expiration or termination of this Lease, Landlord may, at its option remove and store the same without liability to Tenant for loss thereof, and Tenant agrees to pay Landlord upon demand all expenses incurred in such removal, including court costs attorneys' fees and storage charges. Landlord may, at its option, sell such items at private sale, without notice, and without legal process, for such price as Landlord may obtain and apply the proceeds of such sale against any amounts due to Landlord under this Lease.

7.5 Removal of Alterations. Upon the expiration or sooner termination of the Lease Term, Tenant shall, upon written demand of Landlord, to be given at least thirty (30) days prior to the end of the Term, at Tenant's sole cost and expense, forthwith and with all due diligence remove any alterations, additions, or improvements made by Tenant, designated by Landlord to be removed, and Tenant shall, forthwith and with all due diligence at its sole cost and expense, repair any damage to the Premises caused by such removal.

ARTICLE 8 LIENS

8.1 Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for Tenant. Tenant shall indemnify, hold harmless and defend Landlord from any liability arising out of any such liens, including attorneys' fees and costs. In the event that Tenant fails to cause any such lien to be released of record within ten (10) days after imposition of the lien, Landlord shall have the right (but not the obligation), in addition to all other remedies provided herein and by law, to cause the same to be released by such means as Landlord shall deem proper, including payment of or defense against the claim giving rise to such lien. All sums paid and all expenses incurred by Landlord in connection therewith shall be due and payable by Tenant upon demand with interest at the rate specified in Section 18.5 from the date of payment by Landlord to the date of payment by Tenant. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper, to protect Landlord and the Premises, and any other party having an interest therein, from mechanics' and materialmen's liens.

ARTICLE 9 USE OF PREMISES

9.1 Permitted Uses. Tenant shall use the Premises only for the purposes set forth in Section 1.13 and shall not use or permit the Premises to be used for any other purpose without the prior written consent of Landlord. In no event shall the Premises be used as a medical or dental office.

9.2 Prohibited Uses. Tenant shall not use or occupy the Premises in violation of any law or the certificate of occupancy issued for the Building, and Tenant shall, upon five (5) days' written notice from Landlord, discontinue any use of the Premises which is declared to be a violation of law or such certificate of occupancy by any governmental authority with

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jurisdiction over the Premises. Tenant shall not do or permit anything to be done which will invalidate or increase the cost of any fire, extended coverage or other insurance policy covering the Project and/or property located therein and shall comply with all rules, orders, regulations and requirements of any board of fire underwriters or similar body now or hereafter constituted. Notwithstanding Article 4, Tenant shall promptly, upon demand, reimburse Landlord for the full amount of any additional premium charged for any such policy by reason of Tenant's failure to comply with the provisions of this Section 9.2. Tenant shall not do or permit anything to be done in or about the Premises which will in any way injure or annoy or obstruct or interfere with the rights of other tenants or occupants of the Project, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose. Tenant shall not cause, maintain or permit any nuisance in, on or about the Premises or commit or suffer to be committed any waste in or upon the Premises.

9.3 Compliance with Laws. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules and regulations now in force or which may hereafter be in force, and with the requirements of the certificate of occupancy (or its equivalent) for the Building and the requirements of Landlord's insurance company relating to or affecting the condition, use or occupancy of the Premises, the Building and/or the Project. Tenant shall, upon written notice from Landlord, discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or of the certificate of occupancy for the Building or its equivalent. Tenant shall comply with all directions of any governmental authority having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or with respect to the use or occupation thereof.

9.4 Rules and Regulations. Tenant shall comply with the Rules and Regulations for the Project, as set forth in Exhibit "F" attached hereto and as reasonably amended or supplemented by Landlord from time to time upon reasonable notice to Tenant.

9.5 Hazardous Materials. Tenant shall not cause or permit any Hazardous Materials (defined below) to be brought upon, kept or used in or about the Premises, Building or Project by Tenant, its agents, employees, contractors or invitees, other than those expressly permitted, in writing, by Landlord. If Tenant breaches the obligation stated above, or if the presence of Hazardous Materials on the Premises, Building, Common Area or Project caused or permitted by Tenant (including Hazardous Materials specifically permitted and identified below) results in contamination to the Premises, Building, Common Area or Project, or if contamination of the Premises, Building, Common Area or Project by Hazardous Materials otherwise occurs for which Tenant is legally liable to Landlord for damages resulting therefrom, then Tenant shall be liable and responsible for, without limitation, (i) removal from the Premises, Building, Common Area and Project of any Hazardous Materials and the cost of such removal; (ii) damages to persons or property in or on the Premises, Building, Common Area and Project; (iii) claims resulting therefrom; (iv) fines imposed by any governmental agency; and (v) any other liability as provided by law. In addition to the foregoing, Tenant shall indemnify, defend and hold Landlord, its partners, agents and contractors harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises, Building, Common Area and Project or any portion of the real property surrounding the Project (the "Adjacent Property"), damages for the loss or restriction on use of rentable space or of any amenity of the Premises, Building, Common Area and Project, damages arising from any adverse impact on marketing of space in the Project, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees, which arise during or after the Lease Term as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Materials present in the soil or ground water on or under the Project and arising out of a breach of Tenant's obligation under this Section 9.5. Without limiting the foregoing, if the presence of any Hazardous Materials within the Project caused or permitted by Tenant results in any contamination of the Premises, Building, Common Area or Project, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the Premises, Building, Common Area and Project to the condition existing prior to the introduction of any such Hazardous Material, provided that Landlord's approval of such action shall first be obtained which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long term or short term effect on the Project and are permitted by any lender of Landlord having a first priority lien on the Project. As used herein, the term "Hazardous Materials" or "Hazardous Material" means any hazardous or toxic substance material or waste (including, without limitation, any medical waste) which is or becomes regulated by any local governmental authority, the State of California or the United States Government.

ARTICLE 10 COMMON AREAS; PARKING; UTILITIES; SIGNS

10.1 Common Areas. Tenant shall have the nonexclusive right to use in common with other tenants in the Project and subject to the Rules and Regulations referred to in Section 9.4 above the following areas ("Common Areas") appurtenant to the Premises from time to time: (a) The Project's common entrances, lobbies, restrooms, elevators, stairways and accessways, loading docks, ramps, drives and platforms and any passageways and serviceways thereto, and the common pipes, conduits, wires and appurtenant equipment serving the Premises; (b) loading and unloading areas, trash areas, parking areas (exclusive of any reserved parking areas which Landlord may designate from time to time), roadways, sidewalks, parkways, driveways and landscaped areas and similar areas and facilities appurtenant to the Project; (c) other shared areas in the Project as reasonably determined by Landlord from time to time. Landlord reserves the right from time to time without unreasonable interference with Tenant's use of the Premises; (i) to install, use, maintain, repair and replace pipes, ducts, conduits, wires, meters and equipment for service to other parts of the Project above the ceiling surfaces, below the floor surfaces, within the walls and in the central core areas, and to relocate any pipes, ducts, conduits, wires and appurtenant meters and equipment included in the Premises which are located in the Premises or located elsewhere outside the Premises, and to expand the Project; (ii) to make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped area and walkways; (iii) to close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available; (iv) to designate other land outside the boundaries of the Building or Project to be part of the Common Areas; (v) to add additional buildings and improvements to the Common Areas and to change the address and name of this Project; (vi) to use the Common Areas while engaged in making additional improvements, repairs or alterations to the Building or the Project, or any portion thereof and (vii) to do and perform such other acts and make such other changes, additions and deletions in, to or with respect to the Common Areas or the Project as Landlord may, in the exercise of sound business judgment, deem to be appropriate.

10.2 Parking. Provided that Tenant is not in default hereunder, Tenant shall be entitled to the non-exclusive vehicle parking spaces specified in Section 1.15, in the areas designated by Landlord for parking. Parking spaces shall be used only for parking by vehicles no larger than normal size passenger automobiles or pick-up trucks.

10.3 Utilities and Service. Provided that Tenant is not in default hereunder, the following utilities and services will be provided to the Premises, subject to Section 10.4 and subject to the Rules and Regulations for the Project:

- (a) Automatic elevator facilities;

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(b) Heating, ventilation and air conditioning during generally accepted business days and during hours determined by Landlord, when, in the judgment of Landlord, it is required for the comfortable occupancy of the Premises; see also Rider to Lease, Rider No. 2 Paragraph #9

(c) Water for drinking, cleaning and lavatory purposes; and

(d) Janitorial services comparable to those provided in similar office buildings in the vicinity, provided the Premises are kept reasonably in order by Tenant; Tenant shall pay promptly upon demand all charges for telephone services, electricity, and all other utilities which are separately metered for the Premises. Tenant, at its sole cost, shall be responsible for the maintenance and repair of such meters.

Landlord can discontinue, upon five (5) days' written notice to Tenant, any of the utilities or services furnished to the Premises for which Tenant fails to pay as provided in this Article

10.4 No Liability. Landlord shall not be in default hereunder or liable for any injury to person, property or business directly or indirectly resulting from, nor shall rent be abated in the event of: (a) the installation, use, or interruption of use of any equipment in connection with the furnishing of the foregoing utilities and services; (b) the failure to furnish or the interruption or delay in furnishing any such utility or service caused by any condition or event beyond the reasonable control of Landlord or by the performance of repairs or improvements to the Premises, the Building or the Project.

10.5 Signs. Tenant shall not place, paint or permit any sign upon the exterior of the Premises or the Building, or visible from the exterior of the Premises, without the prior written approval of Landlord. Such approval shall be based upon the standard sign criteria for the Building. Any permitted signs shall be constructed and installed at Tenant's expense and shall comply with applicable governmental ordinances.

10.6 Exercise Room. Landlord will, maintain an exercise room at the Premises (the "Exercise Room") for use by Tenant, its employees and authorized guests.

(a) Landlord shall have the right to reasonably restrict the use of the Exercise Room by adopting rules and regulations for its use for the overall benefit of the building's Tenants and/or by restricting the use of the Exercise Room to Tenants, their employees and authorized guests.

(b) Responsibility for proper use of the Exercise Room and the equipment located therein by Tenant, its employees and authorized guests shall be borne solely by the Tenant. Tenant agrees and acknowledges that Landlord shall provide no supervision of Tenant's, its employees' or authorized guests' use of the Exercise Room.

(c) All equipment which may be placed in the exercise room shall be kept in good operating condition by Landlord. In the event that Tenant becomes aware of any problem with the equipment or any other unsafe condition in the Exercise Room, Tenant shall immediately notify Landlord in writing of such condition.

(d) Prior to using the Exercise Room, Tenant and each of its employees and authorized guests shall sign and deliver to Landlord this release form Exhibit H attached hereto and incorporated herein by this reference. It shall be Tenant's responsibility to obtain releases from its employees and/or authorized guests prior to their use of the Exercise Room, and Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, rights, demands, liabilities, actions, causes of action, costs and expenses (including attorneys' fees), which may arise as a result of or in connection with the use of the Exercise Room by Tenant, its employees or authorized guests, whether or not such persons have executed proper releases prior to using the Exercise Room.

ARTICLE 11 TAXES ON TENANT'S PROPERTY

11.1 Tenant's Personal Property. Tenant shall pay at least ten (10) days before delinquency, all taxes, levies and assessments (collectively, "taxes") imposed on or against any furniture, trade fixtures, equipment or other personal property placed by Tenant in or about the Premises. If any such taxes are levied against Landlord or Landlord's property, or if the assessed value of the Project is increased by the inclusion of a value placed upon such personal property of Tenant, then Tenant shall, upon demand, repay to Landlord the taxes so levied against Landlord or the proportion of such taxes resulting from such increase in the assessed value of the Project; provided, however, Tenant shall have the right, in the name of Landlord and with Landlord's full cooperation but without any cost to Landlord, to bring suit in any court of competent jurisdiction to recover the amount of any such taxes so paid, and any amount so recovered shall belong to Tenant.

11.2 Non-Building Standard Improvements. If the tenant improvements in the Premises, whether installed and/or paid for by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, are assessed for real property tax purposes at a valuation higher than the valuation of the Building Standard Work and Materials described in Exhibit "D," then the property taxes levied against Landlord or the Project by reason of such excess assessed valuation shall be deemed to be taxes levied against the personal property of Tenant and shall be paid by Tenant in accordance with the provisions of Section 11.1. If the records of the County Assessor are available and sufficiently detailed to serve as a basis for determining whether said tenant improvements are assessed at a higher valuation than the Building Standard Work and Materials, such records shall be binding on both Landlord and Tenant; otherwise the actual cost of construction shall be the basis for such determination.

11.3 Other Taxes. Tenant shall pay all license, permit, occupational and inspection fees or taxes assessed or charged against Landlord or Tenant, by reason of Tenant's use or occupancy of the Premises.

ARTICLE 12 SUBSTITUTED PREMISES INTENTIONALLY OMITTED

ARTICLE 13 FIRE OR CASUALTY; CONDEMNATION

13.1 Restoration by Landlord. In the event the Premises, or access to them, are wholly or partially destroyed by fire or other casualty covered by the form of fire and extended coverage insurance maintained by Landlord, Landlord shall rebuild, repair or restore the Premises and access thereto to substantially the same condition as the same were in prior to such casualty, excluding Non-Building Standard Work and Materials and improvements installed by Tenant, and this Lease shall continue in full force and effect; provided, however, Landlord may elect, by written notice to Tenant within thirty (30) days after such casualty, to terminate this Lease in lieu of restoring the Premises if: (a) the Building is damaged or destroyed to the extent of more than twenty-five percent (25%) of its replacement cost; (b) the Building is damaged or destroyed by a casualty not covered by such insurance; (c) the damage is such that the Premises cannot be repaired and restored within 120 days after the casualty; or (d) the damage occurs during the last twelve (12) months of the Lease Term

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or any extension thereof; or (e) laws and governmental regulations as of the date of the proposed restoration do not permit or unreasonably restrict such restoration. Either party may terminate this Lease if Landlord is delayed or prevented from completing repairs or restoration to the damaged Premises within six (6) months after occurrence of the casualty as result of any cause described in Section 16.4 ("Force Majeure") by written notice to the other party within fifteen (15) days after expiration of the end of said six-month period.

13.2 Rent Abatement. During any period of repair, reconstruction and restoration by Landlord, the rent provided to be paid under this Lease shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired; provided, however, if the casualty or damage is caused, in whole or substantial part, by the act or omission of Tenant or Tenant's assignees or subtenants or their respective agents, employees, contractors, licensees or invitees, rent shall be abated only if and to the extent that Landlord is reimbursed for the rent abated through proceeds from loss-of-rents insurance carried by Landlord or other appropriate insurance maintained by Tenant. Tenant shall not be entitled to any compensation or damages for loss of use of all or any part of the Premises or for any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

13.3 Condemnation. In case the whole of the Premises, or such part as shall substantially interfere with Tenant's use and occupancy, shall be taken by any lawful power or authority by exercise of the right of eminent domain, or sold to prevent such taking, either Tenant or Landlord may terminate this Lease effective as of the date possession is required to be surrendered to said authority, by written notice to the other party within thirty (30) days after the nature and extent of the taking are determined. Tenant shall not assert any claim against Landlord or the taking authority for any compensation as a result of such taking of the Premises, and Landlord shall be entitled to receive the entire amount of any condemnation award without deduction for any estate or interest of Tenant. In the event of a partial taking of the Premises which does not substantially interfere with Tenant's use of the Premises: (a) Landlord shall be entitled to the entire amount of the award without deduction for any estate or interest of Tenant; (b) Landlord shall promptly proceed to restore the Premises as nearly as practicable to their condition prior to such partial taking, but only to the extent of Building Standard Work and Materials; and (c) a proportionate allowance shall be made to Tenant for the rent corresponding to the time and portions of the Premises for which Tenant is deprived on account of such taking and restoration. Nothing contained in this Section 13.3 shall be deemed to give Landlord any interest in, or prevent Tenant from seeking, any award against the taking authority for the taking of personal property and fixtures belonging to Tenant or for relocation or business interruption expenses recoverable from the taking authority.

ARTICLE 14 ASSIGNMENT AND SUBLETTING

14.1 Landlord's Consent Required. Tenant shall not voluntarily or involuntarily assign, sublet, mortgage or otherwise encumber all or any portion of its interest in this Lease or in the Premises, or permit the Premises to be used or occupied by anyone other than Tenant or its employees, without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord may withhold its consent until Tenant has complied with the provisions of Section 14.2. Any attempted assignment, subletting, mortgage or other encumbrance without such consent shall be null and void. Landlord's consent to one assignment, sublease, mortgage or other encumbrance shall not be deemed to constitute consent to any subsequent attempted assignment, subletting, mortgage or other encumbrance. Tenant agrees to reimburse Landlord for Landlord's reasonable administrative costs and attorneys' fees incurred in conjunction with the processing and documentation of any such requested assignment, subletting, transfer, change of ownership or hypothecation of this Lease or Tenant's interest in and to the Premises, if Landlord consents to the subletting of the Premises by Tenant. Tenant shall not list the Premises for lease with a third party broker unaffiliated with Landlord, without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

14.2 Notice of Assignment, Sublease, Etc. If Tenant desires to assign this Lease or to sublet the Premises (including any arrangement to permit the use or occupancy of the Premises or any portion thereof), Tenant shall first send written notice to Landlord, at least thirty (30) days prior to the effective date of the assignment or sublease, including the following information: (a) the name and address of the proposed assignee or subtenant; (b) the nature of the business to be carried on in the Premises; (c) the terms and provisions of the proposed assignment or sublease; and (d) such financial information as Landlord may reasonably request concerning the proposed assignee or subtenant. Tenant shall deliver such additional information as Landlord may reasonably require.

14.3 Landlord's Option. At any time within thirty (30) days after Landlord's receipt of the notice described in Section 14.2, Landlord may, by written notice to Tenant, elect either: (a) to sublease the Premises or the portion thereof which Tenant proposes to sublease, or to accept an assignment of Tenant's leasehold estate hereunder or such part thereof as Tenant proposed to assign, on the same terms stated in this Lease and in turn sublease or assign to the proposed subtenant or assignee on the same terms offered by Tenant to such party; or (b) to terminate this Lease as to the Premises or the portion thereof which Landlord proposes to sublease or assign, with a proportionate abatement in the rent payable hereunder. If Landlord does not exercise either option set forth in this Section 14.3 within said thirty-day period, Tenant may, immediately upon the expiration of said thirty-day period, enter into a valid assignment or sublease of the Premises or portion thereof upon the terms and conditions set forth in the notice provided by Tenant pursuant to Section 14.2 and subject to Landlord's consent, which shall not be unreasonably withheld as provided in Section 14.1. Notwithstanding the foregoing, however, if the proposed sublease will cover thirty percent (30%) or less of the Rentable Square Feet included in the Premises and will have a term (including all options to renew or extend the same) of less than two (2) years and will terminate more than two (2) years prior to the expiration date of this Lease, Landlord shall not exercise either option set forth above, and such subletting shall be allowed provided (a) Landlord consents to such subletting, which consent shall not be unreasonably withheld; and (b) all rent and other charges payable under such sublease in excess of one hundred ten percent (110%) of the rent charged for such space under the terms of this Lease shall be remitted to Landlord immediately upon receipt by Tenant as additional rent hereunder.

14.4 Changes in Ownership; Affiliates. Tenant may assign this Lease or sublet the Premises or any portion thereof, without Landlord's consent and without extending any option to Landlord under Section 14.3, to any corporation which controls, is controlled by or is under common control with Tenant, to any corporation resulting from a merger or consolidation with Tenant, or to any person or entity which acquires all the assets of Tenant's business as a going concern; provided, however, that the assignee or sublessee assumes the obligations of Tenant hereunder, Tenant remains fully liable hereunder, and the use of the Premises remains unchanged. If Tenant is a corporation which, under the then current guidelines published by the Commissioner of Corporations of the State of California, is not deemed a public corporation, is an unincorporated association or partnership, then the transfer, assignment or hypothecation of any stock or interest in such corporation, association or partnership in excess of twenty-five percent (25%), in the aggregate, shall be deemed an assignment within the meaning of and subject to the provisions of this Article 14.

14.5 No Release of Tenant. No permitted assignment, subletting, mortgage or other encumbrance of Tenant's interest in this Lease or the Premises shall relieve Tenant of its obligation to pay the rent and to perform all other obligations of Tenant hereunder. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or a consent to any assignment, subletting, mortgage or other encumbrance.

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14.6 **Permitted Use.** Any portion of the Premises sublet under this Article shall be used only for the permitted use specified in Section 1.13 or as approved by Landlord.

14.7 **No Merger.** The voluntary or other surrender of this Lease by Tenant or a mutual cancellation hereof shall not result in a merger, and shall, at the option of Landlord, either terminate all or any existing subleases or operate as an assignment to Landlord of such subleases.

ARTICLE 15

RIGHT OF ENTRY; SUBORDINATION; QUIET ENJOYMENT

15.1 **Right of Entry.** Landlord reserves the right to enter the Premises for any of the following purpose: (a) to inspect the Premises; (b) to supply janitorial service and any other service to be provided by Landlord hereunder; (c) to submit the Premises to prospective purchasers or tenants; (d) to post notices of nonresponsibility; or (e) to alter, improve or repair the Premises or any other portion of the Project. Landlord agrees, except in the case of janitorial service and emergency repairs, to give reasonable notice of such entry (unless Tenant consents at the time of entry) and to minimize interference with Tenant's business in the course of such entry. No such entry by Landlord shall constitute an eviction of Tenant or result in an abatement of rent. In connection with any such entry, Landlord may erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, provided that the business of Tenant shall be interfered with as little as is reasonably practicable. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned by such entry by Landlord. Landlord shall at all times have and retain a key with which to unlock all of the doors in and to the Premises, excluding Tenant's vaults and safe, and Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of said means shall not under any circumstances be construed or deemed to be forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Tenant from the Premises or any portion thereof.

15.2 **Subordination.** This Lease is junior, subject and subordinate to all ground leases, mortgages, deeds of trust and other security instruments of any kind now covering the Project, or any portion thereof, Landlord reserves the right to place liens or encumbrances on the Project, or any part thereof or interest therein, superior in lien and effect to this Lease. This Lease, at the option of Landlord, shall be subject and subordinate to any and all such liens or encumbrances now or hereafter imposed by Landlord without the necessity of Tenant's execution and delivery of any further instruments. Notwithstanding the foregoing any ground lessor with respect to its lease, or any holder of a mortgage or deed of trust with respect to its lien, shall have the right to subordinate such lease or lien to this Lease. In the event that any such subordinated ground lease terminates or any such subordinated mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made, for any reason, Tenant shall attorn to and become the tenant of the successor-in-interest to Landlord, at the option of such successor-in-interest. Tenant agrees, upon the written request of Landlord or any ground lessor or mortgages or deed of trust beneficiary of Landlord, to execute and deliver such further instruments evidencing the priority or subordination of this Lease. Tenant's failure to execute such further instruments within ten (10) business days after demand shall constitute a material breach of this Lease.

15.3 **Quiet Enjoyment.** Notwithstanding subordination of this Lease, so long as Tenant pays the rent and other monetary sums due under this Lease and performs all of the Tenant's obligations hereunder, Tenant shall be entitled to the peaceful and quiet enjoyment of the Premises for the Lease Term, subject to the provisions of the Lease.

ARTICLE 16

NONLIABILITY AND INDEMNIFICATION OF LANDLORD

16.1 **Nonliability of Landlord.** Landlord shall not be liable to Tenant, and Tenant hereby waives all claims against Landlord, for any injury or damage to any person or property in or about the Premises, except injury or damage caused by the negligence or intentional misconduct of Landlord or its agents or employees. Landlord shall not be liable for any damage to person or property sustained by Tenant or any other person, caused by or resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Project or from the pipes, sprinklers, wires, appliances, plumbing, air-conditioning or lighting fixtures therein or from the roof, street or sub-surface whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Building or Project or from other sources. Landlord shall not be liable for any latent defect in the Premises or in the Project. Tenant shall give prompt notice to Landlord of any fire or accident within the Premises or the Project, or of any defects in the Project, the Premises or the Leasehold Improvements. Landlord shall not be liable for any damages arising from any act or omissions of any other tenant of the Building or Project.

16.2 **Limitation on Liability.** In consideration of the benefits accruing hereunder, Tenant and all successors and assigns covenant and agree that, in the event of any actual or alleged failure, breach or default hereunder by Landlord: (a) the sole and exclusive remedy shall be against the Landlord's interest in the Project; (b) no officer, director, shareholder and/or partner of Landlord shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction of the corporation or partnership as applicable); (c) no service of process shall be made against any officer, director, shareholder and/or partner of Landlord (except as may be necessary to secure jurisdiction of the corporation or partnership as applicable); (d) no officer, director, shareholder and/or partner of Landlord shall be required to answer or otherwise plead to any service of process; (e) no judgment will be taken against any officer, director, shareholder and/or partner of Landlord; (f) any judgment taken against any officer, director, shareholder and/or partner of Landlord may be vacated and set aside at any time nunc pro tunc; (g) no writ of execution will ever be levied against the assets of any officer, director, shareholder and/or partner of Landlord; (h) the obligations of Landlord under this Lease do not constitute personal obligations of the individual partners, directors, officers or shareholders of Landlord, and Tenant shall not seek recourse against the individual partners, directors, officers or shareholders of Landlord or any of their personal assets for satisfaction of any liability in respect to this Lease; and (i) these covenants and agreements are enforceable both by Landlord and also by any officer, director, shareholder and/or partner of Landlord.

16.3 **Indemnity.** Tenant shall defend, indemnify and hold Landlord harmless from and against any and all claims, actions, liability, costs and expenses, including attorneys' fees, in connection with any liability or injury or damage to person or property arising from: (a) Tenant's use or occupation of the Premises or any work, activity, condition or occurrence allowed or suffered by Tenant in or about the Premises; (b) any breach or failure to perform any obligation imposed on Tenant under this Lease or (c) any negligent or other tortious act or omission of Tenant or its assignees or subtenants or their respective agents, contractors, employees, customers, invitees or licensees. Upon notice from Landlord, Tenant shall, at Tenant's sole expense and by counsel satisfactory to Landlord, defend any action or proceeding brought against Landlord by reason of any such claim.

16.4 **Force Majeure.** Any covenants, conditions, provisions or agreements on the part of Landlord to perform any act for the benefit of Tenant shall not be deemed breached, nor shall Tenant's rent be abated if Landlord's performance is prevented or delayed, as a result of causes beyond the control of Landlord, such as fire, earthquake, casualty, inclement weather, acts of God, war, riot, insurrection, strikes, lockouts or boycotts, unavailability or shortages of labor, equipment or transportation, condemnation, pending litigation, and laws, regulations or requirements of any governmental authority.

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ARTICLE 17 INSURANCE

17.1 **Public Liability Insurance.** Tenant, at its sole cost, shall procure and maintain at all times during the Lease Term a policy of comprehensive broad form public liability insurance insuring Tenant and Listing Landlord as additionally insured against liability for personal injury, bodily injury or property damage arising out of the use, occupancy, or maintenance of the Premises, with a single combined liability limit of not less than Two Million Dollars (\$2,000,000). Such insurance shall insure performance by Tenant of the indemnity provisions of Section 16.3; however, the limits of such insurance shall not limit the liability of Tenant. During the Lease Terms, Tenant shall procure and maintain liability insurance. The foregoing insurance as of the Commencement Date shall be issued by a company or companies rated at least a A VII or better in Best's Insurance Guide, as such Guide is published from time-to-time. Thereafter, any subsequent insurance policies shall be issued by carriers who may or may not have a Best rating but who demonstrate financial stability comparable to an A VII Best rating.

17.2 **Fire and Extended Coverage Insurance.** Tenant, at its sole cost, shall procure and maintain at all times during the Lease Term a standard policy of fire and extended coverage insurance, with vandalism and malicious mischief endorsements, covering loss or damage to (a) all furniture, trade fixtures, equipment and other personal property owned by Tenant and located in the Project and (b) all property and tenant improvements installed by or on behalf of Tenant including Non-Building Standard Work and materials, in an amount not less than ninety percent (90%) of the full replacement cost thereof. Replacement value shall be determined by the insurer and shall be re-evaluated no less frequently than every three (3) years. The proceeds of such insurance shall be used for repair and replacement of the insured property. Upon termination of this Lease after a casualty as permitted under Article 13, the proceeds of the coverage described in (a) above shall be paid to Tenant and the proceeds of the coverage in (b) above shall be paid to Landlord.

17.3 **Other Insurance.** At all times during the Lease Term, Tenant shall maintain in effect workers' compensation insurance as required by law. Tenant agrees to maintain insurance in such reasonable amounts and such reasonable terms as would be maintained by a prudent tenant of comparable space in a similar building in Southern California.

17.4 **Policy Requirements.** All insurance required to be maintained or paid by Tenant hereunder shall: (a) name Landlord, Tenant and the beneficiary under any trust deed now or hereafter recorded that affects the Building as additional insured, as their respective interests appear; (b) contain a cross-liability endorsement; (c) include a standard non-contributing mortgages clause (in favor of said beneficiary); (d) include a standard waiver by the insurer of any right of subrogation against Landlord, its agents, employees and representatives, by reason of any payment under such policy or any act or omission of Landlord, its agents, employees or representatives; (e) provide that no cancellation or reduction of coverage or other modification shall be effective until at least thirty (30) days after written notice to Landlord and said beneficiary; (f) provide that coverage is primary and non-contributing with respect to any policies carried by Landlord and that any policies carried by Landlord shall be excess insurance as relates to Tenant's negligence; (g) be issued by responsible insurers acceptable to Landlord and licensed to do business in the State of California; and (h) be satisfactory to Landlord and said beneficiary in all other respects. Tenant shall deliver to Landlord, prior to the Commencement Date, certificates of insurance evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to Landlord. In the event Tenant fails to procure and maintain such insurance, Landlord may (but shall not be required to) procure such insurance at Tenant's expense after ten (10) days prior written notice to Tenant. Tenant shall furnish Landlord with renewals or binders within twenty (20) days prior to the expiration of each such policy.

17.5 **Project Insurance.** Landlord agrees to maintain a standard policy of fire and extended coverage insurance for the Project (excluding any property which Tenant is obligated to insure pursuant to the provisions of Sections 17.1 and 17.2) and public liability insurance, in such reasonable amounts and on such reasonable terms and conditions as would be maintained by a prudent owner of a similar building in Southern California. Tenant acknowledges that it has no right to receive any proceeds from any such insurance policies carried by Landlord, although Landlord shall use such proceeds to repair and reconstruct the Project and the Premises, unless Landlord is excused from this obligation pursuant to the provisions of Article 13.

17.6 **Waiver of Subrogation.** The parties release each other and their respective authorized representatives from any claims for loss or damage to person or property caused by or resulting from fire or any of the risks insured against under any insurance policy in force at the time of such loss or damage. Each party shall cause each insurance policy obtained by it to provide that the insurer waives all rights of recovery by way of subrogation against the other party in connection with any damage covered by such policy.

ARTICLE 18 DEFAULT; REMEDIES

18.1 **Default by Tenant.** The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant:

(a) Failure to pay when due the Basic Annual Rent, Additional Rent, or any other monetary sums required to be paid by Tenant hereunder, if such failure continues for three (3) days after written notice by Landlord to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under Section 1161, et seq., of the California Code of Civil Procedure.

(b) Abandonment or vacation of the Premises by Tenant.

(c) Failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, if such failure continues for thirty (30) days after written notice by Landlord to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under Section 1161, et seq., of the California Code of Civil Procedure. If the nature of such default is such that it cannot reasonably be cured within such thirty-day period, Tenant shall not be deemed to be in default if Tenant commences such cure within such period and thereafter diligently prosecutes the same to completion.

(d) An event of bankruptcy, which shall be deemed to occur if Tenant: (i) obtains or becomes subject to an order for relief under the Bankruptcy Code, Title 11 of the United States Code; (ii) obtains or becomes subject to an order or decree of insolvency under state law; (iii) makes a general assignment for the benefit of creditors; (iv) consents to or suffers the appointment of a receiver or trustee for any substantial part of its assets, unless vacated within thirty (30) days; (v) consents to or suffers an attachment, execution or other judicial seizure of any substantial part of its assets or its interest under this Lease, unless released or satisfied within thirty (30) days.

18.2 **Landlord's Remedies.** In the event of any such default by Tenant, Landlord shall have the remedies specified in this Section 18.2, in addition to any other remedies now or hereafter available to Landlord at law or in equity.

(a) **Termination of Lease.** Landlord can terminate this Lease and Tenant's right to possession of the Premises by giving written notice of termination. No act by Landlord other than giving written notice to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's

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initiative to protect Landlord's interest under this Lease shall not constitute such a termination. On termination, Landlord has the right to recover from Tenant:

- (i) the worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus
- (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after the date of termination until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; plus
- (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus
- (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's default; plus
- (v) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable California law.

As used in subparagraphs (a)(i) and (a)(ii) above, the "worth at the time of award" shall be computed by allowing interest at the maximum permissible legal rate. As used in subparagraphs (a)(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%).

(b) **Continuation of Lease.** Landlord can continue this Lease in full force and effect without terminating Tenant's right of possession, and Landlord shall have the right to collect rent and other monetary charges when due. Landlord may do all acts necessary to maintain or preserve the Premises, as Landlord deems reasonable and necessary, including removal of personal property from the Premises and storage of the same in a public warehouse at Tenant's expense and risk. Landlord shall have the right to enter the Premises and re-let them, or any part thereof, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises. Any rents received by the Landlord from such reletting shall be applied to the payment of: (i) first, any indebtedness other than rent due hereunder from Tenant to Landlord; (ii) second, the costs of such reletting; (iii) third, the cost of any alterations and repairs to the Premises; and (iv) fourth, the payment of rent due and unpaid hereunder. The residue, if any, shall be held by Landlord and applied in payment of future amounts as the same may become due and payable hereunder if the rent from such reletting during any month is less than the rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord immediately upon demand. Such deficiency shall be calculated and paid monthly. No re-entry or taking possession of the Premises by Landlord pursuant to this Section 18.2(b) shall be construed as an election to terminate this Lease unless a written notice of termination is given by Landlord to Tenant or unless the termination is decreed by a court of competent jurisdiction. At any time after such reletting without termination, Landlord may elect to terminate this Lease.

18.3 Performance By Landlord. If Tenant fails to pay any sum of money or perform any other act to be performed by Tenant hereunder and such failure continues for ten (10) days after notice by Landlord, Landlord may (but shall not be obligated to) make such payment or perform such other act without waiving or releasing Tenant from its obligations. All sums so paid by Landlord and all necessary incidental costs, together with interest thereon at the rate specified in Section 18.5 shall be payable to Landlord on demand. Landlord shall have the same rights and remedies in the event of non-payment by Tenant as in the case of default by Tenant in the payment of the rent.

18.4 Late Charge. The parties acknowledge that late payment by Tenant of Basic Annual Rent, Additional Rent or other sums due hereunder will cause Landlord to lose the use of that money and to incur costs and expenses not contemplated by this Lease. The exact amount of which will be extremely difficult and impractical to determine, including, but not limited to, administrative and collection costs and accounting expenses. Therefore, if any installment of Basic Annual Rent or Additional Rent or any other sum due from Tenant is not received by Landlord when due, it shall bear interest at the rate specified in Section 18.5, and, if not received by Landlord within five (5) days after the due date, Tenant shall pay to Landlord an additional sum equal to ten percent (10%) of the overdue amount as a late charge. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall not constitute a waiver of Tenant's default with respect to such overdue amount or prevent Landlord from exercising any other rights and remedies available hereunder or pursuant to law now or hereafter in effect. Such late charge shall be considered additional rent due under this Lease.

18.5 Interest. Any amount due from Tenant to Landlord which is not paid when due shall bear interest at the maximum rate per annum which Landlord is permitted by law to charge, from the date such payment is due until paid, but the payment of such interest shall not excuse or cure any default by Tenant under this Lease.

18.6 Default by Landlord. Landlord shall not be in default under this Lease unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Building ("First Mortgagee") whose name and address have been furnished to Tenant in writing, specifying the nature of the alleged failure to perform by Landlord; provided, however, that if the nature of Landlord's obligations are such that more than thirty (30) days are reasonably required for performance, Landlord shall not be in default if Landlord commences performance within such thirty-day period and thereafter diligently prosecutes the same to completion. If Landlord has not performed or commenced performance of the obligation required of Landlord within said thirty-day period, Tenant agrees that Landlord shall not be in default under this Lease unless Tenant has first given notice of such failure to the First Mortgagees and Landlord has failed

either: (a) to perform such obligation within thirty (30) days after such notice; or (b) if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for performance, to commence performance within thirty days after First Mortgagee's receipt of such notice and thereafter diligently to prosecute the same to completion. Nothing herein shall be deemed to obligate any First Mortgagee to perform any of the Landlord's obligations under the Lease.

ARTICLE 19 GENERAL PROVISIONS

19.1 Notices. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by certified mail, return receipt required, postage prepaid, by nationally or locally recognized overnight or same day delivery service which provides for acknowledgment of delivery (e.g., Federal Express), Email ("Email"), or by telefacsimile ("FAX") machine capable of confirming transmission and receipt. Notices to Landlord and Tenant shall be delivered to the address set forth in Sections 1.1 and 1.2 (except that upon Tenant's taking possession of the Premises, the premises shall be the address for Notices to Tenant), and effective upon personal delivery or three (3) days after deposit in

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the U.S. Mail. Either party may change its notice address upon written notice to the other party, except that Landlord may in any event use the Premises as Tenant's address for notice purposes after the Commencement Date.

19.2 Estoppel Certificates. Tenant, within ten (10) days after written request from Landlord, shall execute, acknowledge and deliver to Landlord a written statement certifying: (a) that this Lease is in full force and effect and unmodified (or, if modified, stating the nature of all such modifications); (b) the date to which the rent and other charges have been paid in advance, if any; and (c) that, to Tenant's best knowledge, there are no uncured defaults on the part of Landlord, or specifying the nature of such defaults if any are claimed. Any such statement may be conclusively relied upon by any auditor, creditor, prospective purchaser or encumbrancer of the Premises or the Project or any part thereof. Tenant's failure to deliver such statement within said ten-day period shall constitute a conclusive acknowledgement by Tenant: (a) that this Lease is in full force and effect, without modification except as may be represented by Landlord; (b) that no more than one month's rent has been paid in advance; and (c) that there are no uncured defaults in Landlord's performance.

19.3 Transfer of Landlord's Interest. In the event of a sale assignment, exchange or other disposition (collectively, "transfer") of Landlord's interest in the Project, other than a transfer for security purposes only, Landlord shall be relieved of all obligations and liabilities accruing hereunder after the effective date of said transfer, provided that any Security Deposit or other funds then in the hands of Landlord in which Tenant has an interest are delivered to Landlord's successor. This Lease shall not be affected by any such transfer, and Tenant agrees to attorn to the transferee, provided all Landlord's obligations hereunder are assumed in writing by the transferee. The obligations to be performed by Landlord under this Lease shall be binding on Landlord's successors and assigns only during their respective periods of ownership.

19.4 Exhibits. All exhibits referred to herein are attached hereto and incorporated by reference.

19.5 Entire Agreement. This Lease, together with all addenda, exhibits and riders attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are superseded.

19.6 Modification. The provisions of this Lease may not be modified, changed, supplemented, discharged or terminated, except by a written instrument signed by both parties.

19.7 Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. Any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by Landlord of any performance by Tenant after the time such performance is due shall not be deemed a waiver of any preceding breach by Tenant other than the failure of performance so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance. No delay or omission by either party in exercising any relief or power accruing upon non-compliance or failure of performance by the other party shall impair or be construed as a waiver thereof, unless an intention to waive is expressly set forth in a writing signed by the waiving party.

19.8 Partial Invalidity. If any term or provision of this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

19.9 Modification for Lender. If, in connection with obtaining construction, interim or permanent financing for the Project, the lender shall request reasonable modifications to this Lease as a condition to such financing, Tenant will not unreasonably withhold or delay its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder or materially and adversely affect the leasehold interest created hereby or Tenant's rights hereunder.

19.10 Cost of Suit; Attorneys' Fees. If Landlord should bring suit for possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provisions of this Lease, or any other relief against Tenant hereunder, or in the event of any other litigation between the parties with respect to this Lease, then the prevailing party shall be entitled to recover all costs and expenses, including without limitation, its actual professional fees such as appraisers', accountants', and attorneys' fees, incurred by the prevailing party, which obligation on the part of the non-prevailing party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment. If Landlord employs a collection agency to recover delinquent charges, Tenant agrees to pay all collection agency fees charged to Landlord in addition to Rent, late charges, interest and other sums payable under this Lease. Tenant shall pay a charge of seventy-five dollars (\$75) to Landlord for preparation of a demand for delinquent rent. If Landlord is named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy hereunder, Tenant shall pay to Landlord its costs and expenses incurred in such suit, including without limitation, its actual professional fees such as appraisers', accountants', and attorneys' fees. If Tenant is named as a defendant in any suit brought against Landlord in connection with or arising out of Landlord's ownership of the Project, the Building or the Premises hereunder, Landlord shall pay to Tenant its costs and expenses incurred in such suit, including without limitation, its actual professional fees such as appraisers', and attorneys' fees.

19.11 Time of Essence. Time is of the essence of this Lease.

19.12 Binding Effect. Subject to the provisions of Article 14 restricting assignment or subletting by Tenant and subject to Section 19.3 regarding transfer of Landlord's interest, all of this Lease shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

19.13 Governing Law. This Lease shall be governed, construed and enforced in accordance with the laws of the State of California.

19.14 Corporation or Partnership as Tenant. If Tenant is a corporation, each person signing this Lease on behalf of Tenant represents and warrants that he has full authority to do so and that this Lease binds the corporation. Concurrently with the execution of this Lease, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's Board of Directors authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord. If Tenant is a partnership each person signing this Lease for Tenant represents and warrants that he is a general partner of the partnership, that he has full authority to sign for the partnership and that this Lease binds the partnership and all general partners of the partnership. Tenant shall give written notice to Landlord of any general partner's withdrawal or addition. Concurrently with the execution of this Lease, Tenant shall deliver to Landlord a copy of Tenant's recorded statement of partnership or certificate of limited partnership.

19.15 Identification of Tenant. If more than one person executes this Lease as Tenant: (a) each of them is jointly and severally liable for the keeping, observing and performing of all of the terms, covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant; (b) the term "Tenant" shall mean and include each of them jointly and severally; and (c) the act of or notice from, or notice or refund to, or the signature of any one or more of them, with respect to the tenancy or this Lease, including, but not limited to, any renewal, extension, expiration, termination or modification of this Lease, shall be binding upon each and all of the persons executing this Lease as Tenant.

19.16 Provisions as Covenants and Conditions. All provisions to be performed, complied with or satisfied by Landlord or Tenant, whether covenants or conditions, shall be deemed to be both covenants and conditions.

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19.17 **Brokers.** Tenant represents and warrants to Landlord that to Tenant's knowledge no broker, agent or finder negotiated or was instrumental in negotiating or consummating this Lease (other than the broker(s) identified in Section 1.12) and that Tenant knows of no other real estate broker, agent or finder who is, or might be entitled to a commission or compensation in connection with this Lease. Tenant shall indemnify and hold Landlord harmless from and against all liability or damages resulting from any claims that may be asserted against Landlord by any broker, agent or finder undisclosed by tenant herein.

19.18 **Building Name.** Tenant shall not, without the written consent of Landlord, use the name of the Project for any purpose other than as the address of the business to be conducted by Tenant in the Premises.

19.19 **Recording.** Neither Landlord nor Tenant shall record this Lease nor a short form memorandum of this Lease without the prior written consent of the other.

19.20 **Lease Incentives.** If Tenant is in default under this Lease at any time during the Lease Term and without limiting the foregoing, if Landlord has given Tenant any lease incentives or other inducements or consideration in connection with this Lease, including without limitation, any abatement of rent but excluding the Tenant Improvement Allowance ("Incentives") then the Incentives will terminate and Landlord may recover from Tenant the value of all such incentives received by Tenant in addition to all other damages recoverable by Landlord pursuant to the provisions of this Lease.

LANDLORD:
PROMONTORY ASSOCIATES
A California General Partnership

By: Promontory Associates, LLC

Its: General Partner

By: Carleton Management, Inc.

Its: Manager

By: 
John C. Harris

Its: Chief Financial Officer

Date: 7/29/14

TENANT:
PHUNWARE INC.,
A Texas Corporation
DSL Aune

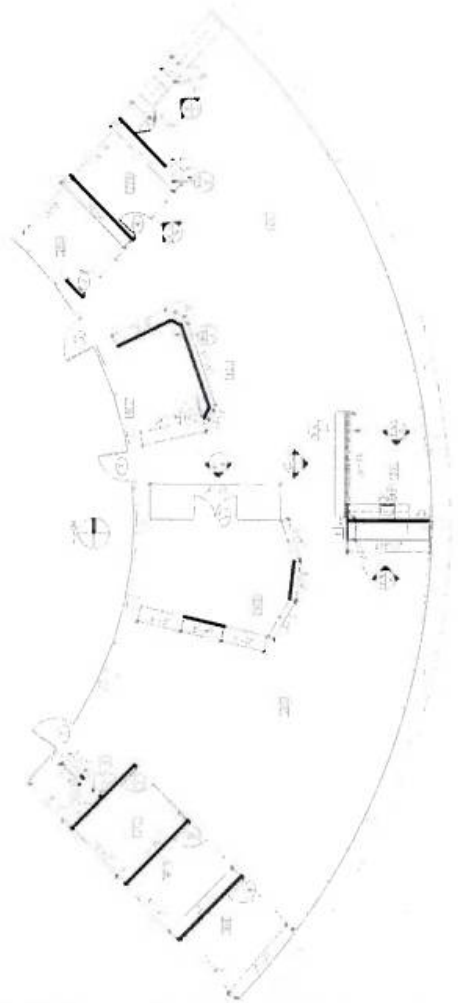
By: 
Matt Aune

Its: Chief Financial Officer

Date: 7/29/14

MA
DP

SUITE 170
5,284 RENTABLE SQUARE FEET



ROOM LEGEND

GENERAL NOTES

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Correspondence: Staff neurologist, Department of Neurology, University of Cambridge, Addenbrookes Hospital, 100 Brookings Drive, Cambridge CB2 2RQ, UK.
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Study	Sample size	Study design	Intervention	Outcome
1. [10]	100	Randomized controlled trial	Hand hygiene	Reduction in bacterial colonization
2. [11]	100	Randomized controlled trial	Hand hygiene	Reduction in bacterial colonization
3. [12]	100	Randomized controlled trial	Hand hygiene	Reduction in bacterial colonization
4. [13]	100	Randomized controlled trial	Hand hygiene	Reduction in bacterial colonization
5. [14]	100	Randomized controlled trial	Hand hygiene	Reduction in bacterial colonization
6. [15]	100	Randomized controlled trial	Hand hygiene	Reduction in bacterial colonization
7. [16]	100	Randomized controlled trial	Hand hygiene	Reduction in bacterial colonization
8. [17]	100	Randomized controlled trial	Hand hygiene	Reduction in bacterial colonization
9. [18]	100	Randomized controlled trial	Hand hygiene	Reduction in bacterial colonization
10. [19]	100	Randomized controlled trial	Hand hygiene	Reduction in bacterial colonization

SPECIFICATIONS

NOTES

PLUMBING KEY NOTES

T1-4

PARTITION PLAN

PHUNWARE
Promontory
11440 West Bernardo Ct.,
Suite 170
San Diego, California 92127

REBN DESIGN
10001 15th Ave. S., Suite 100
Boulder, CO 80501
Tel: 303.440.1000
Fax: 303.440.1001
www.rebn.com



1. The company is a public company, and the CEO is not a director of the company.

See 27 October 2007 article, "A new kind of 'no' is taking hold for leaders in developing Africa's private sector." The article is not an advertisement for the book, "Good from bad: how to turn adversity into advantage."

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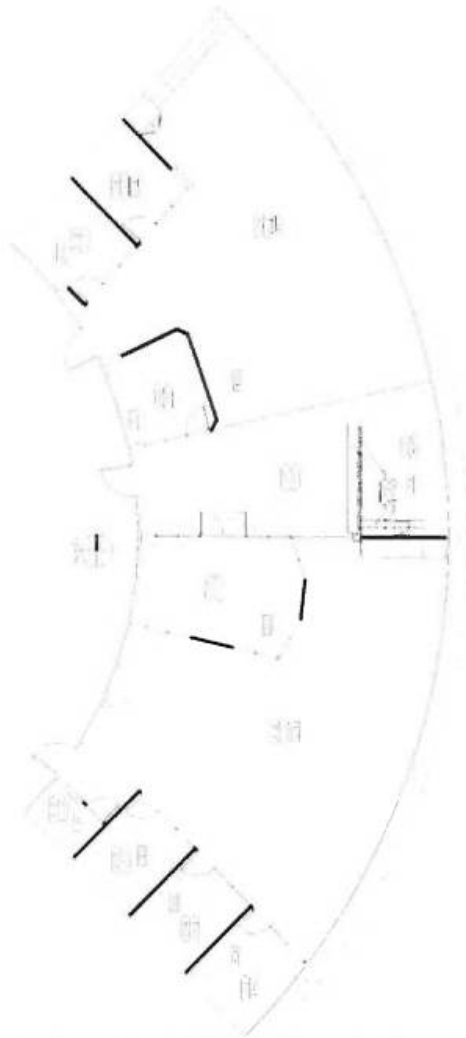
Promontory
11440 West Bernardo Ct.
Suite 170
San Diego, California 92127

POWER/DATA PLAN

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EXHIBIT "A-4"



FINISH SPECIFICATIONS	
1.1	CEILING
1.2	WALL
1.3	FLOOR
1.4	DOOR
1.5	WINDOW
1.6	STAIR
1.7	ELEVATOR
1.8	MECHANICAL
1.9	ELECTRICAL
1.10	TELEPHONE
1.11	PA SYSTEM
1.12	VIDEO
1.13	COMPUTER
1.14	SECURITY
1.15	ENVIRONMENTAL
1.16	LANDSCAPE
1.17	OUTDOOR
1.18	INTERIOR
1.19	EXTERIOR
1.20	FINISH

GENERAL NOTES

1. All work shall be in accordance with the latest edition of the Building Code of the City of San Diego.
2. All materials and workmanship shall be of the highest quality and shall be subject to inspection and approval by the City Engineer.
3. All work shall be completed within the specified time frame.
4. All work shall be completed within the specified budget.
5. All work shall be completed within the specified scope.
6. All work shall be completed within the specified location.
7. All work shall be completed within the specified time frame.
8. All work shall be completed within the specified budget.
9. All work shall be completed within the specified scope.
10. All work shall be completed within the specified location.

ROOM LEGEND

101	RECEPTION
102	LOBBY
103	CONFERENCE
104	OFFICE
105	RESTROOM
106	STAIR
107	ELEVATOR
108	MECHANICAL
109	ELECTRICAL
110	TELEPHONE
111	PA SYSTEM
112	VIDEO
113	COMPUTER
114	SECURITY
115	ENVIRONMENTAL
116	LANDSCAPE
117	OUTDOOR
118	INTERIOR
119	EXTERIOR
120	FINISH

PHUNWARE

Pratt & Whitney
1140 West Bernardo Ct.
Suite 170
San Diego, California 92127

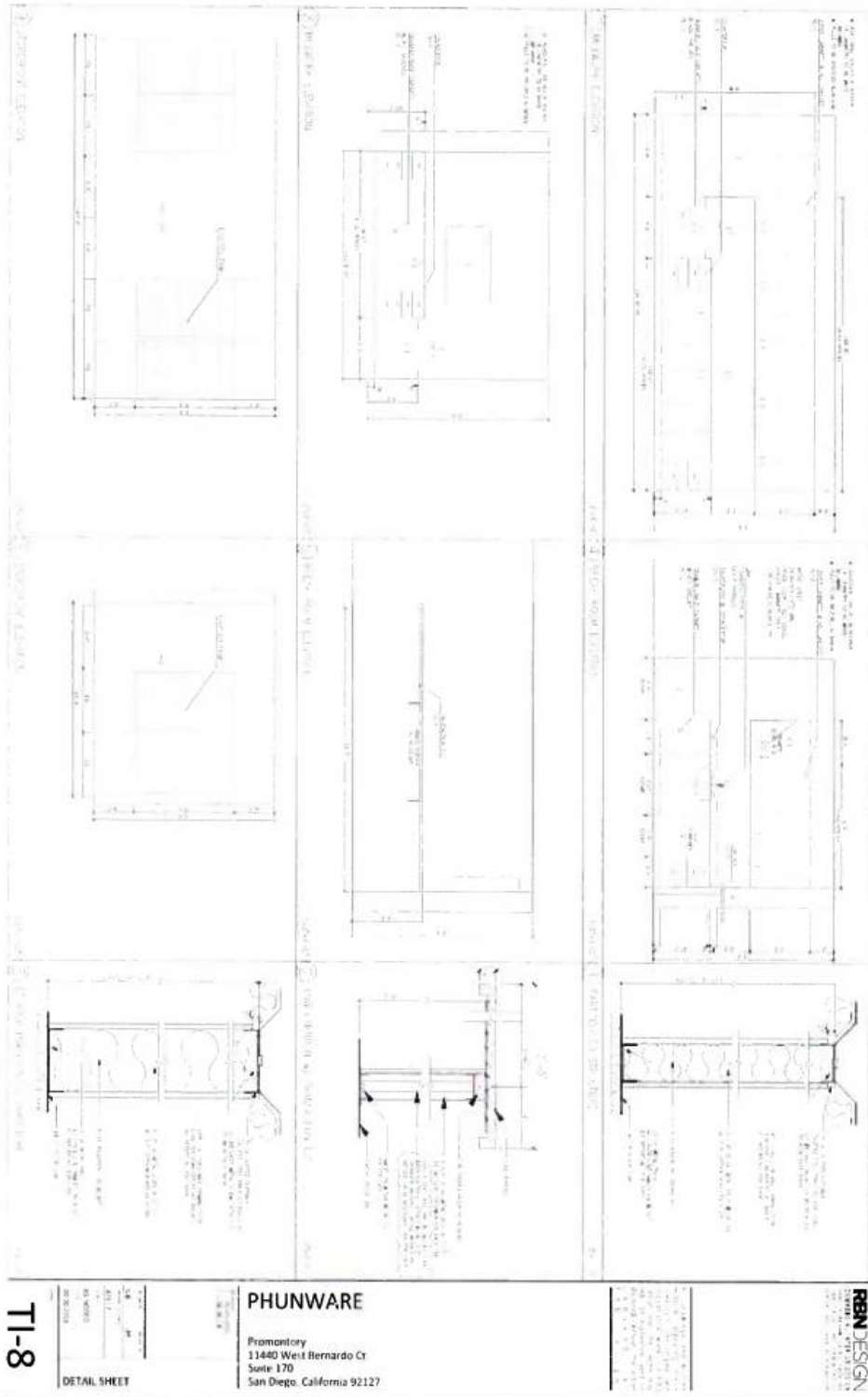
PHUNWARE
1140 West Bernardo Ct.
Suite 170
San Diego, California 92127



TI-7

FINISH PLAN

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EXHIBIT "A-5"



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EXHIBIT "B"

LEGAL DESCRIPTION OF LAND

Lots 1 and 2 of the Montadura Center in the City of San Diego, County of San Diego, State of California, according to map thereof No. 11564 filed in the office of the County Recorder of San Diego County.

Commencing at a point on the Northwestern boundary of said Parcel Map No. 13778, said point bears South 17° 57' 56" West, 336.42 feet from the most Northerly corner thereof, said point also being the beginning of a tangent 232.00 foot radius curve, concave southwesterly, a radial line to said point bears North 17° 31' 43"; thence along the arc of said curve through a central angle of 51° 28' 17", a distance of 208.72 feet; thence South 21° 00' 00" East, 45.00 feet to the true point of beginning of the reference line herein described; thence continuing South 21° 00' 00" East, 40.00 feet.

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INITIAL

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EXHIBIT "D"
WORK LETTER AGREEMENT

1. **PLANS AND SPECIFICATIONS FOR THE PREMISES.**

- (a) Landlord shall prepare, at Landlord's expense, a space plan for the Premises with sufficient detail to permit the preparation of working drawings. Tenant shall deliver written approval of the space plan to Landlord within ten (10) working days after receipt.
- (b) Landlord has the right to approve the space plan, but approval shall not be unreasonably withheld, conditioned or delayed.
- (c) Upon approval of the space plan by Landlord and Tenant, working drawings shall be prepared by Landlord's architect or engineer, at Landlord's expense. Tenant shall deliver written approval of the working drawings within ten (10) working days after receipt of drawings subsequent to the signing of a Lease.

2. **IMPROVEMENT WORK.**

- (a) Landlord shall provide the Premises in a shell state.
- (b) Landlord's contractor shall complete all improvements to the Premises, at Landlord's expense, in accordance with the approved space plan and working drawings.

3. **COMPLETION AND COMMENCEMENT DATE.**

If the Commencement Date is delayed for any of the following reasons, Tenants shall be liable for payment of rent to Landlord for the period of such delay as if the Lease Term had commenced:

- (1) Tenant's failure to approve or provide the space plan or to approve the working drawings by the dates specified above; or
- (2) Tenant's changes in the space plan or the working drawings after the approval thereof by Landlord and Tenant.

Initial(s): MS

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JS

EXHIBIT "E"
NOTICE OF LEASE TERM DATES

This Notice relates to the Lease Agreement ("Lease") dated July 23, 2014, by and between PROMONTORY ASSOCIATES as ("Landlord") and Phunware Inc., a ~~Texas~~ ^{DELAWARE} Corporation as ("Tenant") covering Premises identified as Suite 170, located at 11440 West Bernardo Court, San Diego, California 92127 ("Premises"). Landlord and Tenant hereby confirm the following:

1. Tenant has accepted possession and entered into occupancy of the Premises.
2. Tenant has acknowledged that the Premises are substantially complete in accordance with the terms of the Lease, and that there is no deficiency in construction of the Premises or the Leasehold Improvements.
3. The Lease Term commenced on _____, 20____ ("Commencement Date"), continues for a term of _____ years and _____ months, and ends on _____, 20____.
4. In accordance with the terms of the Lease, rent commenced to accrue on _____, 20____.
5. If the Commencement Date is other than the first day of a calendar month, the first monthly payment contains a pro rata adjustment. Each payment thereafter shall be for the full amount of the monthly installment provided for in the Lease.
6. Rent is due and payable in advance on the first day of each and every calendar month during the Lease Term. Rent checks should be made payable to PROMONTORY ASSOCIATES, c/o Carleton Management, Inc. 11440 West Bernardo Court, Suite 240, San Diego, CA 92127.
7. Rent has not been paid in advance except as provided by the Lease terms, and a Security Deposit in the sum of \$_____ has been delivered to Landlord.
8. The Lease is in full force and effect, and has not been assigned, modified, supplemented or amended in any way.

LANDLORD:
PROMONTORY ASSOCIATES
A California General Partnership

By: Promontory Associates, LLC

Its: General Partner

By: Carleton Management, Inc.

Its: Manager

By: _____
John C. Harris

Its: Chief Financial Officer

Date: _____

TENANT:
PHUNWARE INC.,
A ~~Texas~~ ^{DELAWARE} Corporation

By: _____
Matt Aune

Its: Chief Financial Officer

Date: _____

Initial(s): MS

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DX

EXHIBIT "F"
BUILDING RULES AND REGULATIONS

1. No sign, placard, picture, advertisement, name or notice shall be installed or displayed on any part of the outside of the Building without the prior written consent of Landlord. Landlord shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors and walls shall be printed, affixed or inscribed at the expense of Tenant by a person chosen by Landlord, using materials of Landlord's choice and in a style and format approved by Landlord.
2. Tenant must use Landlord's window coverings in all exterior window offices. To preserve a uniform and pleasing appearance of the building from the exterior, Tenant agrees not to install or cause to be installed in the Premises any window coverings other than those provided by the Landlord. No awning shall be permitted on any part of the Premises. Tenant shall not place anything against or near glass partitions or doors or windows which may appear unsightly from outside the Premises. Window coverings and carpeting shall be cleaned and repaired at Tenant's expense.
3. Tenant shall be allowed to alter or decorate the interior of said Premises to Tenant's specifications subject to obtaining the prior written consent of Landlord. Tenant shall not make or suffer to be made, any other alterations, structural or otherwise to the Premises without the prior written consent of Landlord.
4. Tenant shall not obstruct any sidewalks, halls, passages, exits, entrances, elevators, stairways and Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Landlord would be prejudicial to the safety, character, reputation and interest of the Building and its tenants; provided that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. No tenant and no employee or invitee of any tenant shall go upon the roof of the Building.
5. The directory of the Building will be provided exclusively for the display of the name and location of Tenants only, and Landlord reserves the right to exclude any other names therefrom.
6. All cleaning and janitorial services for the Building and the Premises shall be provided exclusively through Landlord, and except with the written consent of Landlord, no person or persons other than those approved by Landlord shall be employed by Tenant or permitted to enter the Building for the purposes of cleaning the same. Tenant shall not cause any unnecessary labor by carelessness or indifference to the good order and cleanliness of the Premises. Landlord shall not in any way be responsible to any Tenant for any loss of property on the Premises, however occurring, or for any damage to any Tenant's property by the janitor or any other employee or any other person.
7. Landlord will furnish Tenant, free of charge, with two keys to each door lock in the Premises. Landlord may make a reasonable charge for any additional keys. Tenant shall not make or have made additional keys, and Tenant shall not alter any lock or install a new additional lock or bolt on any door of its Premises. Tenant, upon the Termination of its tenancy, shall deliver to Landlord the keys of all doors which have been furnished to Tenant, and in the event of loss of any keys so furnished shall pay Landlord therefore.
8. If Tenant requires telegraphic, telephonic, burglar alarm or similar services, it shall first obtain and comply with, Landlord's instructions in their installation.
9. Any freight elevator shall be available for use by all tenants in the Building, subject to such reasonable scheduling as Landlord in its discretion shall deem appropriate. No equipment, materials, furniture, packages, supplies, merchandise or other property will be received in the Building or carried in the elevators except between such hours and in such elevators as may be designated by Landlord.
10. Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by law. Landlord shall have the right to prescribe the weight, size and position of all equipment, materials, furniture or other property brought into the Building. If heavy objects are considered necessary by Tenant, such heavy objects shall be located on platforms approved by Landlord with weight properly distributed. Business machines and mechanical equipment belonging to Tenant, which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to Landlord or to any tenants in the Building, shall be placed and maintained by Tenant at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration. The persons employed to move such equipment or other property for any cause, and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant property for any cause and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant.
11. Tenant shall not use or keep in the Premises any kerosene, gasoline or inflammable or combustible fluid or material other than those limited quantities necessary for the operation or maintenance of office equipment. Tenant shall not use or permit to be used in the Premises any foul or noxious gas or substance or permit or allow the Premise to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors or vibrations, nor shall Tenant bring into or keep in or about the Premises any birds or animals.
12. Tenant shall not use any method of heating or air-conditioning other than that supplied by Landlord. If you require overtime air conditioning or heating, please advise the Property Management Office prior to 3:00 pm of the day overtime usage on Saturday or Sunday. Overtime usage is billed on an hourly rate. For current rate, please call the Property Management Office. Each Tenant is allowed three calls per month. The fourth and subsequent call in any month will be billed at the hourly rate plus \$10.00 per call for computer programming.
13. Tenant shall not waste electricity water or air-conditioning and agrees to cooperate fully with Landlord to assure the most effective operation of the Building's heating and air-conditioning and to comply with any governmental energy-saving rules, laws or regulations of which Tenant has actual notice, and shall refrain from attempting to adjust controls other than room thermostats installed for Tenant's use. Tenant shall keep corridor doors closed.
14. Landlord reserves the right, exercisable without notice and without liability to Tenant, to change the name and street address of the Building.
15. The Building hours are 7:00 am to 7:00 pm Monday through Friday. Landlord reserves the right to exclude from the building between the hours of 6 pm and 7 am the following day, or such other hours as may be established from time to time by Landlord, and on Sundays and legal holidays, any person unless that person is known to the person or employee in charge of the Building and has a pass or is properly identified. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to Landlord for all acts of such persons. Landlord shall not be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. Landlord reserves the right to prevent access to the Building in case of invasion, mob, riot, public excitement or other commotion by closing the doors or other appropriate action.

Handwritten initials in blue ink, appearing to be 'MS' on the top line and 'CH' on the bottom line, each with a horizontal line through them.

16. Tenant shall close and lock the doors of its Premises and entirely shut off all water faucets or other water apparatus, and electricity, gas or air outlets before Tenant and its employees leave the Premises. Tenant shall be responsible for any damage or injuries sustained by other tenants or occupants of the Building or by Landlord for noncompliance with this rule.
17. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substances of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose employees or invitees, shall have caused it.
18. Tenant shall not sell, or permit the sale at retail, of newspapers, magazines, periodicals, theater tickets or any other goods or merchandise to the general public in or on the Premises. Tenant shall not make any room-to-room solicitation of business from other tenants in the Building. Tenant shall not use the Premises for any business or activity other than that specifically provided for in Tenant's Lease.
19. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.
20. Tenant shall not mark, drive nails, screw or drill into the partitions, woodwork or plaster or in any way deface the Premises or any part thereof, except to install normal wall hangings. Landlord reserves the right to direct electricians as to where and how telephone and telegraphic wires are to be introduced to the Premises. Tenant shall not cut or bore holes for wires. Tenant shall not affix any floor covering to the floor of the Premises in any manner except as approved by Landlord. Tenant shall repair any damage resulting from noncompliance with this rule.
21. Tenant shall not install, maintain or operate upon the Premises any vending machine without the written consent of Landlord.
22. Canvassing, soliciting and distribution of handbills or any other written material, and peddling in the Building are prohibited and each tenant shall cooperate to prevent same.
23. Landlord reserves the right to exclude or expel from the Building any person who, in Landlord's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Building Rules and Regulations.
24. Tenant shall store all its trash and garbage within its Premises. Tenant shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner for trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with directions issued from time to time by Landlord.
25. The Premises shall not be used for the storage of merchandise held for sale to the general public, or for lodging or for manufacturing of any kind, nor shall the Premises be used for any improper, immoral or objectionable purpose. No cooking shall be done or permitted by any tenant on the Premises, except that used by tenant of Underwriters' Laboratory-approved equipment for brewing coffee, tea, hot chocolate and similar beverages shall be permitted, and the use of a microwave shall be permitted, provided that such equipment and use is in accordance with all applicable federal, state, county and city laws, codes, ordinances, rules and regulations.
26. Tenant shall not use in any space or in the public hall of the building any hand trucks except those equipped with rubber tires and side guards or such other material-handling equipment as Landlord may approve. Tenant shall not bring any other vehicles of any kind into the Building.
27. Without the written consent of Landlord, Tenant shall not use the name of the Building in connection with or in promoting or advertising the business of Tenant except as Tenant's address.
28. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.
29. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed.
30. The requirements of Tenant will be attended to only upon appropriate application to the property manager of the Building by an authorized individual. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from Landlord and no employee of Landlord will admit any person (Tenant or otherwise) to any office without specific instructions from Landlord.
31. Tenant shall not park its vehicles in any parking areas designated by Landlord as areas for parking by visitors to the Building. Tenant shall not leave vehicles in the Building parking areas overnight nor park any vehicles in the Building parking areas other than automobiles, motorcycles, motor driven or non-motor driven bicycles or four-wheeled trucks. Landlord may, in its sole discretion, designate separate areas for bicycles and motorcycles.
32. Landlord may waive any one or more of these Rules and Regulations for the benefit of Tenant or any other tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of Tenant or any other tenant, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Building.
33. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease of premises in the Building.
34. Landlord reserves the right to make such other and reasonable Rules and Regulation as, in its judgment, may from time to time be needed for safety and security, for care and cleanliness of the Building and for the preservation of good order therein. Tenant agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted.
35. Tenant shall be responsible for the observance of all of the foregoing rules by Tenant's employees, agents, clients, customers, invitees, and guests.
36. Tenant may reserve conference room by calling Landlord. Usage is billed at an hourly rate. For current rate please call the Property Management office.
37. Prior to using the Exercise Room, Tenant and each of its employees and authorized guests shall sign and deliver to Landlord a release form.

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EXHIBIT "G"
PURCHASE ORDER
PROMONTORY

To: Promontory Associates
c/o Carleton Management, Inc.
11440 West Bernardo Court Suite 240
San Diego, CA 92127
858.613.1000

From: _____

Contact: _____

Phone: _____

TENANT IDENTIFICATION SIGNS

SUITE IDENTIFICATION

Suite # _____

_____ Suite Number in tactile + Braille size 3" x 6"

Interior Glass _____

Acrylic Plaque _____

Copy : Upper and lower case. Futura Med. White vinyl. Maximum letter height ¾", 18 characters maximum per line including punctuation and spaces; indicate space with a slash (/).

Line 1 _____

Line 2 _____

Line 3 _____

Vinyl charges including production : \$37.50
Installation: 75.00
Total Due: \$112.50

Please make checks payable to: PROMONTORY ASSOCIATES

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EXHIBIT "G"

**PROMONTORY
LOBBY DIRECTORY
ORDER FORM**

PROMONTORY ASSOCIATES
C/O CARLETON MANAGEMENT, INC.
11440 WEST BERNARDO COURT, SUITE 240
SAN DIEGO, CA 92127

TENANT INFORMATION

FROM: _____

CONTACT: _____
PHONE: _____

TENANT DIRECTORY IDENTIFICATION

SUITE NUMBER: _____

HOW COMPANY SHOULD BE LISTED ON DIRECTORY:

PLEASE TYPE IN UPPER CASE _____

TENANT'S SIGNATURE _____

TOTAL CHARGE FOR SERVICE \$69.94
===

PLEASE MAKE CHECK PAYABLE TO PROMONTORY ASSOCIATES

Initial(s): MB
AD

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EXHIBIT "H"

RELEASE

The undersigned hereby fully and forever releases, acquits and discharges Promontory Associates, a California general partnership ("Landlord"), and each of its officers, directors, shareholders, employees, agents, assigns, successors-in-interest, transferees and partners (individually and collectively, "Affiliates"), of and from all known and unknown obligations, liabilities, claims, demands, actions and causes of action ("Claims"), and hereby waives and relinquishes all rights, whether contingent, accrued, inchoate or otherwise, which the undersigned has or may have against Landlord or its Affiliates, in any manner or way connected with the Exercise Room provided by Landlord for use by tenants, their employees and authorized guests at the premise located at 11440 West Bernardo Court, San Diego, California 92127, whether or not such Claims may arise by reason of the negligence, gross negligence or willful misconduct of Landlord or its Affiliates, or otherwise.

The undersigned hereby waives all rights 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 expect 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."

The undersigned certifies that he/she has read all of the provisions of the Release and fully understands all of the same. This Release is made and entered into in the State of California and in all respects shall be interpreted, enforced and governed by and under laws of that State. Sole and proper venue for any action initiated with respect to this Release shall be in San Diego, California. This Release is final, complete and exclusive agreement of the parties, and supersedes and replaces all prior agreements or understandings of the parties with respect to the matter set forth herein.

Phunware
TENANT

M. A. P. A.
EMPLOYEE

GUEST

MA
ON

RIDER TO LEASE
RIDER NO. 1

Suite 170
11440 W. Bernardo Court
San Diego, CA 92127

This Rider is attached to and made part of the Lease agreement ("Lease") between PROMONTORY ASSOCIATES, as Landlord, and Phunware Inc., a Texas Corporation as Tenant, dated as of July 23, 2014. Unless otherwise defined or the context otherwise indicates, the Terms used herein have the meanings defined in the Lease. The provisions of the Rider shall control over any inconsistent provisions of the Lease. The Lease is hereby modified and supplemented as follows:

Page 1 of 1

1. Landlord may, from time to time in its sole discretion, maintain an exercise room at the Premises (the "Exercise Room") for use by Tenant, its employees and authorized guests. Landlord shall have the right to relocate, eliminate or otherwise restrict the use of the Exercise Room by adopting rules and regulations for its use and/or by restricting the use of the Exercise Room to Tenants, their employees and authorized guests.
2. Responsibility for proper use of the Exercise Room and the equipment located therein by Tenant, its employees and authorized guests shall be borne solely by the Tenant. Tenant agrees and acknowledges that Landlord shall provide no supervision of Tenant's, its employees' or authorized guest's use of the Exercise Room.
3. All equipment which may be placed in the exercise room shall be kept in good operating condition by Landlord. In the event that Tenant becomes aware of any problem with the equipment or any other unsafe condition in the Exercise Room, Tenant shall immediately notify Landlord in writing of such condition.
4. Prior to using the Exercise Room, Tenant and each of its employees and authorized guests shall sign and deliver to Landlord this release form, Exhibit H attached hereto and incorporated herein by this reference. It shall be Tenant's responsibility to obtain releases from its employees and/or authorized guests prior to their use of the Exercise Room, and Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, rights, demands, liabilities, actions, causes of action, costs and expenses (including attorneys' fees), which may arise as a result of or in connection with the use of the Exercise Room by Tenants, its employees or authorized guests, whether or not such persons have executed proper releases prior to using the Exercise Room.

LANDLORD:
PROMONTORY ASSOCIATES
A California General Partnership

By: Promontory Associates, LLC

Its: General Partner

By: Carleton Management, Inc.

Its: Manager

By: John C. Harris
John C. Harris

Its: Chief Financial Officer

Date: 7/29/14

TENANT:
PHUNWARE INC.,
A Texas Corporation

DELAWARE
By: Matt P. Aune
Matt Aune

Its: Chief Financial Officer

Date: 7/29/14

MA
JD

RIDER TO LEASE
RIDER NO. 2

This Rider is attached to and made a part of the Lease Agreement ("Lease") between PROMONTORY ASSOCIATES a California General Partnership, as Landlord, and Phunware Inc., a Texas Corporation, as Tenant, dated as of July 23, 2014, for Suite 170, consisting of approximately 5,284 rentable square feet, located at 11440 West Bernardo Court, San Diego, California.

Unless otherwise defined or the context otherwise indicates, the terms used herein have the meanings defined in the Lease. The provisions of this Rider shall control over any inconsistent provisions of the Lease. The Lease is hereby modified and supplemented as follows:

Page 1 of 2

1. **TENANT IMPROVEMENTS:** The Landlord shall provide, at Landlord's sole cost and expense, the space planner, plans, permits, fees and Tenant Improvements necessary for the Tenant to be in full operation on the Commencement Date of this Lease. The improvements will be according to mutually acceptable plans, building standard specifications, building standard materials, at costs acceptable to the Landlord, and similar to the attached Exhibit "A-1" and "A-2."
2. **UTILITIES AND JANITORIAL:** Tenant shall be responsible to pay for separately metered electric utilities to the Premises. The Rental Rate includes five (5) day per week janitorial services to suite.
3. **BASIC ANNUAL RENT INCREASE:** The Basic Annual Rent as described in Paragraph 1.8 and in Article 3 of this Lease, and the Monthly Installments of the Basic Annual Rent described in Paragraph 1.9 of this Lease shall be adjusted upward by three percent (3.0%) per year. This adjustment shall be made twelve (12) months after the Lease Term commences and every twelve (12) months thereafter. Therefore, the Rent as described in Paragraph 1.9 of the Lease shall be adjusted accordingly to the following schedule:

Month 1	\$ 2.25	per rentable square foot per month, or \$11,889.00	per month;
Month 2	\$ 0.00	per rentable square foot per month, or \$0.00	per month;*
Months 3-12	\$ 2.25	per rentable square foot per month, or \$11,889.00	per month;
Month 13	\$ 0.00	per rentable square foot per month, or \$0.00	per month;*
Months 14-24	\$ 2.32	per rentable square foot per month, or \$12,245.67	per month;
Month 25	\$ 0.00	per rentable square foot per month, or \$0.00	per month;*
Months 26-36	\$ 2.39	per rentable square foot per month, or \$12,613.04	per month;
Month 37	\$ 0.00	per rentable square foot per month, or \$0.00	per month;*
Months 38-48	\$ 2.46	per rentable square foot per month, or \$12,991.43	per month;
Months 49-60	\$ 2.53	per rentable square foot per month, or \$13,381.17	per month;
Months 61-64	\$ 2.61	per rentable square foot per month, or \$13,782.61	per month;

*Rent abated in Months 2, 13, 25 and 37

4. **PARKING:** Tenant shall be entitled to four (4) parking spaces per 1000 rentable square feet of leased space on a non-reserved first come first serve basis, free of charge, for a total of twenty-one (21) spaces.
5. **SIGNAGE:** Landlord shall provide Tenant signage on the building directory and the entrance to Tenant's suite, at Tenant's expense, according to Exhibit G.
6. **FIRST MONTHS RENT / SECURITY DEPOSIT:** Tenant shall provide Landlord, upon execution of the Lease, a security deposit in an amount equal to \$26,395.65 (\$12,613.04 + \$13,782.61), in addition to the first month's rent of \$11,889.00. Provided Tenant is not in default nor has been in material default of the Lease the equivalent of one (1) month of the security deposit shall be applied to the actual rent due in Month 26 (\$12,613.04).
7. **RIGHT TO EXTEND:** The Tenant is hereby granted the right to extend the term of the Lease for one (1) additional period of five (5) years (s), commencing immediately upon expiration of the original term. Tenant may exercise its right only by delivering written notice thereof to Landlord not less than one hundred eighty (180) days before the end of the original term, and such exercise shall be effectively only if Tenant is not then in default, nor has been in material default, under this Lease. This right is not assignable and is personal to Tenant only. If such right is exercised, all terms of this Lease shall continue to apply during the extended term. The base rent at the beginning of the option period shall be adjusted to the then prevailing rental rate for the leases being entered into at the Promontory, but in no event less than that paid in the last year of the original term increased according to Paragraph 3 above beginning in the first year of the extended term.

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RIDER TO LEASE
RIDER NO. 2

This Rider is attached to and made a part of the Lease Agreement ("~~Lease~~" ^{DISCLAIMER}) between PROMONTORY ASSOCIATES a California General Partnership, as Landlord, and Phunware Inc., a ~~Texas~~ ^{AT} Corporation, as Tenant, dated as of July 23, 2014, for Suite 170, consisting of approximately 5,284 rentable square feet, located at 11440 West Bernardo Court, San Diego, California.

Unless otherwise defined or the context otherwise indicates, the terms used herein have the meanings defined in the Lease. The provisions of this Rider shall control over any inconsistent provisions of the Lease. The Lease is hereby modified and supplemented as follows:

Page 2 of 2

8. **OPERATING EXPENSES:** The Operating Expense Base as described in Paragraph 1.16 of the Lease shall be determined by utilizing the actual operating expenses incurred for the calendar year 2014. Notwithstanding anything in Article 4 of the Lease to the contrary, Tenant shall pay Operating Expenses (as defined in Paragraph 4.2 of the Lease) as follows: Tenant shall pay no portion of the Operating Expenses for the building during calendar year 2014. Commencing on January 1, 2015, and continuing for the remaining term of the Lease, Tenant shall pay only increases in Operating Expenses above and beyond the actual Operating Expenses for the building for calendar year 2014 as determined by Landlord. Tenant shall pay Tenant's proportionate share of such increase based upon 5,284 rentable square feet in Tenant's Premises. Tenant shall pay Tenant's proportionate share of Operating Expense increases on a monthly basis at the same time and in addition to Tenant's payment of Base Rent. The Operating Expenses shall be calculated as if the Building was at least 95% occupied using Generally Accepted Accounting Principles (GAAP).

By way of example only, suppose that Landlord's bookkeepers close the books for the building for 2014 and by mid-March 2015 determine that the actual Operating Expenses for the entire building during the calendar year of 2014 were \$5.35 per square foot. Landlord's bookkeepers then determine the budget for Operating Expenses for the entire building for calendar year 2015 is \$5.50 per square foot per year. Tenant would be responsible for paying the difference between the actual 2014 Operating Expenses on a square foot basis and the budgeted amount for the current year. In this example, the difference would be \$.15 per square foot per year. Tenant's premises comprise 5,284 square feet. $\$.15 \times 5,284 \text{ SF} = \792.60 . This would be Tenant's share of Operating Expenses for the building on an annual basis, or on a monthly basis, $\$792.60 \div 12 = \66.05 . It is anticipated that Tenant would receive from Landlord in approximately April of 2015 a written statement setting forth that Tenant was responsible for Operating Expenses amounting to \$66.05 per month. Tenant would pay Landlord for January, February, and March of 2015, within 15 days after Tenant's receipt of Landlord's written statement. Tenant would then pay \$66.05 per month in addition to Base Rent until Tenant received a new statement in 2016 and each year thereafter.

9. **HEATING VENTILATION AND AIR CONDITIONING (HVAC):** The building is equipped with a water source heat pump. The hours of operation for the cooling towers are from 6:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 1:00 p.m. on Saturday, excluding normally recognized public holidays. Landlord reserves the right to modify said hours of operation for the overall benefit of the building and its Tenants.
10. **COMMENCEMENT DATE:** Tenant shall be allowed access to the Premises fifteen (15) days prior to the Commencement Date for the purposes of installing phones, furniture, and equipment. Tenant shall not interfere in any way with Landlord's Tenant Improvement contractor.

LANDLORD:
PROMONTORY ASSOCIATES
A California General Partnership

By: Promontory Associates, LLC

Its: General Partner

By: Carleton Management, Inc.

Its: Manager

By: John C. Harris

Its: Chief Financial Officer

Date: 7/29/14

TENANT:
PHUNWARE INC.,
A ~~Texas~~ ^{DISCLAIMER} Corporation

By: Matt Aune

Its: Chief Financial Officer

Date: 7/29/14

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LEASE AGREEMENT

BY AND BETWEEN

SIMPLIKATE SYSTEMS, LLC ("TENANT")

AND

3050 BISCAYNE PROPERTIES, LLC ("LANDLORD")

**PROPERTY LOCATED AT
3050 BISCAYNE BOULEVARD
MIAMI, FLORIDA**

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BASIC LEASE INFORMATION

- A. Building: 3050 Biscayne Boulevard
Miami, Florida 33137
- B. Premises: Suite 602
- C. Term: Five (5) years
- D. Rentable Area: Approximately 2,919 rentable square feet
- E. Tenant's Share: 3.4%
- F. Base Rent: \$7,000 per month for first Lease Year (See Section 2.01)
- G. Rent Commencement Date: The date that is the later to occur of the following: (i) Landlord delivers the Premises to Tenant with Landlord's Work Substantially Completed; or (ii) July 1, 2013.
- H. Permitted Use: Office for software development
- I. Security Deposit: \$35,000 (5 months' Base Rent)
- J. Parking: Two assigned spaces at \$45 each per month
- K. Broker: Chariff Realty Group
- L. Landlord's Notice Address: 2200 Biscayne Boulevard
Miami, Florida 33137
Attention: Sharon Christenbury
- M. Tenant's Notice Address: 3050 Biscayne Boulevard
Miami, Florida 33137
Suite 602
Attention: Tushar Patel
- N. Address for Rent Payments: 2200 Biscayne Boulevard
Miami, FL 33137
Attention: Soralin Sanchez
- O. Option to Renew: One Five Year Option

LEASE AGREEMENT
3050 BISCAYNE BOULEVARD

THIS LEASE AGREEMENT (this "Lease") is made and entered into as of the ____ day of _____, 2013 by and between **3050 BISCAYNE PROPERTIES, LLC**, a Delaware limited liability company, having an office address at 2200 Biscayne Boulevard, Miami, Florida 33137 ("Landlord") and **SIMPLIKATE SYSTEMS, LLC**, a Florida limited liability company, having an address at 3050 Biscayne Boulevard, Suite 602, Miami, Florida 33137 ("Tenant"). Landlord and Tenant shall each be known hereunder as a "Party" and collectively as the "Parties."

ARTICLE I.
BASIC LEASE PROVISIONS

1.01 Premises, Landlord's Work, Tenant's Work

A. Landlord, for and in consideration of the rents, covenants and agreements hereafter reserved and contained on the part of Tenant to be observed and performed, the receipt and sufficiency of which is hereby acknowledged, hereby demises and leases to Tenant, and Tenant rents from Landlord, the Premises (the "Premises") known as Suite 602, as more particularly shown on the floor plan annexed hereto as Exhibit "A" in the building (the "Building"), commonly known as Executive Plaza located at 3050 Biscayne Boulevard, Miami, Florida pursuant to the terms and conditions of this Lease. The Building and the outdoor parking facility (the "Parking Facility"), which are located on the land (the "Land"), which is legally described on Exhibit "B," together with all common areas not specifically made a part of the Building or the Parking Facility, and all easements, air rights, development rights, parking facilities and other improvements from time to time located thereon or related thereto are hereinafter collectively referred to as the "Property."

The Parties agree that for purposes of this Lease the Premises consists of approximately 2,919 rentable square feet, and is located on the sixth floor of the Building, and the Building is deemed to consist of 88,245 rentable square feet, and in no event will the designation of such deemed rentable square feet constitute or imply any representation or warranty by Landlord as to the actual size of any floor or other portion of the Building, including the Premises. Tenant's pro-rata share of Operating Costs (as hereafter defined), shall be deemed to be 3.4%.

B. Subject to Landlord's Work, Tenant will accept the Premises on the Commencement Date (as hereafter defined), in "AS-IS" condition, and, except as expressly provided herein, Landlord will have no obligation to do any work or perform any installations to prepare the Premises for Tenant's occupancy or use. Notwithstanding the foregoing, Landlord will warrant Landlord's Work against defective workmanship and materials and will remedy any such defects which appear within a period ending one year after the Rental Commencement Date unless such repair is necessitated by the negligence of Tenant or Tenant's employees, agents or contractors. Unless otherwise provided herein, Tenant hereby certifies that it has inspected the Premises and accepts the Premises in its existing condition as of the Effective Date. Tenant's acceptance of the possession of the Premises shall be conclusive as to Tenant's acceptance of the condition of the Premises, subject to the terms contained herein.

C. Landlord's Work. Landlord will (a) install and maintain building standard window coverings and exterior doors in the Building and the Premises (the maintenance of which may be included in Operating Costs), and (b) perform the work set forth on Exhibit "C" (collectively, "Landlord's Work").

D. Tenant's Work. Tenant will, at Tenant's sole cost and expense, construct all work not included in Landlord's Work to prepare the Premises for the intended use. Tenant's Work will be performed and paid for exclusively by Tenant.

1.02 Permitted Use, Common Areas, Parking

A. Permitted Use

Tenant shall use the Premises solely for use as an office for software development ("Permitted Use"), and for no other use or purpose. Tenant agrees not to use or permit the use of the Premises for any purpose other than the Permitted Use or for any activity which is illegal, dangerous to life, limb or property or which, in Landlord's reasonable opinion, creates a nuisance or negatively affects the reputation of Landlord or the Building or which would increase the cost of insurance coverage with respect to the Building. Tenant shall not at any time knowingly suffer the Premises to be used or occupied in violation of (i) the certificate of occupancy issued for the Premises or for the Building, (ii) any of the provisions of this Lease, (iii) zoning ordinances, and rules and regulations of any governmental or quasi-governmental authorities having jurisdiction, or (iv) such conditions, restrictions and other encumbrances to which the Building or any part thereof is subject. Tenant shall be solely responsible for securing and maintaining any and all approvals and permits (collectively, "Approvals") required for Tenant's Permitted Use hereunder and Landlord, at no cost or liability to Landlord, will cooperate with Tenant in securing any such Approvals.

B. Common Areas

Landlord hereby grants to Tenant for the Term (as hereafter defined) of this Lease and any extensions thereof, a revocable, non-exclusive license in common with others entitled thereto, of the common areas, service roads, loading facilities, and sidewalks and visitor parking areas as may be provided from time to time by Landlord, as such common areas now exist or as common areas may hereinafter be constructed, and other facilities as may be designated from time to time by Landlord (collectively, the "Common Areas") subject, however, to the terms and conditions of this Lease and the Rules and Regulations (as hereafter defined), for the use thereof as prescribed and amended from time to time by Landlord. Notwithstanding the foregoing, the Common Areas and Building common areas shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the right, but not the obligation, to construct, maintain and operate lighting facilities on all said areas and improvements, and to police the same; from time to time to change the area, level, location and arrangement of parking areas and other facilities herein above referred to; and to restrict parking by tenants, their officers, agents and employees to employee parking areas.

Landlord will clean and maintain the Common Areas and the public common areas of the Building, main lobby in the Building, exterior windows, load bearing elements, foundations, roof and common areas that form a part of the Building and the building standard mechanical, electrical, the heating, ventilation and air conditioning system (the "HVAC System"), life safety systems, pipes and conduits that are provided by Landlord in the operation of the Building. Tenant acknowledges that the Landlord is in the process of renovating the Building, the Building lobby and other Common Areas, and replacing the existing "curtain wall" of the Building and that such work may adversely impact Tenant's use of the Premises and the common areas of the Building until such work is complete. Except as expressly provided herein, Tenant will not be entitled to any abatement of rent because of such renovations, and waives any and all claims or liability against Landlord related to or allegedly caused by or associated with such work.



C. Parking

Landlord reserves the right in its sole discretion to designate specific parking spaces in the Parking Facility for the exclusive use of a particular tenant or tenants and to institute reasonable procedures to enforce such rights. Tenant's visitors will have the right, at no cost to Tenant, to park in the portion of the Parking Facility designated for visitors' unreserved parking. In addition, Tenant will have the right to use (i) two reserved parking spaces on the "end" of the aisle and closest to the entrance to the rear of the Building beyond the spaces designated for retail tenants, at a cost to Tenant of \$45 per space per month, and (ii) unreserved parking spaces on a first-come first-served basis, at no cost to Tenant in an area designated for unreserved parking for Building tenants. Notwithstanding the foregoing, Tenant will not have the right to use spaces in the Parking Facility to the extent and for any period that such spaces are (1) reserved for other tenants or visitors to the Building (except for Tenant's reserved parking spaces set forth in C(i) above), (2) being used as a staging area for construction or renovations, or (3) converted from parking to use as tenant space or a common area. If Landlord elects to provide Tenant with additional reserved or unreserved parking spaces, such spaces will be at a cost to Tenant of \$45 per space per month.

Landlord may issue to Tenant a parking sticker or tag, which will authorize parking of a vehicle on which the sticker or tag is displayed, or Landlord will provide a reasonable alternative means of identifying and controlling vehicles authorized to be parked in the section designated for tenants' unreserved parking (or Tenant's reserved parking, as the case may be). Landlord may designate the area within which such cars may be parked, and Landlord may change such designations from time to time upon reasonable prior written notice to Tenant. Landlord may make, modify and enforce the Rules and Regulations relating to the parking of vehicles at the Parking Facility, and the assignment of parking privileges therein, and Tenant will abide by such rules and regulations. Notwithstanding the foregoing and subject to availability, Landlord may provide reserved parking spaces at the Parking Facility at Landlord's then-current rate, which may be increased by Landlord from time to time; provided, however, that, except as expressly provided herein, Landlord will have no obligation to provide Tenant with any such reserved parking spaces. Notwithstanding the foregoing, Landlord will not increase the rate charged to Tenant for parking spaces by more than \$5.00 per year per month for each year of the Lease Term. Within five (5) days after written request by Landlord or Landlord's authorized representative, Tenant will furnish to Landlord the license numbers assigned to its cars and those of its employees. No vehicles other than automobiles and pickup trucks will be permitted in the Parking Facility. Landlord may charge as liquidated damages Thirty and 00/100 Dollars (\$30.00) for each day or partial day with respect to any car belonging to Tenant, or any of its invitees that is parked in an area outside of the parking area designated for Tenant's use.

Tenant will have the right, at its sole cost and expense, to erect a canopy to cover its two reserved parking space in accordance with the provisions of Section 5.02 hereof. All costs and expenses of preparing the plans and specifications, obtaining all licenses and permits, and installation and maintenance of such canopy shall be at the sole cost and expense of Tenant. Tenant will maintain the canopy in first-class condition and repair, and if Tenant fails to maintain the canopy in such condition, Landlord will have the right to maintain and repair such canopy at Tenant's expense and/or remove the canopy from the Parking Facility. Any amount expended by Landlord pursuant to this paragraph will be deemed to be Rent due under this Lease. Such canopy will remain at the end of the Term for the benefit of Landlord. Tenant agrees to indemnify, defend by counsel reasonably acceptable to Landlord and hold Landlord, and Landlord's beneficiaries, trustees, the managing agent of the Building, if any, Landlord's mortgagee, and each of their respective agents, partners, members, shareholders, officers, directors and employees harmless of, from and against any and all losses, damages, liabilities, claims, liens, costs and expenses (including, but not limited to, court costs, reasonable attorneys' fees and litigation expenses) in connection with injury to or death of any person or damage to or theft, loss or loss of the use of any property arising out of the installation or use of the canopy.



D. Parking Facility Access.

Landlord shall provide access to the Parking Facility for Tenant and its invitees, such access to be controlled in such manner as Landlord, in its sole discretion, deems appropriate and may, at Landlord's election, include access only to persons holding authorized card keys, or other procedure as reasonably determined by Landlord. Landlord will have no liability to Tenant, its employees, agents, invitees or licensees for losses due to theft or burglary, or for damages done by unauthorized persons to the Property, and Landlord will not be required to insure against any such losses.

Tenant and Tenant's employees, agents, contractors and invitees shall cooperate fully in any of Landlord's efforts to maintain safety measures at the Property, including the Parking Facility.

E. Compliance with Laws and Rules of Building

Tenant shall comply with all laws, ordinances, orders, rules and regulations (state, federal, municipal and other agencies or bodies having any jurisdiction over the Premises) (collectively, "Laws"), which include, but are not limited to the Americans with Disabilities Act ("ADA"), any law pertaining to Hazardous Materials as described in Section 19.07, medical waste as described in Section 19.08, or any other law relating to the environment or relating to the use, condition or occupancy of the Premises. Tenant will also comply with Laws with respect to Tenant's Work and any alterations made by Tenant to the Premises or the Parking Facility.

Tenant shall comply and shall cause its employees, agents, and invitees to comply with the Rules and Regulations of the Building adopted by Landlord from time to time (collectively, the "Rules and Regulations"). The Rules and Regulations in effect as of the date hereof are set forth in Exhibit "E" hereof. Use by Tenant and its employees and agents of the Parking Facility and parking areas in the vicinity of the Building in which the Premises are located shall be subject to such Rules and Regulations governing use as Landlord may from time to time prescribe, including the designation of specific areas in which automobiles owned by Tenant, its employees and agents, shall be parked. Landlord shall at all times enforce the rules and regulations promulgated herein in a non-discriminatory manner.

1.03 Term and Option to Renew

This Lease shall be effective on ("Effective Date") the date of the later to sign of Landlord or Tenant, provided an executed copy of this Lease is thereafter delivered to the other party. The initial term of this Lease ("Term") will commence on the Rent Commencement Date (as hereafter defined) and expire on the last day of the fifth Lease Year (as hereafter defined) (the "Expiration Date"), unless sooner terminated as provided herein. As used in this Lease, the term "Lease Year" means each twelve (12) consecutive month period during the Term commencing on the Rent Commencement Date, except that if the Rent Commencement Date does not occur on the first day of a calendar month, the first Lease Year shall commence on the Rent Commencement Date and terminate on the last day of the twelfth (12th) full calendar month after the Rent Commencement Date.

In addition, Tenant will have one five-year option to renew this Lease, subject to the provisions of Exhibit "D."



ARTICLE II.
RENT

2.01 Base Rent, Rent Commencement Date

From and after the Rent Commencement Date, as rental for the lease and use of the Premises, Tenant will pay Landlord, at Landlord's address set forth herein, or at such other address as Landlord may from time to time designate, without demand and without deduction, abatement or set-off, the Base Rent set forth in the Base Rent Schedule set forth below, which sum shall be due and payable, in equal monthly installments, on or before the first day of each calendar month, in advance, for each and every month in the term of this Lease, in lawful money of the United States. "Rent Commencement Date" will be the date that Landlord delivers the Premises to Tenant with Landlord's Work Substantially Completed. "Substantially Completed" will mean that Landlord's Work has been completed except for minor details of construction, mechanical adjustments or decorations or other "punch-list" items that do not adversely affect Tenant's use or occupancy of the Premises. Landlord shall complete such punch-list items within 30 days after the date Landlord delivers notice to Tenant that Landlord's Work is Substantially Completed.

BASE RENT SCHEDULE:

"Base Rent" means the following amounts for the initial Term of this Lease:

<u>Applicable Period</u>	<u>Total Annual Base Rent</u>	<u>Monthly Base Rent</u>
Lease Year 1*	\$84,000.00	\$7,000.00
Lease Year 2	\$87,360.00	\$7,280.00
Lease Year 3	\$90,854.40	\$7,571.20
Lease Year 4	\$94,488.58	\$7,874.05
Lease Year 5	\$98,268.12	\$8,189.01

* Base Rent will abate for the first full calendar month of the Lease Term. Provided Tenant is not in default under this Lease, Base Rent will abate for the 13th month, the 25th month, the 37th month and the 49th month after the Rent Commencement Date. The first full month's Base Rent due and payable under this Lease in the amount of \$7,000.00, plus sales tax, will be due and payable on the Effective Date.

If the Rental Commencement Date does not occur on the first day of a calendar month, the Base Rent for the first partial calendar month will be prorated based on the actual number of days within such calendar month after the Rental Commencement Date, and paid on the Rental Commencement Date. If the Term expires or is terminated on a day which is not the last day of the calendar month, the Base Rent for the final partial calendar month that the Base Rent is due will be prorated based on the actual number of days within such calendar month prior to the end of the Term.



"Additional Rent" means all sums of money other than Base Rent which become due and payable by Tenant to Landlord pursuant to this Lease. Tenant will pay to Landlord, Additional Rent within ten (10) days after receipt of Landlord's written demand, statement or invoice therefore or as otherwise specified herein. If Tenant fails to pay any Additional Rent, Landlord shall have the same rights and remedies under this Lease as in the case of non-payment of Base Rent. In addition to all Base Rent, Tenant shall pay, as Additional Rent, "Tenant's Operating Charges" (as defined in Section 2.02), and any and all sales, use, excise, lease transaction tax or "receipts" or "gross receipts", rent tax or other tax, excluding State and/or Federal Income Taxes, now or hereafter imposed upon the Rent being paid by Tenant hereunder and received by Landlord hereunder, and imposed by the United States of America, the State of Florida, or any political subdivision thereof. In addition, Tenant shall pay, prior to delinquency, any and all taxes levied or assessed during the Term hereof upon or against all Tenant's furniture, fixtures, and equipment and any other personal property installed or located within the Premises.

Base Rent and Additional Rent shall be designated, collectively "Rent."

All Rent shall be payable in lawful money of the United States of America drawn on a financial institution with an office in the United States of America.

Landlord shall have the right (but in no event any obligation whatsoever) to make any expenditure for which Tenant is liable under this Lease after 10 days' written notice to Tenant and in the event of such expenditure by Landlord, the amount thereof shall be deemed Additional Rent due and payable by Tenant with the succeeding installment of Rent (unless some other date is expressly provided herein for payment of such amount), together with interest thereon, at the highest rate allowable by applicable law.

2.02 Operating Costs and Real Estate Taxes.

A. As used in this Section 2.02, the following terms shall be defined as hereinafter set forth:

(1) "Base Year" means calendar year 2013.

(2) "Real Estate Taxes" shall mean all ad valorem and non-ad valorem taxes, real estate taxes, transit taxes, personal property taxes and assessments, general or special, ordinary or extraordinary, foreseen or unforeseen, imposed upon the Property or with respect to the ownership thereof, including any taxes imposed on the Parking Facility or the number of parking spaces therein. If, due to a future change in the method of taxation, any franchise, income, profit or other tax, however designated, shall be levied or imposed in substitution, in whole or in part, for (or in lieu of) any tax which would otherwise be included within the definition of Real Estate Taxes, such other tax shall be deemed to be included within Real Estate Taxes as defined herein.

(3) "Tenant's Proportionate Share" or "Tenant's Operating Charges" is stipulated and agreed to be Tenant's pro-rata share of Operating Costs to the extent such expenses exceed Tenant's pro-rata share of Operating Costs for the Base Year.

(4) "Operating Costs" shall mean for any calendar year the total cost, expense and disbursements determined by Landlord to be necessary in the ownership, operation, management, replacement, repair and maintenance of the Property, including without limitation the Building, the Parking Facility, the common areas of the Building, and the Common Areas. Operating Costs shall be determined on an accrual basis and shall specifically include, without limitation, all expenses, costs and disbursements (but not the

cost of capital investment items or specific costs billed to and paid by specific tenants other than capital investment items expressly allowed pursuant to this Section 2.02A) of every kind and nature which Landlord pays or becomes obligated to pay because of or in connection with the ownership, management, operation, replacement, repair and/or maintenance of the Property, including, but not limited to, the following:

(i) All general and special Real Estate Taxes, special assessments and other taxes (ad valorem or not), rates, levies and assessments payable in respect of such year by Landlord upon or with respect to the Property to any governmental or quasi-governmental authority, whether foreseen or unforeseen, and all taxes specifically imposed in lieu of any such taxes, but excluding fees and penalties for late payments or non-payment by Landlord, so long as Landlord did not incur such fees and penalties due to a late payment by Tenant;

(ii) All wages and salaries of all employees to the extent engaged in management, operation, repair and maintenance or security of the Property, including taxes, insurance and benefits relating thereto;

(iii) The cost of all supplies and materials used in management, operation, repair and maintenance of the Property;

(iv) All costs (including surcharges) of all utilities to the Property, other than those separately metered to and paid for by any tenant;

(v) All costs of repair, maintenance and service agreements for the Property and the equipment therein, including, without limitation, security and energy maintenance services, window cleaning, elevator maintenance and janitorial services;

(vi) All costs of insurance relating to the Property, including, without limitation, casualty and liability insurance applicable to the Property and Landlord's personal property used in connection therewith;

(vii) All costs of repairs and general maintenance of the Property, including repairs covered under Landlord's casualty insurance policy but not paid by such insurer, but excluding (a) repairs and general maintenance to the extent (1) paid for by insurance proceeds or by any tenant (other than as part of such Tenant's Operating Costs), or (2) occasioned by condemnation (as that term is used in Section 8 herein); and (b) costs of preparing space for new tenants;

(viii) Customary and reasonable management fees and reimbursable costs and expenses for the property manager;

(ix) All costs of professional services or fees incurred in any contest of any taxes or assessments pertaining to the Property, including, without limitation, legal and accounting services; and

(x) All costs of any additional services not provided to the Property as of the Effective Date but thereafter provided by Landlord in the prudent management of the Property.

If Landlord purchases any item of capital equipment or makes any capital expenditure (A) designed to result in savings or reductions in any element of Operating Costs, (B) made to replace existing equipment and machinery, or (C) made to comply with Laws, then the costs for such capital equipment or capital

expenditure will be amortized on a straight-line basis over the life of such equipment (as determined by Landlord in its reasonable discretion) and included in the definition of Operating Costs for the year in which the costs are incurred and subsequent years, plus a variable rate interest factor equal to the sum of the prime rate of interest published in the Wall Street Journal commencing on the date such capital equipment is purchased or capital expenditure is made by Landlord, adjusted quarterly based on such published rates, plus 200 basis points per annum, but in no event greater than the highest rate of interest permitted to be charged by law. If Landlord leases any such item of capital equipment designed to result in savings or reductions in Operating Costs, then the rentals and other costs paid pursuant to such lease will be included in Operating Costs for the year in which they are incurred.

Tenant shall be informed as to Tenant's Operating Charges for each calendar year, which shall initially be based upon Landlord's good faith estimate thereof, and Tenant shall pay one-twelfth (1/12) thereof monthly in advance, together with the payment of Base Rent. Landlord shall, within 90 days (or as soon thereafter as is practical) after the close of each calendar year provide Tenant with a statement setting forth the actual Operating Costs for the prior calendar year (the "Expense Statement") setting forth (A) the actual amount of Tenant's Proportionate Share for the preceding calendar year; (B) the amounts paid by Tenant toward the estimated Tenant's Proportionate Share during the preceding calendar year; and (C) any revised estimate of Tenant's obligations for Tenant's Proportionate Share for the current calendar year. Tenant shall have thirty (30) days from receipt of the Expense Statement to review it and submit to Landlord in writing any objections of Tenant thereto. Upon 10 days written notice to Landlord, Tenant will have the right to inspect the books of Landlord for the calendar year for which the Expense Statement relates, which inspection shall be conducted at Tenant's expense. Tenant shall only have access to such documentation and information as it relates to its bills. If no written objections are received by Landlord within 30 days after Landlord's delivery of the Expense Statement, such statement shall be conclusively deemed to be correct as between the parties, and there shall be an adjustment with payment by or refund or credit to Tenant, as the case may require, to the end that Tenant shall bear the entire amount of Tenant's Proportionate Share for such period but not in excess thereof. Any such payment to or refund shall be made not later than 60 days after delivery of the Expense Statement to Tenant. Should a refund be due Tenant hereunder, Landlord may elect to credit such refund against the next amount of rent due hereunder or refund such amounts to Tenant. Tenant shall remain liable for and shall pay Tenant's Operating Charges for the period covered by the Term of this Lease, in the amounts and times as set forth herein, notwithstanding the expiration or earlier termination of this Lease.

Tenant hereby covenants and agrees to pay monthly to Landlord, as Additional Rent, any sales, use, excise or other tax, or any imposition in lieu thereof (excluding state and/or federal income tax) now or hereafter imposed upon the rents, use or occupancy by the United States of America, the State of Florida, Miami-Dade County, the City of Miami or any political subdivision of any of the foregoing, notwithstanding the fact that such statute, ordinance or enactment imposing the same may endeavor to impose the tax on Landlord. Each such payment shall be made by Tenant to Landlord at the same time as each installment of Base Rent or any Additional Rent or other sum or amount with respect to which such taxes are payable are paid by Tenant to Landlord.

Tenant hereby covenants and agrees to pay to Landlord, also as Additional Rent, before delinquency, any and all taxes levied or assessed and payable during the Term upon all of Tenant's leasehold improvements and Personal Property. "Personal Property" means all furniture, trade fixtures, equipment, inventory, merchandise, patents, trademarks, trade names and trade processes used by Tenant in connection with the Premises; all permits, licenses, franchises, certificates and other rights and privileges used in connection with the Premises; all other personal property of any type or nature, tangible or intangible, of Tenant with respect to the Premises, including all of Tenant's accounts, contract rights and chattel paper; and all insurance proceeds relating to any or all of the foregoing and all accessions and additions to, substitutions for, and replacements products and proceeds of any or all of the



foregoing whether owned by Tenant presently or hereafter situated in or about the Premises.

If the Term commences or expires on a day other than the first day or the last day of a calendar year, then Tenant's liabilities pursuant to this Section for such calendar year shall be apportioned by multiplying the respective amount of Tenant's Proportionate Share thereof for the full calendar year by a fraction, the numerator of which is the number of days during such calendar year falling within the Term, and the denominator of which is "360."

ARTICLE III. **UTILITIES AND SERVICES**

3.01 Electricity and other Services

Landlord shall furnish to the Premises electricity, water, sewer, year-round ventilation and air-conditioning during normal hours as set forth in Section 3.02. Tenant covenants that at no time will its use of electrical energy in the Premises exceed the capacity of the existing feeders or wiring installations, including any risers or other electrical equipment and appliances then serving the Premises.

3.02 Normal Hours

The services and utilities required to be furnished by Landlord will be provided only during the normal hours of operation of the Building, except as otherwise specified herein. The normal hours of operation of the Building will be 8:00 a.m. to 8:00 p.m. on Monday through Friday (except legal holidays) and 8:00 a.m. to 2:00 p.m. on Saturdays. There will be no normal hours of operation of the Building on Sundays or legal holidays and Landlord shall not be obligated to maintain or operate the Building; provided, however, Tenant will be provided access to the Premises during non-business hours. If Tenant requires air-conditioning or heat beyond the normal hours of operation set forth herein, Landlord will furnish such air-conditioning or heat, provided Tenant gives Landlord's agent sufficient advance notice of such requirement and Tenant agrees to pay for the cost of such extra service in accordance with Landlord's then current schedule of costs and assessments for such extra service.

3.03 Interruptions

Tenant shall not be entitled to an abatement in Rent as a result of Landlord's failure or inability to furnish any of the utilities or services required to be furnished by Landlord hereunder, whether resulting from breakdown, removal from service for maintenance or repairs, strikes, scarcity of labor or materials, acts of God, governmental requirements or from any other cause whatsoever. No such failure or inability of Landlord to furnish the utilities or services required hereunder shall be deemed or considered to be or constitute an eviction, actual or constructive, of the Tenant from the Premises, nor shall it entitle Tenant to terminate this Lease or to receive an abatement of any rent payable hereunder. Notwithstanding the foregoing, if any services reasonably necessary for the operation of the Tenant's business should be unavailable for more than 30 consecutive days as a result of Landlord's negligence or willful misconduct, Tenant will be entitled to an abatement of Base Rent for the period such services are unavailable and Tenant is unable to conduct its business at the Premises as a result thereof.

3.04 Energy Conservation Control

Tenant shall comply with all mandatory and voluntary energy conservation controls and requirements applicable to the Building that are imposed or instituted by any federal, state or local governmental body, including, without limitation, controls on the permitted range of temperature settings in buildings and equipment necessitating curtailment of the volume of energy consumption or

in buildings, and requirements necessitating curtailment of the volume of energy consumption of

the hours of operation of the Building. Any terms or conditions of this Lease that conflict or interfere with compliance with such controls or requirements shall be suspended for the duration of such controls or requirements. Tenant's compliance with such controls or requirements shall not be deemed or considered to be or constitute an eviction, actual or constructive, of the Tenant from the Premises, nor shall such compliance entitle Tenant to terminate this Lease or to receive an abatement of any rent payable hereunder.

3.05 Keys and Locks

Landlord shall furnish Tenant with two (2) keys for the Premises. All such keys shall remain the property of Landlord. No additional locks shall be allowed on any door of the Premises without Landlord's permission. Upon termination of this Lease, Tenant shall surrender to Landlord all keys for the Premises and give to Landlord the explanation of the combination of all locks for safes, safe cabinets and vault doors, if any, in the Premises.

Tenant assumes all liability for issues arising from having possession of keys. Tenant will keep the Building locked after normal hours of operation.

ARTICLE IV SIGNAGE

4.01 Signage

Tenant shall not place any signs or other advertising matter or material on the exterior of the Building, or anywhere upon the Common Areas or the Parking Facility. In addition, Tenant shall not place any signs or other advertising matter or material on the interior of the Premises which is visible beyond the Premises, without the prior written consent of Landlord, which consent may be withheld in the sole discretion of Landlord, except that, subject to Tenant's approval, which will not be unreasonably withheld or delayed, Tenant may place a sign identifying its business on the door of its Premises. All of Tenant's signs shall be maintained by Tenant at Tenant's cost and expense, except that Landlord will list Tenant on the building directories located in the lobby of the Building. On the expiration or earlier termination of this Lease, Tenant shall remove all of its signs from the Premises and the Building and, at its own expense, repair any damage to the Premises or the Building resulting from the removal of such signs by plastering or spackling any holes left by said signage.

ARTICLE V. ALTERATIONS, MAINTENANCE AND REPAIR

5.01 Maintenance and Repair

A. Except for the maintenance and repair obligations of Landlord set forth in Section 5.01.B, Tenant, at Tenant's sole cost and expense, shall maintain, repair and take care of and keep the interior non-structural portions of the Premises, furniture and all fixtures, installations and appurtenances contained therein and Tenant's personal property and equipment and all replacements and additions thereto ("Tenant's Personal Property") in good order and condition, subject to normal wear and tear from the use thereof. Landlord shall have no obligation to maintain, repair, operate or safeguard Tenant's Personal Property. Tenant covenants that Tenant will not commit or allow any waste or damage to be committed in or upon the Premises.

B. Landlord will be responsible for repairing and maintaining the structural elements of the Building and building standard mechanical systems including the electrical system HVAC System.

plumbing lines to the point of entry into the Premises, fire and life safety systems, and pipes and conduits provided by Landlord in the operation of the Building (the "Mechanical Systems"), and Landlord may include the cost of maintenance, repairs and replacements of structural elements and Mechanical Systems in Operating Costs. Landlord will also provide reasonable janitorial and cleaning services and refuse and rubbish removal associated with normal office use. Landlord will make, at Tenant's sole cost and expense, any and all repairs and replacements (whether structural or non-structural) to the Building or Mechanical Systems, or any part thereof that have been caused (in whole or part) by the acts or omissions of Tenant or Tenant's agents, employees, invitees, or visitors, or due to any Alterations performed by Tenant, and Tenant shall pay the cost thereof (plus Landlord's supervisory fee thereon) to Landlord as Additional Rent within ten (10) days of Landlord's written demand therefore.

Notwithstanding anything contained in this Lease to the contrary, Tenant may not perform any work to the structural elements or Mechanical Systems of the Building.

5.02 Alterations

Tenant shall not make (nor permit any party to make) any changes, additions, improvements, structural or alterations or other physical changes (collectively, "Alterations", and each an "Alteration") in or to the Premises or erect the canopy in the Parking Facility as expressly permitted pursuant to this Lease, without the prior written consent of Landlord, and then only at Tenant's sole cost and expense and by contractors or mechanics and in such manner and with such materials as may be approved by Landlord in its reasonable discretion, and may be conditioned on such conditions as Landlord shall deem appropriate, including, without limitation, review and approval by Landlord of the plans and specifications for such work, in such detail as Landlord shall require, and acquisition by Tenant of additional insurance as may be required by Landlord. In no event will Landlord's approval of Tenant's plans and specifications be deemed a representation that the same complies with Laws. In the event Landlord or its agents employ any independent architect or engineer to examine any plans or specifications submitted by Tenant, Tenant agrees to pay to Landlord a sum equal to any reasonable fees incurred by Landlord in connection therewith, such fee not to exceed \$1,000 for each instance. Except as expressly provided herein, Landlord will have no obligation to provide, construct, or finance any Alterations to the Premises for the benefit of Tenant.

All of Tenant's Alterations shall conform to Tenant's plans and specifications as reasonably approved by Landlord, and all Laws, including but not limited to the ADA, and be performed in a manner and at such times as Landlord designates, and such Alterations shall not, in any event, interfere with the use and operation of the Building or the Parking Facility by Landlord or any tenant user or occupant thereof. In addition, Tenant shall comply with all of Landlord's construction rules, if any, as the same may be changed from time to time.

Notwithstanding anything contained in this Lease to the contrary, Tenant may not perform any work to the Mechanical Systems of the Building. If work to Mechanical Systems is required as part of Tenant's Alterations, such work will be performed by Landlord's contractors, at Tenant's sole cost and expense.

Landlord shall have the right, at Tenant's cost and expense, to enter upon the Premises and remove any Alterations undertaken without Landlord's consent (as required hereunder) or which fail to comply with the standards set forth elsewhere in this Lease.

Upon completion of any Alterations, Tenant, at Tenant's expense, shall obtain certificates of final approval of such Alterations required by any governmental authority and shall furnish Landlord with copies thereof with an architect's "sign-off" that all alterations have been completed in compliance hereunder, together with plans and specifications for such Alterations, which plans shall be in hard copy and electronic (CD) form reasonably satisfactory to Landlord. All materials and equipment to be

incorporated in the Premises or the Parking Facility as a result of any Alterations shall be of first quality and no such materials or equipment shall be subject to any lien, encumbrance, chattel mortgage, title retention or security agreement.

All Alterations, and improvements to the Premises (except movable office furniture and movable trade fixtures, equipment and Tenant's Personal Property, in each case, which can be removed without damaging the Premises) and the Parking Facility shall, unless Landlord elects otherwise in writing, become the property of Landlord upon the installation thereof, and shall be surrendered with the Premises at the expiration or sooner termination of this Lease. If requested by Tenant in writing, Landlord shall designate at the time if its approval of any request by Tenant for permission to make Alterations to the Premises, those items for which Landlord reserves the right to require Tenant to remove upon the expiration or sooner termination of the Term of this Lease. Any such designation shall be in Landlord's sole discretion. If such Alteration or improvement is approved by Landlord prior to installation, Tenant shall not be responsible for the costs of restoring the Premises to its condition at the outset of this Lease. If such Alteration or improvement is not approved by Landlord prior to the installation, Landlord may require Tenant, at Tenant's cost, to restore the Premises to the condition that existed prior to the completion of such Alteration or improvement.

Tenant shall be required to pay ad valorem taxes, personal property taxes, and increased insurance thereon or attributable to Tenant's Alterations.

5.03 Construction Lien Laws

Nothing contained in this Lease shall be construed as consent on the part of Landlord to subject the estate of Landlord to liability under the Construction Lien Laws of the State of Florida, it being expressly understood that Landlord's estate shall be not subject to such liability. Tenant shall strictly comply with the Construction Lien Laws of the State of Florida as set forth in Florida Statutes Chapter 713 ("F.S. 713"). In the event that a construction claim of lien is filed against the Property in connection with any work performed by or on behalf of Tenant (other than Landlord's Work), Tenant shall satisfy such claim, or shall transfer same to security or a bond, within ten (10) days from the date of filing. In the event that Tenant fails to satisfy or transfer such claim within said ten (10) days period, Landlord may do so and thereafter charge Tenant, as Additional Rent, all costs incurred by Landlord in connection with satisfaction or transfer of such claim, including actual and reasonable attorneys' fees. Further, Tenant agrees to indemnify, defend and hold Landlord harmless from and against any damage or loss incurred by Landlord as a result of any such construction claim of lien. If so requested by Landlord, Tenant shall execute a short form or memorandum of this Lease, which may, in Landlord's discretion be recorded in the Public Records for the purpose of protecting Landlord's estate from construction claims of lien, as provided in F.S. 713. In the event such short form or memorandum of lease is executed, Tenant shall simultaneously execute and deliver to Landlord an instrument terminating Tenant's interest in the real property upon which the Premises are located, which instrument may be recorded by Landlord at the expiration of the Term of this Lease, or such earlier termination hereof. The Security Deposit paid by Tenant may be used by Landlord for the satisfaction or transfer of any construction claim of lien, as provided in this Section. This Section shall survive the termination of the Lease. Notwithstanding any contrary provision herein, any provision that might be interpreted to be to the contrary or any consents given by Landlord to Tenant, Tenant is prohibited from creating any liens against Landlord's interest in the Property. THE INTEREST OF LANDLORD SHALL NOT BE SUBJECT TO LIENS FOR IMPROVEMENTS MADE BY TENANT.

NOTICE IS HEREBY GIVEN THAT LANDLORD IS NOT AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT OR TO ANYONE HOLDING ANY INTEREST IN ANY PART OF THE PROPERTY, AND THAT NO CONSTRUCTION LIENS OR OTHER LIENS FOR ANY SUCH LABOR,



SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN AND TO THE PROPERTY. Tenant shall notify all contractors and material suppliers with whom it contracts of the provisions of this Section as required by F. S. 713.10.

ARTICLE VI.

ASSIGNMENT AND SUBLETTING

6.01 Landlord's Consent Required

Tenant covenants that it shall not assign or mortgage this Lease or sublet, transfer, pledge or encumber all or any portion of the Premises or suffer or allow the occupancy of the Premises by any party without first obtaining Landlord's prior written consent thereto in each instance, which consent will not be unreasonably withheld. If Tenant is a partnership, then any sale, conveyance, or other transfer of, any partnership interest, or any dissolution of Tenant, whether voluntary, involuntary or by operation of law, of a partner or partners owning a controlling interest in Tenant, shall be deemed a voluntary assignment of this Lease. If Tenant is a corporation, then any sale, conveyance, or other transfer of any controlling shares of stock, dissolution, merger, consolidation or other reorganization of Tenant, or any sale or transfer of a controlling interest of its capital stock, whether voluntary, involuntary or by operation of law, of a shareholder or shareholders owning a controlling interest in Tenant, shall be deemed a voluntary assignment of this Lease. Tenant agrees to pay all reasonable attorneys' fees incurred by Landlord in connection with any such proposed assignment or sublease. Should Landlord consent to such assignment of this Lease or to a sublease of all or any part of the Premises, Tenant shall remain liable for all obligations hereunder until the expiration of the Term hereof, and no failure of Landlord to promptly collect from any assignee or sub-lessee, or any extension of the time for payment of such rents shall release or relieve Tenant of obligation of payment of such rents or performance of other obligations. In the event any subletting or assignment is approved by Landlord, it shall be a condition to the effectiveness of any such sublease or assignment that a fully executed copy of the sublease or assignment, in form and substance reasonably satisfactory to Landlord be delivered to Landlord at least ten (10) days prior to the effective date thereof, and that any sub lessee or assignee assume in writing all obligations of Tenant hereunder. If this Lease is assigned, or if the Premises or any part thereof is sublet or occupied by any party other than Tenant, Landlord may collect Rent from the assignee, subtenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as Tenant, or a release of Tenant from further performance by Tenant of the covenants on the part of Tenant herein contained. This prohibition against assignment or subletting shall be construed to include the prohibition against any assignment or subleasing by operation of law, legal process, receivership, bankruptcy or otherwise, whether voluntary or involuntary and a prohibition against any encumbrance of all and any part of Tenant's leasehold interest. Notwithstanding any assignment or subletting of such Lease, Tenant shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants and conditions hereof and shall stringently comply with all Lease terms and conditions hereunder.

6.02 Landlord's Right to Recapture

If at any time during the Term, Tenant desires to assign this Lease or to sublet all or any portion of the Premises, Tenant shall notify Landlord in writing of such desire and shall offer to vacate all or such portion of the Premises to be assigned or sublet proposed by Tenant and surrender this Lease with respect to such proposed transfer to Landlord as of a date specified in said offer (the "Surrender Date"), which date shall be the last date of any calendar month during the Term and not earlier than thirty (30) days and not later than one hundred eighty (180) days after the giving of such notice by Tenant. Landlord may

not later than one hundred eighty (180) days after the giving of such notice by tenant. Landlord may

accept such offer by notice to Tenant given within ten (10) days after the receipt of such notice from Tenant. If Landlord accepts such offer, (i) the Surrender Date will be deemed to be the Expiration Date with respect to the Premises or the portion of the Premises proposed to be transferred, and Tenant shall vacate and surrender to Landlord all of Tenant's right, title and interest in and to the Premises or such portion proposed to be transferred, on the Surrender Date, and the same shall be delivered to Landlord in broom clean condition, free and clear of all tenancies and occupancies and (ii) in the event Tenant fails to timely and properly surrender and vacate the Premises to Landlord on the Surrender Date, as described in (i) hereof, the same shall constitute a "holdover" and be subject to Section 11.01 hereof.

Consent by Landlord to any sublease or assignment shall not be deemed consent to any further sublease or assignment, each of which shall require Landlord's consent and be subject to the recapture provisions hereof.

ARTICLE VII.

INSURANCE AND INDEMNITY

7.01 Insurance.

A. Tenant shall maintain, at its sole cost and expense during the entire Term, the following insurance ("Tenant's Insurance"): (a) Commercial General Liability Insurance applicable to the Premises, the canopy in the Parking Facility, and its appurtenances providing, on an occurrence basis, including contractual liability coverage, a minimum combined single limit of not less than \$1,000,000.00; (b) Property/Business Interruption Insurance written on an All Risk or Special Cause of Loss Form, including sprinkler leakage, at current value and with a replacement endorsement at current value covering all of Tenant's business and trade fixtures, equipment, movable partitions, furniture, and merchandise located within the Premises ("Tenant's Property"), the canopy in the Parking Facility, Alterations and any other leasehold improvements to the Premises performed by or for the benefit of Tenant; (c) Workers' Compensation Insurance in amounts required by Law; (d) Employers Liability Coverage of at least \$1,000,000.00 per occurrence; and (e) automobile liability coverage of not less than \$500,000 combined single limit, including non-owned and hired car coverage, whether or not Tenant owns any vehicles. Any company writing Tenant's Insurance shall be authorized to do business in Florida and have an A.M. Best rating of not less than A-VIII. All insurance policies shall name as additional insureds Landlord (or its successors and assignees), Landlord's lender, the managing agent for the Building (or any successor), and their respective members, principals, beneficiaries, partners, officers, directors, employees, and agents, and other designees of Landlord and its successors as the interest of such designees shall appear. All policies of Tenant's Insurance shall contain endorsements that the insurer(s) shall endeavor to give Landlord and its designees at least thirty (30) days' advance written notice of any cancellation, termination, material change or lapse of insurance. Tenant shall furnish Landlord with renewals thereof at least 15 days prior to the expiration of any such policies. Tenant shall provide Landlord with a declaration or certificate of insurance evidencing Tenant's Insurance prior to Tenant taking possession of the Premises, and thereafter as necessary to assure that Landlord always has current declarations or certificates evidencing Tenant's Insurance.

B. Tenant shall not do any act which might make void or voidable any insurance on the Property or which may render an increased or extra premium payable for insurance (and without prejudice to any right or remedy of Landlord regarding the subparagraph, Landlord shall have the right to collect from Tenant, upon demand any such increase or extra premium).



7.02 Fire or Other Casualty

In case of damage to the Premises or the Building by fire or other casualty, Tenant shall give immediate notice thereof to Landlord. Landlord shall thereupon undertake the repair and restoration of the Premises or the Building to substantially the same condition as existed on the Effective Date, subject to the delays which may arise by reason of adjustment of loss under insurance policies and for delays beyond the reasonable control of Landlord. However, in the event (i) such destruction results in the Premises being untenable in whole or in substantial part for a period reasonably estimated by a responsible contractor selected by Landlord to be 180 days or more after the date of such casualty, or (ii) of total or substantial damage to, or destruction of, the Building from any cause, or (iii) Landlord decides not to repair or rebuild, this Lease shall, at the option of Landlord, exercisable by written notice to Tenant given within sixty (60) days after Landlord is notified of the casualty, be terminated as of a date specified in such notice (which shall not be more than ninety (90) days thereafter), and the Rent shall be adjusted to the termination date and Tenant shall thereupon promptly vacate the Premises.

If Landlord does not terminate this Lease pursuant to this Section 7.02, Landlord will restore Landlord's Work at its sole cost and expense, and Tenant will restore Tenant's Work and any Alterations performed by Tenant to the Premises, Tenant's personal property and trade fixtures, at Tenant's sole cost and expense.

Landlord will not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from such damage or the repair thereof.

Notwithstanding the foregoing, if the Premises or any portion of the Building are damaged by fire or other casualty resulting from the negligence or willful misconduct of Tenant or any of Tenant's agents, employees, contractors or invitees, Tenant shall be liable to Landlord for the cost of the repair and restoration of the Building and Premises caused thereby, as well as any other cost and expense thereby incurred by Landlord.

7.03 Assumption of Risk, Indemnification, Waiver of Liability

Landlord shall not be liable to Tenant or Tenant's customers, licensees, agents, guests or employees for any injury or damages occurring in or about the Premises to its, his or their persons or property for acts or omissions of any other tenant in the Building, water, rain, sleet, fire, storms, accidents, breakage, stoppage, or leaks of gas, water heating, sewer pipes, boilers, wiring or plumbing or any other defect in, on or about the Premises, and Tenant expressly assumes all liability for or on account of any such injury, loss or damage, and will at all times, indemnify and save Landlord harmless from and against all liability, fines, suits, demands, costs and expenses of any kind or nature (including, without limitation, attorneys' fees and disbursements).

Landlord shall not be liable to Tenant for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, computer failure, requisition, or order of governmental body or authority or by any other cause beyond the control of Landlord, including but not limited to delays from the foregoing. Nor shall Landlord be liable for any damage or inconvenience which may arise through repair or alterations of any part of the Property.

Subject to the provisions of Section 7.04, without limiting or being limited by any other indemnity in this Lease, but rather in confirmation and furtherance thereof, Tenant agrees to indemnify, defend by counsel reasonably acceptable to Landlord and hold Landlord, and Landlord's beneficiaries, trustees, the managing agent of the Building, if any, Landlord's mortgagee, and each of their respective agents, partners, members, shareholders, officers, directors and employees harmless of, from and



against any and all losses, damages, liabilities, claims, liens, costs and expenses (including, but not limited to, court costs, reasonable attorneys' fees and litigation expenses) in connection with injury to or death of any person or damage to or theft, loss or loss of the use of any property occurring in or about the Premises, the Property (including, without limitation, Tenant's canopy), or arising from Tenant's occupancy of the Premises, or the conduct of its business or from any activity, work, or thing done, permitted or suffered by Tenant in or about the Premises or the Property (including, without limitation, Tenant's canopy)(except to the extent any of the same arise out of Landlord's negligence or willful act and are not covered by the commercial general liability insurance maintained or required to be maintained by Tenant pursuant to Section 7.01), or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or due to any other act or omission or willful misconduct of Tenant or any of its agents, employees, contractors, assigns, subtenants, guests or invitees.

The provisions of this Section 7.03 shall survive the expiration or earlier termination of this Lease.

7.04 Waiver of Subrogation

Anything in this Lease to the contrary notwithstanding, each party hereto hereby waives any and every claim which arises or which may arise in favor and against the other party hereto during the Term of this Lease or any extension or renewal thereof for any and all loss of, damage to, any of its property within or upon or constituting a part of the Property to the extent that such loss or damage is recovered under an insurance policy or policies and to the extent such policy or policies contain provisions permitting such waiver of claims. Each party agrees to request its insurers to issue policies containing such provisions and if any extra premium is payable therefore, the party which would benefit from the provision shall have the option to pay such additional premium in order to obtain such benefit.

ARTICLE VIII. **EMINENT DOMAIN**

8.01 Total Condemnation

If the whole of the Building or Premises shall be taken or condemned for a public or quasi-public use under any statute or by right of eminent domain or private purchase in lieu thereof by any competent authority, then this Lease shall terminate as of the date of such taking. Tenant shall have no claim against Landlord and shall not have any claim or right to any portion of the amount that may be awarded as damages or paid as a result of any such condemnation or purchase, and all rights of Tenant to damages thereof are hereby assigned by Tenant to Landlord. The foregoing shall not, however, deprive Tenant of any separate award for moving expenses. Upon the date the right to possession shall vest in the condemning authority, this Lease shall cease and terminate with Rent adjusted to such date, and Tenant shall pay all Rent and other charges due and has no claim against Landlord for the value of any unexpired Term of this Lease.

8.02 Partial Condemnation

If part of the Premises shall be acquired or condemned as aforesaid (a "Partial Condemnation"), and such Partial Condemnation shall render the remaining portion unsuitable for the business of Tenant (in the reasonable opinion of Landlord or Tenant), the Term of the Lease shall cease and terminate as provided in Section 8.01 hereof. Landlord or Tenant shall provide notice to the other of its election to terminate the Lease or restore the Premises within ninety (90) days after the occurrence of the event giving rise to the Partial Condemnation as defined herein. If such Partial Condemnation is not extensive enough to render the Premises unsuitable for the business of Tenant, then this Lease shall continue in effect

to render the Premises unsuitable for the business of Tenant, then this Lease shall continue in effect

except that the Rent shall be reduced in the same proportion that the floor area of the Premises taken bears to the original floor area demised. Subject to the rights of any mortgagee of Landlord's estate, Landlord may, upon receipt of the net award in condemnation, make necessary repairs or alterations to the Building so as to render the portion of the Building not taken a complete architectural unit, but Landlord shall in no event be required to spend for such work an amount in excess of the net amount received by Landlord as condemnation proceeds for the part of the Premises so taken. "Net amount received by Landlord" shall mean that portion of the awards in condemnation which is free and clear to Landlord of any sums required to be paid by Landlord to the holder of any mortgage on the property so condemned for the value of the diminished fee, as well as all expenses and legal fees incurred by Landlord in connection with the condemnation proceeding. All proceeds from any taking or condemnation of the Premises shall belong to and be paid to Landlord.

8.03 Vacating Premises

If part of the Building, but not part of the Premises, is taken or condemned as aforesaid, and, in the reasonable opinion of Landlord or Tenant, such partial acquisition or condemnation shall render Landlord unable to comply with its obligations under this Lease, or shall render the Premises unsuitable for the business of Tenant, the Term of the Lease shall cease and terminate as provided in Section 8.01 hereof, by Landlord or Tenant sending written notice to such effect to the other, whereupon Tenant shall vacate the Premises within a reasonable time of the receipt of such notice.

8.04 Sale under Threat of Condemnation

Sale by Landlord to any authority having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed a taking under the power of eminent domain for all purposes under this Article.

ARTICLE IX. DEFAULT

9.01 Default by Tenant

Tenant shall be in default under this Lease if any one or more of the following events (each an "Event of Default") shall occur:

A. The failure by Tenant to pay any Rent or any other sums of money due hereunder if such failure continues for three (3) days after delivery of notice to Tenant specifying such default;

B. The failure of Tenant to comply with any non-monetary provision of this Lease (other than the failure to maintain the canopy) or any other written agreement between Landlord and Tenant, all of which terms, provisions, and covenants shall be deemed material and such default shall continue for a period of thirty (30) days after the giving of written notice thereof from Landlord to Tenant. This thirty (30) day period is limited solely to a default of a non-monetary provision of this Lease and in no way shall be construed to apply or effect or read in conjunction with Section 9.01(A) herein. In the event that Tenant has commenced remedial action to cure the breach but is unable to complete its remedial action in thirty (30) days, then provided Tenant continues its remedial efforts diligently on a day-to-day basis and without delay, and such default is capable of being cured, the cure period set forth herein shall be extended for an additional thirty (30) day period;



C. The failure of Tenant to repair and maintain the canopy in first-class condition and repair, which failure continues for 10 days after written notice thereof from Landlord to Tenant.

D. The taking of the leasehold on execution or other process of law in any action against Tenant;

E. The failure of Tenant to accept the Premises, to promptly move into, to take possession of, and to operate its business on the Premises, or if Tenant ceases to do business in or abandons any substantial portion of the Premises or if Tenant vacates the Premises or removes, attempts to remove, or permits to be removed from the Premises, any goods or property therefrom otherwise than in the ordinary and usual course of business (except as otherwise provided herein) without having first paid and satisfied Landlord in full for all Base Rent, Additional Rent, and any other charges then due or that may thereafter become due until the expiration of the Term of this Lease;

F. Tenant becoming insolvent or unable to pay its debts as they become due, or Tenant's notification to Landlord that it anticipates either condition;

G. Tenant or any other entity responsible for the obligations of Tenant under this Lease taking any action to, or notifying Landlord that Tenant or any other entity responsible for the obligations of Tenant under this Lease intends to, file a petition under the United States Bankruptcy Code, as amended, or any similar law or statute of the United States, or any state; or, the filing of a petition against Tenant or any other entity responsible for the obligations of Tenant under this Lease under any such statute or law, or, any other creditor of Tenant or any other entity responsible for the obligations of Tenant under this Lease notifying Landlord that it knows such a petition will be filed; or the notification by Tenant or any other entity responsible for the obligations of Tenant under this Lease, to Landlord that it expects such a petition to be filed;

H. The appointment of a receiver or trustee for the leasehold interest of Tenant or any other entity responsible for the obligations of Tenant under this Lease, in the Premises or for all or a substantial part of the assets of Tenant or any other entity responsible for the obligations of Tenant under this Lease;

I. If Tenant should assign, transfer, mortgage, or encumber this Lease or sublet the Premises in a manner not permitted under Article VI hereof;

J. If Tenant commences an assignment for the benefit of creditors;

K. If Tenant fails to cure forthwith, immediately after receipt of notice from Landlord, any hazardous condition which Tenant has created or permitted to exist in violation of Laws or of this Lease; or

L. If Tenant fails to maintain the full amount of the Security Deposit as required pursuant to Article XIII hereof within 10 days after notice.

9.02 Default by Landlord

In the event Landlord fails to perform on or before the required date for performance any obligation set forth in this Lease to be performed by Landlord, and such failure continues for 30 days after receipt by Landlord of notice from Tenant (or such additional period, if any, as may be reasonably required to cure the failure if the failure reasonably cannot be cured within a 30-day period, provided Landlord commences to cure within 30 days after receipt of notice and thereafter diligently pursues such cure to completion), Tenant may obtain such remedy as may be available at law or in equity, including termination of this

may obtain any such remedy or relief as may be available at law or in equity, including termination of this

Lease. If the Premises are in need of emergency repair and Landlord fails to perform the same upon reasonable notice (under the circumstances) from Tenant, Tenant may proceed to make such repairs as are reasonably necessary to prevent death, bodily injury or significant property damage. In the event Tenant performs any emergency repair pursuant to the preceding sentence, Landlord will, within 30 days after submission of an invoice and evidence of payment for such work, reimburse Tenant for Tenant's expenses incurred thereby.

ARTICLE X. **REMEDIES**

10.01 Landlord's Remedies

A. If an Event of Default occurs due to Tenant's failure to pay Rent, Landlord will have the right, at the option of Landlord, to terminate this Lease, and, in addition, Landlord may avail itself of any of the following remedies or any other remedies available at law or in equity:

B. If an Event of Default occurs, the Landlord will have the right, at its option, to perform any one or more of the following:

(1) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, unpaid rent and the cost of recovering possession of the Premises; expenses of relating including necessary renovation and alteration of the Premises; removal and storage of Tenant's and/or other's property and construction equipment, materials and supplies; reasonable attorney's fees; any real estate commission actually paid; the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid Rent for the balance of the Term after the time of such award exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided; and that portion of the leasing commission paid by Landlord applicable to the unexpired term of this Lease, if any.

(2) Resume possession and release the Premises for the remainder of the Term for the account of Tenant and recover from Tenant, at the end of the Term or any additional or extended Term, or at the time each payment of Rent becomes due under this Lease, as the Landlord may elect, the difference between the Rent for which provisions are made in this Lease and the rent received on the releasing or reletting together with all reasonable and actual costs and expenses of Landlord in connection with such releasing or reletting and the collection of rent, including without limitation, all reasonable or necessary repairs or renovations in connection with the releasing or reletting of the Premises, reasonable attorney's fees, any real estate commissions, plus any other damage occasioned by or resulting from the abandonment or a breach or default by Tenant; and

(3) Landlord may enter upon the Premises and/or do whatever Tenant is obligated to do under the terms of this Lease and Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in effecting compliance with Tenant's obligations under this Lease, and Landlord shall not be liable for any damages resulting to the Tenant from such action.

C. If any Event of Default occurs, then the Landlord, in addition to other rights and remedies it may have, shall have the right to re-enter the Premises, with or without judicial process, and



to remove all or any part of the Tenant's property from the Premises and any property removed may be stored in any public warehouse or elsewhere at the cost of, and for the account of Tenant and the Landlord shall not be responsible for the care or safekeeping thereof, and the Tenant hereby waives any and all loss, destruction and/or damage or injury which may be occasioned by any of the aforesaid acts.

D. No such reentry or taking possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention is given to Tenant. Notwithstanding any such reentry without termination, Landlord may at all times thereafter elect to terminate this Lease for such previous default or breach. Tenant shall allow any such reentry without hindrance and Landlord shall not be liable in damages for any such reentry, or guilty of trespass or forcible entry. Upon any such termination of this Lease, Tenant shall immediately vacate and peacefully surrender the Premises to Landlord, and Landlord, upon and at any time after such termination, may, without further notice, reenter and repossess the Premises, either by force, summary proceedings or otherwise, without being liable to any prosecution or damages therefore, and no person claiming through or under Tenant or by virtue of any statute shall be entitled to possession of the Premises.

E. Any Rent which may be due Landlord, whether by acceleration or otherwise as herein provided in this Article, shall include all Base Rent for the Term or any additional or extended Term, plus all other costs and expenses denominated as Additional Rent in this Lease. The Landlord shall not, in any event, be required to pay Tenant any surplus of any sums received by Landlord on a reletting of said Premises in excess of the Rent provided by this Lease.

F. Any and all rights, remedies and options given in this Lease to Landlord shall be cumulative and in addition to and without waiver of, or in derogation of, any right or remedy given to Landlord under any laws now or hereafter in effect. The remedies for which provision is made in this Section 10.01 shall not be exclusive, and in addition thereto, Landlord may pursue such other remedies as are provided by laws in the event of any breach, default or abandonment by Tenant. Specifically, without limiting the foregoing, in the event Landlord institutes dispossessory proceedings or dispossesses or evicts Tenant by summary proceedings or otherwise and/or re-enters and takes possession of the Premises, Tenant shall remain liable for all Rent and all other charges under the Lease for the remainder of the Term. Tenant acknowledges and agrees that the foregoing provision is in derogation of the common law and acknowledges that it is the intent of the parties hereto to allow Landlord to collect future rent in derogation of the common law. Landlord shall be entitled to recover all reasonable and actual costs and expenses incurred by Landlord to enforce its rights under this Lease, including reasonable attorneys' fees and appellate attorneys' fees and court costs and disbursements, in connection with collection of Rent or damages or enforcing other rights of Landlord in the event of a breach or default or abandonment by Tenant, irrespective of whether or not Landlord elects to terminate this Lease by reason of such breach, default or abandonment. Tenant hereby expressly waives any and all rights of redemption, if any, granted by or under any present or future law in the event Tenant shall be evicted or dispossessed for any cause, or in the event Landlord shall obtain possession of the Premises by virtue of the provisions of this Lease, or otherwise.

G. Any and all sums, including "Late Charges" as defined in Section 19.17, due under this Lease from Tenant to Landlord and not paid on the due date shall bear interest from the due date at the highest rate then allowable by Florida law per annum from the due date until paid unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Tenant under this Lease. If this Lease shall terminate, or if Landlord shall re-enter the Premises after an Event of Default as provided in this Lease or by operation of law, in the event of the termination of this Lease, Landlord shall be entitled to retain all monies paid by Tenant to Landlord, whether as advance Rent, Security Deposit or otherwise, and such monies shall be deemed damages and not a penalty.



H. If Tenant is in default under the terms of this Lease, Tenant hereby absolutely, unconditionally and irrevocably waives the following:

(1) any right Tenant may have to interpose or assert any claim, failure of Landlord to provide Tenant with quiet and peaceful enjoyment of the Premises, due to the negligence of Landlord or anyone acting for or through Landlord or due to Tenant's vacating the Premises due to a casualty or condemnation, damage, loss, liability, obligation, demand, defense, judgment, suit, proceeding, disbursement or expense (including reasonable attorneys' fees or expenses) or counterclaim in any action or proceeding brought by Landlord under this Lease to recover possession of the Premises. If Tenant violates this Section, Landlord and Tenant stipulate that any such claim, damage, loss, liability obligation, demand, defense, judgment, suit, proceeding, disbursement or expense (including reasonable attorneys' fees or expenses) or counterclaim shall be severed and tried separately from the action or proceeding brought by Landlord to recover possession of the Premises pursuant to Florida Rules of Civil Procedure 1.270(b) or other applicable law. The eviction proceeding shall proceed pursuant to the summary procedures set forth in Section 51.011, Florida Statutes. This Section shall in no way impair the right of Tenant to commence a separate action against Landlord for any violation by Landlord of the provisions of this Lease or to which Tenant has not waived any claim, damage, loss, liability, obligation, demand, defense, judgment, suit, proceeding, disbursement or expense (including reasonable attorneys' fees or expenses) pursuant to the provisions of this Lease so long as notice is first given to Landlord and any lender of Landlord, provided Landlord has given Tenant prior notice of the identity of such lender, and a reasonable opportunity is granted to Landlord and such lender to correct such violation. In no event shall Landlord or any lender of Landlord be liable for consequential damages incurred by Tenant, including lost profits or interruption of business, as a result of any default by Landlord. Tenant shall in all events comply with the provisions of Section 83.232 Florida Statutes with respect to any action or proceeding brought by Landlord under this Lease;

(2) any and all rights of redemption of the Premises or any goods therein granted by or under any present or future laws in the event Tenant is evicted or dispossessed of the same in accordance with this Lease or Landlord obtains possession of the same in accordance with the Lease;

(3) the benefit of all laws now or hereafter in effect, exempting any goods on the Premises owned by Tenant from distraint, levy or sale in any legal proceedings taken by Landlord in accordance with applicable laws to enforce any rights or remedies under this Lease;

(4) the benefit of all laws existing now or hereafter in effect regarding any limitation as to the goods upon which, or the time within which, distress is to be made after removal of goods Tenant from the Premises, and Tenant further relieves Landlord of the obligation of proving or identifying the goods distrained, it being the purpose and intent of this provision that all goods of Tenant upon the Premises shall be liable to distress for Rent at any time after Tenant's default beyond the applicable cure period under this Lease;

(5) any right to notice of default, other than the notices specifically provided for in this Lease, whether common law or statutory, including, without limitation, that which is set forth in Section 83.20 Florida Statutes;

(6) Tenant hereby specifically and knowingly authorizes Landlord to sell any goods distrained for Rent at a public auction sale to be held at any time at least fifteen (15) days after that distraint without announcement and condemnation of the goods, but upon ten (10) days'

that disclaim without appraisement and condemnation of the goods, but upon ten (10) days

notice to Tenant of the date, place and terms of sale, including Landlord's right to purchase all or any of the property; and

(7) the requirement under Section 83.12 Florida Statutes that Landlord in the distress for Rent action file a bond payable to Tenant in at least double the sum demanded by Landlord. In the case of distress for Rent action under this Lease, no bond whatsoever will be required of Landlord.

ARTICLE XI. END OF TERM

11.01 Holdover

If Tenant remains in possession of the Premises or any part thereof after the expiration or sooner termination of the Term or any extension thereof, Tenant shall become a Tenant at sufferance and shall pay Landlord a monthly rent computed at one hundred fifty percent (150%) of the Rent paid by Tenant in the last month prior to the expiration or termination of the Lease, which shall be payable on a monthly basis. Notwithstanding that Landlord may allow Tenant to continue in possession after the expiration or sooner termination of this Lease, neither that nor the provisions of this Section 11.01 shall constitute a waiver of any of Landlord's rights under this Section or this Lease. Further, notwithstanding the payment of Rent by Tenant and acceptance thereof by Landlord as provided herein, Tenant shall be in continuing breach of this Lease at any time or during any period in which Tenant holds over as provided herein.

11.02 Removal of Tenant's Property

At the expiration or earlier termination of this Lease, Tenant will remove Tenant's goods and effects and those of any other person claiming under Tenant, and quit and deliver up the Premises to Landlord broom clean, free of tenancies, peaceably and quietly in as good order and condition as at the inception of the Term, subject to normal wear and tear from use and subject to approved changes made to the Premises by Landlord. Goods and effects not removed by Tenant at the expiration or earlier termination of this Lease, however terminated, shall be considered abandoned, and Landlord may dispose of and/or store the same as it deems expedient, the cost thereof to be charged to Tenant, and for which Tenant hereby waives all claims against Landlord. Notwithstanding the foregoing, provided that Tenant is not in default under the terms of this Lease, Tenant may remove Tenant's personal property, furniture, signs, equipment, and trade fixtures from the Premises, at (i) the expiration or earlier termination of this Lease, or (ii) any other time provided that such removal will not cause damage to the Building or the Premises, and further provided that Tenant must replace such items so removed from time-to-time as necessary to maintain the appearance and the functionality of the Premises, with items of comparable worth.

ARTICLE XII. SUBORDINATION

12.01 Subordination of this Lease

This Lease and Tenant's rights hereunder are hereby made subject and subordinate to all ground or underlying leases of the Property and all mortgages now or which may be secured upon the Property, and to all renewals, modifications, consolidations, replacements, and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any lessor or mortgagee. In confirmation of such subordination, Tenant shall execute and deliver, within ten (10) days



after request, any instruments that Landlord, the holder of any mortgage, or the lessor under any ground lease or underlying lease may reasonably require, acknowledging such subordination. Notwithstanding the foregoing, in the event of the judicial or non-judicial foreclosure of the Property or the Building, at the election of the acquiring purchaser at the foreclosure sale or by deed-in-lieu of foreclosure, Tenant will attorn to such purchaser. If mortgagee so requests, Tenant shall enter into a subordination, non-disturbance and attornment agreement with mortgagee, satisfactory in form, scope and substance to mortgagee. Landlord will use commercially reasonable efforts to obtain a subordination, non-disturbance and attornment agreement from its current mortgage lender (if any) and any future mortgage lender in favor of Tenant in commercially reasonable form.

ARTICLE XIII. **SECURITY DEPOSIT**

13.01 Security Deposit in the Form of Cash

A. As additional security for the full and prompt performance by Tenant of the terms and covenants of this Lease, Tenant will deposit with Landlord an amount equal to five (5) months' Base Rent (the "Security Deposit"), in the form of cash. The Security Deposit shall not constitute Rent for any month (unless so applied by Landlord on account of Tenant's default), except as expressly provided in this Section 13.01. Unless otherwise required by Florida law, Landlord may commingle the Security Deposit with other security deposits, and shall not pay Tenant interest on the Security Deposit. If Tenant has complied with all the terms and conditions of this Lease, Landlord will return the Security Deposit to Tenant within 30 days after the later of (i) the expiration or earlier termination of this Lease, and (ii) vacation of the Premises by Tenant.

B. In the event that any default occurs under this Lease, Landlord may apply or retain all or any part of the Security Deposit for the payment of any unpaid Base Rent or Additional Rent or for any other sum which Landlord may expend or be required to expend by reason of Tenant's default, including (i) any damages or deficiency which accrues before or after summary proceedings by Landlord and (ii) any liability of Landlord for the failure of Tenant (x) to vacate the Premises at the Expiration Date or (y) to deliver the Premises to Landlord, at the Expiration Date in the condition required pursuant to this Lease. In the case of every such application or retention of the Security Deposit, Tenant shall within ten (10) days pay to Landlord the sum so applied or retained which shall be added to the Security Deposit so that the original amount stated in this Article shall be restored. Failure by Tenant to comply with the provisions of this Article shall be deemed a material default hereunder entitling Landlord to exercise any and all remedies as provided in this Lease in addition to drawing on the Security Deposit up to its full amount. If at the end of the Term or any earlier expiration thereof (i) Landlord has taken possession of the Premises and has confirmed that the Premises were delivered to it in the condition required by the Lease and in a timely manner (or, if not delivered in such condition or in a timely manner, that the failure to satisfy such conditions is not attributable to actions or omissions of Tenant), (ii) there are no unpaid amounts due to Landlord under this Lease or under any guarantee of this Lease, and (iii) Tenant is not then in default under this Lease, then the Security Deposit, or any balance thereof, shall be returned to Tenant. Notwithstanding the foregoing, if Tenant is not then in default under the terms of this Lease and the full amount of the Security Deposit is then on deposit with the Landlord, Landlord will apply \$7,000.00 per month of the Security Deposit to the last three months of Base Rent due under this Lease.

C. In the event of a sale of the Property or the Building or leasing of the Building of which the Premises form a part, Landlord shall have the right to transfer the Security Deposit to the purchaser or lessee and Landlord shall thereupon be released by Tenant from all liability for the return of the Security Deposit upon written notice to Tenant; and Tenant agrees to look solely to the new landlord for the return of the Security Deposit; and it is agreed that the provisions hereof shall apply to every

for the return of the security deposit, and it is agreed that the provisions herein shall apply to every

transfer or assignment made of the Security Deposit to a new landlord. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the Security Deposit and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrances.

ARTICLE XIV. WAIVER

14.01 No Waiver by Landlord or Tenant

The waiver by Landlord or Tenant of any breach of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or any subsequent breach of the same or any other term, condition or covenant herein contained. The consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent or similar act by Tenant. No reentry hereunder shall bar the recovery of Rent or damages for the breach of any of the terms, conditions or covenants on the part of Tenant herein contained. The receipt of Rent after breach or condition broken, or delay on the part of Landlord to enforce any right hereunder, shall not be deemed a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, or a waiver of the right of Landlord to annul this Lease or to reenter said Premises or to relet same. The failure of Landlord or Tenant to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Lease shall not be construed as a waiver or a relinquishment thereof for the future.

Landlord's failure to timely render any statement hereunder shall not act as a waiver by Landlord of its right to issue any such statement during the Term or any renewal or extension thereof.

No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of Rent due under this Lease shall be deemed to be other than on account of the earliest Rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

ARTICLE XV. INTENTIONALLY DELETED

ARTICLE XVI. LANDLORD'S RIGHTS

16.01 Landlord's Lien

Tenant hereby grants to Landlord a lien and security interest ("Landlord's Lien") on all property of Tenant now or hereafter placed in or upon the Premises, and such property shall be and remain subject to such Landlord's lien and security interest of Landlord for payment of all Rent and other sums agreed to be paid by Tenant herein.

The provisions of this Section 16.01 relating to such lien and security interest shall constitute a security agreement under and subject to the Uniform Commercial Code of the State of Florida



so that Landlord shall have and may enforce a security interest on all property of Tenant now or hereafter placed in or on the Premises, in addition to and cumulative of the other Landlord's liens and rights provided by law or by the other terms and provisions of this Lease. Tenant agrees to execute as debtor such financing statement or statements and such other documents as Landlord may now or hereafter request to protect or further perfect Landlord's security interest.

16.02 Entry by Landlord

Landlord may enter the Premises at reasonable hours to: (a) inspect the same, (b) exhibit the same to prospective purchasers, lenders, tenants, or others, (c) determine whether Tenant is complying with all its obligations hereunder, (d) supply any other service to be provided by Landlord to Tenant hereunder, (e) deliver any notices hereunder to Tenant at the Premises, and (f) make repairs required of Landlord under the terms hereof or repairs to any adjoining space or utility services or make repairs, alternations, or improvements to any other portion of the Building, including replacement of the "curtain wall," provided, however, that, other than with respect to an emergency or to perform janitorial and trash removal services, when no notice shall be required, Landlord shall provide twenty-four (24) hours written notice to Tenant and all such work shall be done as promptly as reasonably possible so as to cause as little interference to Tenant as reasonably possible. Landlord shall at all times have and retain a key with which to unlock all of the doors in, on or about the Premises (excluding Tenant's vaults, safes and similar areas designated in writing by Tenant in advance); and Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises, or any portion thereof.

16.03 Landlord's Development Rights

Subject to the rights of Landlord's mortgagee, Landlord hereby reserves the right, at any time, to change the name of the Building; perform maintenance operations and to make repairs, alterations, or additions to, and to build additional stories on, the Building and/or to build structures, and/or improvements adjoining the Building, which may include, but not be limited to, Landlord's construction of additional buildings and improvements, such as structures for motor vehicle parking (collectively, "Landlord's Development Rights"). Tenant shall cooperate with Landlord and not interfere with any such maintenance, repairs, alterations, additions or construction to, affecting or adjoining the Building or the Property. Tenant understands and agrees that Tenant may be subject to noise, commotion and any other effects of such construction activity and may be impeded in using portions of the Property; however, in no event shall Tenant be entitled to any abatement or reduction of Rent by reason thereof or be entitled to claim to any eviction, whether actual or constructive as a result thereof.

In conjunction with and in addition to the foregoing Landlord's Development Rights and/or in the event Landlord wishes to demolish the Building, subject only to the rights of Landlord's mortgagee, Landlord shall have the absolute right to terminate this Lease (an "Early Termination") and remove Tenant from occupancy of the Premises upon not less than twelve (12) months written notice to Tenant at any time during the Term upon such date as stated in such notice (the "Early Termination Date"), provided that Landlord also terminates the leases of all premises in the Building.

Upon such Early Termination, Landlord shall apply the Security Deposit or any unused portion thereof to any Rent due hereunder and shall return any balance remaining to Tenant within approximately thirty (30) days from such Early Termination Date, and, other than as provided herein with respect to the survival of Tenant's obligations, this Lease will be of no further force and effect from and after the Early Termination Date. The rights set forth herein reserved to Landlord shall not be

impaired or affected by any subsequent change in law applicable to this Lease.

In addition, Landlord reserves the right to (a) grant utility easements or other easements in, or replat, subdivide, submit all or any portion of the Property to a long-term lease, or make other changes in the legal status of the Property or the Land as Landlord deems appropriate in its sole discretion; (b) change the street address of the Building; (c) install and maintain signs on and in the Building; and (d) make such rules and regulations as, in the sole judgment of Landlord, may be needed from time to time for the safety of the tenants, the care and cleanliness of the Premises and the Property and the preservation of good order therein. In addition to the foregoing, and notwithstanding anything to the contrary contained in this Lease, any space in and/or adjacent to the Premises, including without limitation the area beneath the ceiling of the Premises, used for shafts, stairways, stacks, pipes, conduits, ducts, electric or other utilities, sinks, fans or other Building facilities, and the use thereof, as well as access thereto throughout the Premises for the purposes of such use and the operation, improvement, replacement, addition, repair, maintenance or decoration thereof, are expressly reserved to Landlord.

16.04 Tenant's Failure to Perform

If Tenant fails to perform any of its obligations under this Lease, Landlord, or any superior lessor or mortgagee, may perform the same at the expense of Tenant (a) immediately and without notice in the case of emergency, or if such failure (i) interferes with the use of space by any other tenant in the Building, (ii) interferes with the efficient operation of the Property, or (iii) may result in a violation of any law, or in a cancellation of any insurance policy maintained by Landlord, and (b) such failure continues for more than ten (10) days after written notice from Landlord. All costs and expenses incurred in performing such obligations of Tenant, together with interest thereon at the rate of two percent (2%) per month or such lesser rate as required by law, shall be payable as Additional Rent.

ARTICLE XVII. **LIMITED LIABILITY OF LANDLORD**

17.01 No Personal Liability

The liability of Landlord to Tenant for any default by Landlord under this Lease shall be limited to the interest of Landlord in the Property and Tenant agrees to look solely to Landlord's interest in the Property, if any, and to no other asset of Landlord, for the recovery of any judgment from Landlord, it being intended that Landlord shall not be personally liable for any judgment of deficiency.

The obligations of Landlord under this Lease do not constitute personal obligations of the partners, members, shareholders, directors, officers, employees or agents of Landlord, and Tenant will not seek recourse against the partners, members, shareholders, directors, officers, employees or agents of Landlord or any of their personal assets for such satisfaction. The obligations of Landlord under this Lease shall not be binding upon Landlord named herein after the sale, conveyance, assignment or transfer by such Landlord (or upon any subsequent landlord after the sale, conveyance, assignment or transfer by such subsequent landlord) of its interest in the Premises or the Property, as the case may be. In the event of any such sale, conveyance, assignment or transfer, Landlord shall be and hereby is entirely released of all covenants and obligations of Landlord hereunder, and thereafter Tenant shall look solely to any subsequent landlord, but only for so long as such subsequent landlord is Landlord hereunder, and such subsequent landlord, while it is Landlord hereunder, shall be deemed to have assumed all of the obligations of Landlord under this Lease arising after the date of such sale, conveyance, assignment or transfer.



17.02 Services Provided by Landlord

Except as otherwise expressly provided in this Lease, Landlord will not be required to provide any services, perform any maintenance on or make any repairs to the Premises nor provide any security services for the Property. Any security measures that Landlord may undertake are for the protection of the Property only, and Tenant shall not rely upon them to protect Tenant's property, or employees, invitees or other person or their property. Tenant understands that Landlord does not warrant that any of the services provided under this Lease will be free from interruption. The failure for any reason by Landlord to any extent to furnish, or the interruption or termination of such services to be provided by Landlord shall not render Landlord liable in any respect nor be construed as an eviction (constructive or otherwise) of Tenant, nor work an offset or abatement of Rent, nor relieve Tenant from the obligation to fulfill any covenant or agreement of this Lease.

17.03 Damage to Tenant's Property

Landlord will not be liable for any damage to property of Tenant or of others entrusted to employees of the Building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, except to the extent caused by Landlord's negligence or willful misconduct and not covered by the commercial general liability insurance maintained or required to be maintained by Tenant pursuant to Section 7.01. Neither Landlord nor Landlord's employees or agents will be liable for any such damage caused by other tenants or persons in, upon or about said Building or caused by operations in construction of any private, public or quasi-public work.

Tenant hereby releases Landlord and waives any right of recovery against Landlord for loss or damage to Tenant's property whether such loss or damage is caused by the act or omission of Landlord, or Landlord's agents, employees, officers, contractors, licensees, invitees or otherwise.

ARTICLE XVIII. NOTICE

18.01 Notice

Except as otherwise provided herein, all notices and other communications provided for hereunder shall be in writing and shall be mailed by United States certified mail, return receipt requested, or delivered by hand with a signed receipt therefore, or by nationally recognized overnight courier that provides for receipted delivery at the addresses set forth below. All such notices and other communications will be effective (i) if sent by mail, the date that is two (2) days after the date when postmarked; and (ii) if delivered, upon delivery, or refusal of delivery.

The addresses for all notices are:

Landlord's Notice Address: 3050 Biscayne Properties, LLC
2200 Biscayne Blvd
Miami, Florida 33137
Attention: Sharon Christenbury, Esq.

Landlord's Rent Address: 3050 Biscayne Properties, LLC
2200 Biscayne Boulevard
Miami, Florida 33137
Attention: Soralin Sanchez



or to such other person or such other address designated by written notice sent by Landlord to Tenant.

Tenant's Notice Address: Simplikate Systems, LLC
 3050 Biscayne Boulevard
 Suite 602
 Miami, Florida 33137
 Attention: Tushar Patel

or to such other person or such other address designated by written notice sent by Tenant to Landlord.

ARTICLE XIX.
MISCELLANEOUS

19.01 Parties

A. The word "Tenant" as used in this Lease shall be construed to mean tenants in all cases where there is more than one tenant, and the necessary grammatical changes required to make the provisions hereof apply to corporations, partnerships, or individuals, men or women, shall in all cases be assumed as though in each case fully expressed. Each provision hereof shall extend to and shall, as the case may require, bind and inure to the benefit of Tenant and its heirs, legal representative, successors and permitted assigns hereunder, provided that this Lease shall not inure to the benefit of Tenant and its heirs, legal representative, transferee or successor of Tenant except upon the express written consent or election of Landlord. To the extent Tenant is comprised of more than one entity or individual, as the case may be, each such entity or individual shall be jointly and severally liable for all obligations under this Lease.

B. The term "Landlord" as used in this Lease shall mean the fee owner of the entire Property or, if different, the party holding and exercising the right, as against all others (except space tenants of Building) to possession of the entire Property. Landlord shall have the right, to transfer and assign in whole or in part, all its rights and obligations hereunder and in the Property, and in the event of any voluntary or involuntary transfer of such ownership or right to a successor in interest of Landlord, unless otherwise noted herein, Landlord shall be freed and relieved of all liability and obligation hereunder which shall thereafter accrue (and, as to Tenant's Security Deposit or any unapplied portion of Tenant's Security Deposit thereof, Landlord shall be relieved of all liability therefore upon transfer of the same to its successor in interest) and Tenant shall look solely to such successor in interest for the performance of the covenants and obligations of Landlord hereunder which shall thereafter accrue. Notwithstanding the foregoing, no mortgagee or ground lessor that succeeds to the interest of Landlord hereunder (either in terms of ownership or possessory rights) shall (i) be liable for any previous act or omission of a prior Landlord, (ii) be subject to any rental offsets or defenses against a prior Landlord, (iii) be bound by any amendment of this Lease made without its written consent, or by payment by Tenant of rent in advance in excess of one (1) month's rent, or (iv) be liable for any security not actually received by it. Subject to the foregoing, the provisions hereof shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of Landlord.

C. Nothing contained in this Lease shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties hereto, it being understood and agreed that neither the method of computation of Rent, nor any other provision contained herein, nor any acts of the Parties herein, shall be deemed to create any relationship between the Parties hereto other than the relationship of Landlord and Tenant.



D. As part of the consideration for this Lease, Landlord warrants and represents to Tenant that this Lease has been duly authorized, approved and ratified in all respects by all necessary action of Landlord and has been executed and delivered by a duly authorized officer of Landlord. As part of the consideration for this Lease, Tenant warrants and represents to Landlord that this Lease has been duly authorized, approved and ratified in all respects by all necessary action of Tenant and has been executed and delivered by a duly authorized officer of Tenant.

19.02 Brokers

Landlord and Tenant represent and warrant to the other that it has not dealt with any broker in connection with this Lease other than Chariff Realty Group (the "Broker"), and to the best of each of their knowledge and belief, no broker, finder or like entity procured or negotiated this Lease or is entitled to any fee or commission in connection herewith other than Broker. Each of Landlord and Tenant shall indemnify, defend, protect and hold the other Party harmless from any and all losses, liabilities, claims, judgments, fines, suits, demands, costs, interest and expense of any kind or nature (including reasonable attorneys' fees and disbursements) arising out of or in connection with the breach of such representation or warranty. Landlord will be responsible to pay Broker a commission pursuant to a separate agreement.

19.03 Entire Agreement, Amendments

Neither Party hereto has made any representations nor promises, except as contained herein. Any representation, inducement, warranty, understanding or agreement that is not expressly set forth in this Lease shall be of no force and effect. No agreement hereinafter made shall be effective to change, modify, discharge, or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by the Party against whom enforcement of the change, modification, discharge or abandonment is sought. This Lease incorporates and includes the exhibits attached hereto and contains and embodies the entire agreement of the Parties and supersedes all prior agreements, negotiations, letters of intent, proposals, representations, warranties, understandings, suggestions and discussions, whether written or oral, of the Parties. Tenant shall, at Landlord's request, promptly execute any requisite document, certificate or instrument that is necessary or desirable to clarify or carry out the force and effect of any terms of conditions of, or obligations of Tenant under this Lease.

19.04 Captions

The captions of the paragraphs in this Lease are inserted and included solely for convenience and shall not be considered or given any effect in construing the provisions hereof.

19.05 Construction of Lease

If any term of this Lease, or the application thereof to any person or circumstances, is deemed to be invalid or unenforceable, the remainder of the Lease, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, will be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

19.06 Force Majeure

Whenever a period of time is herein prescribed for the taking of any action by Landlord, or in the event that Landlord cannot commence or complete the work or perform any other obligation of Landlord hereunder by the date specified therefor, Landlord will not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, financing, or any

other cause whatsoever beyond the control of Landlord and, with respect to an obligation which must be completed by a specified date, the time for the commencement or the completion of the work or the performance of such obligation will be automatically extended for the period of delay due to such event.

19.07 Hazardous Materials

Tenant will not (either with or without negligence) cause or permit the escape, disposal or release of any asbestos containing materials, polychlorinated biphenyls, urea-formaldehyde and urea-formaldehyde foam insulation, nuclear fuel or waste, petroleum products and any hazardous waste, toxic substance, related components, related constituents, pollutant, or contaminant, including without limitation, any substance defined or treated as a "hazardous substance," extremely hazardous substance or "toxic substance" (or comparable term) in violation of any applicable environmental Laws. Tenant shall not allow the storage or use of such substances or materials in any manner in violation of Laws or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Property any such materials or substances, and then only after written notice is given to Landlord of the identity of such substances or materials, except no notice shall be required for standard office supplies for Tenant's use. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any applicable state or local laws and the regulations adopted under these acts. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials, then Tenant shall reimburse the reasonable costs thereof to Landlord upon demand as additional charges if such requirement applies to the Premises. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning the presence of hazardous substances or materials on the Premises. Tenant shall indemnify and hold harmless Landlord and Landlord's employees, agents, contractors, members, officers, directors, partners, trustee, and beneficiaries from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Premises, damages caused by loss or restriction of rentable or usable space or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Term of this Lease from any release of hazardous materials on the Premises occurring while Tenant is in possession or elsewhere if caused by Tenant, or Tenant's employees, agents, contractors or persons acting under Tenant.

By its execution hereof, Tenant acknowledges that it had the opportunity to fully inspect the Premises. Tenant hereby certifies to Landlord that neither Tenant nor any of its employees, agents, or contractors observed or has any knowledge of any mold, mildew, Mold Conditions (as hereinafter defined) or moisture within the Premises and further acknowledges the following:

Because mold spores are present essentially everywhere and mold can grow in almost any moist location, Tenant acknowledges the necessity of adopting and enforcing good housekeeping practices within the Premises. Tenant will, at its sole cost and expense keep and maintain the Premises in good order and condition in accordance with good mold prevention practices and acknowledges that the control of moisture and prevention of mold within the Premises are integral to its obligations under this Lease.

Tenant, at its sole cost and expense, will:

Regularly monitor the Premises for the presence of mold and any conditions that can reasonably be expected to give rise or be attributed to mold including, but not limited to, observed or suspected instances of water damage, condensation, seepage, leaks, or any other water penetration (from any source, internal or

or water damage, condensation, seepage, leaks, or any other water penetration (from any source, internal or

external), mold growth, mildew, repeated complaints of respiratory ailments or eye irritation by Tenant's employees or any other occupants of the Premises, or any notice from a governmental agency of complaints regarding the indoor air quality at the Premises (the "Mold Conditions"); and

Immediately notify Landlord in writing if it observes, suspects, has reason to believe, or should know of, mold or Mold Conditions present at the Premises.

In the event of suspected mold or Mold Conditions at the Premises, Landlord may cause an inspection of the Premises during such time as Landlord may designate, to determine if mold or Mold Conditions are present at the Premises. If the mold or Mold Conditions are attributable to the acts of omissions of Tenant or Tenant's contractors, agents, or employees, Tenant will be responsible to reimburse Landlord for the cost of such report.

If Mold Conditions are found in the Premises, Tenant shall provide access to Landlord and Landlord's agents to undertake any work at reasonable times to remove Mold Conditions deemed necessary by Landlord. Landlord will remediate any Mold Condition discovered on or about the Premises during the Term that constitutes a risk to the health of persons in, on or about the Premises, provided that such obligation will apply only to the extent that such mold was caused by (1) the activities of Landlord, its agents, employees or contractors; or (2) a defect in the design or construction of Landlord's Work.

Tenant hereby releases and relieves Landlord from any and all liability for bodily injury or damage to property and hereby waives any and all claims against Landlord related to or allegedly caused by or associated with any mold and Mold Conditions in or on the Premises first arising after the Commencement Date.

Tenant agrees not to generate hazardous effluents.

Tenant agrees to allow reasonable access to the Premises for monitoring of the above by Landlord, Miami-Dade County, DERM and the Florida DER to assure compliance with the above as well as any other conditions relating to the use of the Property.

Violation of any of the above shall be deemed to be a material default by Tenant under this Lease.

The provisions of this Section 19.07 will survive the expiration or earlier termination of this Lease.

19.08 Medical Waste.

In addition to Tenant's obligations with respect to Hazardous Substances set forth in Section 19.07, Tenant shall be solely responsible for and shall solely provide, at Tenant's sole cost and expense, for the proper treatment, handling, removal and disposal from the Premises, the Building and the Property, of all infectious and/or hazardous medical waste as the same may be determined from time to time by applicable federal, state or local laws or regulations. Landlord and Landlord's Agent shall not be responsible for the treatment, handling, removal or disposal of same, nor shall Landlord incur any liability to Tenant or any other parties, or any governmental agency or division thereof, relating to same. Tenant hereby agrees to indemnify, defend and hold Landlord and Landlord's Agent harmless with respect to any suits, debts, expenses, liabilities, alleged violations or non-compliance with any federal, state or local law or regulation, and any other demands of any nature whatsoever, for any violation by Tenant of the provisions of this Section 19.08 and for any harm to others caused or alleged to have been caused by Tenant's medical waste.

The provisions of this Section 19.08 will survive the expiration or earlier termination of this Lease.



19.09 Radon

In compliance with Florida law, Landlord is required to provide the following notification: "Radon Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health department."

19.10 Light and View

If the view from the Premises or the light or air entering the Premises are interfered with for any reason whatsoever including, but not limited any structure being erected on land adjacent to the Building or as a result of Landlord's own acts, Landlord shall not be liable for any damage Tenant may sustain thereby.

19.11 Recordation

Tenant agrees not to record this Lease or any memorandum hereof but Landlord may record this Lease or a memorandum thereof, at its sole election. Tenant shall join in the execution of any such memorandum of lease requested by Landlord.

19.12 Governing Law, Venue

This Lease and the rights and obligations of the parties hereto are governed by the laws of the State of Florida. Venue for all purposes shall be in Miami-Dade County, Florida.

19.13 Time of Performance

With respect to all obligations of Tenant hereunder, unless otherwise specifically provided, time is of the essence of this Lease.

19.14 Floor Load Limit

Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot area which such floor was designed to carry and which may be allowed by law. Landlord reserves the right to prescribe the weight limitations and position of all heavy equipment and similar items, and to prescribe the reinforcing necessary, if any, which in the opinion of Landlord may be required under the circumstances, such reinforcing to be at Tenant's expense.

19.15 Patriot Act and Homeland Security

Tenant represents and warrants that neither Tenant (which for the purpose of this Section 19.15 includes its partners, members, principal stockholders and any other constituent entities) nor any person or entity that owns any direct or indirect beneficial interest in Tenant is, or is acting directly or indirectly for or on behalf of any group, entity, or nation, named by any Executive Order of the President of the United States or the United States Treasury Department as a terrorist or other "specifically designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <<http://www.treas.gov/ofac/tl1>> or at any replacement website or other replacement official publication of such list or other person, entity, nation or transaction banned or blocked pursuant to any law, order, rule or regulation that is enforced or administered by the



United States Office of Foreign Assets Control or any successor entity, agency or department (an "SDN"). Tenant further represents and warrants that it (i) is currently in compliance with and will at all times during the Term of this Lease (including any extension thereof) remain in compliance with the regulations of the Office of Foreign Asset Control of the Department of the Treasury and any statute, executive order (including 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 relating thereto, and (ii) has not used and will not use funds from illegal activities for any payment made under the Lease.

If Tenant is a privately owned entity, the persons listed on Exhibit E annexed hereto constitute all of the officers, directors, general partners, and persons and/or entities owning twenty-five percent (25%) or more of the shares, membership interests, or partnership interests (as the case may be) of Tenant (collectively the "Principals"). If Tenant is comprised of more than one (1) person or entity, the foregoing certification is made as to each person and entity comprising Tenant.

19.16 Survival

The following provisions of the Lease will survive its expiration or earlier termination: (i) any action arising from or as a result of Tenant's noncompliance during the Term of this Lease or any extensions thereof with Laws and/or the Regulations and Rules; (ii) Tenant's obligation to reimburse Landlord for underpayment of Tenant's Operating Costs and to pay for any repairs undertaken by Landlord on Tenant's behalf; (iii) Landlord's Lien granted hereunder; (iv) Tenant's obligation to pay any legal expenses of Landlord; (v) Tenant's insurance obligations for any event occurring prior to the expiration or earlier termination of the Lease and/or for events occurring by, through or under Tenant at any time; (vi) Tenant's indemnities including those matters arising prior to the expiration of the Lease and/or for events occurring by, through or under Tenant at any time; (vii) Tenant's responsibilities for the condition of the Premises; (viii) limitations on Landlord's liability; (x) disclosure of confidential information hereunder; and (xi) all waivers by Tenant.

19.17 Late Charge

In the event that any payment required by Tenant under the provisions hereof shall not be paid within ten (10) days after its due date, Tenant shall, without further demand, pay a late charge to Landlord equal to five (5) percent of the past due amount, plus any and all bank charges for dishonored checks or funds (each such charge, a "Late Charge"), and such Late Charge will be deemed Additional Rent for all purposes under this Lease. Since the Late Charge described herein shall be in addition to any interest that may be due on any amounts to which a Late Charge shall apply hereunder, Landlord's inability or failure to collect a Late Charge for any reason shall not excuse collection in the future and shall not constitute, or be construed as, a waiver of Landlord's rights hereunder to collect Late Charges now or in the future.

19.18 Waiver of Venue and Trial by Jury by Tenant

LANDLORD AND TENANT HEREBY EXPRESSLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THEIR RELATIONSHIP AS LANDLORD AND TENANT, TENANT'S USE AND OCCUPANCY OF THE LEASED PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE. TENANT (AND ANY GUARANTORS AND OTHER PARTIES WITH LIABILITY FOR THE PERFORMANCE OF ANY OR ALL OF TENANT'S OBLIGATIONS HEREUNDER, AS WELL AS ANY SUBTENANTS, ASSIGNEES AND LICENSEES OF TENANT) HEREBY AGREES TO



SUBMIT TO THE PERSONAL JURISDICTION AND VENUE IN ANY COURT OF COMPETENT JURISDICTION WITHIN MIAMI-DADE COUNTY, FLORIDA.

19.19 Estoppel Statement

Tenant shall from time to time, within ten (10) days after request by Landlord, execute, acknowledge, and deliver to Landlord a statement certifying that this Lease is unmodified and in full force and effect (or that the same is in full force and effect as modified, listing any instruments of modification), the dates to which Rent and other charges have been paid, whether or not Landlord is in default hereunder, whether Tenant has any claims or demands against Landlord (and, if so, the default, claim, and/or demand shall be specified) and any other information that may be required by Landlord, any prospective purchaser, ground lessor or mortgagee of the Property or Building and such statement may be delivered by Landlord to any prospective purchaser, ground lessor or mortgagee of the Property or Building and may be relied upon by such prospective purchaser, ground lessor or mortgagee.

19.20 No Warranties

Except as otherwise may be expressly set forth herein, neither Landlord nor Landlord's agents have made any representations or warranties with respect to the Premises and no rights, easements or licenses are acquired by Tenant by implication or otherwise. Tenant expressly agrees that there are and shall be no implied warranties of merchantability, habitability, fitness for a particular purpose or of any other kind arising out of this Lease, and there are no warranties which extend beyond those expressly set forth in this Lease.

19.21 Landlord's Consent

If Tenant requests Landlord's consent with respect to any matter hereunder and Landlord fails or refuses to give such consent, Tenant shall not be entitled to any damages for any withholding by Landlord of its consent, it being intended that Tenant's sole remedy will be an action for specific performance or injunction and that such remedy will be available only in those cases where this Lease expressly provides that Landlord will not unreasonably withhold its consent.

19.22 Relocation

Landlord expressly reserves the right to remove Tenant from the Premises if Landlord leases the entire rentable area of the sixth floor of the Building to a single tenant, and to relocate Tenant into some other space of Landlord's choosing of approximately the same dimensions and size within the Property (the "Relocation Premises"), which other space shall be decorated and built-out by Landlord, at Landlord's expense. Landlord shall have the right, in Landlord's sole discretion, to use such decorations and materials from the Premises, or other materials so that the Relocation Premises shall be comparable in its interior design and decoration to the Premises; provided, however, that if Landlord exercises its election to remove and relocate Tenant and the Relocation Premises are at the time leasing for a higher annual Base Rent, then Tenant shall not be required to pay the difference between the Base Rent of the Premises and the higher annual Base Rent of the Relocation Premises; provided further, that if the Relocation Premises are then leasing at an annual Base Rent less than the annual Base Rent of the Premises at that time, Tenant's annual Base Rent shall be reduced to the annual Base Rent then being charged for the Relocation Premises.

19.23 Severability of Provisions

Any provision of this Lease which is prohibited or unenforceable under the laws of the State of Florida or any applicable laws of the United States of America shall be ineffective to the extent of such prohibition or invalidity without invalidating the remaining portions hereof or thereof.

19.24 Successors and Assigns

This Lease shall be binding upon and inure to the benefit of Tenant and Landlord and their respective successors and assigns; provided, however, that any assignment by Tenant shall have been made in accordance with Section 6.01 hereof.

19.25 Attorneys' Fees

If any action is brought by either Landlord or Tenant against the other relative to the enforcement of the terms, provisions covenants and conditions of this Lease or in regard to any other matter relating to this Lease, the prevailing party shall be entitled to recover court costs incurred and reasonable attorney's fees (through trial, retrial, arbitration, mediation, judgment enforcement, and all appeals) from the non-prevailing party.

19.26 Intentionally Deleted.

19.27 Counterparts

This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

LANDLORD AND TENANT HAVE EACH CAREFULLY READ AND REVIEWED THIS INFORMED AND VOLUNTARY CONSENT HERETO AND AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

SIGNATURES APPEAR ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the date written above:

WITNESSES:

By: [Signature]
Name: Mauricio Zapata

By: [Signature]
Name: Myrian Kramer

LANDLORD:

3050 BISCAYNE PROPERTIES, LLC, a
Delaware limited liability company

By: [Signature]
Name: Karen Child
Its: Vice President

WITNESSES:

By: [Signature]
Name: Mauricio Zapata

By: [Signature]
Name: Myrian Kramer

TENANT:

SIMPLIKATE SYSTEMS, LLC, a Florida limited
liability company

By: [Signature]
Name: TUSHAR PATEL
Its: CEO



EXHIBIT "A"

FLOOR PLAN

Suites 602 & 603 (collectively, Suite 602)

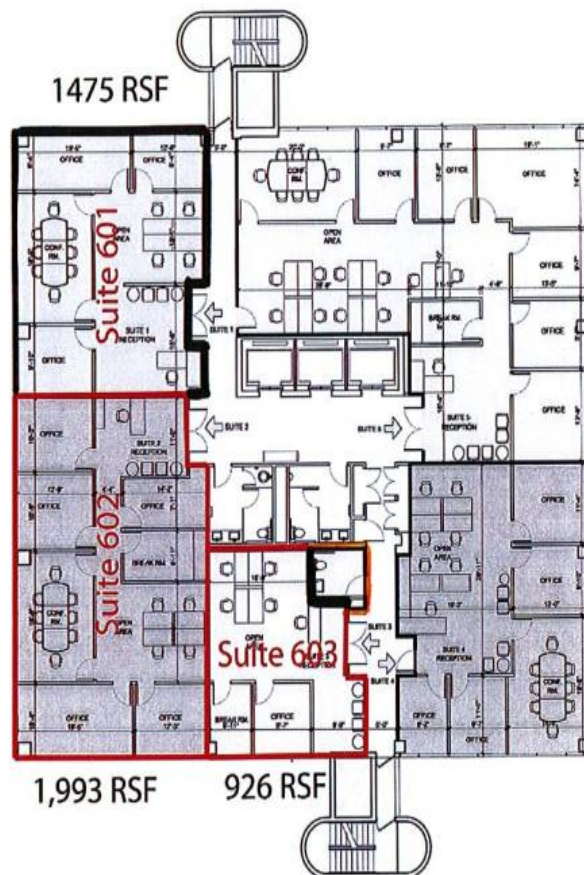




EXHIBIT "B"

LEGAL DESCRIPTION OF THE LAND

LEGAL DESCRIPTION:

PARCEL 1: Parcel Identification Number: 01-3230-060-0010

TRACTS "A" AND "B" OF EXECUTIVE PLAZA, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 121 AT PAGE 87, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA.

LESS:

A PORTION OF TRACT "A" OF EXECUTIVE PLAZA, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 121 AT PAGE 87, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF TRACT "A" OF RANMI SUBDIVISION, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 85 AT PAGE 45 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; THENCE SOUTH 89°59'30" WEST, ALONG THE WESTERLY PROLONGATION OF THE NORTH LINE OF SAID TRACT "A" FOR 101.65 FEET; THENCE N 0°27'10" E FOR 60.70 FEET; THENCE S 89°30'10" WEST FOR 58.73 FEET, TO THE WEST LINE OF TRACT "A" OF SAID EXECUTIVE PLAZA; THENCE S 00°00'47" E FOR 122.69 FEET; THENCE S 89°59'30" W FOR 4.99 FEET; THENCE SOUTH 00°00'47" E FOR 104.96 FEET, TO THE SOUTH LINE OF SAID EXECUTIVE PLAZA PLAT; THENCE N 89°59'30" E FOR 164.84 FEET TO THE SOUTHWEST CORNER OF RANMI SUBDIVISION AS RECORDED IN PLAT BOOK 85 AT PAGE 45 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, THENCE NORTH 167.44 FEET, TO THE POINT OF BEGINNING, CONTAINING 0.71 ± ACRES.

PARCEL 2: Parcel Identification Number: 01-3230-060-0030

TRACT "C" OF EXECUTIVE PLAZA, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 121 AT PAGE 87, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA.

PARCEL 3: Parcel Identification Number: 01-3230-060-0020

THAT PARCEL OF LAND VARIABLE WIDTH LYING SOUTH OF THE SOUTH BOUNDARY OF LOT 4, BLOCK 4, OF ELWOOD COURT, PLAT BOOK 9 AT PAGE 181 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA AND LYING NORTH OF THE NORTH BOUNDARY OF TRACT "C" OF EXECUTIVE PLAZA, PLAT BOOK 121 AT PAGE 87 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, BOUNDED ON THE EAST AND WEST BY THE SOUTHERLY PROJECTION OF THE EAST AND WEST BOUNDARIES RESPECTIVELY OF SAID LOT 4 TO THEIR POINT OF INTERSECTION WITH THE NORTH BOUNDARY OF SAID TRACT "C".

PARCEL 4: Parcel Identification Number: 01-3230-010-0210

LOT 4, BLOCK 4, ELWOOD COURT, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 9, AT PAGE 181, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA.

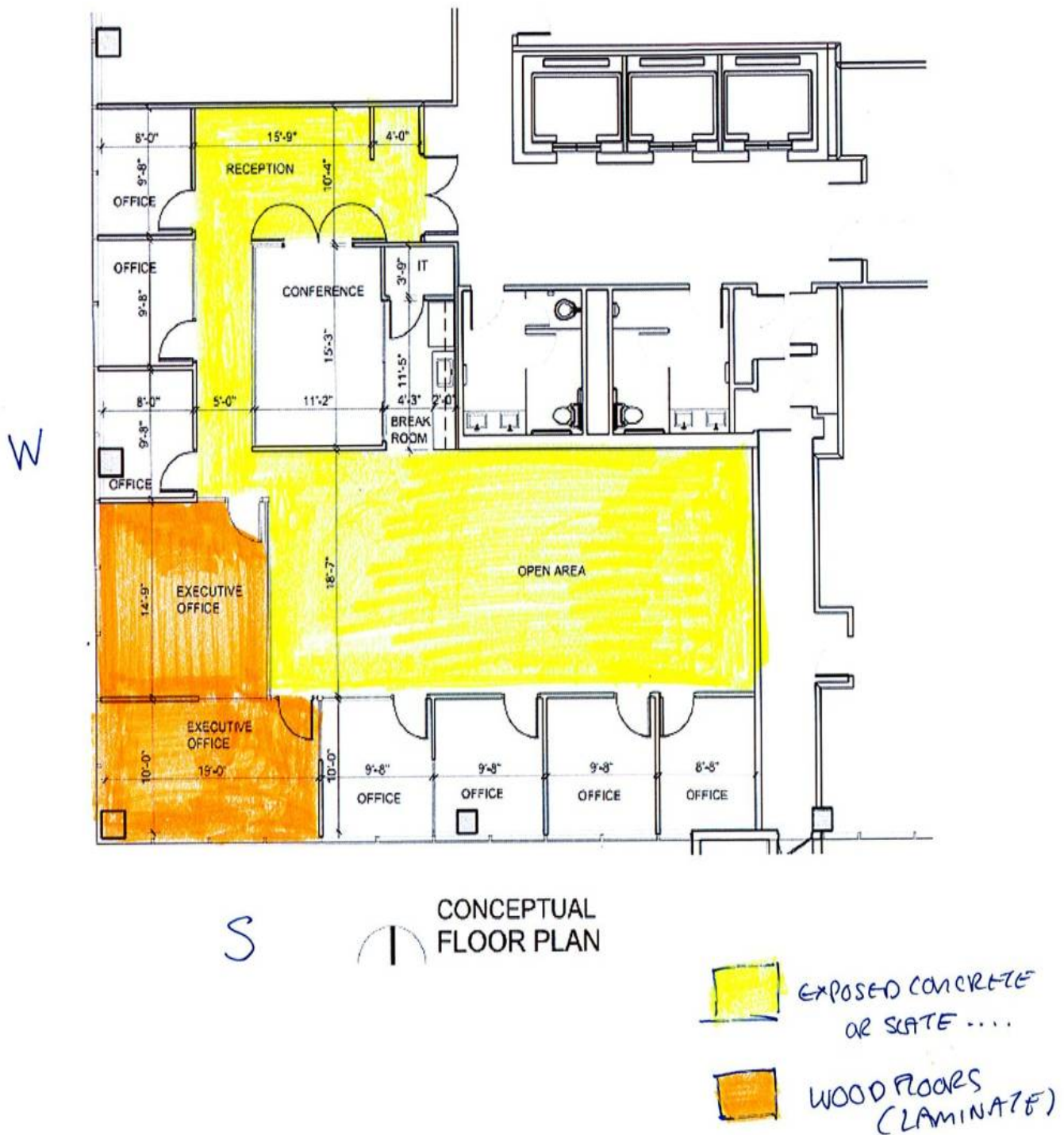
EXHIBIT "C"
LANDLORD'S WORK

"Landlord's Work" will include the following:

- (a) Landlord will (i) construct the improvements to the Premises, (A) in the locations set forth on the Space Plan attached to the Lease as Exhibit "C-1," and (B) in accordance with final plans and specifications (the "Final Plans"), approved by Landlord and Tenant, and (ii) construct the Base Building Improvements (as defined in paragraph (b) below).
- (b) The Final Plans for the Premises, will include the following:
 - (i) Glass walls (not floor to ceiling) in locations shown on the plan,
 - (ii) Sealed , unpolished concrete floors in reception area and "corridors,"
 - (iii) Laminated (Pergo type) wood flooring in two executive offices,
 - (iv) Carpet in other offices,
 - (v) Flat white paint on walls,
 - (vi) Exposed ceilings,
 - (vii) Solid interior doors with vision panel,
 - (viii) Full size stainless steel refrigerator in kitchen,
 - (ix) Plastic laminate cabinets in kitchen,
 - (x) Black laminate counter top in kitchen,
 - (xi) Brick vaneer on one accent wall,
 - (xii) Sliding glass doors to conference room,
 - (xiii) "Coiling conduit" for workstation power supply.



Subject to Final Approval



other offices are all
carpet.

EXHIBIT "D"
OPTION TO RENEW

Provided that Tenant is not in default beyond any applicable notice and cure period, and is in occupancy of the entire Premises, Landlord hereby grants such named Tenant only the option to renew ("Renewal Option") the Term of this Lease for one additional term of five years (the "Renewal Term"), commencing as of the date immediately following the Expiration Date, such option to be subject to the covenants and conditions set forth in this Exhibit D. Tenant shall give Landlord written notice (the "Renewal Notice") of Tenant's election to exercise its Renewal Option no later than 365 days prior to the expiration of the then-current Term of the Lease, with time being of the essence. Tenant's failure to give the Renewal Notice by the date set forth herein, whether due to Tenant's oversight or failure to cure any existing default or otherwise, will render the Renewal Option null and void.

The covenants and conditions of the Lease in force during the Term hereof, as the same may be modified from time to time, will continue to be in effect during the Renewal Term, if properly exercised, subject to the following:

- (a) Annual Base Rent for each Lease Year of a Renewal Term shall be paid in 12 equal monthly installments;
- (b) For the first Lease Year after the Expiration Date of the initial Term the annual Base Rent will be equal to the greater of (i) 104% multiplied by the annual Base Rent for the immediately preceding Lease Year, or (ii) the annual Market Rate (which shall be determined as set forth below) for the Premises; and
- (c) For each subsequent Lease Year after the first Lease Year of the Renewal Term, the annual Base Rent shall be equal to 104% multiplied by the annual Base Rent for the immediately preceding Lease Year.

In addition, the rate for parking charged pursuant to Section 1.02 C of the Lease will be equal to the greater of (x) the then-current rate charged to new tenants in the Building, or (y) the then-applicable rate charged for parking pursuant to this Lease.

Determination of "Market Rate": Within 60 days following Landlord's receipt of the Renewal Notice, Landlord will notify Tenant in writing of the amount Landlord reasonably believes is the market rate. If Tenant agrees, such rate shall be the "Market Rate" for the first Lease Year of the Renewal Term. If Tenant disagrees with the market rate proposed by Landlord, then Tenant shall so notify Landlord in writing. Within ten (10) days following Tenant's objection, the fair market rental value of the Premises will be appraised. To accomplish the appraisal, Landlord and Tenant will each select, within 10 days after Tenant's notice of objection, a reputable, duly certified appraiser experienced in appraising comparable properties in the area of Biscayne Boulevard in which the Building is located. Within 10 days of being appointed, the two selected appraisers will choose a third appraiser who will act as umpire. The appraisers selected by the parties must proceed with dispatch to make independent appraisals of the fair market rental value of the Premises, without regard to this Lease. The average (mean) of the three appraisals will be deemed to be the "Market Rate," except that, if the lowest of the three appraisals differs by more than 10% from the highest appraisal, the umpire must reconcile the differences to arrive at a single value to be used to establish the "Market Rate." Landlord and Tenant will each pay for its own appraiser and will bear equally the fees and expenses of the umpire. If the Base Rent for the first year of the Renewal Term has not been determined before the first day of the Renewal Term, Tenant will pay 104% of the Base Rent applicable to the preceding Lease Year until the Base Rent for the Renewal Term is determined. If Tenant has underpaid the Base Rent, the shortage shall be paid to Landlord within ten (10) days after written notice of such shortage is given to Tenant. If the "Market Rate" cannot be determined by the end of the first Lease Year of the Renewal Term, the Lease shall terminate at the end of such year and Tenant will have no further right to renew this Lease.



EXHIBIT "E"
RULES AND REGULATIONS

1. The sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors, or halls shall not be obstructed or encumbered by any Tenant or used for any purpose other than ingress and egress to and from the Premises.
2. In the event Tenant must dispose of crates, boxes, etc. which will not fit into office wastepaper baskets, it will be the responsibility of Tenant with Landlord assistance to dispose of same at Tenant's expense. In no event shall Tenant set such items in the public hallways or other areas of Building or parking facilities, excepting Tenant's own Premises, for disposal.
3. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed and no sweepings, rubbish, rages, or other substances shall be thrown therein. All damage resulting from any misuse of the fixtures shall be borne by the Tenant who, or whose servants, employees, agents, visitors, or licensees shall have caused the same.
4. All removals, or the carrying in or out of any safes, freight, furniture, equipment, machines or bulky matter of any description must take place during the hours which the Landlord or its agent may determine from time to time. The Landlord reserves the right to prescribe the weight and position of all safes, which must be placed upon 2-inch thick plank strips to distribute the weight. The moving of safes or other fixtures or bulk matter of any kind must be made after previous notice to and agreement by the Manager of the building. Any damage done to the building or to the Tenant or to other persons in bringing in or removing safes, furniture, equipment, machines or other bulk or heavy articles shall be paid for by Tenant.
5. Tenants are cautioned in purchasing furniture and equipment that the size is limited to such as can be placed on the elevator and will pass through the doors of the Premises. Large pieces shall be made in parts and set up in the Premises. Landlord reserves the right to refuse to allow to be placed in the Building any furniture or equipment of any description which does not comply with the above conditions.
6. No sign, advertisement, notice, or other lettering shall be exhibited, inscribed, painted, or affixed by any Tenant on any part of the outside or inside of the Premises. In the event of the violation of the foregoing by any Tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to the Tenant or Tenants violating this rule. Interior signs on doors and directory tablet shall be inscribed, painted or affixed at the expense of the Tenant, and shall be of a size, color, and style acceptable to the Landlord and as permitted under applicable Laws.
7. Landlord will not be responsible for lost or stolen property, equipment, money or any article taken from the Premises, Building or parking facilities regardless of how or when loss occurs.
8. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by any Tenant, nor shall any change be made in existing locks or the mechanism thereof. Each Tenant must, upon the termination of this tenancy, restore to the Landlord all keys of offices and toilet rooms, either furnished to, or otherwise procured by such Tenant, and in the event of the loss of any keys so furnished, such Tenant shall pay to the Landlord the cost thereof. The Landlord may retain a pass key to the Premises and be allowed admittance thereto at all times to enable its



representative to examine the Premises.

9. Tenant, its servants, employees, agents, visitors or licensees shall not paint or decorate in the Premises, or mark, paint or cut into, drive nails or screw into or in any way deface any part of Premises or Building without the prior written consent of Landlord. Other than Landlord's Work, if Tenant desires signal, communication, alarm or other utility or service connection installed or changed, such work may not be done without the prior written consent of Landlord, and, if approved, will be done by Landlord, at Tenant's expense, unless Landlord directs Tenant to perform such work.
10. No awnings or other projections shall be attached to the outside walls of the Building.
11. Tenant shall not install any window coverings on the windows of the Premises, and no signs, numerals, letters or other graphics shall be used or permitted in the windows of the Premises. If Tenant violates the provisions of this paragraph, Landlord may enter the Premises and remove such window coverings or signs.
12. Other than Landlord's Work or as otherwise required to be installed by Landlord pursuant to this Lease, no curtains, blinds, shades, or screens shall be attached to or hung in or used in connection with any window or door of the Premises.
13. The Landlord specifically reserves the right to refuse admittance to the building after 6 P.M. daily, or on Saturdays and Sundays or on legal holidays, to any person or persons who cannot furnish satisfactory identification, or to any person or persons who, for any other reason in the Landlord's judgment, shall be denied access to the Premises. The Landlord, for the protection of the Tenants and their effects may prescribe hours and intervals during the night, on Saturday and Sunday, and legal holidays, when all persons entering and departing the Building shall be required to enter their names, the offices to which they are going or from which they are leaving and the time of entrance or departure in a register provided for that purpose by the Landlord.
14. No Tenant shall make or permit to be made any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring buildings or premises, whether by the use of any musical instrument, radio, talking machine, unmusical noise, whistling, singing or in any other way. No Tenant shall throw anything out of the doors, windows, or skylights, or down the passageways.
15. Tenant shall not install any antenna or aerial wires, or radio or television equipment, or any other type of equipment, inside or outside the Building.
16. Tenant, its servants, employees, agents, visitors, or licensees shall, before leaving the Premises unattended, close and lock all doors and shut off all utilities: damages resulting from failure to do so shall be paid by Tenant. Each Tenant before the closing of the day and leaving the said Premises shall see that all blinds and/or draperies are pulled and drawn.
17. All plate and other glass now in the Premises or the Building that is broken through cause attributable to Tenant, its servants, employees, agents, visitors, or licensees shall be replaced by and at the expense of Tenant by Landlord's contractors.
18. Tenant shall give Landlord prompt notice of all accidents to or defects in Mechanical Systems or any part or appurtenance of Premises.



19. All contractors and/or technicians performing work for Tenant within the Premises or Building shall be referred to Landlord for approval before performing such work, including without limitation, installation of cabling, internet, telephones, electrical devices and attachments, and all installations affecting floors, walls, windows, doors, ceiling, equipment or any other physical feature of the Building or Premises. None of this work shall be done by Tenant without Landlord's prior written approval in accordance with the terms of the Lease.
20. Glass panel doors that reflect or admit light into the passageways or into any place in the Building shall not be covered or obstructed by the Tenant, and Tenant shall not permit, erect, and/or place drapes, furniture, fixtures, shelving, display cases or tables, lights or signs and advertising devices in front of or in proximity of interior and exterior windows, glass panels, or glass doors providing a view into the interior of the Premises.
21. Canvassing, soliciting and peddling in the Building or parking facilities is prohibited and each Tenant shall cooperate to prevent the same in this respect. Tenant shall promptly report such activities to the Building Manager's office.
22. Tenant, its servants, employees, agents, visitors, or licensees shall not solicit business in the Parking Facilities or Common Areas, nor shall Tenant distribute any handbills or other advertising matter in automobiles parked in the Parking Facilities.
23. Tenant shall not use (a) any space, or public hall of the Building, for the delivery or receipt of merchandise, or (b) any hand trucks, except those equipped with rubber tires and side guards.
24. In the event that Landlord is responsible for cleaning the Premises, the work of Landlord's janitors or cleaning personnel shall not be hindered by Tenant after 5:00 P.M. and such work may be done at any time when the offices are vacant. The windows, doors and fixtures may be cleaned at any time. Tenant shall provide adequate waste and rubbish receptacles, cabinets, bookcases, map cases, etc. necessary to prevent unreasonable hardship to Landlord in discharging its obligation regarding cleaning service. In this regard, Tenant shall also empty all glasses, cups and other containers holding any type of liquid whatsoever.
25. No Tenant shall occupy or permit any portion of the Premises to be used for manufacturing or for the possession, storage, manufacture, or sale of liquor or narcotics or as a barber or manicure shop, or as an employment bureau. No Tenant shall engage or pay any employees on the Premises, except those actually working for such Tenant on the Premises nor advertise for laborers giving an address at the Premises.
26. The Premises shall not be used for gambling, lodging or sleeping or for any immoral or illegal purposes.
27. No vehicles, or animals of any kind shall be brought into or kept in or about the Premises, except for seeing-eye dogs, and no cooking shall be done or permitted by any Tenant therein. No Tenant shall cause or permit any unusual or objectionable odors to be produced upon or permeate from the Premises.
28. Tenant, its employees, agents, visitors, or licensees shall not install or operate any refrigerating, heating or air conditioning apparatus or carry on any mechanical



operation or bring into Premises, Building or Parking Facility any inflammable substances or explosives.

29. Neither Tenant nor any, employee, agent, visitor, nor licensee of any Tenant shall go upon the roof of the Building without the written consent of the Landlord.
30. The requirements of tenants will be attended to only upon application at the Building Manager's office. Employees shall not perform any work or do anything outside of the regular duties, unless under special instructions from the office of the Landlord.
31. Tenant shall instruct its employees, agents, visitors and licensees to park all vehicles in the appropriate areas. All vehicles parked in other than their appropriate area may be removed by and with no liability to Landlord, at Tenant's expense.
32. Tenant shall not install or authorize the installation of any coin-operated vending machines at the Premises without first obtaining the prior written consent of Landlord in each such instance, which consent may be given on such conditions as Landlord may elect.
33. Tenant shall instruct its employees, agents and invitees to refrain from smoking in the Building. Tenant acknowledges that the Building and the Premises are to be maintained as a smoke-free environment at all times for all persons. Smoking shall only be permitted in those areas that may be designated by Landlord outside of the Building.

PARKING RULES and REGULATIONS

The following is a list of rules and regulations that must be followed to ensure the proper functioning, operation and maintenance of the Parking Facility.

1. Parking spaces are allocated at Landlord's discretion. Additional spaces may be available, on a temporary basis, and will be assigned to tenants at Landlord's discretion, on first-come, first-serve basis.
2. No double parking or idling is allowed.
3. No maintenance or car repair may be performed in the Parking Facility. Emergency repairs may be performed with previous approval from the management office.
4. Any suspicious activity in or around the Parking Facility should be reported immediately to the management office.
5. Parking cards are not transferable, any attempt to effect a transfer will be void and of no effect and will result in the immediate revocation of parking privileges of the putative transferor and transferee.
6. The Landlord and/or its agent are not responsible for losses or damages to automobiles or their contents.
7. For safety purposes, the speed limit in the Parking Facility is five (5) miles per hour.
8. Overnight or weekend parking is not permitted; cars found parked in the same space for

several days and nights will be towed away at owner's or Tenant's expense.

9. Tenants arriving at the entrance gate without a parking card must take a parking ticket to enter and must contact the management office to make alternative arrangements for the day.
10. The charge for replacing damaged parking cards is \$50.00. Parking cards are heat and light sensitive and should be kept away from extreme heat and sunlight.

The Landlord reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Premises, the Building, and the Parking Facility and for the preservation of good order therein, and any such other or further rules and regulations shall be binding upon the Parties hereto with the same force and effect as if they had been inserted herein at the time of the execution hereof.



EXHIBIT "F"

TENANT'S OFFICERS, DIRECTORS, MEMBERS

Tushar Patel



FIRST AMENDMENT OF LEASE

THIS FIRST AMENDMENT OF LEASE (the "Amendment") is made as of the 18 day of May, 2018 (the "First Amendment Effective Date"), between **3050 Biscayne Properties, LLC**, having an office at 2200 Biscayne Boulevard, Miami, Florida 33137 ("Landlord"), and **Phunware, Inc.**, having an address at 3050 Biscayne Boulevard, Suite 602, Miami, Florida 33137 ("Tenant").

WITNESSETH:

WHEREAS, by Agreement of Lease dated as of March 12, 2013 (the "Lease"), Landlord, as landlord, did demise and let unto Tenant or Tenant's predecessor-in-interest, as tenant, and Tenant or Tenant's predecessor-in-interest did hire and take certain premises known as and located at Suite 602 (the "Premises") in the building commonly known as 3050 Biscayne Boulevard, Miami, Florida 33137 (the "Building") as more particularly described in the Lease;

WHEREAS, under the Lease, Tenant had one (1) option to renew the Lease for a five (5) year term (the "Renewal Option"), and in order to exercise the Renewal Option, Tenant was required to provide Landlord with written notice of Tenant's election to exercise the Renewal Option by June 30, 2017;

WHEREAS, Tenant failed to timely exercise the Renewal Option and the Renewal Option therefore expired;

WHEREAS, Tenant now has informed Landlord that it wishes to extend the Term of the Lease;

WHEREAS, Landlord has agreed to allow Tenant to extend the Term of Lease pursuant to the terms and conditions herein;

NOW, THEREFORE, for good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Defined Terms; Recitals.** All terms used herein and not otherwise defined shall have the meanings ascribed to them in the Lease. The recitals set forth hereinabove are expressly incorporated into the body of this Amendment by reference.

2. **Term.** The parties desire to extend the Term of the Lease as set forth herein. The parties acknowledge and agree that the Expiration Date of the Lease which is currently June 30, 2018 (unless sooner terminated as set forth in the Lease), shall be amended to mean June 30, 2023.

3. **Base Rent.** Commencing on July 1, 2018, the Base Rent shall be calculated as follows:

Applicable Period	Annual Base Rent	Monthly Base Rent	Annual Rent Per Square Foot of Floor Area
July 1, 2018- June 30, 2019	\$109,462.50	\$9,121.88	\$37.50
July 1, 2019- June 30, 2020	\$113,841.00	\$9,486.75	\$39.00
July 1, 2020- June 30, 2021	\$118,394.64	\$9,866.22	\$40.56
July 1, 2021- June 30, 2022	\$123,130.43	\$10,260.87	\$42.18
July 1, 2022- June 30, 2023	\$128,055.64	\$10,671.30	\$43.87

4. **Ratification of Lease.** As modified by this Amendment, the Lease is in all respects ratified and confirmed by the parties hereto (including, without limitation, Tenant's obligation to pay Additional Rent thereunder) and Tenant confirms that Landlord is not currently in default under the Lease. As modified and amended by this Amendment, all of the terms, covenants and conditions of the Lease are hereby ratified and confirmed and shall continue to be and remain in full force and effect throughout the remainder of the term thereof. Where the terms of the Lease and the terms of this Amendment conflict, the terms of this Amendment shall govern. This Amendment shall be binding upon and inure to the benefit of Landlord, Tenant and their respective heirs, successors and permitted assigns.

5. **Broker.** Landlord and Tenant covenant, warrant and represent to each other that there was no broker instrumental in consummating this Amendment and no conversations or negotiations were had with any broker concerning the leasing of the Premises pursuant to this Amendment. Tenant and Landlord agree to indemnify, defend and hold and save the other harmless against any and all liability from any claims of any broker other than the Broker who claims to have dealt with the other party (including, without limitation, the cost of counsel fees in connection with the defense of any such claims in connection with the leasing of the Premises).

6. **Counterparts.** This Amendment may be executed in several counterparts, each of which will be deemed an original, and all of such counterparts together will constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document. Executed copies hereof may be delivered by telecopy or electronic delivery, and upon receipt, will be deemed originals and binding upon the parties hereto. Without limiting or otherwise affecting the validity of executed copies hereof that have been delivered by telecopy delivery, the parties will use best efforts to deliver originals as promptly as possible after execution.

SIGNATURES APPEAR ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the First Amendment Effective Date.

WITNESSES:

By: _____
Name: [Signature]
By: [Signature]
Name: Elena Redondo

WITNESSES:

By: _____
Name: [Signature]
By: [Signature]
Name: IVAN RAMOS

LANDLORD:

3050 BISCAYNE PROPERTIES, LLC,
a Delaware limited liability company,

By: [Signature]
Name: CHANTAL DEVOS
Title: Vice-President

TENANT:

Phunware, Inc.
a Delaware corporation

By: _____
Name: [Signature]
Title: _____
Digitally signed by
Tushar Patel
DN: cn=Tushar Patel, o,
ou=EVP Phunware,
email=tpatel@phunwar
e.com, c=US
Date: 2018.05.18
12:14:20 -04'00'

CERTIFICATION

I, Alan S. Knitowski, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Phunware Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 13, 2019

By: /s/ Alan S. Knitowski

Alan S. Knitowski
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION

I, Matt Aune, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Phunware Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 13, 2019

By: /s/ Matt Aune

Matt Aune
Chief Financial Officer
(Principal Financial and Accounting Officer)

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Alan S. Knitowski, Chief Executive Officer (Principal Executive Officer) of Phunware, Inc. (the “Company”), and Matt Aune, Chief Financial Officer (Principal Financial and Accounting Officer) of the Company, each hereby certifies that, to the best of his or her knowledge:

1. The Company’s Quarterly Report on Form 10-Q for the period ended June 30, 2019, to which this Certification is attached as Exhibit 32.1 (the “Periodic Report”), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act, and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

August 13, 2019

Phunware, Inc.

By: /s/ Alan S. Knitowski

Name: Chief Executive Officer

Title: (Principal Executive Officer)

By: /s/ Matt Aune

Name: Matt Aune

Title: Chief Financial Officer

(Principal Accounting and Financial Officer)

“This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Phunware, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.”