

ENHANCED USE LEASE
BETWEEN
THE UNITED STATES OF AMERICA,
ACTING BY AND THROUGH THE
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION,
AND
UNIVERSITY ASSOCIATES - SILICON VALLEY LLC
REGARDING
UNIVERSITY ASSOCIATES RESEARCH, DEVELOPMENT AND EDUCATION PARK

December 12, 2008

ENHANCED USE LEASE

Basic Lease Information

- Effective Date:** December 30, 2008
- Landlord:** THE UNITED STATES OF AMERICA, acting by and through the NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, an Agency of the United States.
- Tenant:** UNIVERSITY ASSOCIATES - SILICON VALLEY LLC, a Delaware limited liability company.
- Premises:** The parcels of land commonly known as Parcels 1, 2, 3, 4, 5, and 6, as identified in the NADP, and the “Premises Circulation Area,” all as more particularly outlined on *Exhibit A*, and located at the NASA Ames Research Center, Moffett Field, California 94035-1000.
- Property:** The land, the buildings and other improvements known as NASA Ames Research Center, Moffett Field, California 94035-1000, excluding the Premises.
- Predevelopment Period:** The period commencing as of the Effective Date, and continuing to and including the earliest of (a) the Predevelopment Period Expiration Date, (b) the date all Predevelopment Milestones have been achieved or satisfied, or (c) the date this Lease is terminated in accordance with its terms, all as may be extended by Landlord pursuant to Section 5.2.
- Initial Term:** The period commencing as of the day following expiration of the Predevelopment Period and continuing to and including the final day of the sixtieth (60th) full Fiscal Year of the Initial Term, subject to the rights of Tenant to extend the Term in accordance with Section 3.4, all unless sooner terminated as specifically provided in the Lease.
- Base Rent:** See ARTICLE 7.
- Permitted Uses of the Premises:** Research and development, education, office and housing in a campus-style development including classrooms, laboratories, offices, research and development facilities and housing units, as well as various ancillary structures and amenities including internal meeting and employee and student assembly space, a visitor’s center and visitor serving uses, conference facilities (including lodging), dining, sports, fitness and child care facilities, parking structures, support space, open space areas, retail and service space and other facilities and amenities.

Landlord's Address: NASA Ames Research Center
Mail Stop 204-2
Moffett Field, CA 94035-1000
Attn: Chief, NASA Research Park Branch

With a copy to:

NASA Ames Research Center
Mail Stop 200-12
Moffett Field, CA 94035-1000
Attn: Office of the Chief Counsel

Tenant's Address: University Associates – Silicon Valley LLC
c/o UC Santa Cruz
350 North Akron Road
Room 2091 Building 19
P.O. Box 58
Moffett Field, CA 94035
Attn: LLC Administration and Operations Officer

With a copy to:

Ellman Burke Hoffman & Johnson
601 California Street, Nineteenth Floor
San Francisco, CA 94108
Attn: Jay L. Paxton, Esq.
Rikesh R. Patel, Esq.

The foregoing Basic Lease Information is incorporated in and made a part of the Lease to which it is attached. If there is any conflict between the Basic Lease Information and the Lease, the Lease shall control.

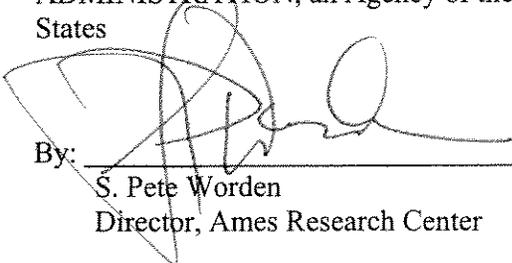
Tenant:

Landlord:

UNIVERSITY ASSOCIATES - SILICON VALLEY LLC, a Delaware limited liability company

THE UNITED STATES OF AMERICA, acting by and through the NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, an Agency of the United States

By: 
George R. Blumenthal
Chair

By: 
S. Pete Worden
Director, Ames Research Center

ENHANCED USE LEASE

This Lease (as defined in Section 1.90) is made as of the Effective Date (as defined in Section 1.47), by and between Landlord (as defined in Section 1.86) and Tenant (as defined in Section 1.192). This Lease is made under the authority of Section 315 of the Space Act (as defined in Section 1.178) (42 U.S.C. §2459j), with reference to the following facts:

R E C I T A L S

A. Landlord is committed to using its resources to the greatest public benefit and thus will take advantage of its unique research capabilities, stock of land, buildings and existing partnerships with state and local government, academia, industry and non-profit organizations to create a center in which NASA (as defined in Section 1.114), its collaborative partners and the public can jointly work to advance the study of astrobiology, life, space, earth and microgravity sciences, biotechnology, nanotechnology, aeronautical and space technology development, and information science and technology, and to promote science and technology education, the dissemination of information concerning Landlord's activities, and the commercial use of NASA's basic research by the private sector.

B. In furtherance of NASA's missions in astrobiology, life, space, earth and microgravity sciences, biotechnology, nanotechnology, aeronautical and space technology development, information science and technology, science and technology education, dissemination of information concerning NASA's activities, and commercialization of NASA's basic research, this Lease furthers the development of a collaborative research environment on the Property (as defined in Section 1.159) and Premises (as defined in Section 1.155) in which NASA, industry and academia are co-located to further foster research related to said activities, as well as other research activities in furtherance of the goals and missions of both NASA and Tenant.

C. NASA has been engaged in a lengthy planning process regarding the reuse of the NASA Ames Research Center to promote and enhance NASA's missions as set forth above. In order to further that planning process, NASA, in collaboration with the cities of Sunnyvale and Mountain View and other cooperating agencies, prepared the EIS (as defined in Section 1.50) to study the development of new facilities on the Property and the Premises. Public input on the EIS took place over approximately two (2) years, and the ROD (as defined in Section 1.173) was signed in November 2002. Landlord is now agreeing to lease the Premises to Tenant on the terms and conditions set forth in this Lease.

D. Tenant, a consortium of public and private research universities, educational institutions and civic-minded private citizens, plans to develop various portions of the Premises in phases within the framework of an integrated Development Plan (as defined in Section 1.45), approved pursuant to the terms and conditions of this Lease, and to enter into one (1) or more Subleases (as defined in Section 1.181) of all or separate portions of the Premises to implement the Development Plan for the Permitted Uses (as defined in Section 1.134) set forth in this Lease, all in order to (i) facilitate the creation and long term operation of a world-class center for research, education, innovation, and related commercial development that will serve as a self-

sustaining community in support of the missions of NASA, Tenant and their partners as contemplated by the EIS, (ii) both enhance, and be enhanced by, the innovation engine that is Silicon Valley, and (iii) significantly advance the broad public interest in nurturing innovation for the benefit of society and the economy of the United States.

NOW, THEREFORE, the Parties (as defined in Section 1.131) agree as follows.

ARTICLE 1 DEFINITIONS

In addition to other terms that may be defined in this Lease, the following terms as used in this Lease shall have the following meanings, applicable, as appropriate, to both the singular and plural forms of the terms herein defined.

1.1 Actual Change in CPI. “Actual Change in CPI” for a CPI Adjustment Period shall mean the difference resulting from subtracting: (a) one (1); from (b) the quotient resulting from dividing the value of the CPI as published for the date most closely preceding the last day of such CPI Adjustment Period by the value of the CPI as published for the date most closely preceding the first day of such CPI Adjustment Period.

1.2 Additional Rent. “Additional Rent” means all charges, costs, expenses and other amounts (other than Base Rent (as defined in Section 1.17) and Shared Rent (as defined in Section 1.176)) that Tenant is required to pay to Landlord under this Lease (including Demand Services (as defined in Section 1.41), Utilities (as defined in Section 1.206) and the UDA Services Amount (as defined in Section 1.202)), together with all interest, late charges, penalties, costs and expenses payable to Landlord that may accrue thereto pursuant to specific terms of this Lease or be incurred by Landlord to third parties in the event of Tenant’s breach with respect to any refusal or failure to pay such amounts, and all damages, costs and expenses that Landlord may incur by reason of Tenant’s breach of this Lease, and all other monetary obligations (except Base Rent and Shared Rent) due or payable by Tenant to Landlord under this Lease.

1.3 Affiliate. “Affiliate” means any entity that is wholly owned or substantially wholly owned, directly or indirectly, by Tenant or any of its approved members or any Preapproved Member.

1.4 Aggregate Backbone Infrastructure Cost. “Aggregate Backbone Infrastructure Cost” means the aggregate out-of-pocket hard and soft costs and expenditures incurred or to be incurred by Tenant (or its members) or the Master Developer (whether or not reimbursed to Tenant, its members or the Master Developer) which fall into one or more of the Backbone Infrastructure Cost Categories.

1.5 Allocation and Settlement Agreement. “Allocation and Settlement Agreement” means that certain “Allocation and Settlement Agreement for MEW Remedial Program Management Between the National Aeronautics and Space Administration and Fairchild Semiconductor Corporation, Raytheon Company, and Intel Corporation,” approved as to form by Intel Corporation’s legal counsel as of March 16, 1998 and executed by the parties thereto on or about that date, as the same may be amended.

1.6 Alterations. “Alterations” means, with respect to each discrete building or other portion of the Improvements (as defined in Section 1.79) to be constructed as part of the Development Plan (as defined in Section 1.45), any improvements, additions, renovations, remodeling, retrofitting, reconstruction, rehabilitation, restoration, demolition, replacement or, other alterations of or to that discrete building or other portion of the Improvements occurring after the Completion of Construction (as defined in Section 1.28) thereof.

1.7 Ancillary Uses. “Ancillary Uses” means use of the Improvements and other amenities on the Premises, ancillary to the Permitted Use, for parks, recreation facilities, meeting space, parking structures or lots, support space, transportation facilities, energy generation and conservation facilities, and other community amenities consistent with the character of the Permitted Uses. Landlord and Tenant acknowledge that the foregoing list is not intended to be exhaustive, and that other uses supporting the Permitted Uses may be appropriate for inclusion within the Premises or in connection with the development of the Premises, subject to the approval of Landlord, including by approval of a Development Plan indicating such additional uses.

1.8 APD. “APD” means an Ames Policy Directive.

1.9 Applicable Laws. “Applicable Laws” means all Federal, state and local laws, ordinances, rules, regulations and codes, and all policy directives, procedural requirements, procedures and guidelines, and standards promulgated by Landlord or NASA Ames Research Center from time to time in the course of Landlord’s general administration of, and having application to the entirety of both the Premises and Property, now existing or later adopted during the Term (as defined in Section 1.194) insofar as any thereof apply to or are required by the development, condition, use or occupancy of the Premises or the Improvements on the Premises. “Applicable Laws” shall, however, exclude all Applicable Policy and Guidance Documents.

1.10 Applicable Policy and Guidance Documents. “Applicable Policy and Guidance Documents” means, collectively, the EIS (including the NASA Research Park Design Guide and the Historic Resources Preservation Plan adopted pursuant to the EIS), the EIR, the EIMP (as defined in Section 1.48), and the Development Plan.

1.11 Army. “Army” means the United States Department of the Army.

1.12 Assignment. “Assignment” means a direct or indirect, voluntary, involuntary or by operation of law, sale, assignment, encumbering, pledge or other transfer of the entire estate in this Lease to any person or entity with respect to a Transfer Property. “Assignment” does not include a Sublease (as defined in Section 1.181), Financing Transaction, Transfer of Ownership or any transfer by reason of a Foreclosure.

1.13 Authorized Representatives. “Authorized Representatives” means the employees, officers, agents, servants, contractors or any other individuals specifically authorized to represent Landlord or Tenant, as the case may be.

1.14 Backbone Infrastructure. “Backbone Infrastructure” means those infrastructure improvements which both: (a) are constructed or to be constructed (i) on, to or within the

Premises Common Area that serve multiple Phases or multiple Parcels within a Phase or (ii) outside the Premises that are, in the reasonable opinion of Tenant, required to partially or fully serve any portion of the Premises, and (b) consist of (i) the main lines (but not lateral lines serving only Improvements on a single Parcel) for Utilities (including water mains, reclaimed water mains, sanitary sewer mains and storm drainage mains), or (ii) Streets and Roadways.

1.15 Backbone Infrastructure Cost Categories. “Backbone Infrastructure Cost Categories” means, with respect to the determination of the Aggregate Backbone Infrastructure Cost, a set of categories of hard and soft costs and expenditures with respect to the planning, design, engineering and construction of the Backbone Infrastructure, as such Backbone Infrastructure Cost Categories are set forth in the Development Plan. “Backbone Infrastructure Cost Category” shall mean any one (1) such category.

1.16 Backbone Infrastructure Credit. “Backbone Infrastructure Credit” means the amount resulting from the multiplication of the (a) Property Benefit Ratio for a particular Backbone Infrastructure Cost Category, and (b) Aggregate Backbone Infrastructure Cost for such Backbone Infrastructure Cost Category.

1.17 Base Rent. “Base Rent” means the aggregate of all Predevelopment Period Base Rent, Phase Base Rent and Remaining Premises Base Rent payable by Tenant to Landlord at any given time under this Lease.

1.18 Below Market Rental Units. “Below Market Rental Units” shall have the meaning given that term in Section 13.5(e).

1.19 Business Days. “Business Days” mean all days, excluding Saturdays, Sundays and all days recognized as national holidays by the Government (as defined in Section 1.75).

1.20 CBO. “CBO” means the NASA Ames Research Center Chief Building Official, or his or her Authorized Representative. As of the Effective Date, the CBO is Mr. Peter H. Chan.

1.21 Center Director. “Center Director” means the NASA Ames Research Center Director or his or her Authorized Representatives. As of the Effective Date, the Center Director is Dr. S. Pete Worden.

1.22 CEQA. “CEQA” means the California Environmental Quality Act (California Public Resources Code §21000 et seq.), as may be amended from time to time.

1.23 CERCLA. “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601 et seq.), as may be amended from time to time.

1.24 Claims. “Claims” means claims, actions, causes of action, suits, proceedings, demands, judgments, liens, damages (including but not limited to compensatory, punitive and consequential damages), penalties, fines, costs, expenses (including but not limited to reasonable attorneys’ fees and costs), liabilities and losses.

1.25 Close Call. “Close Call” means an occurrence or a condition of employee concern in which there is no injury, or only minor injury requiring first aid, or damage to property or equipment of less than One Thousand Dollars (\$1,000.00) (in 2008 dollars), but which possesses a potential to cause a Mishap (as defined in Section 1.103).

1.26 Commencement of Construction. “Commencement of Construction” means each of the following: (a) with respect to each Phase, each discrete portion of the Infrastructure or each discrete portion of the Off-Premises Backbone Infrastructure, the date on which physical work commences as to such Phase, Infrastructure or Off-Premises Backbone Infrastructure after the CBO issues to Tenant, the Master Developer or their respective Related Entities (as defined in Section 1.168) the first permit (for site work, building or otherwise) with respect to such Phase, Infrastructure or Off-Premises Backbone Infrastructure; (b) with respect to each Parcel, the date on which physical work commences as to such Parcel after the CBO issues to Tenant, the Master Developer or their respective Related Entities the first permit (for site work, building or otherwise) with respect to such Parcel; and (c) with respect to each discrete building or other structure within a Parcel, the date on which physical work commences as to such building or structure after the CBO issues to Tenant, the Master Developer or their respective Related Entities the first permit (for site work, building or otherwise) with respect to such building or structure.

1.27 Compatibility Guidelines. “Compatibility Guidelines” mean the following guidelines, policies and goals: (i) expansion of human knowledge of the Earth and of phenomena in the atmosphere and space; (ii) the design or production of aeronautical and space vehicles; (iii) the preservation of the role of the United States as a leader in science and technology and in the application thereof to the conduct of peaceful activities within and outside the atmosphere; (iv) the most effective utilization of the scientific, engineering and natural resources of the United States; (v) the research, development or production of software or hardware for computers, embedded processors or telecommunications; (vi) the research, development and production of nanotechnologies; (vii) the design, control and production of technologies related to the sustainable production of energy and the reuse and management of waste; (viii) biomedical research, development and production; (ix) research, development and production of autonomous systems and robotic technologies; (x) post-secondary education-related activities and university research; and (xi) support services necessary for any of the above, consistent with the Development Plan. Notwithstanding the foregoing, “Compatibility Guidelines” shall exclude any business or other activities that do not comply with Applicable Laws.

1.28 Completion of Construction. “Completion of Construction” means each of the following: (a) with respect to each Phase, when (i) installation of all Phase Infrastructure (as defined in Section 1.140) and all Backbone Infrastructure with respect to such Phase has been completed, (ii) all Utilities are available to such Phase and connected with sufficient capacity available to serve such Phase, and (iii) Tenant has received a binding indication of permission to use such Phase Infrastructure and Backbone Infrastructure from all necessary authorities; (b) with respect to each Parcel, when (i) installation of all Improvements (including the primary structures and Improvements ancillary thereto with respect to such Parcel) has been completed, (ii) all Utilities are available to the Parcel and connected with sufficient capacity available to serve such Parcel, and (iii) Tenant has received a clearance for temporary or permanent occupancy of the Improvements on the Parcel from all necessary authorities; and (c) with respect

to each discrete building or other structure within a Parcel, when Tenant has received a clearance for temporary or permanent occupancy of such building or structure from all necessary authorities.

1.29 Construction Contract. “Construction Contract” means the written contract with a general contractor or prime contractor entered into in connection with the construction of any portion of the Improvements.

1.30 Conveyable On-Premises Backbone Infrastructure. “Conveyable On-Premises Backbone Infrastructure” means all On-Premises Backbone Infrastructure designated on the Development Plan to be conveyed to the Government. The Conveyable On-Premises Backbone Infrastructure shall consist of, at a minimum, Street and Roadways that are part of On-Premises Backbone Infrastructure, together with the water mains, reclaimed water mains, sanitary sewer mains and storm drainage mains (but not any lateral connections thereto) for such Utilities located within or under such Streets and Roadways.

1.31 CPI. “CPI” means the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, California (1982-84 equals 100), or if such index is no longer published, a successor or substitute index designated by the United States Department of Labor (or other applicable federal agency) or, if no successor or substitute index is so designated, then a successor or substitute index mutually agreed upon by Tenant and Landlord, published by a governmental agency reflecting changes in consumer prices in the San Francisco Bay Area that is most nearly comparable to the CPI.

1.32 CPI Adjustment. “CPI Adjustment” means, as of each CPI Adjustment Date, the Actual Change in CPI for the previous CPI Adjustment Period, subject to adjustment as provided in Sections 7.6(b) and 7.6(c). The foregoing and anything to the contrary contained in this Lease notwithstanding, the Parties agree that the CPI Adjustment shall, with respect to each CPI Adjustment Date, be not less than the Minimum CPI Adjustment and not more than the Maximum CPI Adjustment.

1.33 CPI Adjustment Carryover Decrease. “CPI Adjustment Carryover Decrease” shall mean the difference resulting from subtracting the Actual Change in CPI from the Minimum CPI Adjustment for any CPI Adjustment Period during which the Actual Change in CPI is less than Minimum CPI Adjustment. The CPI Adjustment Carryover Decrease shall be applied as provided in Section 7.6(c) and carried over from CPI Adjustment Date to CPI Adjustment Date until fully so applied.

1.34 CPI Adjustment Carryover Increase. “CPI Adjustment Carryover Increase” shall mean the difference resulting from subtracting the Maximum CPI Adjustment from the Actual Change in CPI for any CPI Adjustment Period during which the Actual Change in CPI is greater than the Maximum CPI Adjustment. The CPI Adjustment Carryover Increase shall be applied as provided in Section 7.6(b) and carried over from CPI Adjustment Date to CPI Adjustment Date until fully so applied.

1.35 CPI Adjustment Date. “CPI Adjustment Date” means the October 1st which is the first day of the sixth (6th) full Fiscal Year (as defined in Section 1.67) during the Initial Term, and every fifth October 1st thereafter during the Term.

1.36 CPI Adjustment Period. “CPI Adjustment Period” means the five (5) year period ending on the day immediately preceding each CPI Adjustment Date; provided, however, the first CPI Adjustment Period with respect to the UDA Services Amount shall commence on October 1, 2009 and shall end on the day immediately preceding the first CPI Adjustment Date.

1.37 Defaulting Sublessee. “Defaulting Sublessee” means any Sublessee which has failed to perform its obligations under its Sublease.

1.38 Delay. “Delay” means any one or more of Force Majeure Delay, Landlord Delay or Market Forces Delay.

1.39 Delivered Phase. “Delivered Phase” means any Phase as to which the Phase Commencement Date has occurred.

1.40 Delivered Phase Entitled Use Appraisal. “Delivered Phase Entitled Use Appraisal” shall have the meaning given that term in Section 7.5(m).

1.41 Demand Services. “Demand Services” means (a) all reasonable construction oversight and liaison services (including plan checking), and reasonable construction environmental oversight services which Landlord elects (at its sole option) to furnish or is required to furnish under Sections 6.2, 6.5 or 6.8 and (b) to the extent requested by Tenant and which Landlord elects (at its sole option) to furnish, studies, reviews, architectural and engineering services, telecommunication and data communication services (including installation and/or connection to the Property’s internet systems), waste and refuse collection and any other materials or services furnished by Landlord directly or indirectly to, for the benefit of, or used by, Tenant or any Tenant Related Entity on or about the Premises. Demand Services specifically exclude UDA Services.

1.42 Design and Construction Documents. “Design and Construction Documents” means the schematic design documents, design development drawings, and construction drawings, specifications, calculations and other permit requirements for the Improvements, Infrastructure (as defined in Section 1.80) and Off-Premises Backbone Infrastructure (as defined in Section 1.121), to be prepared by licensed professionals and in accordance with Applicable Laws (including APD 8822.1 (NASA Research Park Design Review Program) and APD 8829.1 (Construction Permits)), as any such Design and Construction Documents may be modified or amended by Landlord and Tenant in accordance with the terms of this Lease.

1.43 Development Agreement. “Development Agreement” means an agreement between Tenant and a Master Developer under which Tenant may delegate to such Master Developer the right to perform some or all of the obligations of Tenant set forth in ARTICLE 6 for the development of the Premises in accordance with the Development Plan.

1.44 Development Milestones. “Development Milestones” mean, collectively, those items identified as “Development Milestones” on the Project Schedule, and shall include the

performance milestones for the development of each Phase. It is the intention of Landlord and Tenant that the Development Milestones in the Development Plan shall be established so as to allow sufficient time to provide reasonable assurance to Tenant and the Master Developer and financing entities that no Development Milestone will fail to be achieved with reasonable efforts in the circumstances.

1.45 Development Plan. “Development Plan” means the comprehensive plan for the design, development and construction of the Premises, the Improvements, Infrastructure and Off-Premises Backbone Infrastructure, as approved by Landlord and Tenant pursuant to Section 4.8, together with all associated documents, instruments, plans and studies identified as constituting a part of the Development Plan (but excluding the EIS, EIR, and other documents produced, certified or adopted pursuant to the requirements of NEPA (as defined in Section 1.119) or CEQA), all as may be modified or amended by Landlord and Tenant in accordance with the terms of this Lease.

1.46 EA Ozone Precursor Amount. “EA Ozone Precursor Amount” means the twelve (12) month de minimis amount of one hundred (100) tons of ozone precursors (which will diminish annually by the amount of ozone precursors produced by the use and operation of newly developed buildings constructed under an allocation from the EA Ozone Precursor Amount) that can be produced by new development at the Property and the Premises under the Moffett Field Comprehensive Use Plan evaluated under an environmental assessment, which resulted in a Finding of No Significant Impact in 1994.

1.47 Effective Date. “Effective Date” means December 30, 2008.

1.48 EIMP. “EIMP” means the Environmental Issues Management Plan, NASA Research Park, Santa Clara County, California, dated as of March 1, 2005, prepared by Erler & Kalinowski, Inc., as modified or supplemented by that certain Memorandum (EKI A20044.01), dated December 1, 2006, regarding the initial review of mitigation measures required for residential development on the Premises, as both of the foregoing may hereafter be amended.

1.49 EIR. “EIR” means the “Environmental Impact Report” prepared or to be prepared with respect to the Premises pursuant to CEQA.

1.50 EIS. “EIS” means the NASA Ames Development Plan Final Programmatic Environmental Impact Statement, dated July 2002, which served as a primary basis for the ROD (as defined in Section 1.173), but excluding the NAPD TDM Plan, provided that the goals and requirements contained in Sections 2, 3.1 and 3.2 of the NADP TDM Plan remain part of the EIS to the extent required by the NADP MIMP.

1.51 EIS Ozone Precursor Amount. “EIS Ozone Precursor Amount” means the twelve (12) month de minimis amount of one hundred (100) tons of ozone precursors (which will diminish annually by the amount of ozone precursors produced by the use and operation of newly developed buildings constructed under an allocation from the EIS Ozone Precursor Amount) that can be produced by new development at the Property and the Premises under the EIS. The EIS Ozone Precursor Amount shall be adjusted to the amount specified in a “State Implementation Plan” that includes the project emissions and that is hereafter approved by EPA;

provided, however, that any such State Implementation Plan shall not operate to reduce the EIS Ozone Precursor Amount unless required by Applicable Laws.

1.52 Eligible Predevelopment Costs. “Eligible Predevelopment Costs” means the aggregate of all reasonable, out-of-pocket costs and expenditures incurred by Tenant (or its members) or the Master Developer (whether or not reimbursed to Tenant, its members or the Master Developer) during the Predevelopment Period or the first year of the Initial Term, but in no event to exceed an aggregate of Ten Million Dollars (\$10,000,000.00), in connection with site-related studies of the Premises, and the planning, design and engineering of the Backbone Infrastructure and certain other site-related improvements listed below, including costs incurred in connection with:

(a) with respect to planning: surveying; studies of Preexisting Hazardous Materials in buildings and other structures existing on the Premises as of the Effective Date; health risk assessment and planning for the management of health risks and monitoring requirements; planning with respect to existing ground water remediation systems; endangered species preservation planning; traffic and transit studies and planning; traffic demand management studies and planning; street planning; professional services regarding CalTrans improvements to Highway 101 interchanges serving the Property; runoff and storm water management and planning; geotechnical and seismic risk studies and planning; Backbone Infrastructure planning (excluding, however, cable television and telecommunications and data communications); electrical power supply, generation and delivery planning; water supply, reuse and delivery planning; sewer systems and effluent reuse planning; NADP, EIMP and MIMP related planning; and security and access planning (in all cases planning includes studies and assessments);

(b) with respect to design: Backbone Infrastructure design (excluding, however, design of cable television and telecommunications and data communications); design pertaining to electrical power supply, generation and delivery; design pertaining to water supply, reuse and delivery; design pertaining to sewer systems and effluent reuse planning; design with respect to existing ground water remediation systems; and design pertaining to mitigation measures required by the EIS; and

(c) with respect to engineering: Backbone Infrastructure engineering (excluding, however, engineering of cable television and telecommunications and data communications); geotechnical and seismic risk engineering of Backbone Infrastructure; engineering pertaining to electrical power supply, generation and delivery; engineering pertaining to water supply, reuse and delivery; engineering pertaining to sewer systems and effluent reuse planning; engineering with respect to existing ground water remediation systems; Hazardous Materials and other environmental mitigation and implementation engineering with respect to Backbone Infrastructure; value engineering with respect to Backbone Infrastructure.

Notwithstanding anything to the contrary in this Section 1.52, “Eligible Predevelopment Costs” shall exclude costs and expenditures incurred in connection with: (i) the preparation and certification of the EIR under CEQA, including the MIMP to be adopted thereunder; (ii) all studies and reports required in connection with the EIR, all except to the extent such studies and reports are substantially similar to studies and reports would have been

performed or prepared in the absence of CEQA requirements at a later time as a part of Eligible Predevelopment Costs described above (and thus represent only an acceleration in time of performance and preparation studies and reports which would have otherwise been prepared in the absence of compliance with CEQA); (iii) costs paid by Tenant to reimburse Landlord pursuant to Sections 4.3, 4.4 and 4.5; (iv) the planning, engineering (but not engineering pertaining to electrical power supply, generation or delivery to central systems, or engineering pertaining to water supply, reuse or delivery to central systems) and architectural design of the buildings and other Improvements on individual parcels (except for Backbone Infrastructure); (v) the selection of the Master Developer and the negotiation of the ENA, Master Developer Sublease, Development Agreement and all other agreements with the Master Developer; (vi) the negotiation of any Undeveloped Area Sublease or Residential Facility Sublease and all other agreements with the Sublessee under any such Sublease (vii) financial studies; and (viii) business consulting or legal fees.

1.53 ENA. “ENA” shall have the meaning given that term in Section 4.7.

1.54 Entitled Use. “Entitled Use” means the maximum number of Square Feet (as defined in Section 1.179) that may be developed and occupied for the Permitted Uses consistent with the Development Plan; provided, however, the area of any parking structure or other structure not intended for occupancy shall not be included in the total number of Square Feet of space that may be developed and occupied as part of the Entitled Use. As of the Effective Date, the Entitled Use is the development and occupancy of a maximum of not more than two million nine hundred fifty-two thousand (2,952,000) Square Feet of Improvements, of which: (i) approximately five hundred thousand (500,000) to six hundred fifty thousand (650,000) is allocated for education or research and development facilities which are owned or controlled by an institution of higher learning; (ii) approximately one hundred fifty thousand (150,000) to three hundred thousand (300,000) is allocated for office or research and development facilities; (iii) not more than two hundred fifty thousand (250,000) is allocated for conference facilities (including lodging); (iv) approximately one million eight hundred forty-three thousand (1,843,000) is allocated for residential housing facilities (containing not less than one thousand nine hundred thirty (1,930) housing units sufficient to house four thousand nine hundred nine (4,909) residents, and which may include a reasonable amount of dormitory units), subject to adjustment as provided below; and (v) approximately forty thousand (40,000) to one hundred thousand (100,000) is allocated for retail space. Notwithstanding the foregoing allocations, Tenant understands that it shall not develop more than an aggregate of two million nine hundred fifty-two thousand (2,952,000) Square Feet of Improvements for the Entitled Uses.

1.55 Environmental Law. “Environmental Law” means all Federal, state and local laws, statutes, ordinances, regulations, rules, judicial and administrative orders and decrees, permits, licenses, approvals and authorizations of all Federal, state and local governmental agencies (including Landlord) or other governmental authorities pertaining to the protection of human health and safety or the environment, now existing or later adopted during the Term.

1.56 EPA. “EPA” means the United States Environmental Protection Agency.

1.57 Event of Default. “Event of Default” means the occurrence of one (1) or more of the events described in Section 15.1.

1.58 Existing Environmental Conditions. “Existing Environmental Conditions” means: (a) Preexisting Hazardous Materials (as defined in Section 1.154); (b) all archeological artifacts on, in, under or about the Premises or Property as of the Effective Date; (c) the matters described in Section 8.2(a), including in the environmental reports listed on Exhibit B; (d) all information regarding the environmental condition of the Premises and the Property provided to Tenant by any person or entity (including Landlord); and (e) such other documents or agreements regarding the environmental condition of the Premises and the Property (including agreements among some or all of Landlord, EPA, the State of California and other entities and governmental agencies that are involved in the remediation of, or that are responsible to remediate, existing contamination on or about the Premises or Property) provided to Tenant by any person or entity (including Landlord).

1.59 Expiration Date. “Expiration Date” means the last day of the Term.

1.60 Extended Term. “Extended Term” means each of three (3) additional, consecutive ten (10) year periods which are the subject of Tenant’s right to extend the Initial Term, the first Extended Term and second Extended Term pursuant to Section 3.4(a).

1.61 Facility Owner. “Facility Owner” shall have the meaning given that term in Section 13.6(a).

1.62 Fair Market Value. “Fair Market Value” shall mean, with respect to the Premises or a particular portion thereof, the value determined by appraisal in accordance with the provisions of Section 7.5, as adjusted at the times and in the manner provided in Sections 7.5 and 7.6.

1.63 FHDA. “FHDA” means the Foothill-De-Anza Community College District.

1.64 Financing Transaction. “Financing Transaction” means any direct or indirect grant, hypothecation or conveyance to a Mortgagee (as defined in Section 1.107) in connection with a Mortgage (as defined in Section 1.104) of a security interest in this Lease or any Sublease or in any improvements on any portion of the Premises, but only if, with respect to a security interest in this Lease, this Lease has not been divided pursuant to Section 8.7 below or, if this Lease has been divided pursuant to Section 8.7, this Lease (as so divided) is for a portion of the Premises containing all of one (1) or more entire Phases.

1.65 First Phase Appraisal. “First Phase Appraisal” shall have the meaning given that term in Section 7.5(a).

1.66 First Terminable Portion of the Premises. “First Terminable Portion of the Premises” shall have the meaning given that term in Section 8.8(d).

1.67 Fiscal Year. “Fiscal Year” means the Fiscal Year of the Government, as the same may be established or changed from time to time during the Term. As of the Effective Date, each Fiscal Year begins on October 1 and ends on the immediately following September 30.

1.68 FOIA. “FOIA” means the Freedom of Information Act (5 U.S.C. §552 et seq.), together with all regulations promulgated thereunder and Government policies related thereto, as any of the foregoing may be amended from time to time.

1.69 Force Majeure Delay. “Force Majeure Delay” means any delay in the performance of an obligation required by this Lease resulting from causes beyond the control of whichever of Landlord or Tenant is to perform the obligation, including, with respect to Tenant, obligations regarding the achievement or satisfaction of any Development Milestone. Such causes include acts of God or of public enemies, war, invasion, insurrection, rebellion, riots, terrorist acts, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, unavailability of equipment, supplies, materials or labor, unforeseen or previously unknown environmental conditions, and unusual weather delays, or any other similar cause. Force Majeure Delay also includes any delays resulting from any governmental agency action or inaction, other than Landlord Delay (except to the extent such governmental agency action or inaction results from Tenant’s failure to comply with the Development Plan). No Force Majeure Delay shall operate to excuse, abate or delay Tenant’s obligation to pay Rent.

1.70 Foreclose. “Foreclose” means the taking of actions to effectuate a Foreclosure.

1.71 Foreclosure. “Foreclosure” means: (i) any judicial foreclosure of a Mortgage; (ii) any exercise of a power of sale by a trustee under a Mortgage; (iii) any deed given in lieu of foreclosure in circumstances where there exists a default in the performance of any one or more of the obligations the performance of which is secured in whole or in part by the Mortgage; and (iv) any conveyance by a trustee (or other nominal holder of legal title to the leasehold estate or a subleasehold to secure the performance of obligations under bonds or other evidences of indebtedness) conveys or otherwise transfer such title to permit or facilitate the realization by the holders of such bonds or other evidences of indebtedness of the value of the security.

1.72 Full Insurable Replacement Value. “Full Insurable Replacement Value” means one hundred percent (100%) of actual costs to perform demolition and debris removal and the repair, replacement, reconstruction, restoration or rehabilitation of the Improvements on the Premises or any part thereof which would ordinarily be taken into account when determining the full replacement cost of property for the purpose of a policy of “all-risk” property insurance (without deduction for depreciation), excluding foundations and other subterranean facilities and an increased cost of construction endorsement, and, in the case of builders’ risk insurance, including materials and equipment not in place but in transit to or delivered to the Premises.

1.73 GAAP. “GAAP” means Generally Accepted Accounting Principles, as used and applied in the United States of America. The foregoing notwithstanding, if the United States Securities and Exchange Commission hereafter requires that public companies report using International Financial Reporting Standards, rather than Generally Accepted Accounting Principles, then references to “GAAP” in this Lease shall be deemed to refer to such International Financial Reporting Standards.

1.74 General Dispute Notice. “General Dispute Notice” means a notice of a dispute delivered by either Party to the other Party, which notice describes the nature of the dispute in reasonable detail and invokes the procedure for dispute resolution set forth in Section 21.7.

1.75 Government. “Government” means the Federal government of the United States of America.

1.76 Hazardous Material. “Hazardous Material” means any substance that is (a) defined under any Environmental Law as a hazardous substance, hazardous waste, hazardous material, pollutant or contaminant, (b) a petroleum hydrocarbon, including crude oil or any fraction or mixture thereof, (c) hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic or a reproductive toxicant, or (d) otherwise regulated pursuant to any Environmental Law.

1.77 Housing Priority List. “Housing Priority List” shall mean a list of individuals falling in one of the following categories in the following order: (i) first, those individuals who work at the Premises or who are attending classes, training or similar programs at the Premises; (ii) second, to those individuals who work at the Property or at Orion Park (as defined in Section 1.123), or who are attending classes, training or similar programs at the Property; (iii) third, to those individuals who work in the communities surrounding the Property and who would ordinarily take Ellis Street or Moffett Boulevard across Highway 101 (but not using Highway 101) between their work locations and the Property; (iv) fourth, to persons who are employed by Tenant or any of its members or who are students attending academic institutions which are members of Tenant, but who do not work or study at the Premises or the Property; and (v) fifth, to those individuals who are currently employed by the military or the Government (other than any of the foregoing individuals).

1.78 Housing Unit Owner. “Housing Unit Owner” shall have the meaning given that term in Section 13.5(b).

1.79 Improvements. “Improvements” means all the improvements constructed or to be constructed on, to or within the Premises following the Effective Date by Tenant, Master Developer or any other Sublessee or other occupant of a Delivered Phase, but excluding all Infrastructure and Off-Premises Backbone Infrastructure.

1.80 Infrastructure. “Infrastructure” means those improvements constructed or to be constructed on, to or within the Premises consisting of infrastructure, including all On-Premises Backbone Infrastructure, Phase Infrastructure, landscaping and common areas, and such other infrastructure and associated improvements as may be typically dedicated to a municipality or owner/tenant association type organization for a development of the size and scope contemplated by the Development Plan.

1.81 Infrastructure Plan. “Infrastructure Plan” means the Development Plan as it relates to the design, development and construction of the Infrastructure and Off-Premises Backbone Infrastructure, such Infrastructure Plan to include at least the following elements: (a) a description of the Infrastructure and Off-Premises Backbone Infrastructure required to serve development in the Premises; (b) a description of the proposed location, priority and phasing of the Infrastructure and Off-Premises Backbone Infrastructure; (c) a description of the aggregate demand requirements for the Backbone Infrastructure in connection with the development of the Premises and the future development of the NRP South Campus (as defined in Section 1.120); (d) a conceptual Infrastructure and Off-Premises Backbone Infrastructure financing plan that

indicates sources of capital, including any use of tax-exempt financing, phasing, and projections of costs and revenues over a multiyear period; (e) the Backbone Infrastructure Cost Categories; (f) the Property Benefit Ratios and a tentative allocation of benefit among the Parcels of the first Phase; (g) a conceptual plan for Backbone Infrastructure serving the portion of the NRP South Campus located outside the Premises, including Backbone Infrastructure which Tenant is not required to construct; and (h) a separate breakdown of items (a) through (e) above for the Premises as a whole and the first Phase.

1.82 Initial Term. “Initial Term” means the period commencing as of the day following expiration of the Predevelopment Period and continuing to and including the final day of the sixtieth (60th) full Fiscal Year of the Initial Term (it being intended that the Initial Term shall contain not less than sixty (60) full Fiscal Years), subject to the rights of Tenant to extend the Term in accordance with Section 3.4, all unless sooner terminated as specifically provided in this Lease.

1.83 Interim Leases. “Interim Leases” shall have the meaning given that term in Section 3.2(b).

1.84 JAMS. “JAMS” means Judicial Arbitration & Mediation Services, Inc., a California corporation, or any successor thereto.

1.85 Judge. “Judge” means a retired judge of the Superior Court of the State of California affiliated with JAMS.

1.86 Landlord. “Landlord” means the United States of America, acting by and through the National Aeronautics and Space Administration, an agency of the Government.

1.87 Landlord Delay. “Landlord Delay” means delay in Tenant’s performance of an obligation required by this Lease (including with respect to the achievement or satisfaction of any Development Milestone) that results, directly or indirectly, from any of the following: (a) delays by Landlord in responding to Tenant requests for approval, consents, permits or other matters for which Landlord approval or action is required under this Lease or under Applicable Laws, Applicable Policy and Guidance Documents or requirements applicable to Landlord and/or the Premises, which delays either extend beyond the time (if any) required under this Lease for response or that is unreasonable (except to the extent such delay results from Tenant’s failure to comply with the Development Plan); and/or (b) the negligence or willful misconduct of Landlord or its employees. No Landlord Delay shall operate to excuse, abate or delay Tenant’s obligation to pay Rent.

1.88 Landlord Infrastructure. “Landlord Infrastructure” means all infrastructure approved by Tenant (which approval shall not be unreasonably withheld, conditioned or delayed) and constructed by Landlord on the Property following the Effective Date which Tenant, the Master Developer or a Sublessee intends to use (in whole or in part) in connection with Infrastructure or Off-Premises Backbone Infrastructure, all to the extent set forth in the Development Plan.

1.89 Lead Agency. “Lead Agency” means The Regents of the University of California.

1.90 Lease. “Lease” means this Enhanced Use Lease, as the same may be amended from time to time in accordance with the terms hereof.

1.91 Mandatory Sublessee Covenants. “Mandatory Sublessee Covenants” means the covenants of Tenant under this Lease with respect to repair, maintenance, insurance, Hazardous Materials, indemnity (but only covenants of indemnity with respect to Physical Condition Claims, the acts or omissions of the Sublessee or its Related Entities or any breach of or default under the particular Sublease), the MEW Construction Coordination Agreement and the Navy Construction Coordination Document.

1.92 Market Forces Delay. “Market Forces Delay” means three (3) consecutive calendar quarters during which (on a mean average basis over such three (3) consecutive calendar quarters): (i) with respect to the portions of a Phase to be improved with the Entitled Use described in clause (iv) of Section 1.54 only, the vacancy rate in rental apartments in Santa Clara County, California, is greater than ten percent (10%), as such vacancy rate is published from time to time by the Santa Clara County Board of Realtors; or (ii) with respect to the portions of a Phase to be improved with the Entitled Use described in clause (ii) of Section 1.54 only, the vacancy rate for either first-class suburban office or research and development space in Santa Clara County, California, is greater than fifteen percent (15%). Market Forces Delay shall be deemed to commence as of the first of such three (3) consecutive calendar quarters, and be deemed to end the day following expiration of a period of three (3) consecutive calendar quarters during which (on a mean average basis over such three (3) consecutive calendar quarters) the reported vacancy rates fall below the vacancy rates set forth herein. There shall be no Market Forces Delay with respect to any Entitled Uses other than those specifically set forth above in this Section 1.92. In addition, there shall be no Market Forces Delay, with respect to any particular period of time, unless Tenant notifies Landlord of its belief of the existence or occurrence of a Market Forces Delay within one (1) year following the expiration of such Market Forces Delay.

1.93 Master Developer. “Master Developer” means a real estate developer approved by Landlord and Tenant pursuant to Section 4.6. In the event there are more than one Master Developers approved by Landlord and Tenant pursuant to Section 4.6, then all such Master Developers shall be referred to collectively as the “Master Developer” for purposes of this Lease unless the context otherwise indicates.

1.94 Master Developer Selection Package. “Master Developer Selection Package” means a group of documents prepared by or on behalf of Tenant containing a written description of the portion of the Premises for which a Master Developer is sought, a selection process and initial selection criteria for the Master Developer, minimum business terms (if any), the list of Preapproved Master Developers previously approved by Landlord (if any), an invitation list of other potential Master Developers, and all other documents prepared by or on behalf of Tenant in connection therewith to be given to prospective Master Developers as a part of the Master Developer Selection Package. The Master Developer Selection Package shall be delivered by Tenant to Landlord, and approved by Landlord, in accordance with Section 4.6.

1.95 Master Developer Sublease. “Master Developer Sublease” means a Sublease (other than any Undeveloped Area Sublease or Residential Facility Sublease) of all or a portion

of the Premises between Tenant, as sublessor, and a Master Developer, as Sublessee. In addition, no Sublease by Tenant of a Parcel upon which the Completion of Construction of all Improvements has occurred (such Improvements being described in the Development Plan as it may be modified in accordance with this Lease prior to such Completion of Construction of such Improvements) shall be deemed a Master Developer Sublease.

1.96 Maximum CPI Adjustment. “Maximum CPI Adjustment” means twenty-five percent (25%) per CPI Adjustment Period.

1.97 Memorandum of Lease. “Memorandum of Lease” means a memorandum of this Lease, in the form attached hereto as *Exhibit C*, to be executed and acknowledged by the Parties, which Tenant may record in the Official Records of Santa Clara County, California.

1.98 MEW Companies. “MEW Companies” means National Semiconductor (Maine), Inc. (formerly named Fairchild Semiconductor Corporation), a Delaware corporation, and Raytheon Company, a Delaware corporation, with respect to (a) the MEW ROD (as defined in Section 1.100); (b) an Administrative Order for Remedial Design and Remedial Action issued on November 29, 1990 regarding response actions to be performed on the NASA Ames Research Center Property; and (c) a Consent Decree in the case styled United States of America v. Intel Corporation and Raytheon Company, C 91 20275 JW (in the United States District Court for the Northern District of California).

1.99 MEW Construction Coordination Agreement. “MEW Construction Coordination Agreement” means that certain Agreement for Coordination of Construction and MEW Remedial System Modification Work at NASA Research Park, Ames Research Center, Moffett Field, California, to be executed by and among NASA, the MEW Companies and Tenant, a copy of which is attached hereto as *Exhibit D*.

1.100 MEW ROD. “MEW ROD” means that certain Record of Decision issued on June 9, 1989, by the EPA for the Middlefield-Ellis-Whisman area of Mountain View California, as modified by the EPA’s Explanations of Significant Differences as described in the MEW Construction Coordination Agreement.

1.101 MIMP. “MIMP” means the “Mitigation Implementation and Monitoring Plan” or similar plan, prepared and adopted or to be prepared and adopted in connection with the EIR pursuant to Section 4.4.

1.102 Minimum CPI Adjustment. “Minimum CPI Adjustment” means ten percent (10%) per CPI Adjustment Period.

1.103 Mishap. “Mishap” means an unplanned event on or about the Premises or Property and directly caused by the acts or omissions of Tenant or its Related Entities that results in at least one (1) of the following: (a) injury to any person; (b) damage to public or private property (including foreign property); (c) occupational injury or occupational illness to any person; or (d) failure of a NASA mission.

1.104 Mortgage. “Mortgage,” when used as a noun, means a mortgage, deed of trust, a deed to secure debt or other security instrument, or a “synthetic lease” or other form of “lease

financing” transaction, by which Tenant’s leasehold estate under this Lease or any subleasehold interest or any interest in improvements located on the portion of the Premises (whether or not such improvements constitute real property or personal property) is mortgaged, encumbered, liened, conveyed, assigned or otherwise transferred to a Mortgagee to secure a debt or other obligation as part of a Financing Transaction. “Mortgage,” when used as a verb, means to make and give one of the foregoing interests.

1.105 Mortgaged Leasehold. “Mortgaged Leasehold” means a leasehold interest (or part thereof) created pursuant to this Lease or any Sublease which is subject to a Mortgage, and includes any interest in improvements (if any) which such Mortgage specifies that it also encumbers.

1.106 Mortgaged Leasehold Default. “Mortgaged Leasehold Default” means: (i) with respect to the leasehold created pursuant to this Lease, an Event of Default; and (ii) with respect to the subleasehold created pursuant to a Sublease, an event of default occurring after all grace periods for performance have expired, as defined in such Sublease, but only to the extent such default would be a ground for termination of such Sublease under its terms.

1.107 Mortgagee. “Mortgagee” means any trustee, beneficiary or holder of a Mortgage.

1.108 Mortgagee Request for Notice. “Mortgagee Request for Notice” means a written request by a Mortgagee that Landlord give to such Mortgagee a copy of any notice given by Landlord under this Lease or any Sublease which: (i) describes a failure to perform an obligation under this Lease or any Sublease which could become a Mortgaged Leasehold Default under the Mortgaged Leasehold encumbered by the Mortgage held by such Mortgagee; or (ii) describes a failure to perform an obligation under this Lease, the Master Developer Lease or any superior Sublease which could result in a termination of the Mortgaged Leasehold encumbered by the Mortgage held by such Mortgagee. The foregoing notwithstanding, no such request shall be a “Mortgagee Request for Notice” unless: (i) the document is entitled, in boldfaced type in all capital letters, “Mortgagee Request for Notice”; (ii) such notice clearly states an address to which Landlord may deliver notices in response to such request; (iii) such notice is recorded in the Official Records of Santa Clara County, California (unless the Recorder of Santa Clara County, California refuses to record such notice after a diligent attempt to do so); and (iv) a copy of such notice is delivered to Landlord in accordance with the procedures described in ARTICLE 20.

1.109 Mortgagor. “Mortgagor” means owner of a Mortgaged Leasehold or a leasehold which is being made subject to a Mortgage.

1.110 NADP. “NADP” means the NASA Ames Development Plan, the impacts of which were studied in the EIS.

1.111 NADP MIMP. “NADP MIMP” means the Mitigation Implementation and Monitoring Plan for the NASA Ames Development Plan, attached to the ROD, as may be modified or supplemented by that certain Memorandum (EKI A20044.01), dated December 1, 2006, regarding the initial review of mitigation measures required for residential development on the Premises.

1.112 NADP TDM Plan. “NADP TDM Plan” means that certain draft report entitled “NASA Research Park and Bay View Transportation Demand Management Plan,” dated July 2002 (prepared by Nelson/Nygaard Consulting Associates), which is a portion of Appendix B to the EIS. The parties acknowledge that the NADP TDM Plan establishes the overall transportation demand management goals and the phasing requirements designed to achieve those goals, all of which are incorporated into the NADP MIMP. The specific program elements described in the NADP TDM Plan are a draft only, intended and used only to establish the feasibility of achieving certain transportation performance goals set forth in the EIS and those program elements are not binding.

1.113 Named Tenant. “Named Tenant” means University Associates - Silicon Valley LLC, a Delaware limited liability company.

1.114 NASA. “NASA” means the National Aeronautics and Space Administration, an Agency of the United States.

1.115 NASA Research Park Account Manager. “NASA Research Park Account Manager” means the chief or director of the NASA Research Park branch or office, or his or her Authorized Representative.

1.116 Navy. “Navy” means the United States Department of the Navy.

1.117 Navy Construction Coordination Document. “Navy Construction Coordination Document” means that certain document substantially in the form of the Agreement for Coordination of Construction and Navy Remedial System Modification Work at NASA Research Park, Ames Research Center, Moffett Field, California, a copy of which is attached hereto as *Exhibit E*.

1.118 Navy Memorandum of Understanding. “Navy Memorandum of Understanding” means that certain Memorandum of Understanding Between the Department of the Navy and the National Aeronautics and Space Administration Regarding Moffett Field, California, dated December 22, 1992; and a Federal Facility Agreement Section 120 of CERCLA, among the U.S. Environmental Protection Agency (EPA), the California Department of Health Services, the California Regional Water Quality Control Board, and the Department of the Navy, dated August 8, 1989.

1.119 NEPA. “NEPA” means the National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.), as may be amended from time to time.

1.120 NRP South Campus. “NRP South Campus” means that portion of the Property and the Premises identified as the NRP South Campus in the NASA Ames Research Center Master Plan, Final July 28, 2006.

1.121 Off-Premises Backbone Infrastructure. “Off-Premises Backbone Infrastructure” means all Backbone Infrastructure located on or within the Property.

1.122 On-Premises Backbone Infrastructure. “On-Premises Backbone Infrastructure” means all Backbone Infrastructure located on or within the Premises, excluding, however, all

Conveyable On-Premises Backbone Infrastructure as of the date title thereto is conveyed to the Government pursuant to Section 6.11(a).

1.123 Orion Park. “Orion Park” means the land and improvements thereon constituting the former Naval Air Station housing area commonly known as the Orion Park Housing Area, which is adjacent to the Property and is currently under the custody and control of the Army.

1.124 Ozone Precursor Allocation Period. “Ozone Precursor Allocation Period” shall have the meaning given that term in Section 4.8(n).

1.125 Ozone Precursor Allocation Project. “Ozone Precursor Allocation Project” shall mean a Phase, Parcel, building or other specific Improvement designated as such in the Ozone Precursor Schedule for the purpose of obtaining a separate Ozone Precursor Allocation Period.

1.126 Ozone Precursor Schedule. “Ozone Precursor Schedule” means a rolling five (5) Fiscal Year schedule, which shall be a part of the Project Schedule (and annual updates of the Ozone Precursor Schedule shall be amendments of the Development Plan pursuant to Section 4.8(g)), setting forth each Ozone Precursor Allocation Project and its Ozone Precursor Allocation Period. The initial Ozone Precursor Schedule shall be submitted to Landlord as part of the initial Development Plan, and thereafter the annual updates of the Ozone Precursor Schedule shall be submitted to Landlord on or before the date which is sixty (60) days before the commencement of the following Fiscal Year.

1.127 Parcel. “Parcel” means each of the units of land located within a particular Phase and designated for development on the Development Plan, excluding units of land designated on the Development Plan primarily for use as Premises Common Area or the installation and operation of On-Premises Backbone Infrastructure.

1.128 Parcel Fair Market Value. “Parcel Fair Market Value” means, with respect to each Parcel located within a particular Phase, the portion of the Phase Fair Market Value of that Phase allocated to such Parcel, as determined (and/or adjusted, as applicable) in accordance with the provisions of Section 7.5.

1.129 Partial Assignment. “Partial Assignment” means an Assignment with respect to a portion of the Premises as to which this Lease is to be divided pursuant to Section 8.7 to any person or entity.

1.130 Partial Taking. “Partial Taking” means a Taking (as defined in Section 1.188) that is not a Total Taking (as defined in Section 1.195) or a Temporary Taking (as defined in Section 1.191), and includes a Taking described in clause (b) of Section 1.195 as to which Landlord fails to receive timely the notice described in that clause (b).

1.131 Parties. “Parties” means Landlord and Tenant, and their respective successors and assigns permitted under this Lease.

1.132 Permitted Activities. “Permitted Activities” means the lawful activities of Tenant that are part of the ordinary course of the Permitted Use specified in the Basic Lease Information.

1.133 Permitted Materials. “Permitted Materials” means the materials handled by Tenant, Tenant’s Related Entities or other uses of the Premises in the ordinary course of conducting any Permitted Use. “Permitted Materials” shall also include construction materials commonly used in the construction of Improvements of the type being constructed at a particular time. If a material was a Permitted Material when installed or used, it shall continue to be considered a Permitted Material even if it ceases to be used in the ordinary course of conducting a Permitted Use or ceases to be commonly used in construction, but the foregoing shall not limit or excuse Tenant’s obligations to comply with Environmental Laws with respect to such material.

1.134 Permitted Use. “Permitted Use” means the uses of the Premises set forth in the Basic Lease Information.

1.135 Personal Property. “Personal Property” means all furniture, fixtures, equipment, appliances and apparatus placed in the Improvements or elsewhere on the Premises by Tenant, any Sublessee or other uses of the Premises and that neither are incorporated into nor form an integrated part of the Improvements on the Premises. The determination of whether an item is classified as personal property or real property shall be made in accordance with California law.

1.136 Phase. “Phase” means each discrete Phase of the Premises, as set forth in the Development Plan. The Parties acknowledge that the Premises may be developed in a single Phase, or in a number of Phases specified by Tenant, but in no event shall a Phase consist of less than ten (10) acres of land. In the event that there is a single Phase, all reference in this Lease to “each Phase,” “a Phase” or “a unique Phase” shall be deemed to refer to that single Phase.

1.137 Phase Base Rent. “Phase Base Rent” shall have the meaning given that term in Section 7.2(d).

1.138 Phase Commencement Date. “Phase Commencement Date” means, with respect to each Phase, the date Landlord delivers possession of such Phase to Tenant in accordance with Section 3.2(b).

1.139 Phase Fair Market Value. “Phase Fair Market Value” means the Fair Market Value of a particular Phase, as determined (and/or adjusted, as applicable) in accordance with the provisions of Section 7.5.

1.140 Phase Infrastructure. “Phase Infrastructure” means, with respect to any Phase, Infrastructure constructed or to be constructed on, to or within such Phase.

1.141 Physical Condition Claims. “Physical Condition Claims” means Claims against Landlord claimed or suffered by third parties which arise or result from: (a) the physical condition of any Delivered Phase, not including in the determination of such condition any matter arising or from or in connection with Hazardous Materials; (b) the physical condition of, the use or occupancy of, or the development, construction, maintenance, repair or restoration of, any Improvements, Infrastructure, Off-Premises Backbone Infrastructure, or Alterations, not including in the determination of such condition any matter arising or from or in connection with Hazardous Materials (provided, however, that Physical Conditions Claims pertaining to the physical condition or use or occupancy of those portions of (i) Off-Premises Backbone

Infrastructure, or Infrastructure located outside the boundaries of the Premises, shall only include Claims arising during construction thereof, and (ii) Conveyable On-Premises Backbone Infrastructure shall only include Claims arising prior to the date title thereto is conveyed to the Government pursuant to Section 6.11(a)); or (c) the use, storage, transportation, treatment, disposal, release or other handling, on or about or beneath the Premises, of any Hazardous Material by Tenant or any of its Related Entities.

1.142 Plans in Progress. “Plans in Progress” means any Design and Construction Documents that have been formally submitted to NASA Ames Construction Permit Office for permit approval.

1.143 Points of Connection. “Points of Connection” mean the points of connection of existing Utilities and of Conveyable On-Premises Backbone Infrastructure to be designated in the Development Plan, as the same may be revised from time to time by the mutual agreement of the Parties.

1.144 Post-Development In-Kind Cap. “Post-Development In-Kind Cap” shall have the meaning given that term in Section 7.3(d).

1.145 Preapproved Master Developer. “Preapproved Master Developer” means any one of the land development companies identified on a list to be approved by the Center Director.

1.146 Preapproved Member. “Preapproved Member” means any one of the following: (i) UCSC (as defined in Section 1.200); (ii) FHDA; (iii) Carnegie Mellon University; (iv) Santa Clara University; (v) California State University on behalf of San Jose State University; and (vi) an individual having five (5) or more years of civic or public service experience in the Greater Bay Area in a managerial, leadership or representative role, whether as a participant in a public organization or private organization serving the public, policymaker or lawmaker, elected official, member of an academic or scientific enterprise or institution, or otherwise.

1.147 Predevelopment In-Kind Cap. “Predevelopment In-Kind Cap” shall mean, (a) with respect to each annual installment of Predevelopment Period Base Rent, fifty percent (50%) of such annual installment of Predevelopment Period Base Rent, and (b) with respect to each quarterly installment of Remaining Premises Base Rent, fifty percent (50%) of such quarterly installment of Remaining Premises Base Rent.

1.148 Predevelopment Milestones. “Predevelopment Milestones” mean, collectively, those certain milestones specified on Exhibit F. The foregoing notwithstanding, a milestone specified on Exhibit F shall not be considered a Predevelopment Milestone if, on or prior to the Predevelopment Period Expiration Date, Landlord voluntarily waives in writing, with the written consent of Tenant, the requirement that Tenant achieve or satisfy such milestone as a condition precedent to the commencement of the Initial Term hereunder.

1.149 Predevelopment Period. “Predevelopment Period” means the period commencing as of the Effective Date, and continuing to and including the earliest of (a) the Predevelopment Period Expiration Date (as defined in Section 1.151), (b) the date all Predevelopment Milestones have been achieved or satisfied, or (c) the date this Lease is terminated in accordance with its terms, all as may be extended by Landlord pursuant to Section 5.2.

1.150 Predevelopment Period Base Rent. “Predevelopment Period Base Rent” shall have the meaning given that term in Section 7.1.

1.151 Predevelopment Period Expiration Date. “Predevelopment Period Expiration Date” means December 31, 2013.

1.152 Predevelopment Schedule. “Predevelopment Schedule” means the schedule attached hereto as Exhibit G, which contains an estimated schedule for completion of the primary items of Predevelopment Work (as defined in Section 1.153).

1.153 Predevelopment Work. “Predevelopment Work” means all the predevelopment work, services and approvals performed or obtained or required to be performed or obtained by or on behalf of Tenant during the Predevelopment Period in connection with the evaluation, planning and potential development of the Premises for the Entitled Uses, including the work, services and approvals performed or obtained or required to be performed or obtained by or on behalf of Tenant pursuant to ARTICLE 4 hereof.

1.154 Preexisting Hazardous Materials. “Preexisting Hazardous Materials” means Hazardous Materials (including storage tanks), if any, that existed in, on, or under the Premises or Property prior to the Effective Date, whether such substances were within the definition of Hazardous Materials as used in this Lease on the Effective Date or subsequently became included within such definition.

1.155 Premises. “Premises” means the parcels of land commonly known as Parcels 1, 2, 3, 4, 5, and 6, as identified in the NADP, and the “Premises Circulation Area,” all as more particularly outlined on Exhibit A, and located at the NASA Ames Research Center, Moffett Field, California 94035-1000.

1.156 Premises Common Area. “Premises Common Area” means those areas within the Premises that are designated on the Development Plan or by Tenant (with the consent of Landlord) for non-exclusive use, such as parks, recreational facilities, Streets and Roadways, parking areas, driveways and sidewalks in the Premises. “Premises Common Area” shall also include all Conveyable On-Premises Backbone Infrastructure prior to the date title thereto is conveyed to the Government pursuant to Section 6.11(a).

1.157 Product Data. “Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by any contractor or subcontractor to illustrate a material, product or system for any portion of the work described in the Design and Construction Documents.

1.158 Project Schedule. “Project Schedule” means the schedule with respect to the design and construction of the Improvements, Infrastructure and Off-Premises Backbone Infrastructure set forth in the Development Plan, including (i) the schedule with respect to the design and construction of the Improvements, Infrastructure and Off-Premises Backbone Infrastructure set forth in the Development Plan as it relates to the timing of development that is expected to occur on the Property, (ii) estimated dates for Commencement of Construction and Completion of Construction with respect to each Phase, and with respect to each Parcel within the first Phase, (iii) the Ozone Precursor Schedule, and (iv) a schedule for the achievement or

satisfaction of the Development Milestones, all as may be modified or amended, by Landlord and Tenant in accordance with the terms of this Lease.

1.159 Property. “Property” means the land, the buildings and other improvements known as NASA Ames Research Center, Moffett Field, California 94035-1000 excluding the Premises.

1.160 Property Benefit Ratio. “Property Benefit Ratio” means, for each Backbone Infrastructure Cost Category, the ratio of the demand requirements for such Backbone Infrastructure Cost Category for the future development of the portion of the NRP South Campus located outside the Premises to the demand requirements for such Backbone Infrastructure Cost Category in connection with the development of the NRP South Campus. In establishing each Property Benefit Ratio, the Parties shall use the following principles, which principles shall be used to determine the property benefit ratios for all parcels within the NRP South Campus:

(i) for each discrete portion of Backbone Infrastructure that is comprised of Streets and Roadways, water mains, sanitary sewer mains and electrical distribution conduit, and gas mains, Tenant shall calculate the Property Benefit Ratio in accordance with standard engineering methodologies based upon demand per gross building square foot of each land use approved by Landlord for parcels within the NRP South Campus (inclusive of the Premises and Tenant’s Entitled Use);

(ii) for each discrete portion of the Backbone Infrastructure that is comprised of reclaimed water, Tenant shall calculate the Property Benefit Ratio in accordance with standard engineering methodologies based upon a per unit of land area basis for parcels within the NRP South Campus (inclusive of the Premises); and

(iii) for each discrete portion of Backbone Infrastructure that is comprised of storm water systems, Tenant shall calculate the Property Benefit Ratio in accordance with standard engineering methodologies based upon permeable surface area and analyses of existing and proposed future drainage for parcels within the NRP South Campus (inclusive of the Premises).

1.161 Property Common Area. “Property Common Area” means those areas within the Property that are for non-exclusive use, such as parks, recreational facilities, Streets and Roadways, parking areas, driveways, and sidewalks in the Property. “Property Common Area” shall also include all (a) Off-Premises Backbone Infrastructure and (b) all Conveyable On-Premises Backbone Infrastructure effective as of the date title thereto is conveyed to the Government pursuant to Section 6.11(a). The Property Common Areas existing as of the Effective Date are generally depicted on Exhibit H attached hereto.

1.162 Public Members. “Public Members” mean, collectively, the members of Tenant which are considered “public agencies” under CEQA. As of the Effective Date, the Public Members are UCSC and FHDA.

1.163 Qualified Appraiser. “Qualified Appraiser” means an appraiser designated Member of Appraisal Institute, licensed in the State of California a certified general appraiser, with at least five (5) years’ full time experience appraising large commercial and multi-family

residential properties in the Silicon Valley; and with respect to Landlord, an appraiser employed by another Federal agency (e.g., the Army Corps of Engineers or the General Services Administration) shall be deemed a Qualified Appraiser.

1.164 Quitclaim Deed. “Quitclaim Deed” means a quitclaim deed, signed by Tenant and acknowledged, in a recordable form reasonably requested by Landlord, remising, releasing and quitclaiming to Landlord all of Tenant’s right, title and interest in and to a portion of the Premises (or to one (1) or more of the Parcels, if applicable).

1.165 Reasonable Assurances. “Reasonable Assurances” means assurances that a specified event, series of events or circumstances will occur, and shall be consistent with the factors and conditions then customarily associated with the capitalization plan and capacity to obtain debt financing applicable to special purpose entity developers of other projects similar to the Phase or Phases which are to be subject to a proposed Master Developer Sublease, Undeveloped Area Sublease or Residential Facility Sublease.

1.166 Recognition Agreement. “Recognition Agreement” means an agreement entered into between Landlord and a Sublessee pursuant to Section 13.11.

1.167 Reconveyance. “Reconveyance” means a request for full reconveyance of the lien of each Mortgage, executed by the applicable Mortgagee and acknowledged, in a form reasonably requested by Landlord, releasing a portion of the Premises (or one (1) or more of the Parcels, if applicable) and all other collateral related thereto from the lien of such Mortgage.

1.168 Related Entities. “Related Entities” means, with respect to any person or entity, (a) all contractors, consultants, Sublessees and licensees of such person or entity (and with respect to Tenant, all contractors, consultants, Sublessees and licensees of any Affiliate and of any member of Tenant), and (b) the employees, agents and representatives of any person or entity described in clause (a) of this Section 1.168. In addition, with respect to Tenant, the phrase “Related Entities” includes any Affiliate and any member of Tenant.

1.169 Remaining Premises Appraisal. “Remaining Premises Appraisal” shall have the meaning given that term in Section 7.5(a).

1.170 Remaining Premises Base Rent. “Remaining Premises Base Rent” shall have the meaning given that term in Section 7.2(b).

1.171 Rent. “Rent” means all Base Rent, all Additional Rent, all Shared Rent and all other amounts of money and charges payable in accordance with this Lease.

1.172 Residential Facility Sublease. “Residential Facility Sublease” shall mean a Sublease (other than any Master Developer Sublease or Undeveloped Area Sublease) by Tenant of any portion of Improvements containing at least one (1) housing unit to a potential third party Housing Unit Owner which is not a member of Tenant and which intends to Sublease or sell the housing unit or units contained in or on such portion of Improvements to individual users pursuant to Section 13.5.

1.173 ROD. “ROD” means the Record of Decision signed by Landlord in November 2002 selecting Mitigated Alternative 5 in the EIS, and adopting the mitigation measures set forth in the NADP MIMP.

1.174 Samples. “Samples” means physical examples of the materials to be supplied in connection with any portion of the work described in the Design and Construction Documents.

1.175 Second Terminable Portion of the Premises. “Second Terminable Portion of the Premises” shall have the meaning given that term in Section 8.8(e).

1.176 Shared Rent. “Shared Rent” means the aggregate of all (a) Sublease Rents (as defined in Section 1.182), (b) condemnation awards, (c) proceeds of rental loss insurance, (d) proceeds of property insurance in excess of the amount necessary to fully reconstruct the damaged or destroyed portions of the Premises, Improvements or Infrastructure which are covered by such insurance, (e) any amount required to be added pursuant to Section 13.5(g), and (f) any other amounts to be paid to Tenant pursuant to a Master Developer Sublease, Undeveloped Area Sublease or Residential Facility Sublease, all to the extent received by Tenant from the Sublessee (if at all) under such Sublease after payment or deduction of all Shared Rent Credits (as defined in Section 1.177). The foregoing and the provisions of Section 1.182 notwithstanding, “Shared Rents” shall exclude all reimbursements of Tenant’s or Tenant’s member’s out-of-pocket costs and expenses and all charges for services (other than services provided as a part of UDA Services) or improvements or financing provided or procured by Tenant.

1.177 Shared Rent Credits. “Shared Rent Credits” means the aggregate of (a) all Base Rent, including Rent paid by the application of credits or in-kind consideration, and (b) the UDA Services Amount, including any UDA Services Amount paid by the application of credits.

1.178 Space Act. “Space Act” means the National Aeronautics and Space Act of 1958 (42 U.S.C. §2451 et seq.), as may be amended from time to time.

1.179 Square Feet. “Square Feet” (or “Square Foot”) means a calculation of gross square feet (or a gross square footage) as determined by the “Standard Method for Measuring Floor Area in Office Buildings,” approved as of June 7, 1996 by the American National Standards Institute, Inc. (ANSI/BOMA Z65.1-1996). “Square Feet” does not include the areas of accessory buildings, such as parking structures and buildings containing primarily mechanical or electrical equipment or other service equipment.

1.180 Streets and Roadways. “Streets and Roadways” mean streets, roadways and highway improvements, together with improvements associated with such streets, roadways and highway improvements, including curbs and gutters, sidewalks, medians, landscaping, street lights and other improvements associated with such streets, roadways and highway improvements.

1.181 Sublease. “Sublease” means any direct or indirect, voluntary, involuntary or by operation of law, sublease or other right to use and occupy any portion of the Premises or the space in any portion of the Improvements (other than an Assignment), granted by Tenant or any Sublessee to any person or entity. “Sublease” includes any Master Developer Sublease,

Residential Facility Sublease and Undeveloped Area Sublease. The foregoing notwithstanding, the term “Sublease” does not include any concession, easement or license which does not constitute a “lease” under California law.

1.182 Sublease Rents. “Sublease Rents” mean basic Sublease rents only (including reimbursement of operating costs and other reimbursement typically paid by tenants under leases or subtenants under subleases whether or not characterized as rent), and not consideration, other cost reimbursements, profits or other sums received by Tenant from any Sublessee outside of the sublandlord-subtenant relationship, such as research and similar contracts outside of the sublandlord-subtenant relationship.

1.183 Sublessee. “Sublessee” means the sublessee or sublessees under any Sublease from time to time, including any successors in interest of any Sublessee.

1.184 Sublessee Business Information. “Sublessee Business Information” shall have the meaning given that term in Section 13.6(c).

1.185 Subsequent Phase Appraisal. “Subsequent Phase Appraisal” shall have the meaning given that term in Section 7.5(b).

1.186 Subsurface Areas. “Subsurface Areas” means the area located under the ground surface of the Premises.

1.187 Support Agreement. “Support Agreement” means an instrument, prepared by Landlord on its standard form for each Government Fiscal Year, setting forth the amounts that are estimated to be due and owing from Tenant as Rent under this Lease during that Fiscal Year in the form attached hereto as *Exhibit I*.

1.188 Taking. “Taking” means the acquisition of all or part of the Premises for a public use by exercise of the power of eminent domain or voluntary conveyance in lieu thereof, and a Taking shall be considered to occur as of the earlier of the date on which possession of the Premises (or part so taken) by the entity exercising the power of eminent domain is authorized as stated in an order for possession or the date on which title to the Premises (or part so taken) vests in the entity exercising the power of eminent domain.

1.189 Tangible Net Worth. “Tangible Net Worth” means (1) the total of all assets properly appearing on the consolidated balance sheet of the prospective tenant or its guarantor in accordance with GAAP, less (2) the sum of (i) the book amount of all such assets which would be treated as intangibles under GAAP, including all such items as goodwill, trademarks, trademark rights, trade names, trade name rights, brands, copyrights, patents, patent rights, licenses, deferred charges and unamortized debt discount and expenses, (ii) all reserves which have not already been deducted in calculating total assets on prospective tenant’s or its guarantor’s consolidated balance sheet, including reserves for depreciation, depletion, insurance, and inventory valuation, but not including contingency reserves not allocated for any particular purpose and not deducted from assets, (iii) the amount, if any, at which any shares of stock of prospective tenant or its guarantor appear on the asset side of such balance sheet, (iv) all liabilities of prospective tenant or its guarantor shown on such balance sheet, (v) all investments in non-consolidated affiliates, and (vi) all accounts or notes due to prospective tenant or its

guarantor from any shareholder, director, officer, employee or affiliate of prospective tenant or its guarantor or from any relative of such party.

1.190 Technical Submittal. “Technical Submittal” means Product Data, calculations, analyses, or Samples submitted to Landlord so that Landlord may verify that the proposed materials or equipment correctly meet the intent of the approved project design.

1.191 Temporary Taking. “Temporary Taking” means a Taking for a temporary period during the Term.

1.192 Tenant. “Tenant” means University Associates - Silicon Valley LLC, a Delaware limited liability company, and its permitted successors and assigns.

1.193 Tenants’ Association. “Tenants’ Association” means, one (1) or more entities established by Landlord and/or other entities that have leased premises at the Premises or Property (with the first such Tenants’ Association tentatively named NASA Research Park Tenants’ Association, Inc.) to maintain and insure some or all of the Property Common Area for the benefit of the tenants and other users and occupants of the Premises or Property, or, should a Tenants’ Association not be formed, another entity that undertakes responsibility for the maintenance and insurance of some or all of the Property Common Area for the benefit of the tenants and other users and occupants of the Premises or Property.

1.194 Term. “Term” means, collectively, the Predevelopment Period, the Initial Term and each Extended Term duly exercised by Tenant.

1.195 Total Taking. “Total Taking” means either (a) a Taking of all of the Premises, or (b) a Taking of such a substantial portion of the Premises that, in Tenant’s good faith, reasonable judgment, the remaining portion of the Premises (after repair and restoration of the remaining portion of the Improvements) would be unsuitable; inadequate or impractical for Tenant’s use under this Lease. Tenant shall deliver to Landlord written notice of Tenant’s determination pursuant to clause (b) above within one hundred eighty (180) days after a Taking occurs (as described in Section 1.188). Landlord’s failure to receive such notice within that one hundred eighty (180) day period shall be conclusively deemed Tenant’s determination that the Taking is a Partial Taking.

1.196 Transfer. “Transfer” means any Assignment or Sublease, as the context may require.

1.197 Transfer of Ownership. “Transfer of Ownership” means: (a) any sale of a controlling interest in the voting stock or the membership interests in Tenant to any party other than an Affiliate of Tenant or a Preapproved Member; and (b) during the first twenty-two (22) years of the Initial Term, any sale of voting stock or the membership interests in Tenant to any party other than an Affiliate of Tenant or a Preapproved Member. Without limiting the foregoing or the provisions of Section 5.4, during any period when the Tenant under this Lease is Named Tenant, Tenant may admit new Preapproved Members or allow members to withdraw or resign, and any such transaction shall not constitute a Transfer of Ownership. The foregoing notwithstanding, any withdrawal by UCSC from Tenant shall be governed by the provisions of Section 5.4.

1.198 Transfer Property. “Transfer Property” means, with respect to a Transfer, the portion of the Premises (including the Improvements, Infrastructure and Alterations located on such portion of the Premises) which is the subject of the Transfer.

1.199 Transportation Management Association. “Transportation Management Association” means one (1) or more entities established by Landlord and/or other entities that have leased premises at the Premises or Property to implement a transportation demand management plan (which may or may not be similar to the NADP TDM Plan), or, should a Transportation Management Association not be formed, another entity that undertakes responsibility to implement a transportation demand management plan (which may or may not be similar to the NADP TDM Plan) for the benefit of the tenants and other users and occupants of the Premises or Property.

1.200 UCSC. “UCSC” means the University of California, Santa Cruz, and The Regents of the University of California (or either of them).

1.201 UDA Services. “UDA Services” shall have the meaning given that term in Section 9.1(c).

1.202 UDA Services Amount. “UDA Services Amount” means, in consideration of, and payment for, the UDA Services, an annual amount equal to Three and 65/100ths Dollars (\$3.65) per Square Foot of Improvements used for an Entitled Use), as increased on each CPI Adjustment Date in the same manner, and subject to the same limitations, as Base Rent hereunder, provided that the first CPI Adjustment Period with respect to the UDA Services Amount shall commence on October 1, 2009 and shall end on the day immediately preceding the first CPI Adjustment Date, and if that CPI Adjustment Period is more or less than five (5) years in duration, then both the Maximum CPI Adjustment and the Minimum CPI Adjustment for such period shall be prorated on a daily basis to take into account such longer or shorter period. The UDA Services Amount shall be payable in the increments as provided in Section 7.10(a) and shall be subject to the credit described in Section 9.1(c).

1.203 Undelivered Phase. “Undelivered Phase” means any Phase as to which the Phase Commencement Date has not yet occurred.

1.204 Undelivered Phase Entitled Use Appraisal. “Undelivered Phase Entitled Use Appraisal” shall have the meaning given that term in Section 7.5(n).

1.205 Undeveloped Area Sublease. “Undeveloped Area Sublease” shall mean a Sublease (other than any Master Developer Sublease or Residential Facility Sublease) by Tenant to a third party which is not a member of Tenant of any portion of the Premises which is not developed with buildings containing Square Feet.

1.206 Utilities. “Utilities” means improvements constructed or to be constructed on, to or within the Premises or the Property consisting of utilities and associated improvements, including water services (including steam and vacuum line and chilled water services), reclaimed water services, storm water services, sanitary sewer services, vacuum line services, electricity and other power services, cable television services, natural gas services, telecommunications and data communications services, and such other utilities and associated improvements as may be

typically provided in a development of the size and scope contemplated by the Development Plan.

ARTICLE 2 PREMISES

2.1 Lease of Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term and subject to the covenants hereinafter set forth, the Premises. The Premises are described and outlined on the diagram attached hereto as *Exhibit A*. The Parties shall execute and acknowledge a Memorandum of Lease promptly after Tenant delivers to Landlord notice requesting the same. Tenant may thereafter record the Memorandum of Lease in the Official Records of Santa Clara County, California, and Tenant shall pay all costs, fees and expenses in connection therewith; provided, however, Tenant shall not record the Memorandum of Lease if payment of any documentary transfer tax is required without first giving Landlord an opportunity to contest the validity of the imposition of such documentary transfer tax, and Tenant shall cooperate with Landlord in all reasonable respects in connection with any such contest.

2.2 Property Common Areas. During the Term, Tenant and its Related Entities shall have the non-exclusive right, in common with other tenants and users of the Property, to use only for their intended purposes the Property Common Areas. Landlord shall have the right from time to time to change the size, location, configuration, character or use of any such Property Common Areas, construct additional improvements or facilities in any such Property Common Areas, or close any such Property Common Areas so long as any such action does not materially adversely affect Tenant's use of, or access to, the Premises or the parking of which Tenant has a right of use under Section 2.10 of this Lease. Tenant shall not interfere with the rights of Landlord, the other tenants or users of the Property or their respective Related Entities to use such Property Common Areas.

2.3 Premises Common Areas. During the Term, Landlord, the other tenants and users of the Property, and their respective Related Entities shall have the non-exclusive right, in common with tenants and users of the Premises, to use only for their intended purposes the Premises Common Areas. Tenant shall, with the consent of Landlord (which shall not be unreasonably withheld, delayed or conditioned) have the right from time to time to change the size, location, configuration, character or use of any such Premises Common Areas, construct additional improvements or facilities in any such Premises Common Areas, or close any such Premises Common Areas so long as any such action does not materially adversely affect use of or access to the Property. Tenant shall not unreasonably interfere with the rights of Landlord, the other tenants or users of the Property or their respective Related Entities to use such Premises Common Areas; provided, however, that Tenant or the Master Developer may make reasonable rules governing the use of the Premises Common Area, so long as such rules are not discriminatory and are consistently applied to the entirety of the Premises Common Area. No such rules shall interfere with the right of Landlord, the other tenants or users of the Property or their respective Related Entities to use the streets for access to the Property or with the right of Landlord to use any Utilities in the Premises Common Area as to, and to the extent, which Landlord has a right of use.

2.4 Landlord's Easement Rights.

(a) Landlord and Tenant acknowledge that: (i) as of the Effective Date, certain Utilities are located on portions of the Premises, all or many of which are to be relocated, upgraded or replaced in connection with the development of the Premises; (ii) in connection with the development of the Premises, certain Streets and Roadways are to be relocated, upgraded or replaced on the Premises which may connect with and become part of the general roadway circulation system serving the Property; and (iii) in the future, Landlord may desire to install Utilities to serve other portions of the Property (or portions of the Premises as to which this Lease has terminated) that cross the Premises. With respect to the foregoing, Tenant agrees that it shall from time to time allow the installation of such Utilities and shall grant easement rights affecting the Premises (or such other rights as Landlord may reasonably request with respect to the installation of such Utilities) in favor of Landlord (or the providers of such Utilities), subject to the following:

(i) any Utilities to serve any of the Property (or portions of the Premises as to which this Lease has terminated) that Landlord may desire to have installed in the future shall be installed within or immediately under Streets and Roadways constructed (or to be constructed) on the Premises, along the perimeter of the Premises, or in such other locations as Tenant may reasonably approve, and in a manner and in a timeframe reasonably approved by Tenant, and the same shall be installed, repaired and maintained by Landlord at no cost or expense to Tenant;

(ii) any existing Utilities which Landlord requires to be relocated within the Premises by Tenant in connection with Tenant's development of the Premises shall be relocated by Tenant, at its cost, in accordance with Landlord's specifications, and shall be installed within or immediately under Streets and Roadways constructed (or to be constructed) on the Premises, along the perimeter of the Premises, or in such other locations as Landlord may reasonably require and Tenant may reasonably approve. After Tenant completes such relocation work, such relocated Utilities shall be repaired and maintained by Landlord at no cost or expense to Tenant;

(iii) any Utilities (including any existing Utilities) may be relocated by Tenant from time to time if necessary to accommodate Tenant's development and operation of the Premises, or by Landlord from time to time if necessary to accommodate Landlord's development and operation of portions of the Property (or portions of the Premises as to which this Lease has terminated);

(iv) any such easement or other rights to be granted by Tenant shall be limited such that they shall not, in the reasonable opinion of Tenant, unreasonably interfere with Tenant's development and use of the Premises in accordance with this Lease, and shall not result in any material increased cost to Tenant; and

(v) Landlord shall be obligated to repair any damage to the Premises resulting from the use of any such easement or other rights.

(b) Landlord shall notify Tenant in the event Landlord requires any such easement or other rights, and with such notice Landlord shall provide Tenant with a detailed description of the nature and extent of such required easement or other rights, including engineered drawings in the case of any Utilities. Promptly following delivery of any such notice, Landlord and Tenant shall, reasonably and in good faith, agree upon the terms and conditions of the necessary easement agreement (or other instrument granting other rights, if applicable) (to the extent not addressed in the foregoing provisions of this Section 2.4) to be entered into between Landlord and Tenant with respect thereto.

(c) Landlord's grant to Tenant of the leasehold estate under this Lease is subject to Landlord's reservation of the right to own, operate, inspect, maintain, repair, renovate and replace the Utilities located on the Premises as of the Effective Date, and such other Utilities as may become located on the Premises during the Term in accordance with this Section 2.4 and Tenant hereby consents thereto. Tenant further agrees that, pursuant to Section 8.6, Landlord may enter the portion of the Premises on which such Utilities are located, together with such additional, adjoining portions of the Premises as may be reasonably necessary to operate, inspect, maintain, repair, renovate and replace such Utilities. With respect to the Utilities located on the Premises as of the Effective Date and such other Utilities as may become located on the Premises during the Predevelopment Period in accordance with this Section 2.4, the Parties agree that such Utilities shall remain in place until such Utilities are relocated by Tenant in connection with its development of the Premises (if at all), and such relocated Utilities are determined to be operational, and title thereto is conveyed to the Government (if applicable).

2.5 Reservation of Right to Grant Non-Exclusive Licenses to Use Subsurface Areas. Landlord hereby reserves the right to grant licenses or other rights to the Subsurface Area to the MEW Companies, the Navy, the EPA, the State of California and to such other entities or agencies as may be responsible to remediate or remove Hazardous Materials in or about the Subsurface Area. Landlord hereby reserves access to known or suspected areas of contamination or other property areas in the Premises upon which any containment system, treatment system, monitoring system, or other environmental response action is installed or implemented, or to be installed or implemented, for the purposes of the foregoing entities' fulfilling the requirements, as the case may be, of the MEW ROD, the Federal Facility Agreement executed August 8, 1989, between the Navy, the EPA Region IX, the California Department of Health Services, and the California Regional Water Quality Control Board, and any amendments thereto; CERCLA; the National Oil and Hazardous Substances Pollution Contingency Plan (42 C.F.R. §9605) (formerly, the National Contingency Plan); the Navy Memorandum of Understanding; and the Allocation and Settlement Agreement. Such licenses or other rights shall require that all entries pursuant thereto shall be undertaken in a manner which does not materially interfere with the use and enjoyment of the Premises for the Permitted Uses and does not result in any expense or liability (including expense or liability in connection with repair or maintenance) being incurred by Tenant, the Master Developer, any other Sublessee or user of the Premises or any part or parts thereof.

2.6 Reservation of Right to Remediate. Except as set forth in the MEW Construction Coordination Agreement or the Navy Construction Coordination Document, and except as otherwise set forth in this Lease with respect to Tenant's obligations to remove or remediate Hazardous Materials, the leasehold interest herein granted specifically excludes any right to

remediate Preexisting Hazardous Materials or Hazardous Materials which migrate, after the Effective Date, to the Subsurface Areas from any source other than the Premises or which migrate within the Subsurface Areas. Upon the prior written request of Tenant, Landlord shall grant, to the extent not covered by the MEW Construction Coordination Agreement or the Navy Construction Coordination Document, to Tenant a limited right to remediate such Hazardous Materials only to the extent necessary to permit Tenant, the Master Developer or any Sublessee safely to excavate, install, construct, maintain, repair and replace foundations, Utilities, utility vaults, wires, cables, pipes, stanchions, landscaping, irrigation systems and other improvements reasonably required or convenient in connection with the performance of the Predevelopment Work, or the installation, construction, maintenance, repair or replacement of Improvements to be located on the Premises in accordance with the Development Plan. Before granting any such right, Landlord may request that Tenant enter into a MEW Construction Coordination Agreement or the Navy Construction Coordination Document if Tenant has not previously entered into such an agreement with respect to the work to be performed. No such grant of a limited right is intended or shall be deemed an assumption by Tenant, the Master Developer or any Sublessee or user of the Premises or any part or parts thereof to investigate, discover, characterize, remove or otherwise remediate any such Preexisting Hazardous Material, although all work performed by Tenant under such limited right shall be subject to the provisions of this Lease. With respect to any Predevelopment Work, the easement or other instrument to be executed pursuant to Section 2.7, and/or the MEW Construction Coordination Agreement and/or the Navy Construction Coordination Document shall set forth the requirements with respect to Preexisting Hazardous Materials and Hazardous Materials. Nothing in this Section 2.6 shall be deemed an assumption by Landlord of any duty to remediate any such Preexisting Hazardous Materials or Hazardous Materials, subject to the provisions of ARTICLE 18.

2.7 Landlord's Grant of Other Rights.

(a) Landlord and Tenant acknowledge that Tenant, Master Developer or their respective Related Entities may need to enter the Undelivered Phases or portions of the Property either: (i) in connection with the performance of the Predevelopment Work during the Predevelopment Period; or (ii) in connection with the development, construction, operation, management and use of the Premises, the Improvements, Infrastructure or Off-Premises Backbone Infrastructure during the Initial Term or any Extended Term. With respect to the foregoing, Landlord agrees to grant to Tenant or to the applicable third parties such non-exclusive easements, permits, licenses or rights-of-way over, in, under and across portions of any Undelivered Phase or the Property (including any Subsurface Areas of any Undelivered Phase) as are reasonably necessary to perform such work, or for the provision of existing or future Utilities serving the Premises, or to operate, manage, use, maintain, repair or replace such work or Utilities, subject to the following:

(i) any Utilities to be located on portions of the Property and which shall serve any portion of the Premises shall be installed within or immediately under Streets and Roadways on the Property or in such other locations as Landlord may reasonably approve, and in a manner and in a timeframe reasonably approved by Landlord. Unless and until title to any such Utilities is conveyed to the Government in accordance with Section 6.11(a) (if applicable), the same shall be installed, repaired and maintained by Tenant or such third parties at no cost or expense to Landlord;

(ii) any such easement or other rights to be granted by Landlord shall be limited such that they shall not, in the reasonable opinion of Landlord, unreasonably interfere with the use and enjoyment of the Property by Landlord, its tenants and other users and occupants of portions of the Property, and their respective Related Entities, and shall not result in any material increased cost to Landlord;

(iii) Tenant or such third parties shall be obligated to repair any damage to the Property resulting from the use of any such easement or other rights; and

(iv) Tenant shall notify Landlord in the event Tenant requires any such easement or other rights, and with such notice Tenant shall provide Landlord with a detailed description of the nature and extent of such required easement or other rights, including engineered drawings in the case of any Utilities. Promptly following delivery of any such notice, Landlord and Tenant shall, reasonably and in good faith, agree upon the terms and conditions of the necessary easement agreement (or other instrument granting other rights, if applicable) (to the extent not addressed in the foregoing provisions of this Section 2.7) to be entered into between Landlord and Tenant with respect thereto.

(b) If requested by Tenant, Landlord shall use reasonable efforts to lease or otherwise grant to Tenant the right to use a reasonably sized field office (in no event exceeding three thousand (3,000) Square Feet) on the Premises or the Property during the Predevelopment Period for Tenant's employees, personnel, agents or representatives. Any such lease or other right of use shall be on Landlord's customary terms and conditions, and the Parties' rights and obligations with respect to such field office shall be governed by such agreement.

2.8 Tenants' Associations. Tenant acknowledges that Landlord may convey, subject to the rights of Tenant set forth in this Lease, an interest in some or all of the Property Common Areas to one (1) or more Tenants' Associations, or that Landlord may transfer to one (1) or more Tenants' Associations, and the same shall assume, the obligations to perform some or all of the UDA Services and/or other services or obligations with respect to the Property Common Areas. In any such event, Tenant shall execute, acknowledge as appropriate, and deliver to Landlord (within thirty (30) days following Landlord's written request) such documents, instruments and agreements (such as, but not limited to, amendments to this Lease and consents and subordination to declarations of covenants, conditions and restrictions) as Landlord may reasonably require and Tenant shall reasonably approve. Tenant may, at its option, become a member of any Tenants' Association. Nothing in this Section 2.8 shall be deemed to prohibit Tenant from forming a separate tenant's or users association comprised of tenants or users of Parcels within the Premises.

2.9 Transportation Management Associations. With respect to each Transportation Management Association created that implements a transportation demand management plan (which may or may not be similar to the NADP TDM Plan) which affects or impacts Tenant or the Premises (or any portion thereof), Tenant shall execute, acknowledge as appropriate, and deliver to Landlord (within forty-five (45) Business Days following Landlord's written request) such documents, instruments and agreements (such as, but not limited to, amendments to this Lease and consents and subordination to declarations of covenants, conditions and restrictions) as Landlord may reasonably require and Tenant shall reasonably approve. Tenant shall become

a member of any Transportation Management Association. The foregoing notwithstanding, Tenant shall not be required to operate, participate in or comply with a Transportation Management Association or transportation demand management program which is more onerous, on a per square foot basis, than the Transportation Management Association with which other users of the NRP South Campus who enter into leases or other agreements with Landlord must comply.

2.10 Parking. The Parties acknowledge that areas contained in the Premises and Property exclusively set aside for shared, non-exclusive parking among users of the Premises and Property were identified in the NADP. Landlord shall make some reasonable portion (at least six hundred (600) spaces on the Property) of such shared parking areas on the Property available to the Sublessees and users of the Premises for the non-exclusive use for parking by and among such Sublessees and users. The foregoing notwithstanding, the location and extent of any shared parking on the Premises shall be subject to and superseded by the location and extent of any areas exclusively set aside for shared parking set forth in the approved Development Plan. The Development Plan shall designate a reasonable portion of the parking on the Premises as shared parking (which may include shared street parking); provided, however, that the minimum six hundred (600) spaces on the Property to be made available by Landlord pursuant to the second sentence of this Section 2.10 shall be increased by the number of shared parking spaces on the Premises so designated in the Development Plan. In the event Tenant intends to utilize such shared parking areas on the Property for parking, Tenant shall be responsible for its share (based on the estimated ratio that the usage of such shared parking areas by Tenant bears to the usage of such shared parking areas by all users of them, with each such shared parking area considered separately) of the cost of constructing and maintaining the off-site parking improvements and associated infrastructure with respect to such shared parking area, the costs of which shall not constitute in-kind consideration for purposes of Section 7.3.

2.11 Main and Ellis Street Gates. The Parties acknowledge that the success of the development of the Premises depends on reliable, uninterrupted access to the Premises for all users. Within the constraints of Applicable Laws, and the EIS, and if economically feasible for Landlord, Landlord and Tenant shall endeavor to obtain approvals necessary to relocate and/or operate the Main and Ellis Street gates on the Property consistent with free, unimpeded and unimpaired access and circulation to and within the Premises. The Parties shall meet and confer regarding the cost of making changes necessary to accommodate any revised security arrangements resulting from the foregoing, and, if the Parties agree on a plan for Tenant to advance some or all of any costs related to the foregoing, all such costs shall constitute in-kind consideration for purposes of Section 7.3.

ARTICLE 3 TERM

3.1 Predevelopment Period. The Predevelopment Period shall commence as of the Effective Date, and continuing to and including the earliest of (a) the Predevelopment Period Expiration Date, (b) the date all Predevelopment Milestones have been achieved or satisfied, or (c) the date this Lease is terminated in accordance with its terms, all as may be extended by Landlord pursuant to Section 5.2.

3.2 Initial Term.

(a) The Initial Term of this Lease shall commence as of the day following expiration of the Predevelopment Period and continue to and including the final day of the sixtieth (60th) full Fiscal Year of the Initial Term, subject to the rights of Tenant to extend the Term in accordance with Section 3.4, unless sooner terminated as specifically provided in this Lease. The foregoing notwithstanding, the Initial Term shall not commence, and this Lease and Landlord's and Tenant's rights and obligations hereunder shall automatically terminate without further act of Landlord or Tenant, as of expiration of the Predevelopment Period if any Predevelopment Milestone has not been achieved or satisfied as of expiration of the Predevelopment Period, it being intended that such achievement or satisfaction of all Predevelopment Milestones as of expiration of the Predevelopment Period shall be a condition precedent (for Landlord's benefit) to the commencement of the Initial Term hereunder. Tenant may, at any time prior to expiration of the Predevelopment Period, request (in writing) from Landlord a written determination of the Predevelopment Milestones that Tenant has not achieved or satisfied as of the date of Tenant's request, and Landlord shall respond to Tenant in writing with Landlord's determination within twenty (20) days of receipt of such written request from Tenant. Similarly, Landlord may, at any time prior to expiration of the Predevelopment Period, request (in writing) from Tenant a written determination of the Predevelopment Milestones that Tenant believes it has achieved or satisfied as of the date of Landlord's request, and Tenant shall respond to Landlord in writing with Tenant's determination within twenty (20) days of receipt of such written request from Landlord. If the Predevelopment Milestones are achieved or satisfied during the Predevelopment Period and the Initial Term commences, promptly thereafter the Parties shall execute a written memorandum confirming the date that the Initial Term commences and the date of the last day of the Initial Term.

(b) Possession of the first Phase, as described in the Development Plan, shall be delivered to Tenant upon commencement of the Initial Term. Possession of subsequent Phases shall be delivered to Tenant on the one hundred eightieth (180th) day following a written notice from Tenant to Landlord that Tenant requests such delivery of possession as to such Phase. Promptly after each such delivery of possession, the Parties shall execute a written memorandum confirming the date on which the Phase Commencement Date of that Phase occurred. During the Predevelopment Period with respect to the Premises and during the Initial Term with respect to all Undelivered Phases, Landlord may continue to use and occupy all buildings and other improvements thereon, including the right to enter into leases and other agreements with third parties (collectively, "Interim Leases"). All rent, cost recovery payments and other amounts payable under the Interim Leases shall be paid to and retained by Landlord. Before possession of each Phase is delivered to Tenant, Landlord shall terminate all Interim Leases affecting that Phase, or, with the prior written consent of Tenant, subordinate the same to this Lease and all then existing Subleases (in which event the rent, cost recovery payments and other amounts payable under such Interim Leases shall be paid to and retained by the applicable Sublessee or Sublessees as of the date possession of such Phase is delivered). Possession of each Phase shall otherwise be delivered by Landlord to Tenant, and each Delivered Phase shall be as of delivery of possession thereof to Tenant, vacant and free of the claims to possession of third parties. Tenant shall accept possession of each Phase in its existing "as is" condition as of the Phase Commencement Date for such Phase, with all faults, without any covenant, representation

or warranty of any kind or nature whatsoever, express or implied (including with respect to the suitability of the Phase or any Utility systems serving the Phase for Tenant's purposes).

3.3 No Representations or Warranties. Tenant acknowledges that Landlord does not make any express or implied representations or warranties as to any matters including the suitability of the soil or subsoil, any characteristics of the Premises or improvements thereon, the likelihood of deriving trade from, or other characteristics of, the Premises or Property, the economic or programmatic feasibility of the Development Plan, title to the Premises, Hazardous Materials on or in the vicinity of the Premises, or any other matter. Tenant will satisfy itself during the Predevelopment Period as to such suitability and other pertinent matters by Tenant's own inquiries and tests into all matters relevant in determining whether to proceed with the development of the Premises as contemplated by this Lease.

3.4 Extended Terms.

(a) So long as this Lease has not been terminated as a consequence of an Event of Default or as may otherwise be provided herein, Tenant shall have the unilateral right to extend the Initial Term for up to three (3) Extended Terms on and subject to the following terms and conditions. Tenant may exercise each such right to extend the Term only by delivering written notice to Landlord of Tenant's election to extend the Term at least fifteen (15) full calendar months before the expiration of the then current Term. If Landlord does not receive Tenant's notice of its election to extend the Term at least fifteen (15) full calendar months before the expiration of the then current Term, then Tenant's rights to extend pursuant to this Section 3.4(a) shall be void and of no further force, and any notice purporting to exercise an Extended Term received after the date that is fifteen (15) full calendar months before the expiration of the then current Term shall be void and of no force. In addition, Tenant shall have no right to extend the Term for the second (2nd) Extended Term if Tenant fails to extend the Term for the first (1st) Extended Term, and Tenant shall have no right to extend the Term for the third (3rd) Extended Term if Tenant fails to extend the Term for the second (2nd) Extended Term. Base Rent for each Extended Term shall be determined pursuant to Section 7.4 below.

(b) If the Term is duly extended in accordance with this Section 3.4, Tenant shall continue to lease the Premises on all of the other terms and conditions of this Lease, provided that Base Rent for each Extended Term shall be revised as provided in Section 7.4.

3.5 Holding Over. If the Initial Term commences as provided in this Lease and thereafter if, with consent by Landlord, Tenant holds possession of the Premises after the Expiration Date, Tenant shall become a tenant from month to month under this Lease, but the Base Rent during such month to month tenancy shall be equal to one hundred fifty percent (150%) of the Base Rent in effect on the Expiration Date. Landlord and Tenant each shall have the right to terminate such month to month tenancy by giving at least ninety (90) days' written notice of termination to the other at any time, in which event such tenancy shall terminate on the termination date set forth in such termination notice. The foregoing notwithstanding, the provisions of this Section 3.5 shall not apply to any Sublease as to which the Sublessee thereunder has received a Recognition Agreement from Landlord, and the rights and obligations of Landlord and such Sublessee shall be governed by the provisions of such Recognition Agreement.

3.6 Surrender of the Premises.

(a) Upon expiration of the Term, or any earlier termination of this Lease, Tenant shall remove all Personal Property, shall comply with the provisions of Sections 8.2(c)(vii) and 8.2(c)(viii), and shall surrender the Premises and the Improvements to Landlord, free and clear of all liens, encumbrances or exceptions to title other than the exceptions to title as of the Effective Date and such other exceptions to title created or approved by Landlord during the Term. Upon such termination, title to the Improvements then existing on the Premises automatically shall vest in the Government and shall be in-kind consideration in lieu of any Claim by Landlord for any future Rent that would be owing hereunder for any period following any termination of this Lease. The Improvements shall be broom-clean and in reasonably good operating condition taking into account the age and nature thereof, ordinary wear and tear excepted; provided, however, Tenant shall not be obligated to repair or restore any damage or destruction, or to restore the Improvements in connection with a Taking, unless required by the provisions of ARTICLE 16 or ARTICLE 17, respectively. Tenant shall promptly deliver to Landlord reasonably satisfactory evidence of Tenant's then-current book value of such Improvements to permit Landlord to capitalize such Improvements on Landlord's real property and financial records.

(b) Notwithstanding the provisions of Section 3.5 or the foregoing provisions of this Section 3.6, if this Lease terminates before the Expiration Date, Tenant shall nevertheless surrender possession of the Premises and the Improvements to Landlord, but the Parties shall execute a license granting Tenant a period of ninety (90) days thereafter to remove its Personal Property, to comply with the provisions of Sections 8.2(c)(vii) and 8.2(c)(viii), and to comply with its other obligations pursuant to this Section 3.6 and its obligations pursuant to Section 5.5, provided, however, if Tenant requires more than such ninety (90) day period to comply with the provisions of Sections 8.2(c)(vii) and 8.2(c)(viii), Tenant shall have such reasonable period of time as is necessary to comply with such Sections as long as Tenant commences such work with due diligence and dispatch within such ninety (90) day period and, having so commenced, thereafter prosecutes with diligence and dispatch and completes such work. During the term of any such license, Tenant shall pay to Landlord rent for Tenant's continued access to the Premises, such rent to be determined based upon the extent to which Tenant's continued access to and activities on the Premises preclude Landlord from the use of the Premises or portions thereof.

(c) The other provisions of this Section 3.6 notwithstanding, such provisions shall not apply to any Sublease as to which the Sublessee thereunder has received a Recognition Agreement from Landlord, and the rights and obligations of Landlord and such Sublessee shall be governed by the provisions of such Recognition Agreement.

(d) The provisions of this Section 3.6 shall survive any termination of this Lease.

3.7 Periodic Programmatic Review. The Parties intend to meet and confer with each other as periodically as is reasonable in the circumstances to evaluate their collaborations and programmatic partnerships under this Lease and such other agreements as the Parties may have executed. This Lease shall not be void or voidable if the Parties fail to conduct such evaluation.

ARTICLE 4
PREDEVELOPMENT WORK

4.1 Predevelopment Schedule.

(a) The Predevelopment Schedule sets forth the Parties estimate (as of the Effective Date) of the time to perform the primary items of Predevelopment Work within the Predevelopment Period. Landlord and Tenant acknowledge that the Predevelopment Schedule represents only a good faith estimate, as of the Effective Date, and no failure to conform to the Predevelopment Schedule shall constitute a breach of this Lease.

(b) The foregoing notwithstanding: (i) Tenant shall cause its Public Members, by and through the Lead Agency, to initiate preparation of the EIR pursuant to Section 4.3 on or before December 31, 2011 (which date shall not be subject to extension for any Delay); (ii) Tenant shall select each Master Developer pursuant to Section 4.6 on or before December 31, 2011 (which date shall not be subject to extension for any Delay), or if Tenant has not selected each Master Developer pursuant to Section 4.6 on or before December 31, 2011, Tenant shall submit to Landlord on or before December 31, 2011 (which date shall not be subject to extension for any Delay) a funding or financing plan for the development of the Premises; (iii) Tenant shall have delivered the Development Plan to Landlord pursuant to Section 4.8 on or before December 31, 2012 (which date shall not be subject to extension for any Delay); and (iv) neither Party has any obligation to extend any of the dates set forth in clauses (i) through (iii) above, or the Predevelopment Period, beyond the Predevelopment Period Expiration Date.

4.2 Investigation of Premises. Without limiting Section 2.5, Section 2.7, Section 8.2, or ARTICLE 18, Landlord shall use reasonable efforts to cooperate with Tenant in connection with Tenant's (or its designee's) investigations of all conditions of the Premises (including in connection with the taking of core samples or otherwise assessing existing or potential contamination or the location of Hazardous Materials). Neither Tenant nor Master Developer shall commence any physical work or other investigations on the Premises (including in connection with the taking of core samples or otherwise assessing existing or potential contamination or the location of Hazardous Materials) except on such terms and conditions as are reasonably acceptable to Landlord. All such physical work or other investigations shall be at Tenant's sole expense.

4.3 Preparation and Certification of EIR. During the Predevelopment Period, Tenant shall cause its Public Members, by and through the Lead Agency, to perform a CEQA analysis and prepare an EIR with respect to the Premises in full compliance with the statutory CEQA process, subject to the following to the extent permitted by Applicable Laws: (i) the "project" (as defined in, and to be studied under, CEQA) shall conform to the requirements of the EIS; and (ii) Landlord will have an opportunity to review and comment (to the extent reasonably appropriate to the integrity of the CEQA process) on all administrative drafts and proposed draft EIR documents (including studies and reports) prepared in accordance with the statutory CEQA process. Following completion of such CEQA analysis, Tenant shall cause its Public Members, by and through the Lead Agency, to certify a final EIR with respect to the Premises.

4.4 Preparation and Adoption of MIMP and EIMP. In connection with preparation of the EIR as provided in Section 4.3, Tenant shall cause its Public Members, by and through the Lead Agency, to prepare and adopt an MIMP in full compliance with the statutory CEQA process. The EIS MIMP shall be incorporated into the MIMP to form a consistent set of mitigations for the Premises, which shall be not less than those required as a result of the EIR, with which Tenant, the Master Developer, all Sublessees and their respective Related Entities shall comply. In addition, Tenant shall cause its Public Members, by and through the Lead Agency, to adopt the EIMP, with which Tenant, the Master Developer, all Sublessees and their respective Related Entities shall comply. Adoption of such MIMP and the EIMP shall occur contemporaneously with or reasonably following the certification a final EIR pursuant to Section 4.3, but in all events during the Predevelopment Period.

4.5 Funding of CEQA Analysis. The funding for the CEQA work described in Sections 4.3 and 4.4 shall be provided by the Public Members, subject to such reimbursements from the Master Developer as may be agreed to by Tenant or the Public Members and the Master Developer. Landlord shall not be responsible for any cost associated with the CEQA analysis or the preparation or certification of the EIR as described in Section 4.3, or any cost associated with the preparation or adoption of the MIMP or the EIMP as described in Section 4.4. Without limiting the foregoing, Landlord will be reimbursed by Tenant or its Public Members, as applicable, for reasonable costs incurred by Landlord (including personnel costs for civil servants and costs for contractors) in connection with the CEQA analysis or the preparation or certification of the EIR as described in Section 4.3, or in connection with the preparation or adoption of the MIMP and the EIMP as described in Section 4.4. Such costs shall be estimated Demand Services on the applicable Support Agreement and shall be paid in accordance with Sections 7.10 and 7.11. The provisions of this Section 4.5 shall be subject to the provisions of Section 7.3(a).

4.6 Selection of Master Developer.

(a) Within sixty (60) days following the Effective Date, Tenant shall deliver to Landlord a proposed Master Developer Selection Package for Landlord's approval (which approval shall not be unreasonably withheld or conditioned). Within thirty (30) days of the receipt by Landlord of such proposed Master Developer Selection Package from Tenant, Landlord shall provide to Tenant any comments it has for Tenant's consideration regarding the proposed Master Developer Selection Package. To the extent the invitation list for Master Developers contains entities which are not Preapproved Master Developers, such additional entities shall be subject to the approval of Landlord (which shall not be unreasonably withheld, delayed or conditioned) and shall be reputable real estate developers with a recent history of successfully completing corporate or research campus developments containing five hundred thousand (500,000) or more Square Feet, large scale residential communities containing five hundred (500) or more residential units in one or more projects, or large scale, mixed use, reuse or redevelopment projects involving public/private partnerships and in all cases shall have the requisite credit and financial capacity (including access to equity and debt financing) to finance and develop the Premises (including under and pursuant to a Master Developer Sublease) for the Permitted Uses. Tenant shall provide Landlord with a copy of the final Master Developer Selection Package not later than the date on which Tenant initiates the Master Developer selection process pursuant to such Master Developer Selection Package. Tenant shall not make

any material change to such final Master Developer Selection Package without providing Landlord with at least thirty (30) days to review and comment thereon. If the Master Developer Selection Package described in the first sentence of this Section 4.6(a) is to select a Master Developer for less than all of the Premises, then Tenant shall submit each additional Master Developer Selection Package to Landlord for its review and comment, and the provisions of this Section 4.6 shall apply to each such Master Developer Selection Package.

(b) Tenant shall, with reasonable diligence, select a Master Developer pursuant to and in accordance with the applicable Master Developer Selection Package. Landlord shall, if it so elects, have a representative acceptable to Tenant on the panel selecting a Master Developer.

(c) Following selection by Tenant of the Master Developer in accordance with Section 4.6(b), Tenant shall notify Landlord of the name, credentials and background information of the Master Developer and its team members, if any, as well as any submitted economic terms and conditions, to Landlord for Landlord's approval (which approval shall not be unreasonably withheld, delayed or conditioned). The foregoing notwithstanding, the credentials and background information of the Master Developer and its team members, if any, shall not be required to be so delivered by Tenant, and shall not be subject to Landlord's approval, if Tenant selects a Preapproved Master Developer.

(d) Within fifteen (15) days of the receipt by Landlord of the notice from Tenant described in Section 4.6(c), Landlord shall notify Tenant in writing as to whether Landlord approves or disapproves of the proposed Master Developer. If Tenant does not select a Preapproved Master Developer in accordance with Section 4.6(b), and if Landlord reasonably disapproves of the credentials or background information of the selected Master Developer or its team members, if any, Tenant shall be permitted to select a different Master Developer in accordance with Sections 4.6(b) and (c), and this Section 4.6(d). In all events, Tenant shall select one (1) or more Master Developers for all of the Premises on or before the last day of the Predevelopment Period.

(e) The Master Developer shall not be deemed "approved" for purposes of this Lease unless and until the Master Developer has been selected pursuant to Section 4.6(b) and Tenant has obtained all the approvals required from Landlord in connection with such selection pursuant to Sections 4.6(c) and 4.6(d).

(f) Tenant may, in its sole discretion, remove any approved Master Developer at any time and for any reason. Following such removal, Tenant shall again select and obtain Landlord's approval of a replacement Master Developer in accordance with the procedure set forth in this Section 4.6.

4.7 ENA. Following approval of the Master Developer and approval of all other matters required pursuant to Section 4.6, Tenant shall negotiate the terms of an exclusive negotiation agreement ("ENA") with the approved Master Developer under which Tenant and such Master Developer will agree to exclusively negotiate, in good faith, a Master Developer Sublease of all or a portion of the Premises to Master Developer for the purposes of developing all or such portion of the Premises in accordance with the Development Plan. As part of its

negotiations under the ENA and prior to Tenant's submittal of a Master Developer Sublease to Landlord for Landlord's approval, Tenant and the Master Developer shall execute a term sheet setting forth the material business terms of the Master Developer Sublease. Tenant shall not execute such term sheet without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

4.8 Creation of Development Plan.

(a) Tenant and the Master Developer shall create a proposed Development Plan following execution and delivery of an ENA by Tenant and the Master Developer, and provide a copy of such proposed Development Plan to Landlord for Landlord's approval (which approval shall not be unreasonably withheld, delayed or conditioned).

(b) The proposed Development Plan shall include (i) a business plan (taking into account varying projected market conditions and presenting detailed multiyear estimates of costs and revenues and sources and uses of funds), (ii) the configuration of the Entitled Use (including the allocations of Entitled Use among Phases and Parcels and the bases upon which allocations of Entitled Use may be exchanged), (iii) a description (including types and Square Footage) of each Ancillary Use, (iv) the Project Schedule including the Development Milestones, (v) the phasing plan of each Phase showing or describing the tentative location of Parcels within each Phases, which shall protect the future marketability of the Premises, (vi) an analysis of the projected population per Phase and for the entire Premises, (vii) a description of existing site conditions, (viii) a demolition and deconstruction plan, (ix) a transportation demand management, traffic and parking plan, (x) landscaping and building massing plans, (xi) a description or specification of the Utility sources and requirements with respect to the development of the Premises, including inverts, piping sizes, a schematic system layout, and their associated Points of Connection, (xii) the Infrastructure Plan, and (xiii) a compliance plan for the EIMP, indicating project impacts including with respect to (A) existing groundwater remediation wells, monitoring wells and related piping, and (B) vapor intrusion mitigation.

(c) The Infrastructure Plan shall include the Backbone Infrastructure Cost Categories and the Property Benefit Ratio for each such Backbone Infrastructure Cost Category. Landlord shall cooperate with Tenant, at all times during the planning for and preparation of the Infrastructure Plan, in connection with the determination of the Property Benefit Ratio, including with respect to any assessment regarding the future development of the NRP South Campus.

(d) If Landlord and Tenant cannot agree on the Backbone Infrastructure Cost Categories or the Property Benefit Ratios or both, either Party may request by written notice to the other Party that such dispute be resolved by a panel composed of three (3) registered civil engineers, each of whom has at least ten (10) years experience in making benefit determinations for assessment district and other public financing purposes. Such notice shall state the name and address of one (1) civil engineer meeting the criterion specified herein. Within twenty (20) days of the receipt of such notice by the other Party, such other Party shall notify the Party having given the notice of the name and address of one (1) other civil engineer meeting the criterion specified herein. The two (2) civil engineers so appointed shall meet and appoint, by written notice to Landlord and Tenant, one (1) other civil engineer meeting the specified criterion. If the two (2) civil engineers cannot mutually agree on a third civil engineer within five (5) days of the

appointment of the second of them, they shall so notify the parties and either Party, on behalf of both, may then request appointment of such third civil engineer by the then Chief Judge of the United States District Court having jurisdiction over Santa Clara County, California. No later than the tenth (10th) day following selection of such third civil engineer, the Parties and all three (3) civil engineers shall attend a meeting at which the Parties address any pertinent issues. The panel of civil engineers shall resolve the dispute by majority vote, and shall notify the Parties of their determination. The Parties shall each promptly pay one-half (1/2) of the fees and cost reimbursements for the three (3) civil engineers. Any determination with respect to the Backbone Infrastructure Cost Categories or the Property Benefit Ratios, or both, made pursuant to this Section 4.8(d) by majority vote of the panel of three (3) civil engineers shall be binding on the Parties.

(e) Tenant acknowledges that Landlord has the authority under federal law to adopt design rules and guidelines for the design and construction of buildings on Government land, and is required to apply such design rules and guidelines in its review of plans and in inspection of construction on such land. The Development Plan may include proposed design rules, guidelines, methods, procedures or specifications in the form of a revised NASA Research Park Design Guide with respect to the development of the Premises, the Improvements or Infrastructure to be constructed thereon, or the Backbone Infrastructure to be constructed with respect thereto. If the approved Development Plan contains any such revisions to the NASA Research Park Design Guide, then such revised NASA Research Park Design Guide shall be used by the Design Review Board (described in APD 8822.1) when reviewing Tenant's submissions pursuant to APD 8822.1, together with such other codes, standards and other applicable policies as may be specified in APD 8822.1 and APD 8829.1.

(f) Within forty-five (45) days of receipt of such proposed Development Plan from Tenant, Landlord shall notify Tenant in writing as to whether Landlord approves or disapproves of such proposed Development Plan, which approval shall not be unreasonably withheld, conditioned or delayed. If Landlord reasonably disapproves of such proposed Development Plan, Landlord shall concurrently with the giving of its written disapproval provide Tenant with a reasonably detailed description of the reasons for such disapproval. Within thirty (30) days of receipt of such notice of disapproval, Tenant shall revise (or cause the revision of) such proposed Development Plan taking into account the reasons for such disapproval and deliver such revised proposed Development Plan to Landlord for its approval (which approval shall not be unreasonably withheld, delayed or conditioned). Such procedure shall be followed until Landlord and Tenant approve a Development Plan. In the event Landlord disapproves such proposed Development Plan in accordance with the terms hereof, Landlord and Tenant shall cooperate with one another as frequently as is reasonable in the circumstances to create an approved Development Plan. The Parties acknowledge that creation of an approved Development Plan is an essential component to the realization of the value expected to be derived by the Parties under this Lease, and that time is of the essence with respect thereto.

(g) Without limiting Section 4.8(f), the Parties intend to meet and confer with each other as is reasonable in the circumstances following approval of the Development Plan, and during the remainder of the Term thereafter, to evaluate the then current viability and/or feasibility of the Development Plan, and with respect to the Predevelopment Period, to evaluate the estimated timeline for completion of the Predevelopment Milestones. Except as provided in

Section 4.8(h), amendments, revisions or modifications may be made to the approved Development Plan only by the written consent of Landlord and Tenant, which consent shall not be unreasonably withheld, delayed or conditioned.

(h) Other provisions of this ARTICLE 4 notwithstanding, the configuration of Parcels within each Phase and the allocations of Entitled Use among Parcels (but not exchanges of Entitled Uses) within each Phase may be changed or modified in the discretion of Tenant pursuant to a written addendum to the Development Plan executed by Tenant and delivered to Landlord (or, at the election of Tenant, pursuant to an amendment, revision or modification to the Development Plan approved by Landlord and Tenant pursuant to Section 4.8(g)), but all reallocations and exchanges (whether based on the equivalency factors set forth in the Development Plan or otherwise) of Entitled Uses, all increases or decreases in Entitled Uses, and the introduction of new Entitled Uses shall require an amendment, revision or modification to the Development Plan approved by Landlord and Tenant pursuant to Section 4.8(h).

(i) Concurrently with delivering to Landlord notice of each Phase Commencement Date as described in Section 7.5(g), Tenant shall provide Landlord with the following documents with respect to the Phase referred to in the notice: (i) an amendment or revision of the Development Plan setting forth all changes to the elements of the Development Plan outlined in Section 4.8(b); and (ii) an update of the Project Schedule, including the Commencement of Construction and the Completion of Construction for each Parcel within that Phase.

(j) Landlord shall review and approve the Ozone Precursor Schedule and each annual update thereof, which approval shall not be unreasonably withheld and shall be subject to the provisions of Sections 4.8(k), 4.8(l), 4.8(m) and 4.8(n).

(k) With respect to the first (1st) Ozone Precursor Schedule which is to be submitted by Tenant and approved as a part of the initial Development Plan: (i) the entirety of the EIS Ozone Precursor Amount shall be allocated to Ozone Precursor Allocation Projects within the Premises in the manner proposed by Tenant; and (ii) if the EIS Ozone Precursor Amount is insufficient to permit an allocation to all Ozone Precursor Allocation Projects within the Premises in the manner proposed by Tenant, then the EA Ozone Precursor Amount shall be allocated to Ozone Precursor Allocation Projects within the Premises in the manner proposed by Tenant, except to the extent that the EA Ozone Precursor Amount is not then sufficient to provide allocations for commercially reasonable construction periods (including reasonable contingency periods) for (A) improvements or other facilities which are to be developed and used by Landlord (including its grantees under grants or cooperative agreements, and/or its contractors providing services to Landlord under procurement contracts); (B) improvements or other facilities to be constructed by Planetary Ventures, LLC pursuant to the enhanced use lease between NASA and Planetary Ventures, LLC, as such enhanced use lease exists as of the date of this Lease, but only if Planetary Ventures, LLC has informed Landlord at or before the time of the submission of the initial Ozone Precursor Schedule of the commercially reasonable construction period (including a reasonable contingency period) during which Planetary Ventures, LLC intends to construct such improvements or other facilities, in which event Landlord may refuse to approve the portion of the proposed Ozone Precursor Schedule which would conflict with the commercially reasonable construction period (including a reasonable

contingency period) specified by Planetary Ventures, LLC; and (C) a commercially reasonable construction period (including a reasonable contingency period) for any rehabilitation or reuse of Hangar One. As to improvements or other facilities which are to be developed and used by Landlord (including its grantees under grants or cooperative agreements, and/or its contractors providing services to Landlord under procurement contracts) or any rehabilitation or reuse of Hangar One, Landlord shall inform Tenant of its best estimate of the commercially reasonable construction period (including a reasonable contingency period) during which such facilities will be constructed within sixty (60) days of a written request for such estimate from Tenant.

(l) With respect to subsequent annual updates of the Ozone Precursor Schedule: (i) the entirety of the EIS Ozone Precursor Amount shall be allocated to Ozone Precursor Allocation Projects within the Premises in the manner proposed by Tenant except to the extent that Landlord allocated to any other person or entity a portion of the EIS Ozone Precursor Amount that Tenant did not allocate to Ozone Precursor Allocation Projects within the Premises in the Ozone Precursor Schedule last approved by Landlord; and (ii) if the EIS Ozone Precursor Amount is insufficient to permit an allocation to all Ozone Precursor Allocation Projects within the Premises in the manner proposed by Tenant, then the EA Ozone Precursor Amount shall be allocated to Ozone Precursor Allocation Projects within the Premises in the manner proposed by Tenant, except to the extent that the EA Ozone Precursor Amount is not then sufficient to provide allocations for commercially reasonable construction periods (including reasonable contingency periods) for (A) improvements or other facilities which are to be developed and used by Landlord (including its grantees under grants or cooperative agreements, and/or its contractors providing services to Landlord under procurement contracts); (B) improvements or other facilities to be constructed by Planetary Ventures, LLC pursuant to the enhanced use lease between NASA and Planetary Ventures, LLC, as such enhanced use lease exists as of the date of this Lease, but only if Planetary Ventures, LLC has informed Landlord at or before the time of the submission of the particular annual Ozone Precursor Schedule update by Tenant of the commercially reasonable construction period (including a reasonable contingency period) during which Planetary Ventures, LLC intends to construct such improvements or other facilities, in which event Landlord may refuse to approve the portion of the Ozone Precursor Schedule which would conflict with the commercially reasonable construction period (including a reasonable contingency period) specified by Planetary Ventures, LLC; and (C) a commercially reasonable construction period (including a reasonable contingency period) for any rehabilitation or reuse of Hangar One. If Landlord allocates any portion of the EIS Ozone Precursor Allocation to any other person or entity as described in clause (i) above, Landlord shall notify Tenant thereof as soon as is reasonably feasible. The foregoing notwithstanding, no portion of the EA Ozone Precursor Amount which has been previously allocated in the Ozone Precursor Schedule to an Ozone Precursor Allocation Project within the Premises, as to which the Ozone Precursor Allocation Period is not proposed by Tenant to be changed in the annual update, shall be nullified or otherwise modified without the consent of Tenant, which consent may be given or withheld in the sole discretion of Tenant.

(m) Except to the extent provided in Sections 4.8(k) and 4.8(l), Landlord may make allocations from the EA Ozone Precursor Amount applicable to the period covered by an approved Ozone Precursor Schedule in its sole discretion following that approval, although it shall consider, in good faith but in its sole discretion, allocations therefrom requested by Tenant.

(n) Each period of time as to which an allocation of Ozone Precursor Amount is reserved pursuant to this Section 4.8 for a particular Ozone Precursor Allocation Project, as such period may be modified pursuant to Section 6.14, is referred to herein as an “Ozone Precursor Allocation Period”; provided, however, each Ozone Precursor Allocation Period shall be limited to the commercially reasonable construction period (including a reasonable contingency period) necessary to construct that particular Ozone Precursor Allocation Project.

(o) Without limiting the rights of Landlord or Tenant pursuant to this Section 4.8 or Section 6.14, the Parties shall meet and confer regarding the Ozone Precursor Schedule and each annual update thereof. Furthermore, the Parties acknowledge that frequent and regular communication regarding development activities on the Premises and the Property will be necessary.

(p) Landlord shall not refuse to approve the initial Development Plan (or require, in any update thereto, any revision to previously approved aspects of the Development Plan) on the ground that housing constructed on the Premises should be allocated or credited to projects not located on the Premises for the purpose of the timing of development of non-housing uses under the MIMP.

4.9 Master Developer Sublease. Following approval, execution and delivery of an ENA, Tenant may, in its sole discretion (but subject to the approval of Landlord as herein provided), enter into a Master Developer Sublease of all or a portion of the Premises. Any such Master Developer Sublease shall be effected pursuant to the provisions of Section 13.7.

4.10 Development Agreement. In connection with a Master Developer Sublease, Tenant may, in its sole discretion, enter into a Development Agreement with Master Developer; provided, however, that the terms of any such Development Agreement (and any amendment, revision or modification thereof) shall be subject to the prior approval of Landlord, which approval shall not be unreasonably withheld, delayed or conditioned.

4.11 Approval of Members of Tenant. Prior to expiration of the Predevelopment Period, Tenant shall obtain the approval of Landlord to the constituent members of Tenant, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however, that Tenant shall not be required, prior to expiration of the Predevelopment Period or any other time during the Term, to obtain the approval of Landlord to the constituent members of Tenant which are Preapproved Members. Tenant shall deliver to Landlord all information reasonably requested by Landlord in connection with Landlord’s determination of whether it approves of any constituent member of Tenant pursuant to this Section 4.11. Without limiting the provisions of Section 21.3, the members of Tenant shall not, at any time, have any personal liability in connection with this Lease, the Premises or any Improvements contained thereon, or by reason of membership in Tenant. The private citizen members of Tenant shall not, at any time, have any material personal financial interest in connection with this Lease, the Premises or any Improvements contained thereon, or in Tenant.

ARTICLE 5
EXTENSION OR TERMINATION PRIOR TO INITIAL TERM

5.1 Right of Landlord to Terminate. If Tenant fails to achieve or satisfy any of the milestones specified in Section 4.1(b) as of the date required for achievement or satisfaction under Section 4.1(b), then Landlord may thereafter provide written notice of such failure to Tenant describing the milestone which Tenant so failed to achieve or satisfy. If Tenant fails to satisfy or achieve such milestone within one hundred twenty (120) days following receipt of such notice from Landlord, Landlord may terminate this Lease by written notice to Tenant given following such one hundred twenty (120) day period but before the date such milestone is achieved or satisfied. The foregoing notwithstanding, for purposes of this Section 5.1, none of the dates set forth in Section 4.1(b) for achievement of satisfaction of the specific milestones described therein, nor the Predevelopment Period Expiration Date, shall be postponed or extended by any Delay.

5.2 Extension of Predevelopment Period. If Tenant delivers to Landlord documents or materials requiring Landlord's review or approval during the Predevelopment Period, including any proposed Master Developer Selection Package, ENA, Master Developer Sublease, Development Agreement, Development Plan or any information requested by Landlord in connection with Landlord's approval of Tenant's members pursuant to Section 4.11, at a time during the Predevelopment Period which in Landlord's judgment would leave Landlord insufficient time to review or approve (as applicable) such documents or materials prior to or on the Predevelopment Period Expiration Date, then Landlord may unilaterally extend the Predevelopment Period Expiration Date for a period which in Landlord's judgment is necessary in order to permit Landlord to complete its review or approval (as applicable) of such documents or materials. The foregoing notwithstanding, such extension by Landlord shall not exceed a period of one hundred twenty (120) days unless approved by Tenant in writing.

5.3 Right of Tenant to Terminate. If it is determined in good faith by Tenant that the development of the Premises as provided in this Lease is not feasible or that environmental considerations make it undesirable to proceed, Tenant may terminate this Lease effective upon written notice to Landlord given as soon as reasonably feasible after such determination but in no event less than ninety (90) days prior to the Predevelopment Period Expiration Date. In the event Tenant so elects to terminate this Lease, Tenant shall to the extent requested by Landlord in writing cause the following documents to be executed and acknowledged (as appropriate), and delivered to Landlord as of the date of termination (in addition to the documents described in Section 5.5): (i) an assignment and assumption agreement with respect to any or all Master Developer Subleases and any or all ENAs, Development Agreements and other contracts Tenant has entered into with such Master Developer (whereby Tenant assigns its rights under such contracts to Landlord and Landlord assumes Tenant's obligations under such contracts after the effective date of such assignment and assumption agreement for the benefit of both the counterparty and Tenant); (ii) an assignment and assumption agreement with respect to any or all Undeveloped Area Subleases and Residential Facility Subleases and any or all other contracts Tenant has entered into with the Sublessee under any such Sublease (whereby Tenant assigns its rights under such contracts to Landlord and Landlord assumes Tenant's obligations under such contracts after the effective date of such assignment and assumption agreement for the benefit of both the counterparty and Tenant); and (iii) an assignment with respect to Tenant's right, title

and interest to and in all designs and other work product associated with development of the Premises (whereby Tenant assigns its rights under such designs and other work product to Landlord). Landlord shall execute and acknowledge (as appropriate) such of the foregoing documents as require Landlord's execution thereof, and deliver the same to Tenant.

5.4 Right of Public Members to Withdraw or Resign from Tenant.

(a) If during the Predevelopment Period it is determined in good faith by the Public Members of Tenant that the development of the Premises as provided in this Lease is not feasible or that environmental considerations make it undesirable to proceed, one or all of the Public Members may elect to withdraw from Tenant upon written notice to Landlord given as soon as reasonably feasible after such determination but in no event less than thirty (30) days prior to the Predevelopment Period Expiration Date. Any such withdrawal shall not be considered a Transfer of Ownership under this Lease requiring Landlord's prior written approval or consent. Without limiting the generality of the foregoing, Landlord and Tenant acknowledge that Tenant is not obligated to proceed with the development of the Premises, either on a final or preliminary basis, until (i) an EIR is completed and certified by the Lead agency, in conjunction with consideration, if any, and approval of the Development Plan by the Tenant or the Lead Agency, and (ii) all legal challenges to the adequacy of the EIR have been resolved or the statute of limitation for such challenges has expired with no such challenged being filed.

(b) If, at any time during the portion of the Term beginning on the date that the events described in clauses (i) and (ii) of Section 5.4(a) have occurred and ending on the twenty-second anniversary of the first day of the Initial Term, UCSC elects to withdraw from Tenant, then UCSC shall deliver written notice to Landlord as soon as reasonably feasible after such determination. In such notice, UCSC shall specify the date on which it shall withdraw as a member of Tenant, which date shall be at least sixty (60) days after the date of such notice. In addition, UCSC shall elect in such notice either (i) to occupy and use, or enter into a binding commitment to occupy and use within a reasonable period of time, at least one hundred thousand (100,000) Square Feet of the First Terminable Portion of the Premises or the Second Terminable Portion of the Premises in accordance with Section 8.8, or (ii) to enter into a Transfer of Ownership of UCSC's membership interest in Tenant to a public or private four (4) year research university which has a reputation comparable to UCSC as approved by NASA (which approval shall not be unreasonably withheld, delayed or conditioned).

(c) If UCSC's notice described in Section 5.4(b) does not set forth its election as required by Section 5.4(b), then UCSC shall not withdraw as a member of Tenant for at least sixty (60) days after the date of UCSC's notice and, during that sixty (60) day period, Landlord may elect, at its option, by written notice to UCSC that UCSC cause Tenant to assign to Landlord (or its designee) all of Tenant's right, title and interest in and to the Premises pursuant to this Lease, together with Tenant's right, title and interest in and to all Subleases to which Tenant is a party. The Parties shall complete such assignment within sixty (60) days after the date of Landlord's notice. If Landlord fails to deliver notice of such election within the initial sixty (60) day period described above, then UCSC may withdraw as a member of Tenant.

5.5 Documentation Upon Termination or Partial Termination. If this Lease terminates, in whole or in part, whether pursuant to the foregoing provisions of this ARTICLE 5

or otherwise, Tenant shall remain liable to Landlord for Tenant's obligations under this Lease that arose prior to the termination (or partial termination) hereof (including the obligation to pay Predevelopment Period Base Rent for the portion of the Predevelopment Period commencing as of the Effective Date and continuing to and including the date of termination), and Tenant shall to the extent requested by Landlord in writing cause the following documents to be executed and acknowledged (as appropriate) to evidence or implement such termination (or partial termination) of this Lease, and delivered to Landlord within ten (10) Business Days after the later of such termination (or partial termination) or written request by Landlord: (i) a Quitclaim Deed covering the Premises or the applicable portion thereof; (ii) a Reconveyance from each Mortgagee of the Premises or the applicable portion thereof; (iii) an agreement terminating this Lease in whole or in part, as applicable; and (iv) a termination of the Memorandum of Lease covering the Premises or the applicable portion thereof. Landlord shall execute and acknowledge (as appropriate) such of the foregoing documents as require Landlord's execution thereof, and deliver the same to Tenant. In addition, the Parties shall enter into such other documents as may reasonably be required, including in the case of a partial termination, such amendment or restatement of this Lease with respect to the portion of the Premises as to which this Lease shall remain in effect as well as such additional documents as may be necessary pursuant to Section 8.7. Tenant shall pay all costs and expenses (including transfer taxes, if any, and recording fees) to record such documents in the Official Records of Santa Clara County, California. The other provisions of this Section 5.5 notwithstanding, documents to be provided by Tenant upon the termination of this Lease shall not affect the rights of any Sublessee under any Sublease as to which the Sublessee has received a Recognition Agreement from Landlord.

ARTICLE 6 CONSTRUCTION OF IMPROVEMENTS, INFRASTRUCTURE AND ALTERATIONS

6.1 General. The construction of all Improvements, Infrastructure, Off-Premises Backbone Infrastructure and Alterations, shall be performed at Tenant's sole cost and expense and in accordance with the terms and conditions of this Lease. Title to all Improvements and Infrastructure shall remain in Tenant or Master Developer (or any permitted transferee or Sublessee) until termination of this Lease, at which time title thereto shall pass to the Government as provided in Section 3.6; provided, however, that title to the Conveyable On-Premises Backbone Infrastructure shall be conveyed to the Government prior to termination of this Lease pursuant to Section 6.11(a). The design and construction of all Improvements, Infrastructure, Off-Premises Backbone Infrastructure and Alterations by Tenant shall be performed in a good and workmanlike manner, and shall, subject to Section 4.8(e), comply with the terms and conditions of this Lease, including all Applicable Policy and Guidance Documents, all Applicable Laws, the MEW Construction Coordination Agreement and the Navy Construction Coordination Document, and all buildings constructed on the Premises must meet LEED Silver certification requirements at a minimum or an alternative comparable standard, if any, approved in writing by Landlord and Tenant. Tenant shall engage responsible licensed contractor(s) to perform all work for which a contractor's license is required under the laws of the State of California. The foregoing notwithstanding, Landlord acknowledges that Tenant intends to provide a development with respect to the Premises that, as of the Effective Date, uses

leading edge technologies to reduce emissions and solid and liquid waste and shall cooperate reasonably with Tenant in achieving that objective.

6.2 Construction of Improvements. Tenant shall obtain all necessary permits and approvals (including any modifications thereto required by any proposed changes in previously permitted work), bid, construct, install and pay for all of the Improvements. All of the Design and Construction Documents shall be submitted to, and approved by, the NASA Ames Construction Permit Office (or if the NASA Ames Construction Permit Office ceases to exist, to such other permitting authority as Landlord shall reasonably designate). Nothing contained in this Section 6.2 shall be deemed to relieve Tenant of its obligations to comply with Applicable Laws or the Applicable Policy and Guidance Documents with respect to the design of the Improvements; provided, however, Tenant shall not be obligated to comply with changes in Applicable Laws with respect to Plans in Progress. Tenant shall communicate with Landlord regularly and shall provide at least ninety (90) days prior notice of planned submittals to allow Landlord to provide a reasonable and appropriate staffing level to review and respond to Tenant's submittals. If Tenant desires reasonable assurances that all applications for permits are processed in an expedited manner (more quickly than reasonable and normal), Tenant shall so notify Landlord and Landlord shall provide required additional staff which, to the extent not covered by Tenant's permit fees related to the submittals, shall be provided as a Demand Service. To the extent mandated by statute or a uniform, nationwide policy of Landlord, or as otherwise agreed by the Parties, all Improvements, Infrastructure, Off-Premises Backbone Infrastructure and Alterations shall be constructed, and the Premises shall be developed, by engaging contractors that pay the prevailing wages in Santa Clara County, California.

6.3 Other Permits. In addition to obtaining the permits described in Section 6.2, Tenant shall obtain from the NASA Ames Construction Permit Office (a) hot work permits at least twenty-four (24) hours prior to performing any welding, cutting, torching or similar open flame work, and (b) permits for excavation/drilling, confined space entry, facility closure/obstruction and high voltage electrical work, in each case before any such work commences. Water discharge permits shall be handled through the NASA Ames Construction Permit Office, but shall be issued by the applicable governmental agencies. All other required permits, if any, shall be obtained by Tenant directly from the applicable governmental agencies, and Tenant shall promptly provide copies thereof to the NASA Ames Construction Permit Office.

6.4 Construction Contracts. Tenant agrees that the general contractor and/or construction manager for each discrete portion of the Improvements, each discrete portion of the Infrastructure and each discrete portion of the Off-Premises Backbone Infrastructure requires Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. The Parties agree that all Construction Contracts for any portion of the Improvements, the Infrastructure or the Off-Premises Backbone Infrastructure shall:

(a) Advise contractors, suppliers and laborers that they may assert lien rights under California law against any leasehold or subleasehold estate in the Premises, but not against fee title to the Premises;

(b) Provide for a collateral assignment thereof to Landlord, and the applicable parties shall execute a collateral assignment of all such Construction Contracts before the Commencement of Construction of such Improvements, Infrastructure or Off-Premises Backbone Infrastructure in a form reasonably acceptable to the parties thereto (and which shall provide for subordination of Landlord's rights under such Collateral Assignment to the rights of a Mortgagee (if any));

(c) Provide that, if Landlord exercises its rights under the collateral assignment described in Section 6.4(b) and becomes a party to such Construction Contracts, Landlord cannot require performance of additional services under such Construction Contracts without reasonable assurance of payment in consideration therefor; and

(d) Provide that, if Landlord exercises its rights under the collateral assignment described in Section 6.4(b) and becomes a party to such Construction Contracts, then Landlord's liability (other than obligations to make payments in accordance with such Construction Contracts) under such Construction Contracts shall be limited as set forth in this Lease, and no contrary or conflicting provision in such Construction Contracts shall be binding upon Landlord; provided, however, Landlord agrees that it may not require any contractor to provide any payment or performance bond.

6.5 Inspections. During the construction of each discrete portion of the Improvements, each discrete portion of the Infrastructure and each discrete portion of the Off-Premises Backbone Infrastructure, the NASA Ames Construction Permit Office shall conduct the hold-point and final inspections as set forth in the permits applicable to such Improvements, Infrastructure or Off-Premises Backbone Infrastructure. Tenant shall communicate with Landlord regularly and shall provide at least thirty (30) days prior notice of the anticipated need for any such inspections to allow Landlord to provide a reasonable and appropriate staffing level to make and complete such inspections. If Tenant desires reasonable assurances that all inspections and re-inspections are made and completed on an expedited basis (more quickly than reasonable and normal), Tenant shall so notify Landlord and Landlord shall provide required additional staff which to the extent not covered by Tenant's inspection fees, shall be provided as a Demand Service.

6.6 Fees and Reimbursement of Costs.

(a) Tenant agrees that it shall pay the fees and reimburse Landlord for the costs described in this Section 6.6 as Additional Rent in connection with the construction of all Improvements, Infrastructure, Off-Premises Backbone Infrastructure and Alterations. During the first five (5) Business Days of the last month of each calendar quarter during any portion of the Term that Tenant anticipates to perform construction work (and therefore be required to pay fees or incur costs for services rendered pursuant to this ARTICLE 6), Tenant shall outline the expected scope of work for the upcoming calendar quarter and submit the same to Landlord. Within ten (10) Business Days after receiving Tenant's expected scope of work, Landlord shall update its estimate of the fees payable, and the costs to be reimbursed, by Tenant for the upcoming calendar quarter. Landlord shall concurrently provide Tenant with reasonably satisfactory evidence of actual expenditures of funds for the prior calendar quarter. The Parties shall then amend the applicable Support Agreement as is necessary. Tenant shall deposit the

amount set forth on the revised Support Agreement prior to the first day of such subsequent calendar quarter. If the level of effort for providing services was not adequately addressed in any expected scope of work submitted by Tenant or in any estimate provided by Landlord, Landlord shall so notify Tenant and will provide a new estimate of fees and costs, and Tenant shall promptly deposit with Landlord such additional amount as may reasonably be necessary. No services will be provided to Tenant unless adequate funds are on account, and no delay resulting from a lack of funds on account shall constitute Force Majeure Delay or Landlord Delay.

(b) Prior to Commencement of Construction of each discrete portion of Improvements, Infrastructure, Off-Premises Backbone Infrastructure or Alterations, Tenant shall make application to Landlord for all permits necessary to construct the same, and Tenant shall, as provided in Section 6.6(a), pay to Landlord the cost (as set forth in Landlord's permitting fee rate schedule) of all permit and inspection fees assessed by Landlord for such Improvements. Such permit and inspection fees reimburse Landlord for its actual costs to provide (i) plan check, (ii) hold-point and final inspections and (iii) the final certificate of occupancy for the submittal package. Within five (5) Business Days after each Tenant application for a permit, Landlord will advise Tenant of the estimated amount of the permit fee based upon the submitted package. Landlord requires a single payment of each such fee in advance for each submittal package, and Landlord shall not begin the review of the plans until payment has been received. Landlord's permitting fee rate schedule does not and shall not include development impact fees (current examples of such impact fees include traffic or transportation impact fees, housing impact fees, and school impact fees), and Landlord agrees that, regardless of whether Landlord hereafter imposes any such impact fees with respect to future development on the Premises or Property, Landlord shall not impose any such impact fees (as opposed to the permitting fees described hereinabove) in connection with the development of the Improvements, Infrastructure and Off-Premises Backbone Infrastructure described in the Development Plan approved by Landlord.

(c) If a change in a previously issued permit is required, an additional fee shall be charged by Landlord in accordance with the permitting fee rate schedule.

(d) The permitting fee rate schedule may be revised from time to time by Landlord in compliance with Applicable Laws; provided that any such revisions shall not apply to Plans in Progress; and provided further that notwithstanding any such revision of Landlord's permitting fee rate schedule, Landlord agrees that the fees payable by Tenant shall not exceed the fees then charged by the City of Mountain View. Landlord shall provide Tenant with the current permitting fee rate schedule from time to time promptly following Tenant's written request.

(e) Tenant shall pay all other permit fees due and owing to agencies other than Landlord directly to such agencies. If requested by Landlord, Tenant shall provide Landlord with a copy of any permit issued by any such other agency.

6.7 Construction Liaison Costs. During the construction of each discrete portion of the Improvements, Infrastructure, Off-Premises Backbone Infrastructure or Alterations, Tenant shall, as provided in Section 6.6(a), reimburse Landlord's reasonable costs to provide construction liaison support. The construction liaison support shall consist of environmental oversight as described below, Landlord health and safety issues, review of Technical Submittals and change orders, coordination of Utility shut-offs, traffic impacts or road closures, security

issues, observation of critical inspections or tests, assistance in resolution of unforeseen site conditions, and monitoring of project progress. Landlord's level of effort for construction liaison support will vary depending on the scope and amount of work proceeding at any given time, and the number of Landlord's personnel shall be subject to Tenant's approval, such approval not to be unreasonably withheld, conditioned or delayed. Landlord's environmental oversight shall include environmental site sampling, and response to questions on disposition of soil or groundwater from excavations from the installation of Improvements. Landlord's environmental personnel shall be knowledgeable about Existing Environmental Conditions, and shall use reasonable efforts to advise the Tenant with respect to Existing Environmental Conditions and the terms of applicable agreements pertaining to such Existing Environmental Conditions.

6.8 Demand Services. Tenant may request that Landlord provide Demand Services from time to time in connection with the construction of the Improvements. Such Demand Services may include Utility shutdowns, engineering support (such as calculations on Landlord's systems) or other elective services (janitorial, composting, landscaping, hazardous waste disposal, or environmental sampling other than as part of construction liaison support). Provided that Tenant deposits adequate funds on account (based on Landlord's reasonable estimate of the costs for such Demand Services), Landlord shall provide such Demand Services to Tenant.

6.9 Temporary or Partial Certificates of Occupancy. Tenant shall pay Landlord's reasonable standard fee to issue each temporary or partial certificate of occupancy in connection with Tenant's application to the CBO to issue the same.

6.10 General Demolition and Construction Requirements. Landlord and Tenant acknowledge that, in accordance with the Development Plan, a substantial amount of demolition of existing improvements and infrastructure will occur on the Premises. Tenant shall perform all demolition, construction and work in accordance with all Applicable Laws, the Applicable Policy and Guidance Documents, the recommendations of Tenant's geotechnical, environmental, engineering and other construction consultants, and in a good and workmanlike manner using materials of a quality consistent with the first class nature of the Premises. Tenant shall not construct any buildings or other structures outside the boundaries of the Premises or on, over or above any Utilities (subject to Tenant's right to relocate any such Utilities as set forth in this Lease), nor shall Tenant use any portion of the Property in connection with the construction or installation of the Improvements; provided, however, the foregoing shall not prevent Tenant from constructing and installing Utility lines within portions of the Property between the boundary of the Premises and any Point of Connection pursuant to Section 2.7. Tenant shall prepare and maintain on the Premises (i) on a current basis during the construction of any Improvements, Infrastructure or Off-Premises Backbone Infrastructure, annotated Design and Construction Documents showing clearly all substantive changes, revisions and substitutions during such period of construction, and (ii) upon Completion of Construction with respect to each discrete portion of the Infrastructure, each discrete portion of the Off-Premises Backbone Infrastructure and each discrete portion of the Improvements on a Parcel, as-built drawings showing clearly all changes, revisions and substitutions during the period of construction, including minor field changes and the final location of all mechanical equipment, Utility lines, ducts, outlets, structural members, walls, partitions and other significant features of the applicable work. Tenant and its contractors are encouraged to adopt a "Zero Incident Policy" in

connection with all construction work on the Premises. Landlord shall provide its Zero Incident Policy to Tenant promptly following Tenant's written request.

6.11 Construction Completion Procedures.

(a) Tenant shall deliver to Landlord notice when Tenant reasonably believes that the construction and installation of any discrete portion of the Conveyable On-Premises Backbone Infrastructure is complete to permit Landlord to conduct an inspection of the work with Tenant and its contractors (and develop a punch list of items to be corrected), to conduct such tests or other inspections of the applicable portion of the Conveyable On-Premises Backbone Infrastructure as Landlord may reasonably require, and to approve the work. Tenant shall notify Landlord prior to commissioning any Conveyable On-Premises Backbone Infrastructure and schedule such commissioning activities so as to include Landlord and Landlord's contractors. Without limiting the immediately preceding sentence, if the commissioning of any such Conveyable On-Premises Backbone Infrastructure, and the final connection of each such portion of the Conveyable On-Premises Backbone Infrastructure to Landlord's infrastructure, impacts NASA's mission critical facilities, then Tenant agrees that the same shall be coordinated by Landlord and the timing thereof shall be subject to Landlord's prior approval, which may be given or withheld in Landlord's subjective discretion. Tenant shall execute, acknowledge and deliver to Landlord, within sixty (60) days after Landlord's written request, such documents as Landlord may reasonably require to transfer title and ownership of the applicable portion of the Conveyable On-Premises Backbone Infrastructure to the Government free and clear of all liens and encumbrances, together with project contract close out documents (including Product Data, operations and maintenance manuals, as-built drawings, and all warranties and guarantees received by Tenant from manufacturers, contractors or other parties in connection with the construction and installation of such portion of the Conveyable On-Premises Backbone Infrastructure). Following Landlord's acceptance of such applicable portion of the Conveyable On-Premises Backbone Infrastructure and delivery of such documentation with respect thereto, Tenant shall have no further responsibility with respect thereto and Landlord shall be responsible for the maintenance and repair thereof pursuant to Section 10.1. Tenant shall concurrently deliver to Landlord a schedule of values regarding such Conveyable On-Premises Backbone Infrastructure to permit Landlord to determine the capital costs of such Conveyable On-Premises Backbone Infrastructure for entry into Landlord's real property and financial records. If Landlord is thereafter audited, Tenant shall provide reasonable supporting documentation evidencing such schedule of values.

(b) Within sixty (60) days after the Completion of Construction of each discrete portion of the Improvements on a Parcel, each discrete portion of the Infrastructure or each discrete portion of the Off-Premises Backbone Infrastructure, Tenant shall: (i) submit to Landlord a notice of such completion; (ii) deliver to Landlord evidence, reasonably satisfactory to Landlord, of payment of all costs, expenses, liabilities and liens arising out of or in any way connected with such construction (except for liens that are contested in the manner provided in Section 6.13); (iii) provide to Landlord a complete set of as-built drawings in a computer based format approved by Landlord, and building information modeling data (if any); and (iv) deliver to Landlord such other documents as Landlord may reasonably require for its real property records and reporting requirements. Upon approval by the Center Director (which approval shall not be unreasonably withheld or delayed) of the Completion of Construction of such discrete

portion of the Improvements, the CBO will issue a certificate of occupancy or similar document for the applicable Improvements. The Center Director may withhold such approval (and, therefore, the CBO shall not issue a certificate of occupancy) only if the Center Director determines, in his or her reasonable discretion, that the Improvements have not been completed substantially in accordance with the relevant Design and Construction Documents or Applicable Laws. Tenant shall not occupy any Improvements constructed on the Premises until a certificate of occupancy and all other necessary approvals have been issued by Landlord and all other applicable governmental agencies; provided, however, Tenant may apply to the CBO for a partial or temporary certificate of occupancy and, if issued, occupy portions of the Improvements pursuant thereto.

6.12 Limitation on Effect of Approvals. All rights of Landlord to review, comment upon, approve, inspect or take any other action with respect to the Premises, the Improvements, the Infrastructure, the Off-Premises Backbone Infrastructure, the Alterations or the design or construction thereof are specifically for the benefit of Landlord and no other party. No review, comment, approval or inspection, required or permitted by, of, or to Landlord hereunder shall give or be deemed to give Landlord any liability, responsibility or obligation for, in connection with, or with respect to, the design, demolition, construction, maintenance, repair, preservation, rehabilitation, reconstruction, restoration or operation of the Premises, the Improvements, the Infrastructure, the Off-Premises Backbone Infrastructure or the Alterations, or the removal and/or remediation of any Hazardous Materials on, in or from the Premises, nor shall any such approval or inspection be deemed to relieve Tenant of the sole obligation and responsibility for the design, construction, maintenance, repair, preservation, rehabilitation, reconstruction, restoration, and operation of the Premises (and the Improvements, Infrastructure and Alterations thereon) and the removal and/or remediation of Hazardous Materials required under this Lease. Similarly, no inspection performed or not performed by Landlord under this Lease shall: (a) give or be deemed to give Landlord any responsibility or liability with respect to the thing inspected, the work or the prosecution thereof, or the design or construction of the work or any part thereof; (b) constitute or be deemed to constitute a waiver of any of Tenant's obligations or Tenant's rights hereunder; or (c) be construed as approval or acceptance of the thing inspected or the prosecution thereof, or the design or construction of the work or any part thereof; provided, however, that the foregoing is not intended to limit the effect of any approval given by Landlord or permit issued by Landlord pursuant to APD 8822.1 or APD 8829.1 for purposes of the satisfaction of Tenant's obligations and requirements thereunder.

6.13 Protection from Mechanic's Liens.

(a) Tenant shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion, fee interest or other estate of Landlord or of any interest of Landlord in the Premises. Tenant shall notify all of its contractors that Tenant does not own fee title to the Premises (or any portion of the Property), and such contractors shall be instructed to record any preliminary notice or other document related to any mechanic's or materialmen's liens against only Tenant's ground leasehold interest in the Premises and not against fee title to the Premises or Property. At least ten (10) days before the date of any Commencement of Construction, Tenant shall give written notice to Landlord of the date of such Commencement of Construction or of the delivery of materials, as the case may be. Landlord shall then have the right to post and maintain on the

Premises and Property any notices that are required to protect Landlord and Landlord's interest in the Premises and Property from any liens for work and labor performed or materials furnished in completing the Improvements, the Infrastructure, the Off-Premises Backbone Infrastructure or the Alterations. Nothing in this Lease shall be deemed to be, or be construed in any way as constituting, the consent of or request by Landlord, expressed or implied, by inference or otherwise, to any person, firm or corporation, for the performance of any labor or the furnishing of any materials for any construction, repairs, maintenance, replacement, Alterations of or to the Premises or any part thereof, or as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against Landlord's interest in the Premises.

(b) Tenant shall not suffer or permit any choate liens to stand against the Property or any part thereof by reason of any work, labor, services or materials done for, or supplied to, or claimed to have been done for or supplied to Tenant. Tenant shall keep the Property free and clear of any and all choate mechanic's, materialmen's and other liens for work done, services performed, materials supplied or appliances used or furnished in or about the Property in connection with any activities of Tenant on or about the Property. If any such lien shall at any time be filed, Tenant shall cause the same to be discharged of record (whether or not by bonding) within thirty (30) days prior to the date any such lien may be foreclosed upon. If Tenant fails to discharge or contest such lien within such period and such failure shall continue for a period of fifteen (15) days after notice by Landlord, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, procure the discharge of the same either by paying the amount claimed to be due, by deposit in court, or by bonding. All amounts paid or deposited by Landlord for any of the aforesaid purposes, and all other expenses of Landlord and all necessary disbursements in connection therewith, in defending any such action or in procuring the discharge of such lien, shall become due and payable by Tenant to Landlord promptly upon written demand therefor.

6.14 Changes to Ozone Precursor Limitation Allocation Periods.

(a) At least twelve (12) months before the first day of any Ozone Precursor Allocation Period as to a particular Ozone Precursor Allocation Project, Tenant shall file an application for schematic design review approval of such project by Landlord pursuant to APD 8822.1 or any commercially reasonable successor thereto having similar requirements. If Tenant fails to file such an application by that time, or if the Commencement of Construction with respect to a particular Ozone Precursor Allocation Project does not occur within the first (1st) ninety (90) days of the applicable Ozone Precursor Allocation Period, or if Tenant thereafter fails to pursue the development of the particular Ozone Precursor Allocation Project with reasonable diligence, then the Ozone Precursor Allocation Period shall no longer apply, and Tenant may propose a new Ozone Precursor Allocation Period when Tenant submits the next annual update of the Ozone Precursor Schedule. Tenant may delegate to Master Developer or a Sublessee the right to file the required application for schematic design review approval as to one or more Ozone Precursor Allocation Projects. Tenant shall not be deemed to have failed to file such an application due to any incompleteness or other irregularity in the application as long as such application was filed in good faith, and Tenant shall not be deemed to have failed "to pursue the development of the particular Ozone Precursor Allocation Project with reasonable diligence" unless Landlord has first given to Tenant (and the applicant, if the applicant is not Tenant) a

notice stating Landlord's belief that Tenant or the applicant has so failed and stating the actions which Landlord contends are required to cure such failure, and Tenant or the applicant has thereafter failed to use commercially reasonable diligence to cure such failure.

(b) If Tenant concludes that development of a particular Ozone Precursor Allocation Project will not be undertaken and completed during the applicable Ozone Precursor Allocation Period then set forth in the Ozone Precursor Schedule, then Tenant may propose a new Ozone Precursor Allocation Period for that Ozone Precursor Allocation Project when Tenant submits the next annual update of the Ozone Precursor Schedule.

ARTICLE 7 RENT

7.1 Predevelopment Period Base Rent. During the Predevelopment Period, Base Rent shall be payable annually with respect to the entire Premises in arrears on December 31, 2009 and each December 31 thereafter (provided, however, the last payment of Base Rent shall be due on the last day of the Predevelopment Period), and, subject to the credits described in Sections 7.3(a), 7.3(f) and 7.13, without abatement, offset, deduction, or prior notice, in the amount of One Million Seven Hundred Seventy-Seven Thousand Ninety-Three and 19/100ths Dollars (\$1,777,093.19) per annum ("Predevelopment Period Base Rent"), to be prorated on a daily basis for period less than one (1) year. The foregoing notwithstanding, Tenant may, by written notice to Landlord given on or before December 1, 2009, elect to defer one-half (1/2) of the amount of Predevelopment Period Base Rent due on December 31, 2009 to December 31, 2010 (or the last day of the Predevelopment Period, if earlier), at which time it will be payable in addition to the installment due on that date. On or before each September 15 during the Predevelopment Period (or, if the last installment of Predevelopment Period Base Rent will be made on any date other than December 31 of the last year of the Predevelopment Period, the date which is at least sixty (60) days before the last day of the Predevelopment Period), Tenant shall deliver to Landlord notice of Tenant's reasonable estimate of the amount of Eligible Predevelopment Costs that Tenant has then incurred and expects to incur during that calendar year, which amount (but not to exceed the Predevelopment In-Kind Cap) shall be set forth on the Support Agreement for the immediately following Fiscal Year (or with respect to the last year of the Predevelopment Period, on a revised Support Agreement for the current Fiscal Year if applicable). Tenant's payment of Predevelopment Period Base Rent shall be based on the estimate of Eligible Predevelopment Costs set forth on such Support Agreement. As soon as reasonably feasible during the calendar quarter immediately following each payment of Predevelopment Period Base Rent by Tenant, Tenant shall deliver to Landlord invoices and other reasonably satisfactory evidence of the amount of Eligible Predevelopment Costs actually incurred during the prior calendar year (or applicable portion of the last calendar year of the Predevelopment Period), and the provisions of Section 7.9 shall apply. If the actual amount of Eligible Predevelopment Costs incurred is less than the amount of Tenant's estimate of Eligible Predevelopment Costs set forth on the applicable Support Agreement and there are no other Eligible Predevelopment Costs which have been duly carried forward from a prior calendar year as a result of the Predevelopment In-Kind Cap, then Tenant shall concurrently pay to Landlord the additional Predevelopment Period Base Rent in cash, which payment shall be made

concurrently with Tenant's delivery of the invoices and other reasonably satisfactory evidence of the amount of Eligible Predevelopment Costs actually paid by Tenant.

7.2 Initial Term Base Rent.

(a) Base Rent payable during the Initial Term shall be the sum of the Phase Base Rent and the Remaining Premises Base Rent payable pursuant to the provisions of Sections 7.2(d) and 7.2(b) respectively.

(b) During the Initial Term, Base Rent shall be payable with respect to each Undelivered Phase (the "Remaining Premises Base Rent") on a quarterly basis, in advance on the first day of the Initial Term (to be prorated on a daily basis if not on the first day of a calendar quarter) and thereafter on the first day of each calendar quarter during the Term and, subject to the credits described in Sections 7.3(b), 7.3(f), 7.13 and 9.1(c), without abatement, offset, deduction, or prior notice, in the per annum amount of two percent (2%) of the appraised Fair Market Value allocated to each Undelivered Phase by the Qualified Appraisers pursuant to the Remaining Premises Appraisal. Effective as of the Phase Commencement Date for each Delivered Phase, the Remaining Premises Base Rent shall be reduced to the per annum amount of two percent (2%) of the appraised Fair Market Value allocated to the remaining Undelivered Phases on a per-unit of Entitled Use basis by the Qualified Appraisers pursuant to the Remaining Premises Appraisal.

(c) If the Phase Commencement Date with respect to a particular Phase has not occurred by the last date specified in the Development Milestones for such Phase Commencement Date to occur, then Landlord's sole remedy for such delay shall be to require that Base Rent with respect to such Phase increase, as of such last date specified in the Development Milestones for such Phase Commencement Date to occur, to the per annum amount of three and one-half percent (3.5%) of the appraised Fair Market Value allocated to that Undelivered Phase by the Qualified Appraisers pursuant to the Remaining Premises Appraisal. The foregoing notwithstanding, for purposes of this Section 7.2(c), the last date specified in the Development Milestones for such Phase Commencement Date to occur shall be postponed one (1) day for each day during the Initial Term containing an event or condition constituting a Delay.

(d) During the Initial Term, Base Rent shall be payable with respect to each Delivered Phase (the "Phase Base Rent") on a quarterly basis, in advance, commencing as of the Phase Commencement Date for that Delivered Phase and thereafter on the first day of each calendar quarter during the Term, and, subject to the credits described in Sections 7.3(d), 7.3(f), 7.13 and 9.1(c), without abatement, offset, deduction, or prior notice, in the per annum amount of three and one half percent (3.5%) of the appraised Fair Market Value of that Delivered Phase. The per annum Phase Base Rent as to each Parcel within a Delivered Phase shall be increased to seven percent (7%) of the Parcel Fair Market Value of such Parcel as of the earlier of the date (i) of the Completion of Construction of the first discrete building containing Square Feet on such Parcel, or (ii) on which Landlord elects to increase Phase Base Rent in accordance with Section 7.2(e).

(e) If the Completion of Construction of the first discrete building containing Square Feet on a Parcel has not occurred by the last date specified in the Development Milestones for such Completion of Construction to occur, then Landlord's sole remedy for such delay shall be to require that Phase Base Rent with respect to such Parcel increase, as of the last date specified in the Development Milestones for such Completion of Construction to occur, to the per annum amount of seven percent (7%) of the Parcel Fair Market Value of such Parcel. The foregoing notwithstanding, for purposes of this Section 7.2(e), the last date specified in the Development Milestones for such Completion of Construction shall be postponed one (1) day for: (i) each day during the Initial Term containing an event or condition constituting a Delay; and (ii) for each day that such Completion of Construction was delayed by reason of having to obtain a revised Ozone Precursor Allocation Period, but only if such construction did not commence when scheduled due to a Delay.

(f) The Parties acknowledge that the Fair Market Values specified in this Section 7.2 are subject to adjustment as provided in Sections 7.5(h) through 7.5(n).

7.3 Base Rent Payment in Kind.

(a) Each installment of Predevelopment Period Base Rent shall be partially satisfied with in-kind consideration, to the extent available, in an amount equal to all Eligible Predevelopment Costs incurred prior to the date such installment is due which have not been previously applied as in-kind consideration; provided, however, the maximum amount of such in-kind consideration shall, on a per year basis, be capped at the Predevelopment In-Kind Cap. The foregoing notwithstanding, if Tenant elects pursuant to Section 7.1 to defer payment of one-half (1/2) of the installment of Predevelopment Period Base Rent due on December 31, 2009 to December 31, 2010, then: (i) the Predevelopment In-Kind Cap applicable to the installment of Predevelopment Period Base Rent due on December 31, 2009 shall be zero (0); and (ii) the Predevelopment In-Kind Cap applicable to the installment of Predevelopment Period Base Rent due on December 31, 2010 shall be increased by the amount of the Predevelopment Period Base Rent so deferred (such that the aggregate dollar amount of the Predevelopment In-Kind Cap applicable to the installments of Predevelopment Period Base Rent payable at December 31, 2009 and December 31, 2010 remains unchanged).

(b) Each installment of Remaining Premises Base Rent shall be partially satisfied with in-kind consideration, to the extent available, in an amount equal to all Eligible Predevelopment Costs incurred prior to the date such installment is due which have not been previously applied as in-kind consideration; provided, however, the maximum amount of such in-kind consideration shall, on a per quarter basis, be capped at the Predevelopment In-Kind Cap.

(c) In no event shall the aggregate amount of Eligible Predevelopment Costs available for in-kind consideration under Section 7.3(a) or 7.3(b) exceed Ten Million Dollars (\$10,000,000.00).

(d) Subject to the provisions of Section 7.3(h), each installment of Phase Base Rent during the Initial Term shall, to the extent available, be partially satisfied with in-kind consideration in an amount equal to the sum of the (A) the sum of all Backbone Infrastructure Credits incurred prior to the date such installment is due which has not been previously applied

as in-kind consideration, and (B) the blended cost of capital to finance the costs and expenditures represented by such Backbone Infrastructure Credits. For the purposes of this Section 7.3(d), the term “blended cost of capital” means the aggregate of: (i) all interest to be paid, over the life of each loan, on any amount borrowed or to be borrowed from a third party source (other than Tenant or any Sublessee or Related Entity of any of them) to fund, in whole or in part, the costs and expenditures represented by such Backbone Infrastructure Credits; and (ii) the estimated aggregate amount of the preferred and other return on capital invested by Tenant or any Sublessee or Related Entity of any of them which is used to fund, in whole or in part, the costs and expenditures represented by such Backbone Infrastructure Credits. Tenant shall provide to Landlord a written estimate of the blended cost of capital for each increment of Backbone Infrastructure Credit, based on information then available to Tenant and, where such rates are variable, reasonable estimates of rates over the life of any such loan or investment of capital. Tenant shall provide Landlord with the information on which such estimate is based, and such estimate shall be binding on Landlord unless made in bad faith by Tenant. The maximum amount of such in-kind consideration shall, on a per year basis, be capped at one-third (1/3) of the Phase Base Rent for such year of the Initial Term (the “Post-Development In-Kind Cap”).

(e) At Landlord’s sole option from time to time, any installments of Shared Rent may also be satisfied in whole or in part with in-kind consideration of the same types as that which could be applied against Base Rent.

(f) If, because of the Predevelopment In-Kind Cap or Post-Development In-Kind Cap, the amount of Eligible Predevelopment Costs or in-kind consideration is not credited towards the applicable portion of Base Rent for any particular calendar year, the difference shall be credited against the applicable portion of the next year’s Base Rent until the carried over amount shall have been fully credited (subject to the provisions of Section 21.20) in subsequent years during the Initial Term within the Predevelopment In-Kind Cap or Post-Development In-Kind Cap, as applicable.

(g) Notwithstanding the other provisions of this Section 7.3, the Parties agree that no portion of Base Rent shall be satisfied by Eligible Predevelopment Costs or other in-kind consideration to the extent such costs or expenses have been taken into account in establishing the Fair Market Value of the Premises.

(h) For each Backbone Infrastructure Credit, Tenant shall provide invoices or other evidence reasonably satisfactory to Landlord, together with copies of all lien releases, that all costs of Backbone Infrastructure pertaining to such Backbone Infrastructure Credit have been fully paid. Landlord shall have thirty (30) days to review such documentation and determine that the same is complete and accepted by Landlord. If Landlord determines that such documentation is not complete or is not in acceptable form, Landlord shall submit to Tenant a written statement describing any deficiencies. After Landlord has determined that such documentation is complete and accepted by Landlord, the Parties shall execute a memorandum of understanding setting forth the amount of the in-kind consideration and applicable cost of capital described in Section 7.3(d).

7.4 Extended Term Base Rent. During each Extended Term, Base Rent shall be payable with respect to the Premises on the first day of each calendar quarter, in advance, and,

subject to the credits described in Section 9.1(c), without abatement, offset, deduction, or prior notice, in the amount of seven percent (7%) of the appraised Fair Market Value of the Premises as of the first day of each Extended Term.

7.5 Determination of Fair Market Value. The Fair Market Value of the Premises and Phases (and the allocations of Fair Market Value of the Premises among the Phases and of each Phase among its Parcels, in all such cases based upon the Entitled Uses allocated thereto in the Development Plan) shall be determined by the appraisal process set forth below at the times described below:

(a) As promptly as reasonably feasible after Tenant gives Landlord notice of the estimated date of commencement of the Initial Term pursuant to Section 7.5(g) (but in all events within ninety (90) days after such notice is given), each Party's Qualified Appraiser shall prepare a written appraisal report indicating the Fair Market Value of the first Phase and the allocable portion of such Fair Market Value on a per-unit of Entitled Use basis with respect to such first Phase (the "First Phase Appraisal"). At the same time, each Party's Qualified Appraiser shall prepare a written appraisal report indicating the aggregate Fair Market Value of the remaining Phases within the portion of the Premises outside of the first Phase, which appraisal shall also contain both (i) an indication of the allocable portion of such aggregate Fair Market Value on a per-unit of Entitled Use basis with respect to such remaining Phases, and (ii) an indication of the allocable portion of such aggregate Fair Market Value among each of such remaining Phases (the sum of which shall equal the aggregate Fair Market Value of such remaining Phases) based upon the Entitled Uses allocated to such remaining Phases in the Development Plan (the "Remaining Premises Appraisal").

(b) As promptly as reasonably feasible after Tenant gives Landlord each notice of the estimated date of the Phase Commencement Date of an Undelivered Phase pursuant to Section 7.5(g) (but in all events within ninety (90) days after each such notice is given), each Party's Qualified Appraiser shall prepare a written appraisal report indicating the Fair Market Value of such Undelivered Phase and the allocable portion of such Fair Market Value on a per-unit of Entitled Use basis (each, a "Subsequent Phase Appraisal").

(c) The First Phase Appraisal and each Subsequent Phase Appraisal shall also contain a reasonable, good faith allocation of the Fair Market Value of the Phase to each of the Parcels within such Phase based on the allocation of Entitled Uses of the Parcels within such Phase in the Development Plan, the sum of which shall equal the total Fair Market Value of the Phase. The Remaining Premises Appraisal shall not contain or be required to contain any such allocation.

(d) As promptly as reasonably feasible after each Extended Term is duly exercised by Tenant (but in all events within ninety (90) days after each Extended Term is duly exercised by Tenant), each Party's Qualified Appraiser shall prepare a written appraisal report indicating the Fair Market Value of the entire Premises.

(e) The Fair Market Value of the portion of the Premises being appraised shall be based upon the entire Premises as unimproved land fully-approved for the Entitled Uses allocated to such portion of the Premises in the Development Plan (and shall not be determined

upon a theoretical highest and best use of such portion of the Premises), subject to the terms and conditions of this Lease, including, among other relevant considerations and to the extent applicable for each appraisal: the business terms of this Lease; the condition of the entire Premises “as is” as of the commencement of the Initial Term without Improvements, Infrastructure or Off-Premises Backbone Infrastructure constructed after the commencement of the Initial Term; the Infrastructure and Off-Premises Backbone Infrastructure requirements for the development as of the commencement of the Initial Term; the savings (if any) in planning, permitting and development/impact/hook-up fees associated with the development to be constructed; the benefit of completed Landlord Infrastructure allocated under the Development Plan; any requirements for the payment of prevailing wages; the presence and effect of Preexisting Hazardous Materials; the mitigation measures required by the EIS to the extent not applicable to other comparable properties; security measures applicable to the Premises; the cost of demolishing existing improvements for the development as of the commencement of the Initial Term; affordable housing requirements as set forth in the EIS; the parking ratio set forth in the Development Plan for the portion of the Premises being appraised, which shall be allocated among Parcels based on the allocation of Entitled Uses set forth in the Development Plan; and the permitted uses of, and limitations on the use of, such portion of the Premises. The foregoing notwithstanding, the Qualified Appraisers shall not consider in determining the Fair Market Value of the Premises or applicable portion thereof the Eligible Predevelopment Costs, the Backbone Infrastructure Credit, and other costs that will constitute in-kind consideration to be provided to Landlord in accordance with the provisions of this Lease. The effects on value of the UDA Services Amount to be paid by Tenant pursuant to Section 7.10 and the lack of an obligation to pay real property taxes or assessments to local or state authorities shall be conclusively regarded as offsetting, and shall not be considered by the Qualified Appraisers. With respect to residential uses, the effects of any affordable housing or below market rent housing requirements adopted by Tenant that are in excess of the affordable housing requirement set forth in the EIS shall not be considered a factor for determining Fair Market Value by the Qualified Appraisers. In considering comparable transactions involving parcels smaller than the Premises, the Qualified Appraisers shall take into account appropriate adjustments to value for infrastructure necessary within the Premises to serve parcels within the Premises of similar size to those involved in the comparable transaction with a level of infrastructure available to the comparable parcel. Parcels within such Phase which are designated in the Development Plan to primarily contain improvements such as parks, common recreational facilities and other Infrastructure shall be deemed to have a de minimis value for purposes of such allocation. The Parties agree to provide all appraisers with all information available to either or both Parties.

(f) If the difference in the appraised Fair Market Value of the portion of the Premises being appraised as determined by the Parties’ Qualified Appraisers is ten percent (10%) or less (calculated from the higher of the two appraisals), the Fair Market Value of the portion of the Premises being appraised shall be the average of the two appraisals. In the event that the difference in the two appraisals of Fair Market Value of the portion of the Premises being appraised is greater than ten percent (10%), a third Qualified Appraiser shall be mutually agreed to by Landlord and Tenant and paid for by the Parties equally, and the Fair Market Value of the portion of the Premises being appraised shall be as determined as provided below. If the Parties cannot mutually agree on a third Qualified Appraiser within five (5) days of the delivery of the two appraisals, then either Party, on behalf of both, may request appointment of such third Qualified Appraiser by the then Chief Judge of the United States District Court having

jurisdiction over Santa Clara County, California. No later than the tenth (10th) day following selection of such third Qualified Appraiser, the Parties and all three Qualified Appraisers shall attend a meeting at which the Parties address any pertinent issues. After such meeting, the Qualified Appraisers shall endeavor for a period of twenty (20) days to reach agreement as to the applicable Fair Market Values, and, if the three Qualified Appraisers cannot reach unanimous agreement on the Fair Market Value, then the third Qualified Appraiser shall prepare a written appraisal report indicating the Fair Market Value of the applicable portion of the Premises within forty-five (45) days after the failure to reach agreement as to the applicable Fair Market Value. During that forty-five (45) day period, each of the Parties' Qualified Appraisers also shall prepare their final written conclusions as to Fair Market Value (which may be different than their initial determinations). The three Qualified Appraisers shall deliver their final conclusions as to Fair Market Value simultaneously to both Parties no later than the last day of that forty-five (45) day period. The appraised Fair Market Value farthest from the median of the three final conclusions (on a dollar basis) shall be disregarded, and the average of the remaining two final conclusions shall be deemed to be the Fair Market Value of the portion of the Premises being appraised, unless one such final conclusion is the arithmetic mean of the other two, in which event such mean final conclusion shall be the Fair Market Value.

(g) Tenant will give Landlord one hundred eighty (180) days notice of the estimated date of commencement of the Initial Term (with respect to the First Phase Appraisal and the Remaining Phases Appraisal) and one hundred eighty (180) days notice of the estimated Phase Commencement Date with respect to each subsequent Phase (with respect to each Subsequent Phase Appraisal). The Fair Market Value of the entire Premises also shall be reappraised during the one hundred eighty (180) day period ending on the last day of the Initial Term and each of the Extended Terms. Landlord and Tenant will commence their applicable independent appraisals and expect their Qualified Appraisers to have completed appraisal reports and submitted them to the other Party at least ninety (90) days prior to the commencement of the Initial Term (with respect to the First Phase Appraisal and the Remaining Phases Appraisal), the estimated Phase Commencement Date with respect to subsequent Phase (with respect to each Subsequent Phase Appraisal), or the commencement of each Extended Term (with respect to the reappraisal of the entire Premises). In the event that the services of the third Qualified Appraiser are required, the engagement of the third Qualified Appraiser, and the completion of work by all Qualified Appraisers, shall occur within ninety (90) days.

(h) If any Parcels within any Delivered Phase are reconfigured or if allocations of Entitled Uses among any Parcels within any Delivered Phase are reallocated pursuant to Section 4.8(h), the Parties shall execute a memorandum of understanding that makes an equitable reallocation of the Phase Fair Market Value to the Parcels within such Delivered Phase based on (i) the reconfiguration of the Parcels within such Delivered Phase and/or the reallocation of Entitled Uses of the Parcels within such Delivered Phase, and (ii) the Fair Market Value on a per-unit of Entitled Use set forth in the final First Phase Appraisal and/or final Subsequent Phase Appraisal (as applicable) for such Delivered Phase, and as of the date of such memorandum of understanding, the final First Phase Appraisal and/or final Subsequent Phase Appraisal with respect to the Delivered Phase which is the subject of such memorandum of understanding shall be deemed to contain such reallocation of the Phase Fair Market Value to the Parcels within such Delivered Phase as if fully set forth therein. If the Parties cannot agree on such memorandum of understanding within sixty (60) days of such reconfiguration of Parcels or

reallocation of Entitled Uses among Parcels, then either Party may commence, by written notice to the other Party, a reallocation of the Phase Fair Market Value to the Parcels within such Delivered Phase by re-appraisal pursuant to the appraisal process set forth in this Section 7.5, and the final First Phase Appraisal and/or final Subsequent Phase Appraisal (as applicable) shall be adjusted as appropriate following completion of such re-appraisal. The foregoing notwithstanding, no such memorandum of understanding or re-appraisal shall result in any increase or decrease in (i) the Phase Fair Market Value of the Delivered Phase containing the Parcels which are the subject of such reconfiguration or reallocation, or (ii) the sum of the Parcel Fair Market Values of the Parcels which are the subject of such reconfiguration or reallocation.

(i) Any reconfiguration of Parcels within any Undelivered Phase shall not result in an allocation of the Phase Fair Market Value of such Undelivered Phase to the Parcels within such Undelivered Phase, it being acknowledged by the Parties that the Remaining Premises Appraisal shall not contain or be required to contain any such allocation, whether initially or as a result of such reconfiguration of Parcels.

(j) If Entitled Uses among any Delivered Phases are reallocated pursuant to Section 4.8(h), the Parties shall execute a memorandum of understanding that makes an equitable reallocation of the Phase Fair Market Values among the Delivered Phases which are the subject of such reallocation based on (i) the reallocation of Entitled Uses among such Delivered Phases, and (ii) the Fair Market Value on a per-unit of Entitled Use set forth in the final First Phase Appraisal and/or final Subsequent Phase Appraisal(s) (as applicable) for such Delivered Phases, and as of the date of such memorandum of understanding, (A) the final First Phase Appraisal and/or final Subsequent Phase Appraisal(s) (as applicable) with respect to the Delivered Phases which are the subject of such memorandum of understanding shall be deemed to contain such reallocated Phase Fair Market Values as if fully set forth therein and (B) the Parcels within each such Delivered Phase shall be reallocated such Delivered Phases' new Phase Fair Market Values based on the allocation methodologies contained in the final First Phase Appraisal or final Subsequent Phase Appraisal(s) (as applicable). If the Parties cannot agree on such memorandum of understanding within sixty (60) days of such reallocation of Entitled Uses among Delivered Phases, then either Party may commence, by written notice to the other Party, a re-appraisal of the Phase Fair Market Values of the Delivered Phases which are the subject of such reallocation pursuant to the appraisal process set forth in this Section 7.5, and the final First Phase Appraisal and/or final Subsequent Phase Appraisal(s) (as applicable) shall be adjusted as appropriate following completion of such re-appraisal. The foregoing notwithstanding, no such memorandum of understanding or re-appraisal shall result in any increase or decrease in the sum of the Phase Fair Market Values of the Delivered Phases which are the subject of such reallocation.

(k) If Entitled Uses are reallocated among any Undelivered Phases pursuant to Section 4.8(h), the Parties shall execute a memorandum of understanding that makes an equitable reallocation of the Phase Fair Market Values among the Undelivered Phases which are the subject of such reallocation based on (i) the reallocation of Entitled Uses among such Undelivered Phases, and (ii) the Fair Market Value on a per-unit of Entitled Use set forth in the final Remaining Premises Appraisal for such Undelivered Phases, and as of the date of such memorandum of understanding, the final Remaining Premises Appraisal with respect to the Undelivered Phases which are the subject of such memorandum of understanding shall be

deemed to contain such reallocated Phase Fair Market Values as if fully set forth therein. If the Parties cannot agree on such memorandum of understanding within sixty (60) days of such reallocation of Entitled Uses among Undelivered Phases, then either Party may commence, by written notice to the other Party, a re-appraisal of the Phase Fair Market Values of the Undelivered Phases which are the subject of such reallocation pursuant to the appraisal process set forth in this Section 7.5, and the final Remaining Premises Appraisal shall be adjusted as appropriate following completion of such re-appraisal. The foregoing notwithstanding, no such memorandum of understanding or re-appraisal shall result in any increase or decrease in the sum of the Phase Fair Market Values of the Undelivered Phases which are the subject of such reallocation.

(l) If any Entitled Use is increased or decreased, or a new Entitled Use is introduced, pursuant to Section 4.8(h) following the final First Phase Appraisal, or following any final Subsequent Phase Appraisal, the Parties shall execute a memorandum of understanding that allocates to such final First Phase Appraisal, final Remaining Premises Appraisal and/or final Subsequent Phase Appraisal(s) (as applicable) the increase or decrease in Phase Fair Market Values and Parcel Fair Market Values (as applicable) resulting from such increase or decrease in Entitled Use or new Entitled Use. If the Parties cannot agree on such memorandum of understanding within sixty (60) days of such increase or decrease in the Entitled Use or within sixty (60) days of the effective date of such new Entitled Use, then either Party may commence, by written notice to the other Party, a re-appraisal of the Phases which contain such increase or decrease in the Entitled Use or new Entitled Use (as shown on the amended Development Plan approved by Landlord and Tenant pursuant to Section 4.8(f)) and a re-allocation or adjustment of each such Phase Fair Market Value to the Parcels within such Phase, all pursuant to the appraisal process set forth in this Section 7.5, and the final First Phase Appraisal, final Remaining Premises Appraisal and/or final Subsequent Phase Appraisal(s) (as applicable) shall be adjusted as appropriate following completion of such re-appraisal. The foregoing notwithstanding, no such memorandum of understanding or re-appraisal shall be effective as to any Phase or Parcel which does not contain such increase or decrease in the Entitled Use or new Entitled Use (as shown on the amended Development Plan approved by Landlord and Tenant pursuant to Section 4.8(f)).

(m) If any Entitled Use is reallocated from an Undelivered Phase to a Delivered Phase pursuant to Section 4.8(h), either Party may commence, by written notice to the other Party, an appraisal of the Fair Market Value of the Entitled Use being so reallocated to such Delivered Phase (each, a "Delivered Phase Entitled Use Appraisal"). Such Delivered Phase Entitled Use Appraisal shall be consistent with the appraisal process set forth in this Section 7.5, but shall contain a conclusion as to Fair Market Value on a retroactive basis as of the date the then most recent First Phase Appraisal or Subsequent Phase Appraisal (as applicable) for such Delivered Phase was completed. Following completion of such Delivered Phase Entitled Use Appraisal, (A) the Phase Fair Market Value in the final First Phase Appraisal or final Subsequent Phase Appraisal (as applicable) with respect to such Delivered Phase shall be automatically increased by the Fair Market Value of the Entitled Use set forth in the Delivered Phase Entitled Use Appraisal as if fully and originally set forth in such final First Phase Appraisal or final Subsequent Phase Appraisal (as applicable), (B) the Parcels within such Delivered Phase shall be reallocated such Delivered Phase's new Phase Fair Market Value based on the allocation methodologies contained in the final First Phase Appraisal or final Subsequent Phase Appraisal

(as applicable), and (C) the Phase Fair Market Value allocated in the final Remaining Premises Appraisal to the Undelivered Phase from which such Entitled Use has been reallocated shall be decreased by the per-unit Fair Market Value for such reallocated Entitled Use set forth in the final Remaining Premises Appraisal (with no corresponding increase in any other Phase Fair Market Value for any other Undelivered Phase).

(n) If any Entitled Use is reallocated from a Delivered Phase to an Undelivered Phase pursuant to Section 4.8(h), either Party may commence, by written notice to the other Party, an appraisal of the Fair Market Value of the Entitled Use being so reallocated to such Undelivered Phase (each, an “Undelivered Phase Entitled Use Appraisal”). Such Undelivered Phase Entitled Use Appraisal shall be consistent with the appraisal process set forth in this Section 7.5, but shall contain a conclusion as to Fair Market Value on a retroactive basis as of the date the Remaining Premises Appraisal was completed. Following completion of such Undelivered Phase Entitled Use Appraisal, (A) the Phase Fair Market Value in the final Remaining Premises Appraisal with respect to such Undelivered Phase shall be automatically increased by the Fair Market Value of the Entitled Use set forth in the Undelivered Phase Entitled Use Appraisal as if fully and originally set forth in such final Remaining Premises Appraisal, (B) the Phase Fair Market Value allocated in the final First Phase Appraisal or final Subsequent Phase Appraisal (as applicable) to the Delivered Phase from which such Entitled Use has been reallocated shall be decreased by the per-unit Fair Market Value for such reallocated Entitled Use set forth in the final First Phase Appraisal or final Subsequent Phase Appraisal (as applicable), and (C) the Parcels within such Delivered Phase shall be reallocated such Delivered Phase’s new Phase Fair Market Value based on the allocation methodologies contained in the final First Phase Appraisal or final Subsequent Phase Appraisal (as applicable).

(o) With respect to each appraisal described above in this Section 7.5, Landlord and Tenant will each commission a Qualified Appraiser to perform the applicable appraisal. The Parties will exchange drafts of instructions for the applicable appraisal (consistent with Section 7.5(e)) to the respective Qualified Appraisers and shall consult with one another regarding them, although the primary instructions for such appraisals shall be as provided in Section 7.5(e); provided, however, neither Party shall be bound to revise its instructions based upon consultation with the other Party.

7.6 CPI Adjustment.

(a) The Fair Market Value of the Premises and each Phase thereof shall be adjusted by the CPI Adjustment as of each CPI Adjustment Date during the Initial Term.

(b) If, as of any CPI Adjustment Date, there exists any CPI Adjustment Carryover Increase from any prior CPI Adjustment Period, then the CPI Adjustment shall be increased by application of all or a portion of such CPI Adjustment Carryover Increase to the CPI Adjustment to be applied as of such CPI Adjustment Date, but only to the extent that such increase would not cause such CPI Adjustment to exceed the Maximum CPI Adjustment. If less than all of any CPI Adjustment Carryover Increase is applied as of any CPI Adjustment Date, then the remainder of such CPI Adjustment Carryover Increase shall be carried over to the next succeeding CPI Adjustment Dates until fully applied. CPI Adjustment Carryover Increases may

be accumulated over successive CPI Adjustment Periods, to the extent not applied as herein provided.

(c) If, as of any CPI Adjustment Date, there exists any CPI Adjustment Carryover Decrease from any prior CPI Adjustment Period, then the CPI Adjustment shall be decreased by application of all or a portion of such CPI Adjustment Carryover Decrease to the CPI Adjustment to be applied as of such CPI Adjustment Date, but only to the extent that such increase would not cause such CPI Adjustment to be less than the Minimum CPI Adjustment. If less than all of any CPI Adjustment Carryover Decrease is applied as of any CPI Adjustment Date, then the remainder of such CPI Adjustment Carryover Decrease shall be carried over to the next succeeding CPI Adjustment Dates until fully applied. CPI Adjustment Carryover Decreases may be accumulated over successive CPI Adjustment Periods, to the extent not applied as herein provided.

7.7 Prorations of Rent. The Parties shall equitably adjust or prorate the payment schedule of Base Rent such that Base Rent (except Predevelopment Period Base Rent) is payable together with respect to each Parcel and/or each Phase on the first day of a calendar quarter. In the event of such adjustment or proration, Landlord shall appropriately modify the Support Agreement to reflect such adjustment or proration and promptly distribute or provide such modified Support Agreement to Tenant. Such quarterly Base Rent shall, with respect to each Parcel, be subject to further adjustment as provided in this Lease.

7.8 Shared Rent. One-third (1/3) of all Shared Rents will be paid to Landlord as Rent under this Lease in arrears annually following the end of each Fiscal Year, with a final accounting and a reconciliation payment to occur within ninety (90) days thereafter. Tenant shall provide to Landlord accountings, accompanied by reasonable evidence of amounts received from Master Developer or other Sublessees of the Premises and costs paid. Tenant shall require that such accountings be reviewed by a reputable and independent regional or local firm of certified public accountants reasonably acceptable to Landlord. Landlord also shall have the right to audit such accountings.

7.9 Audits and Records Rights.

(a) Tenant shall keep, or cause to be kept, true, accurate and complete records (including contracts, invoices and payment records) and double-entry books, consistently applied. Tenant shall keep and make available to Landlord or other Government entities designated by Landlord at all reasonable times, upon advance notice and during normal business hours, an original or duplicate set of said books of account and records at a location on the Property or the Premises, for a period of five (5) years after the date to which they relate and thereafter in the event of litigation concerning the same until such litigation terminates in final judgment. Any such review and inspection of such books of account and records shall be scheduled as soon as feasible upon the request of Landlord at a time agreed upon with Tenant and shall be undertaken so as to minimize, to the extent reasonably possible, any interference with the conduct of Tenant's business. If, at any time during the Term, such books, records and accounts prove inadequate to provide information in the detail herein required, Tenant shall, upon the request of Landlord, procure and maintain such books, records and accounts as shall be of a character and form adequate for said purpose.

(b) Tenant shall, at Tenant's sole cost and expense, prepare or cause to be prepared and furnished to Landlord annually by February 28th of each year during the Term, an annual report for the preceding calendar year, including an income statement prepared on an accrual basis and, in alternating years, (a) an unaudited financial review and (b) an audited financial statement certified by a reputable and independent regional or local firm of certified public accountant reasonably acceptable to Landlord.

(c) Upon reasonable prior notice and during normal business hours, Tenant shall provide Landlord or other Government entities designated by Landlord access to all records relating to the Premises for the purpose of conducting an audit of such records for any of the three (3) preceding calendar years by an independent certified public accountant at Landlord's expense. The auditors shall consult with both Parties during the audit process.

(d) In addition to all other reports required to be furnished by Tenant to Landlord hereunder, Tenant shall furnish to Landlord an annual list of any and all reports and financial statements relating to the Premises that were furnished to any other party, including without limitation any Mortgagee.

7.10 Additional Rent.

(a) During each Fiscal Year (or part thereof) during the Term, Tenant shall pay to Landlord, as Additional Rent, quarterly in advance (and on an estimated basis if applicable) on the first day of each calendar quarter during the Term, and in accordance with this Lease and the terms and conditions of the annual Support Agreement:

(i) The costs of Demand Services, if any, to be provided to Tenant by Landlord in such year;

(ii) The costs of Utilities, if any, to be provided to Tenant by Landlord in such year;

(iii) Ten percent (10%) of the then applicable UDA Services Amount multiplied by the number of Square Feet of Improvements to be used for an Entitled Use (in all then Delivered Phases), as allocated in the Development Plan, as to which Commencement of Construction has not occurred;

(iv) Sixty-six percent (66%) of the then applicable UDA Services Amount multiplied by the number of Square Feet of Improvements to be used for an Entitled Use (in all then Delivered Phases) as to which Commencement of Construction has occurred but as to which Completion of Construction has not occurred; and

(v) One hundred percent (100%) of the then applicable UDA Services Amount multiplied by the number of Square Feet of Improvements to be used for an Entitled Use (in all then Delivered Phases) as to which Completion of Construction has occurred.

(b) Throughout the Term, Tenant shall pay, as Additional Rent, all other amounts of money and charges expressly required to be paid by Tenant under this Lease, whether or not such amounts of money or charges are designated "Additional Rent."

(c) The foregoing notwithstanding, the Parties agree that Tenant's obligation to pay any UDA Services Amount shall not, with respect to each Phase, commence until the occurrence of the Phase Commencement Date as to such Phase.

7.11 Procedures for Additional Rent. The Additional Rent payable by Tenant pursuant to Section 7.10 (such as costs for Demand Services, Utilities and the UDA Services Amount) shall be calculated and paid in accordance with the following procedures:

(a) Immediately following the Effective Date, Landlord and Tenant shall execute a mutually acceptable initial Support Agreement. Thereafter, Tenant agrees to execute and deliver to Landlord each mutually acceptable annual Support Agreement within fifteen (15) days following Landlord's delivery to Tenant of the same, which Support Agreement shall set forth the amount of Base Rent, the estimated costs for Demand Services and Utilities, and the estimated UDA Services Amount, for the applicable Fiscal Year. In addition, Tenant shall execute amendments to each Support Agreement as may be reasonably required under this Lease (including Section 6.6(a)).

(b) Cost estimates for Demand Services, Utilities and the UDA Services Amount, and payments thereof by Tenant, shall be consistent with Applicable Laws and Landlord's policy, including the requirement for payment in advance of the period in which Landlord anticipates incurring costs. Landlord shall reconcile on a quarterly basis the actual costs incurred by Landlord for Demand Services, Utilities and the actual UDA Services Amount for the previous quarter against the estimated payment previously made by Tenant for such quarter. Landlord, reasonably and in good faith, will review costs for Demand Services and Utilities periodically to ensure that the rates are based on actual costs to Landlord.

(c) If the Term commences or ends on a day other than the first or last day of a Fiscal Year, respectively, the amounts payable by Tenant under Section 7.10 applicable to the Fiscal Year in which the Term commences or ends shall be prorated according to the ratio which the number of days during the Term in such Fiscal Year bears to three hundred sixty-five (365). Termination of this Lease shall not affect the obligations of Landlord and Tenant pursuant to Section 7.10 to be performed after such termination in respect of amounts becoming due in respect of two periods prior to such termination.

7.12 Late Payment. Tenant acknowledges that the late payment by Tenant of any installment of Base Rent or Additional Rent will cause Landlord to incur costs and expenses, the exact amount of which is extremely difficult and impractical to fix. Such costs and expenses will include administration and collection costs and processing and accounting expenses. Therefore, if any installment of Base Rent or Additional Rent is not received by Landlord within ten (10) days after such installment is due, Tenant shall immediately pay to Landlord a late charge equal to two percent (2%) of such delinquent installment. Landlord and Tenant agree that such late charge represents a reasonable estimate of such costs and expenses and is fair reimbursement to Landlord. In no event shall such late charge be deemed to grant to Tenant a grace period or extension of time within which to pay any Rent or, subject to the terms of Section 15.1(a), prevent Landlord from exercising any right or enforcing any remedy available to Landlord upon Tenant's failure to pay each installment of Rent due under this Lease when due. All amounts that become payable by Tenant to Landlord under this Lease shall bear interest from the date due

until paid. The interest rate per annum shall be the interest rate established pursuant to 31 U.S.C. §3717 and 14 C.F.R. §1261.412 (or any successor rate schedule set under Applicable Laws) which are applicable to the period in which the amount becomes due. Amounts shall be due upon the earliest of (i) the date fixed pursuant to this Lease, or (ii) thirty (30) days after the date of the first written demand for payment, consistent with this Lease, including demand upon default.

7.13 Taxes Payable by Tenant. Tenant shall pay, to the applicable taxing authority upon written demand and prior to delinquency, all ad valorem real property taxes, possessory interest taxes and all other taxes, assessments, excises, levies, fees and charges, including all payments related to the cost of providing facilities or services, of every kind and description, general or special, ordinary or extraordinary, foreseen or unforeseen, secured or unsecured, whether or not now customary or within the contemplation of Landlord and Tenant, that are levied, assessed, charged, confirmed or imposed by any public or government authority upon or against, or measured by, or reasonably attributable to, or otherwise with respect to (a) the Premises, any Improvements thereon or any Personal Property used in connection with the Premises, or any part of the Premises, Improvements or Personal Property, (b) the cost or value of Tenant's Personal Property located at the Premises or the cost or value of any Improvements made in or to the Premises by or for Tenant, regardless of whether title to such Improvements is vested in Tenant or Landlord, (c) any Rent payable under this Lease, including any gross income tax or excise tax levied by any public or government authority with respect to the receipt of any such Rent, (d) the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or (e) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. Tenant shall be entitled to a credit against Base Rent for ad valorem real property taxes, real property possessory interest taxes and assessments (excluding assessments imposed by financing districts created by Tenant) and any service fee or charge in respect of services ordinarily paid for through real property taxes or assessments (but in no event including any taxes on Utility services), that are imposed by any state or local government authority on the Premises or the Improvements constructed thereon. Tenant shall promptly deliver to Landlord written notice if Tenant, for any reason, is required by the applicable taxing authority to pay any such ad valorem real property taxes, real property possessory interest taxes, and assessments during any portion of the Term.

7.14 Rent Payments. Tenant shall pay all Base Rent under this ARTICLE 7 via wire transfer in accordance with such instructions as Landlord may from time to time designate in writing. Landlord's wire instructions shall include the number of this Lease.

ARTICLE 8 USE OF THE PREMISES

8.1 Permitted Use.

(a) Tenant shall use the Premises only for the Permitted Use of the Premises and for lawful purposes incidental thereto, and no other purpose whatsoever. Unless Landlord consents to any change in the Permitted Use or increase in the Entitled Use, Tenant shall not construct Improvements, buildings or other structures (including in connection with any Alterations) exceeding the limitations of the Entitled Use. Tenant shall not do or permit to be

done in, on or about the Premises, nor bring or keep or permit to be brought or kept therein, anything which is prohibited by or will in any way conflict with any Applicable Laws or Applicable Policy and Guidance Documents. Without limiting the foregoing, activities conducted on the Premises will be consistent with the NADP, the EIS, the Space Act, the approved Development Plan and such other agreements as may be, or executed by Landlord and Tenant.

(b) Tenant shall not do or permit anything to be done in or about the Premises which will unreasonably obstruct or interfere with the rights of Landlord or other tenants or users of the Property, or injure or cause damage to them, or which is prohibited by or would cause a cancellation of any insurance policy applicable to the Premises. Tenant shall not use or voluntarily and knowingly allow the Premises to be used for any unlawful activity, nor shall Tenant cause, maintain or voluntarily and knowingly permit any nuisance in, on or about the Premises or commit or voluntarily and knowingly suffer to be committed any waste in, on or about the Premises. Tenant shall not receive, store or otherwise handle any product or material that is explosive or highly inflammable, except in accordance with Applicable Laws.

8.2 Environmental Requirements.

(a) Portions of the Premises and/or Property are underlain by a plume of contaminated groundwater that comprises two Superfund sites: the former Naval Air Station Moffett Field; and the Middlefield-Ellis-Whisman site. Tenant understands that the groundwater is contaminated with volatile and semi-volatile organic compounds, benzene, ethylbenzene, toluene, xylenes, and petroleum hydrocarbons. The EPA has identified potentially responsible parties for the contamination which is the subject of the Superfund sites. Those parties include Landlord, the Navy and the MEW Companies. In addition, a groundwater plume contaminated with chlorinated solvents, primarily trichloroethylene (TCE), is migrating onto the Property from Orion Park. Tenant understands that certain Hazardous Material is present in the Subsurface Area of the Premises and in the existing improvements located on the Premises, including lead and other metals, asbestos, polychlorinated biphenyls and pesticides. Tenant hereby acknowledges receipt of the environmental reports listed on attached Exhibit B. It is not the intention of the Parties that this Lease allocate, or result in any allocation of, any liability for the contamination identified in this Section 8.2(a) to Tenant, except as provided in Section 12.1.

(b) Landlord acknowledges that, as of the Effective Date, Tenant has not conducted due diligence activities on portions of the Property or Premises although Landlord has provided to Tenant certain reports and documents pertaining to the condition of portions of the Property in the vicinity of the Premises or the Premises, which reports and documents are listed on Exhibit J. Landlord will make available to Tenant or its designee all reports and documents pertaining to the condition of portions of the Property in the vicinity of the Premises or the Premises of which Landlord comes into possession following the Effective Date. In the event that Tenant determines that such reports and documents or any such testing indicates construction issues on any such portion of the Property or Premises, Landlord and Tenant shall, to the extent necessary or appropriate, work cooperatively to identify any appropriate modifications to the Development Plan. As provided in Section 4.2, Landlord shall cooperate with Tenant in connection with Tenant's (or its designee's) investigations of all conditions of the

Premises (including in connection with the taking of core samples or otherwise assessing existing or potential contamination or the location of Hazardous Materials).

(c) Tenant hereby agrees that:

(i) Tenant shall not conduct, or permit to be conducted, on the Premises any activity which is not a Permitted Activity;

(ii) Tenant shall not use, store or otherwise handle, or permit any use, storage or other handling of, any Hazardous Material which is not a Permitted Material on or about the Premises;

(iii) Tenant shall obtain and maintain in effect all permits and licenses required pursuant to any applicable Environmental Law for Tenant's activities on the Premises, and Tenant shall at all times comply with all applicable Environmental Law;

(iv) Tenant shall not engage in the storage, treatment or disposal on or about the Premises of any Hazardous Material except those used, stored, handled or generated in the course of Permitted Activities;

(v) Tenant shall not install any above ground or underground storage tank or any subsurface lines for the storage or transfer of any Hazardous Material, except in accordance with Environmental Law, and Tenant shall use commercially reasonable efforts to store all Hazardous Materials in a manner that protects the Premises, the Improvements, the Property and the environment from accidental spills and releases;

(vi) Tenant shall use commercially reasonable efforts to not cause any release of any Hazardous Material on or about the Premises, whether affecting surface water or groundwater, air, land or the subsurface environment;

(vii) To the extent required by Applicable Laws, Tenant shall promptly remove or remediate from the Premises any Hazardous Material introduced, or voluntarily and knowingly permitted to be introduced, onto the Premises by Tenant;

(viii) If any release of a Hazardous Material to the environment, or any condition of pollution or nuisance, occurs on or about or beneath the Premises or the Improvements as a result of any act or omission of Tenant or its Related Entities (but excluding its Sublessees), Tenant, at Tenant's sole cost and expense, shall promptly undertake all remedial measures required by applicable Environmental Law to clean up and abate or otherwise respond to the release, pollution or nuisance in accordance with all applicable Environmental Law; and

(ix) Tenant shall deliver to Landlord written notice of the release of Hazardous Material to the environment that occurs during the Term as promptly as is feasible after Tenant has knowledge of such release, including copies of any notice that Tenant is required to deliver to any third party (including any governmental agency) under any Environmental Law.

(d) If Landlord gives written notice to Tenant that Tenant's use, storage or handling of any Hazardous Material on the Premises may not comply with this Lease, Tenant shall use commercially reasonable efforts to correct any such violation within ninety (90) days after Landlord gives written notice thereof to Tenant; provided, however, that if, by the nature of such violation, the same cannot reasonably be cured within such period of ninety (90) days, Tenant shall have such reasonable time as may be necessary as long as Tenant commences with due diligence and dispatch the curing of such violation within such period of ninety (90) days and, having so commenced, thereafter prosecutes with diligence and dispatch and completes the same.

8.3 EPA Cooperation. Landlord acknowledges that Tenant may seek to obtain (a) a Prospective Lessee Agreement from the EPA and United States Department of Justice, and/or (b) a comfort letter from the EPA which provides Tenant with assurance that it will be entitled to the statutory liability protections under CERCLA available to a bona fide prospective purchaser/lessee, contiguous property owner and innocent purchaser. If requested by Tenant prior to December 31, 2010, Landlord shall undertake such ministerial acts and shall execute as the fee owner of the Premises and Property such documents as may be reasonably required by such agencies in connection therewith.

8.4 Compliance With Law.

(a) Except as otherwise specifically set forth in ARTICLE 6 with regard to the application of APD 8822.1 and APD 8829.1 to Plans in Progress, Tenant shall, at Tenant's sole cost and expense, promptly comply with all Applicable Laws and Applicable Policy and Guidance Documents.

(b) Notwithstanding Section 8.4(a), Tenant shall not be obligated to comply with APD 1700.1, except with respect to: explosive materials; radioactive materials (as defined by the Nuclear Regulatory Commission); Class IIIa, IIIb or IV lasers or microwave or radio frequency transmitters; cryogenics; pressure systems; or human pathogens that require Center for Disease Control Biosafety level III or IV containment. Tenant may propose a safety compliance program for some or all of the foregoing matters based upon UCSC's analogous safety compliance program, and if Landlord approves of the same (which approval shall not be unreasonably withheld, conditioned or delayed), Tenant shall comply with such program as approved by Landlord. Tenant shall deliver prior written notice to Landlord before Tenant manufactures, uses, stores or transports any such items on or about the Premises or the Property, and Landlord shall have the right to approve (and establish requirements for, or conditions of, approval) before Tenant manufactures, uses, stores or transports any such items.

(c) This Lease does not grant Tenant any rights to use the NASA or NASA Ames Research Center name, initials or logo. Tenant agrees to submit to Landlord for its approval all promotional and advertising material that uses the NASA or NASA Ames Research Center name, initials or logo prior to publication. Approval by Landlord shall be based on Applicable Laws (e.g., 42 U.S.C. §§2459b, 2472(a) and 2473(c)(1); and 14 C.F.R. §1221.100 et seq.) governing the use of the words "National Aeronautics and Space Administration" and the initials "NASA."

(d) It is understood that Landlord shall administer the Applicable Laws (to the extent promulgated or adopted by Landlord or NASA Ames Research Center) in a commercially reasonable manner.

(e) Tenant covenants for itself, and its Sublessees, successors and assigns, that Tenant and any Sublessees, successors and/or assigns shall not discriminate upon the basis of race, color, religion or national origin in the use, occupancy, sale or lease of the Premises or any Improvements, or in their employment practices conducted thereon. This covenant shall not apply, however, with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Premises, and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

8.5 Environmental Stewardship and Sustainability.

(a) Tenant agrees to participate actively in Landlord's recycling, energy, and water conservation programs, including the use of reclaimed water for irrigation, whenever feasible.

(b) Tenant, at its sole cost and expense, shall comply with a transportation demand management program to be created by Tenant as a part of the Development Plan. Such transportation demand management plan may or may not be similar to the NADP TDM Plan, but shall conform to and implement the traffic reduction goals set forth in the EIS and the NADP MIMP. In addition, Tenant will cooperate with Landlord with respect to such transportation demand management plan (including reimbursement of Tenant's fair share allocation of the cost of Landlord's annual Property-wide TDM cordon count) and hereby authorizes Landlord (and any Tenants' Association or Transportation Management Association) to complete a transportation survey of the employees of Tenant and its Related Entities as may be requested from time to time. The foregoing notwithstanding, Tenant shall not be required to operate, participate in or comply with a transportation demand management plan or Transportation Management Association which is more onerous, on a per square foot basis, than the transportation demand management plan or Transportation Management Association with which other users of the NRP South Campus who enter into leases or other agreements with Landlord must comply.

(c) Tenant shall comply with Landlord's integrated pest management program, which emphasizes preventative measures and Tenant's use of chemicals and pesticides only in the absence of other measures.

(d) Tenant agrees to apply, to the maximum extent reasonably feasible, sustainable design principles to the design and construction of the Improvements and any Alterations.

8.6 Entry by Landlord. Landlord shall have the right, subject to the provisions below, to enter the Premises during normal business hours to (a) inspect the Premises, (b) determine whether Tenant is performing Tenant's obligations hereunder, (c) supply any service to be provided by Landlord, or (d) post notices of non-responsibility, provided that any such entry

shall be undertaken so as to cause as little interference to Tenant as reasonably practicable and shall be undertaken in a commercially reasonable manner. Any such entry shall be made upon not less than seventy-two (72) hours prior written notice and subject to Tenant's security requirements, including the requirement that Landlord be accompanied at all times by a representative of Tenant (unless such entry is required for emergency or security purposes and such prior notice is not reasonably feasible, in which event no prior notice shall be required, such entry may occur at any time and such entry shall not be subject to Tenant's security requirements). Landlord also specifically reserves the following rights: (i) the right to implement Government national security measures in accordance with Applicable Laws; and (ii), on behalf of Landlord, the EPA, the State of California and other entities and governmental agencies that are involved in the remediation of, or that are responsible to remediate, existing or future contamination on or about the Property, the right to have reasonable access to known or suspected areas of contamination or other areas upon which any containment system, treatment system, monitoring system, or other environmental response action is installed or implemented, or to be installed or implemented, for the purposes of complying with Environmental Law and requirements; provided, however, that any such installation and implementation shall be undertaken so as to cause as little interference to Tenant and its Related Entities as reasonably practicable. Landlord shall cooperate with Tenant in locating any such required equipment in locations and installing and implementing such systems in a manner that is compatible with the Development Plan. Any entry to the Premises obtained by Landlord by any of such means 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.

8.7 Division of Premises and Lease.

(a) Landlord and Tenant acknowledge that Tenant plans to develop various portions of the Premises in Phases as set forth in the Development Plan, and to sublease separate portions of the Premises for the Entitled Uses allocated as set forth in the Development Plan. To facilitate Tenant's ability to finance development of separate Phases in accordance with the Development Plan, and to permit Tenant the flexibility to realize the present value of any such Phase without divesting itself of Tenant's entire interest in the Premises and this Lease, Tenant shall be permitted to divide the Premises into two (2) or more separate leasable premises (with each such leasable premises consisting of an entire Phase or entire Phases), and accordingly divide this Lease into two (2) or more separate ground leases, on and subject to compliance with this Section 8.7.

(b) At such time as there shall be two or more entities leasing, using or occupying different portions of the Premises (whether as a consequence of a partial termination of this Lease or pursuant to Section 8.7(a)), or in the case of a Financing Transaction affecting less than the entire Premises, the Parties shall, upon the written request of Tenant, restate this Lease into separate, independent leases for each such portion of the Premises (to the extent necessary or appropriate given the nature and/or extent of the transaction in question).

(c) If this Lease is restated into separate, independent leases for separate portions of the Premises, applicable items of Additional Rent shall be allocated among such separately leased portions of the Premises based upon the number of Square Feet of the Entitled

Use (or other appropriate measure such as population, trips, acres, or according to the type of Additional Rent being allocated) allocable to each such portion of the Premises. Such restated leases shall not be cross-defaulted; except that two (2) or more such restated leases shall be cross-defaulted to the extent the tenant under any such restated leases is the same entity, except in the case that any such restated lease is subject to a Financing Transaction (in which case a default under any other restated lease shall not be a default under the restated lease which is subject to a Financing Transaction).

(d) If this Lease is restated into separate, independent leases for separate portions of the Premises, Tenant shall create and implement a governance structure among such separately leased portions of the Premises to address, among other things, the need for, and the maintenance, repair, replacement and operation of, the Premises Common Areas and Infrastructure within the Premises (whether pursuant to a reciprocal easement agreement, declaration of covenants, conditions and restrictions, or otherwise) and the allocation of the costs thereof, which governance structure shall be subject to Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed.

(e) Without limiting the other provisions of this Section 8.7, the Parties shall execute, acknowledge and deliver such documents as may be reasonably required (whether by Landlord, Tenant or any Mortgagee) to effect the purposes of this Section 8.7.

8.8 Termination Based on Non-Completion of Certain University Facilities.

(a) If, as of the twelfth (12th) anniversary of the first day of the Initial Term, (a) Completion of Construction has not occurred as to at least two hundred thousand (200,000) Square Feet of Improvements for the Entitled Use of education or research and development facilities or (b) if Completion of Construction has occurred as to at least two hundred thousand (200,000) Square Feet of Improvements for the Entitled Use of education or research and development facilities, but such Square Feet of Improvements have not previously been occupied and used for education or research and development purposes, then at Landlord's election by written notice to Tenant given within one hundred twenty (120) days following the twelfth (12th) anniversary of the first day of the Initial Term and effective as of the date of such written notice (i) this Lease shall terminate as to the First Terminable Portion of the Premises and the provisions of Section 3.6 shall apply, and (ii) two hundred thousand (200,000) Square Feet of Improvements shall be removed from the Entitled Use of education or research and development facilities, and the maximum number of Square Feet for all of the Entitled Uses shall be reduced by the same amount.

(b) If, as of the twenty-second (22nd) anniversary of the first day of the Initial Term, (a) Completion of Construction has not occurred as to at least an additional two hundred thousand (200,000) Square Feet of Improvements for the Entitled Use of education or research and development facilities or (b) if Completion of Construction has occurred as to at least an additional two hundred thousand (200,000) Square Feet of Improvements for the Entitled Use of education or research and development facilities but such Square Feet of Improvements have not previously been occupied and used for education or research and development purposes, then at Landlord's election by written notice to Tenant given within one hundred twenty (120) days following the twenty-second (22nd) anniversary of the first (1st) day of the Initial Term and

effective as of the date of such written notice (i) this Lease shall terminate as to the Second Terminable Portion of the Premises and the provisions of Section 3.6 shall apply, and (ii) an additional two hundred thousand (200,000) Square Feet of Improvements shall be removed from the Entitled Use of education or research and development facilities, and the maximum number of Square Feet for all of the Entitled Uses shall be reduced by the same amount.

(c) The condition in this Section 8.8 that the applicable two hundred thousand (200,000) Square Feet of Improvements for the Entitled Use of education or research and development facilities “have not previously been occupied and used for education or research and development purposes” shall be deemed satisfied if Tenant, a member of Tenant or a public or private four (4) year research university (or any combination thereof) have simultaneously occupied and used such two hundred thousand (200,000) Square Feet of Improvements for education or research and development purposes, whether directly or as part of a shared educational or research and development activity, collaboration, venture or partnership.

(d) As used in this Section 8.8, the term “First Terminable Portion of the Premises” means, with respect to the two hundred thousand (200,000) Square Feet of Improvements for the Entitled Use of education or research and development facilities referred to in Section 8.8(a),

(i) the land (which land may constitute less than an entire Parcel) directly under such Improvements, or designated to be under such Improvements in the approved Development Plan, if such Improvements either (A) consist of discrete buildings or other structures containing approximately two hundred thousand (200,000) Square Feet of education or research and development facilities or (B) are designated to consist of discrete buildings or other structures containing approximately two hundred thousand (200,000) Square Feet of education or research and development facilities in the approved Development Plan, or

(ii) a portion of the Premises, as selected by Landlord and Tenant in the exercise of their reasonable discretion (which portion may constitute less than an entire Parcel), sufficient to contain two hundred thousand (200,000) Square Feet of Improvements for the Entitled Use of education or research and development facilities, if the provisions of Section 8.8(d)(i) do not apply.

(e) As used in this Section 8.8, the term “Second Terminable Portion of the Premises” means, with respect to the additional two hundred thousand (200,000) Square Feet of Improvements for the Entitled Use of education or research and development facilities referred to in Section 8.8(b),

(i) the land (which land may constitute less than an entire Parcel) directly under such Improvements, or designated to be under such Improvements in the approved Development Plan, if such Improvements either (A) consist of discrete buildings or other structures containing approximately two hundred thousand (200,000) Square Feet of education or research and development facilities or (B) are designated to consist of discrete buildings or other structures containing approximately two hundred thousand (200,000) Square Feet of education or research and development facilities in the approved Development Plan, or

(ii) a portion of the Premises, as selected by Landlord and Tenant in the exercise of their reasonable discretion (which portion may constitute less than an entire Parcel), sufficient to contain two hundred thousand (200,000) Square Feet of Improvements for the Entitled Use of education or research and development facilities, if the provisions of Section 8.8(e)(i) do not apply.

8.9 Signs. After Landlord's approval of the Development Plan in accordance with this Lease, Tenant may install, without Landlord's prior written consent, any sign (construction, building, monument, directional, street or other signs) on or about the Premises or the Improvements that comply with the Development Plan or a sign policy prepared by Tenant and consented to by Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Tenant shall not install any other sign on or about the Premises or the Improvements (or any sign on or about the Premises prior to Landlord's approval of the Development Plan) without Landlord's prior written consent, which shall be given or withheld in accordance with Landlord's then existing sign guidance and standards, and any subsequently enacted sign policy (as any of the foregoing may be adopted and changed from time to time). Tenant may also propose limited identification and directional signage for the Premises, to be located on the Property, subject to Landlord's approval. Such identification and directional signage, if installed, shall comply with Landlord's general signage regulations and design standards.

ARTICLE 9 UTILITIES, DEMAND SERVICES AND UDA SERVICES

9.1 Landlord's Responsibilities.

(a) During the Term, Landlord may furnish Utilities reasonably requested by Tenant, in accordance with Landlord's then current practices and standards for the Premises and Property (provided, however, Tenant agrees that Landlord has no obligation to provide steam services, vacuum line services, chilled water services, telecommunications or data communications services, cable television services, or other Utilities that Landlord does not typically provide to tenants and other users and occupants of the NRP South Campus), subject to capacity limitations of Landlord's Utility systems and the related infrastructure, and subject to temporary shut down for repairs, for security purposes, for compliance with any Applicable Laws, or due to any event or occurrence beyond Landlord's reasonable control. If Tenant requires Utility capacity exceeding the existing capacity of Landlord's Utility systems, then Tenant shall bear all costs and expenses to provide the additional Utility capacity. Landlord shall not be in default under this Lease or be liable for any Claim directly or indirectly resulting from, nor shall Rent be abated nor shall a constructive or other eviction be deemed to have occurred by reason of, (i) any interruption of or failure to supply or delay in supplying any Utilities or (ii) any limitation, curtailment, rationing or restriction on use of water, electricity, gas or any resource or form of energy or other service serving the Premises or Property, if such results from mandatory restrictions or voluntary compliance with guidelines, so long as Utilities are made equitably available to all users and occupants of the Property and the Premises. Landlord may transfer, assign, delegate or otherwise convey to a third party its Utilities systems and/or its obligations to furnish Utilities pursuant to this Section 9.1(a), provided that such transaction shall not result in a

diminished capacity to serve the Premises. In the event of such a transaction, Tenant shall execute such documents as may reasonably be required in connection with such transaction.

(b) If Tenant desires that Landlord provide any Demand Service, Tenant shall request the same in writing describing in reasonable detail the scope of the Demand Service. Landlord shall promptly provide Tenant with an estimated cost for those Demand Services Landlord is willing to provide (if any). If Tenant elects to have Landlord provide any such Demand Service, Tenant shall pay the costs thereof as Additional Rent in accordance with Section 7.10.

(c) In addition to the foregoing, Landlord will provide to or with respect to the Premises law enforcement, structural fire response and periodic Fire Marshal inspections, Hazardous Materials first response, emergency medical response services, fire alarm monitoring, environmental oversight, remediation monitoring, safety and health services oversight, off-Premises infrastructure maintenance, and maintenance and repair of water mains, sewer mains and storm drainage mains and Streets and Roadways located on or within or leading to the Premises (collectively, the “UDA Services”). The foregoing notwithstanding, the UDA Services shall not include supplying any Utilities to or with respect to the Premises. UDA Services to be so provided by Landlord shall be not less, in quality or quantity, than Landlord’s practices and standards for the Property as of the Effective Date. If at any time Landlord fails to so provide any UDA Service and such failure continues for a period of thirty (30) days following written notice of such failure from Tenant (or such additional period of time as is reasonably necessary provided that Landlord commences to cure such failure within the thirty (30) day period and diligently completes the same), then Tenant shall have the right (but not the obligation) to substitute the UDA Service by contracting for and obtaining a similar service (subject to the approval of Landlord, not to be unreasonably withheld, delayed or conditioned, in order to assure that the contracted service is of a quality similar to that which would have otherwise been provided by Landlord as part of UDA Services), and Tenant shall be entitled to a credit against the UDA Services Amount and Base Rent, in that order, in the amount of all costs incurred by Tenant in connection with obtaining such similar service.

9.2 Tenant’s Responsibilities. Tenant shall pay before delinquency the costs for all Utilities, Demand Services and UDA Services supplied to the Premises in accordance with Section 7.10, together with all taxes, assessments, surcharges and similar expenses relating to such Utilities and Demand Services (if any). At Tenant’s option from time to time, and at Tenant’s expense, Tenant may make arrangements with appropriate service providers for any or all Utilities or Demand Services to be provided directly to Tenant, in which event Tenant shall pay the reasonable costs thereof to the entity providing the same.

ARTICLE 10 MAINTENANCE AND REPAIRS

10.1 Obligations of Landlord. Landlord shall maintain and repair the Property Common Areas and keep them in good condition, ordinary wear and tear and any periods of restoration or replacement excepted. With respect to Utilities provided by Landlord pursuant to Section 9.1(a) (if any) and Conveyable On-Premises Backbone Infrastructure following conveyance of title to the Government, the Parties agree that Landlord’s obligations under this

Section 10.1 extend to, but exclude, the Points of Connection (or with respect to such Utilities or such Conveyable On-Premises Backbone Infrastructure for which there is no Point of Connection, the boundary of the Premises). Tenant shall give Landlord written notice of the need for any maintenance or repair for which Landlord is responsible, after which Landlord shall have a reasonable opportunity to perform the maintenance or make the repair, and Landlord shall not be liable for any failure to do so unless such failure continues for thirty (30) days after Tenant gives such written notice to Landlord; provided, however, such thirty (30) day period shall be extended so long as Landlord commences the maintenance or repairs within the thirty (30) day period and diligently completes the same. Landlord's liability with respect to any maintenance or repair for which Landlord is responsible shall be limited to the cost of the maintenance or repair. If Landlord is unable to perform any agreed upon repairs or replacements in a timely manner (whether as a consequence of the lack of funding therefor or otherwise), Landlord shall so notify Tenant and, following the agreement between Landlord and Tenant on the scope and cost of such work, Tenant shall have the right to perform such work. Upon completion of such work, Tenant shall provide Landlord with invoices or other reasonably satisfactory evidence of the actual cost of such work, and Landlord shall accept such amount as a credit against Base Rent next owing hereunder. Any damage to any part of the Property that is caused by Tenant, the Master Developer or their respective Related Entities shall be repaired by Landlord at Tenant's expense and Tenant shall pay to Landlord, as Additional Rent, the reasonable cost of such repairs incurred by Landlord. Any damage to any part of the Premises that is caused by Landlord or its employees or contractors shall be repaired by Landlord or such contractors at no cost to Tenant.

10.2 Obligations of Tenant. During the Term, Tenant shall, at Tenant's sole cost and expense, keep the Premises (including the Premises Common Areas, except to the extent covered by the UDA Services) free from dirt, rubbish, waste and debris (except to the extent customary in connection with construction), and maintain and repair the Premises, the Improvements and all other fencing, equipment, fixtures and improvements on the Premises, in good order and operating condition, ordinary wear and tear excepted. If Landlord reasonably believes that Tenant is not performing any of its obligations pursuant to this Section 10.2, Landlord shall give Tenant written notice of the need for any maintenance or repair for which Tenant is responsible, after which Tenant shall have a reasonable opportunity to perform the maintenance or make the repair, and Tenant shall not be liable for any failure to do so unless such failure continues for thirty (30) days after Landlord gives such written notice to Tenant; provided, however, such thirty (30) day period shall be extended so long as Tenant commences the maintenance or repairs within the thirty (30) day period and diligently completes the same. With respect to Utilities provided by Landlord pursuant to Section 9.1(a) (if any) and Conveyable On-Premises Backbone Infrastructure following conveyance of title to the Government, the Parties agree that Tenant's obligations under this Section 10.2 extend to and include the Points of Connection (or with respect to such Utilities or such Conveyable On-Premises Backbone Infrastructure for which there is no Point of Connection, the boundary of the Premises), except to the extent Landlord is required to provide such services as a part of the UDA Services. Tenant shall promptly repair any damage to the Premises or Property caused by Tenant, the Master Developer or any of their respective Related Entities.

ARTICLE 11
ALTERATIONS

11.1 Alterations by Tenant. After the Completion of Construction with respect to each Parcel, Tenant may make from time to time, without Landlord's prior consent, any Alterations thereto that are consistent with the Development Plan. Tenant shall not make any other Alterations thereto without Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. All Alterations (whether or not Landlord's consent is required) shall be made by Tenant at Tenant's sole cost and expense in accordance with the provisions of this ARTICLE 11.

11.2 Plans and Specifications. Tenant's plans and specifications for all Alterations shall be prepared by responsible licensed architect(s) and engineer(s), shall comply with the Applicable Policy and Guidance Documents and all Applicable Laws, shall not adversely affect any Utility provided by Landlord, and shall be in a form sufficient to secure the approval of all government authorities with jurisdiction over the Premises. Without limiting the foregoing, all Alterations shall be designed and constructed in accordance with the Entitled Use of the Premises, Applicable Laws and the Development Plan.

11.3 Permits. Tenant shall obtain all required permits for all Alterations from the NASA Ames Construction Permit Office, in accordance with APD 8829.1. In addition, Tenant shall obtain from the NASA Ames Construction Permit Office (a) hot work permits at least twenty-four (24) hours prior to performing any welding, cutting, torching or similar open flame work, and (b) permits for excavation/drilling, confined space entry, facility closure/obstruction and high voltage electrical work, in each case before any such work commences. Water discharge permits shall be handled through the NASA Ames Construction Permit Office, but shall be issued by the applicable governmental agencies. All other required permits, if any, shall be obtained by Tenant directly from the applicable governmental agencies, and Tenant shall promptly provide copies thereof to the NASA Ames Construction Permit Office. Tenant shall engage responsible licensed contractor(s) to perform all work. Tenant shall perform all work, in a good and workmanlike manner, in full compliance with all Applicable Laws and the Development Plan; and free and clear of any mechanics' liens. Tenant shall pay for all work (including the cost of all permits, fees, taxes, and property and liability insurance premiums in connection therewith) required to make such Alterations.

ARTICLE 12
INDEMNIFICATION AND INSURANCE

12.1 Damage or Injury.

(a) Landlord shall not be liable to Tenant, and Tenant hereby waives and releases all Claims against Landlord, for any damage to or loss or theft of any property or for any bodily or personal injury, illness or death of any person in, on or about the Premises or Property, arising or resulting at any time from the use or occupancy of the Premises or Property by Tenant or its Related Entities, except to the extent that Claims arise or result from (i) the willful misconduct of Landlord or its employees, (ii) the active negligence of Landlord or its employees if such Claims are not covered by insurance, or (iii) any default in the performance of Landlord's

obligations under this Lease. In addition and notwithstanding the foregoing, Landlord shall not be liable to Tenant, and Tenant hereby waives and releases all Claims against Landlord, that arise or result from Landlord's exercise of its rights pursuant to Section 13.15.

(b) Tenant shall indemnify and defend Landlord against and hold Landlord harmless from all (i) Physical Condition Claims, (ii) all other Claims claimed or suffered by third parties arising or resulting from the acts or omission of Tenant, its members, or their respective Related Entities (other than Sublessees or their Related Entities), and (iii) Claims claimed or suffered by third parties arising or resulting from any default in the performance of Tenant's obligations under this Lease. The foregoing notwithstanding, Tenant shall not be required to indemnify and defend Landlord against or hold Landlord harmless from any Claims or defaults arising or resulting from (A) Landlord's entry on the Premises pursuant to this Lease, (B) the willful misconduct of Landlord or its employees, (C) the active negligence of Landlord or its employees if such Claims are not covered by insurance, or (D) any default in the performance of Landlord's obligations under this Lease.

(c) Except to the extent of Claims against Landlord arising as a consequence of the failure of Tenant, its members, its Affiliates and/or their respective Related Entities to comply with (i) Applicable Laws, (ii) Applicable Policy and Guidance Documents, (iii) the documents and agreements related to the Existing Environmental Conditions, including the MEW Construction Coordination Agreement, the Navy Construction Coordination Document, the documents described in Section 1.98 or the Navy Memorandum of Understanding, (iv) the terms and conditions of any applicable permit or other document related to Tenant's development, construction and installation of Improvements, Infrastructure or Off-Premises Backbone Infrastructure, or (v) the other applicable terms and conditions of this Lease, then, notwithstanding the provisions of Section 12.1(a) or 12.1(b), Landlord waives and agrees not to make any Claims against Tenant with respect to the Existing Environmental Conditions, including any obligation Landlord may have to perform or contribute to or pay for remediation or removal of the Existing Environmental Conditions or to perform any other obligation of Landlord under any agreements relating to the Existing Environmental Conditions.

(d) This Section 12.1 shall survive the termination of this Lease with respect to any Claims occurring as a result of events occurring prior to such termination.

12.2 Insurance Coverages and Amounts.

(a) Tenant shall, at all times during the Term (except as provided below) and at Tenant's sole cost and expense, obtain and keep in force the insurance coverages and amounts set forth in this Section 12.2(a):

(i) Tenant shall maintain commercial general liability insurance, including contractual liability, broad form property damage liability, fire legal liability, premises and completed operations, and medical payments, with limits not less than Twenty Million Dollars (\$20,000,000.00) per occurrence and aggregate, insuring against claims for bodily injury, personal injury and property damage arising from the use, occupancy or maintenance of the Premises and Property. The policy shall contain an exception to any pollution exclusion which insures damage or injury arising out of heat, smoke or fumes from a hostile fire. Any general

aggregate shall apply on a per occurrence basis. The foregoing notwithstanding, the limits on such commercial general liability insurance policy shall be required to be Ten Million Dollars (\$10,000,000.00) per occurrence and aggregate during the Predevelopment Period and need only apply to entries onto the Premises by Tenant and its Related Entities.

(ii) If Tenant uses owned, hired or non-owned vehicles, Tenant shall maintain business auto liability insurance with limits not less than One Million Dollars (\$1,000,000.00) per accident covering such vehicles.

(iii) Tenant shall maintain, and shall cause its Related Entities to maintain, worker's compensation insurance in statutory limits to the extent required by California law. The foregoing insurance shall be maintained at the expense of Tenant or its Related Entities, and not at the expense of Landlord. In addition, to the extent Tenant employs one (1) or more employees, Tenant shall maintain employer's liability insurance which affords coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence.

(iv) Tenant shall maintain property insurance (without deduction for depreciation) for the perils covered by a standard fire insurance policy, extended coverage perils and vandalism and malicious mischief, including coverage for increased costs due to changes in building codes and, if applicable, boiler machinery and pressure vessel insurance. The amount of such insurance shall be the Full Insurable Replacement Value of buildings which constitute a part of the Improvements. The foregoing notwithstanding, such property insurance shall not be required to be carried or maintained with respect to any Phase as to which the Phase Commencement Date has not occurred.

(v) All other insurance that Tenant customarily maintains to adequately protect the Premises, consistent with Tenant's insurance program for other similar properties. Landlord may from time to time request such reasonable evidence that the Premises are being so insured by Tenant.

(b) In addition to the insurance required by Section 12.2(a), but only to the extent not covered by other property insurance maintained by Tenant, Tenant (or Tenant's Related Entities) shall obtain and keep in force during the period of any construction comprehensive "all risk" or "special form" builder's risk insurance, including vandalism and malicious mischief. Such builder's risk insurance shall cover all portions of the Improvements and Infrastructure under construction on the Premises or portions of the Property, all materials and equipment of Tenant or any Tenant's Related Entity stored at the Premises or Property by Tenant or Tenant's Related Entities and furnished under a Construction Contract, and all materials and equipment that are in the process of fabrication at the Premises, or when title to or an insurable interest in such materials or equipment has passed to Tenant or Tenant's Related Entities (excluding any tools and equipment, and property owned by the employees of Tenant's Related Entities). Such builder's risk insurance shall be written on a completed value basis in an amount not less than the full estimated replacement cost of such Improvements and Infrastructure.

(c) If this Lease is assigned to the Lead Agency pursuant to Section 13.1(d), Lead Agency shall thereafter have the right to establish a self-insurance program with respect to

any of the insurance requirements under this Lease. In such event, Lead Agency shall provide Landlord with a detailed description of such self-insurance program (and such financial statements of Lead Agency as Landlord may reasonably require) and such program shall be applicable to the Premises and the insurance coverages required hereunder, so long as such self-insurance program is approved by Landlord, which approval shall not be unreasonably withheld if such self-insurance program is consistent with self-insurance programs acceptable to prudent institutional ground lessors of property in Santa Clara County comparable to the Premises. In the event that Lead Agency elects to self-insure with respect to any of the insurance requirements required under this Lease and Landlord approves such program, Lead Agency shall submit to Landlord a certificate of self-insurance signed by a duly authorized representative of Lead Agency, and such certificate shall evidence that Lead Agency's self-insurance program is in full force and effect and in compliance with the terms of this Lease. All deductibles under any insurance policy described in this Section 12.2 and all self-insured retentions shall be consistent with Lead Agency's University-wide insurance program and shall be paid by Lead Agency. Landlord shall have no obligation to approve a self-insurance program for any entity other than the Lead Agency.

12.3 Conditions on Property Insurance. In addition to the other conditions and requirements for insurance policies set forth in this ARTICLE 12, Tenant's construction and property insurance policies shall satisfy the following conditions. The policy or policies evidencing construction and property insurance shall provide that, in the event of loss thereunder, and subject to the terms of any Mortgage, the proceeds of the policy or policies shall be payable to Tenant (or to a Mortgagee or a trustee approved or appointed by a Mortgagee) (except as provided in the last sentence of this Section 12.3) to be used solely for the repairs or replacement of the property damaged or destroyed, with any balance of the proceeds not required for such repairs or replacement to be paid to Tenant (or to a Mortgagee or a trustee approved or appointed by a Mortgagee) (except as provided in the last sentence of this Section 12.3); provided, however, that the insurer, after payment of any proceeds in accordance with the provisions of the policy or policies shall have no obligation or liability with respect to the use or disposition of the proceeds. Nothing herein contained shall be construed as an obligation upon Landlord to perform construction, improvements, repairs or replacement of the Premises or any part thereof. Notwithstanding the foregoing, Landlord shall be named as a loss payee of insurance proceeds in excess of Five Million Dollars (\$5,000,000.00), subject and subordinate to the rights of Tenant and any Mortgagee as primary loss payee.

12.4 Insurance Requirements.

(a) All insurance and all renewals thereof shall be issued by companies with a rating of at least "A-" "VII" (or its equivalent successor) or better in the current edition of Best's Insurance Reports (or its equivalent successor, or, if there is no equivalent successor rating, otherwise mutually acceptable to the Parties).

(b) Each policy shall provide that the policy shall not be canceled or materially altered without thirty (30) days prior written notice to Landlord (ten (10) days in the case of cancellation for non-payment of premiums) and shall remain in effect notwithstanding any such cancellation or alteration until such notice shall have been given to Landlord and such period of thirty (30) days (or ten (10) days, if applicable) shall have expired; provided, however,

if any insurance company of Tenant agrees only to “endeavor” to notify Landlord of cancellation or alteration of any such insurance policy, then it shall be the responsibility of Tenant to notify Landlord at least twenty (20) days prior to such cancellation or alteration of insurance coverage.

(c) The commercial general liability insurance and any automobile liability insurance shall be endorsed to name Landlord (and any other parties reasonably designated by Landlord) as an additional insured and shall be primary and noncontributing with any insurance which may be carried by Landlord.

(d) Tenant shall deliver certificates of insurance and endorsements, in a form reasonably acceptable to Landlord, to Landlord upon the Effective Date and thereafter during the Term prior to the expiration of each policy. Such documents shall be delivered to the address for certificate holder set forth below. If Tenant fails to insure or fails to furnish any such insurance certificate or endorsement, Landlord shall have the right from time to time and after written notice to Tenant to effect such insurance for the benefit of Tenant or Landlord or both of them, and Tenant shall pay to Landlord on written demand, as Additional Rent, all premiums paid by Landlord. Each certificate of insurance shall list the certificate holder as follows:

National Aeronautics and Space Administration
Ames Research Center
Attn: Office of the Chief Counsel
Mail Stop 200-12
Moffett Field, CA 94035-1000

(e) No approval by Landlord of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by Landlord of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible. By requiring insurance herein, Landlord makes no representation or warranty that coverage or limits will necessarily be adequate to protect Tenant, and such coverage and limits shall not be deemed as a limitation on Tenant’s liability under the indemnities granted to Landlord in this Lease.

(f) Failure of Landlord to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Landlord to identify a deficiency from evidence that is provided shall not be construed as a waiver of Tenant’s obligation to maintain such insurance.

12.5 Subrogation. Tenant waives on behalf of all insurers under all policies of property insurance now or hereafter carried by Tenant pursuant to this Lease, all rights of subrogation which any such insurer might otherwise, if at all, have to any claims of Tenant against Landlord. Tenant shall procure from each of the insurers under all such policies of property insurance a waiver of all rights of subrogation which the insurer might otherwise, if at all, have to any claims of Tenant against Landlord as required by this Section 12.5 stating substantially the following: “The insurer waives any right of subrogation against the United States of America which might arise by reason of any payment made under this policy.”

ARTICLE 13
ASSIGNMENT AND SUBLETTING

13.1 Assignment.

(a) Tenant shall not, directly or indirectly, without the prior written consent of Landlord (which consent shall not be unreasonably withheld, delayed or conditioned), enter into an Assignment. Without limiting the foregoing, Tenant agrees that it shall be reasonable for Landlord to withhold its consent to Tenant's request to enter into an Assignment pursuant to this Section 13.1 if the proposed transferee, in Landlord's reasonable judgment: (i) is an entity whose business or other activities are not consistent with the Compatibility Guidelines (to the extent that the assignee intends to use a portion of the Premises for its own purposes) as of the date the determination is made; (ii) lacks the relevant experience to use the Transfer Property for the designated Permitted Uses for such Transfer Property; (iii) comprises a security risk to the United States; (iv) is listed on the General Service Administration's List of Parties Excluded from Federal Procurement and Nonprocurement Programs; or (v) lacks the financial capacity to perform its responsibilities and obligations set forth in this Lease. In addition, in connection with Landlord's determination of whether it will consent to any such Assignment, Landlord shall be entitled to consider the effect of such Assignment on Shared Rents and the sharing of the proceeds of such Assignment.

(b) If Tenant wishes to enter into an Assignment, Tenant shall give written notice to Landlord identifying the intended assignee by name and address and specifying all of the terms of the intended Assignment. Tenant shall give Landlord such additional information concerning the intended assignee, including audited financial statements (or if audited financial statements are not available, financial statements certified by an officer of the intended assignee) and such other information as Landlord reasonably requests. Within thirty (30) days after such written notice requesting Landlord's consent to the intended Assignment is given by Tenant, Landlord shall determine whether or not to consent to the intended Assignment in accordance with this Section 13.1. Landlord shall deliver to Tenant written notice of its determination on or before the last day of such thirty (30) day period. If Landlord fails to determine by written notice to Tenant whether or not to consent to the intended Assignment in accordance with this Section 13.1 on or before the last day of such thirty (30) day period, Tenant may give a second notice to Landlord requesting Landlord's consent to the intended Assignment. If Landlord fails to determine by written notice to Tenant whether or not to consent to the intended Assignment in accordance with this Section 13.1 within ten (10) days of receipt of such second notice, Landlord shall be deemed to have consented to the intended Assignment. Consummation of any Assignment without the prior written consent of Landlord and compliance with any conditions to consummation set forth in this Section 13.1 shall be void.

(c) Tenant may complete an Assignment pursuant to this Section 13.1 subject to the following conditions, as applicable: (a) the Assignment shall be on substantially the same terms as set forth in the written notice given by Tenant to Landlord; (b) no Assignment shall be valid and no assignee shall take possession of the Premises or any part thereof until an executed duplicate original of all applicable documentation has been delivered to Landlord; and (c) the assignee shall agree to pay to Landlord the portion of the amount of Rent then in effect and allocable to the applicable Transfer Property when the same becomes due and payable.

(d) The other provisions of this Section 13.1 notwithstanding, Tenant may, in its sole discretion, enter into an Assignment with the Lead Agency without having to obtain Landlord's prior consent or approval, and shall deliver to Landlord written notice of such Assignment and complete, fully executed copies of all documents effecting such Assignment no later than the effective date of such Assignment.

13.2 Effect of Landlord's Consent to Partial Assignment. If a Partial Assignment is effected pursuant to Section 13.1, the Premises and this Lease shall be divided as provided in Section 8.7. If the Tangible Net Worth of the transferee at the time of the Assignment is at least one hundred sixty-five (165) times the annual Base Rent applicable to the Transfer Property as of the consummation of such Assignment, Tenant shall be released from all of its obligations under this Lease (or any restatement of this Lease) with respect to the Transfer Property that arises or occurs after the date such Assignment is consummated. If the Tangible Net Worth of the transferee at such time does not satisfy such requirement, Tenant shall not be released from such obligations. The foregoing Tangible Net Worth requirement shall not be determinative of Section 13.1(a) with respect to Landlord's consent to such Assignment. In no event shall Tenant be relieved from its obligations under this Lease (or any restatement of this Lease) with respect to all portions of the Premises other than the Transfer Property.

13.3 Transfers of Ownership.

(a) Tenant shall not permit any member of Tenant to enter into a Transfer of Ownership without the prior written consent of Landlord (which consent shall not be unreasonably withheld, delayed or conditioned). Without limiting the foregoing, Tenant agrees that it shall be reasonable for Landlord to withhold its consent to a Transfer of Ownership pursuant to this Section 13.3 if the proposed transferee, in Landlord's reasonable judgment: (i) is an entity whose business or other activities are not consistent with the Compatibility Guidelines (to the extent that the transferee intends to use a portion of the Premises for its own purposes) as of the date the determination is made; (ii) comprises a security risk to the United States; or (iii) is listed on the General Service Administration's List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(b) Prior to any Transfer of Ownership, Tenant shall give written notice to Landlord identifying the intended transferee by name and address and specifying all of the terms of the intended Transfer of Ownership. Tenant shall give Landlord such additional information concerning the intended transferee as Landlord reasonably requests. Within thirty (30) days after such written notice requesting Landlord's consent to the intended Transfer of Ownership is given by Tenant, Landlord shall determine whether or not to consent to the intended Transfer of Ownership in accordance with this Section 13.3. Landlord shall deliver to Tenant written notice of its determination on or before the last day of such thirty (30) day period. If Landlord fails to determine by written notice to Tenant whether or not to consent to the intended Transfer of Ownership in accordance with this Section 13.3 on or before the last day of such thirty (30) day period, Tenant may give a second notice to Landlord requesting Landlord's consent to the intended Transfer of Ownership. If Landlord fails to determine by written notice to Tenant whether or not to consent to the intended Transfer of Ownership in accordance with this Section 13.3 within ten (10) days of receipt of such second notice, Landlord shall be deemed to have consented to the intended Transfer of Ownership. Consummation of any Transfer of

Ownership without the prior written consent of Landlord and compliance with any conditions to consummation set forth in this Section 13.3 shall be void.

(c) Tenant may permit any member of Tenant to enter into a Transfer of Ownership pursuant to this Section 13.3 subject to the following conditions, as applicable: (a) the Transfer of Ownership shall be on substantially the same terms as set forth in the written notice given by Tenant to Landlord; and (b) no Transfer of Ownership shall be valid until an executed duplicate original of all applicable documentation has been delivered to Landlord.

13.4 Financing Transactions. Tenant may, with the prior written consent of Landlord (which consent shall not be unreasonably withheld, delayed or conditioned), enter into a Financing Transaction. If Landlord consents to the Financing Transaction with respect to less than all of the Premises, the Premises and this Lease shall be divided as provided in Section 8.7. Tenant shall not be released from any of its obligations under this Lease (or any restatement of this Lease in connection with such Financing Transaction), in connection with or as a result of the consummation of such Financing Transaction.

13.5 Sublease of Housing Units. Individual housing units which are constructed or to be constructed on the Premises shall be available for Sublease to individuals, subject to the provisions of this Section 13.5. The provisions of this Section 13.5 shall not apply in connection with Tenant entering into any Master Developer Sublease, Undeveloped Area Sublease or Residential Facility Sublease.

(a) The Master Developer shall create, manage and maintain the Housing Priority List. Landlord shall reasonably cooperate with the Master Developer to create, manage and maintain the Housing Priority List and to implement the procedures described below in this Section 13.5.

(b) At least six (6) months before the Completion of Construction of any Improvements containing one (1) or more housing units, the Sublessee who owns such Improvements (the "Housing Unit Owner") shall give the Master Developer notice of the availability of such units (with a copy to Landlord), the expected market rents, the size and configuration of such units and the date upon which it is expected that the units will be available for occupancy. Such Housing Unit Owner and Master Developer shall then reasonably cooperate with one another in advising individuals on the Housing Priority List of the projected availability of such units. Subject to reasonable credit standards and tenant rental history standards as developed by the Housing Unit Owner in its reasonable, good-faith discretion, the Housing Unit Owner shall rent each unit to any individual on the Housing Priority List who notifies the Housing Unit Owner at least one (1) month prior to the projected Completion of Construction of the applicable Improvements that they will lease a unit on the Housing Unit Owner's commercially reasonable standard terms and conditions. Any unit offered in accordance with such procedure which is not Subleased to a person on the Housing Priority List prior to Completion of Construction of the applicable Improvements may be offered to members of the general public without reference to the Housing Priority List.

(c) Following the Completion of Construction of any Improvements containing housing units and the initial leasing of a particular housing unit, and prior to reletting

of such housing unit to another individual, the Housing Unit Owner of the unit shall offer to lease the unit to all individuals having priority to lease pursuant to the Housing Priority List, and shall keep such offers open for a period of at least two (2) weeks. Such offers may be made electronically. Among those individuals who accept an offer within such two (2) week period, the Housing Unit Owner shall, subject to reasonable credit standards and tenant rental history standards as developed by the Housing Unit Owner in its reasonable, good-faith discretion, then lease the housing unit to the individual who has the then highest priority on the Housing Priority List, and, among persons having the same priority, to the individual who accepted the offer first, subject to execution and delivery of such Housing Unit Owner's commercially reasonable standard terms and conditions. Those individuals who do not accept an offer or do not reply within such two (2) week period shall fall to the end of his or her particular priority category on the Housing Priority List. If none of the individuals to whom the unit was offered accepts the offer within the two (2) week period, the Housing Unit Owner shall be permitted to offer such housing unit to members of the general public without reference to the Housing Priority List.

(d) Rents to be charged for any housing unit on the Premises shall be paid in cash at substantially the then prevailing market rent for similar residential properties located in Santa Clara County, as determined by the Housing Unit Owner in its reasonable discretion.

(e) The provisions of Section 13.5(d) notwithstanding, ten percent (10%) (unless Tenant voluntarily proposes more) of all the housing units on the Premises shall be offered and rented at below market rents in conformity with the EIS (the "Below Market Rental Units"). A separate priority list with respect to the Below Market Rental Units, having categories equivalent to the Housing Priority List, shall be created, managed and maintained by the Master Developer, except that only individuals satisfying certain income restrictions, as reasonably agreed by Landlord and Tenant consistent with the EIS, shall be listed on such priority list. The procedures for the lease of Below Market Rental Units to individuals shall be the same as those set forth in Section 13.5(b) and 13.5(c), including offers to members of the general public who meet the income criteria if no lease is made to a person on the Housing Priority List.

(f) The provisions of Section 13.5(d) notwithstanding, if the approved Development Plan includes a reasonable number of dormitory units among the housing units to be constructed at the Premises, Tenant may elect to charge below market rents for some or all of such units.

(g) If Tenant voluntarily charges (or requires a Sublessee to charge) below market rents for a number of units in excess of the number required by the EIS, then the aggregate difference between the amount of rents so collected and the amount which would have been collected at market rates for those units shall be added as income in the calculation of Shared Rents.

13.6 Sublease of Office, Research and Development and Educational Improvements. Improvements which are constructed or to be constructed on the Premises containing office, research and development or educational space shall be available for Sublease to individuals or entities, subject to the provisions of this Section 13.6. The provisions of this Section 13.6 shall

not apply in connection with Tenant entering into any Master Developer Sublease, Undeveloped Area Sublease or Residential Facility Sublease.

(a) In order for the Sublessee who owns such Improvements (the “Facility Owner”) to Sublease any such space to a prospective Sublessee, the business of the prospective Sublessee must be consistent with one or more of the Compatibility Guidelines as of the effective date of the Sublease.

(b) If such Sublease is for twenty-five thousand (25,000) or less rentable square feet, the Facility Owner shall make in good faith the determination as to whether the business or other primary activity of such prospective Sublessee meet the Compatibility Guidelines as of the effective date of the Sublease, and shall so inform Landlord. Rent under each such Sublease shall be paid in cash at substantially the then prevailing market rent for similar space and similar uses located in Santa Clara County, as determined by the Facility Owner in its reasonable discretion.

(c) If such Sublease is for more than twenty-five thousand (25,000) rentable square feet, the Facility Owner shall notify Landlord of its intention to enter into such Sublease. Together with such notice, the Facility Owner shall provide Landlord with a reasonably detailed description of the intended business or other primary activity of such prospective Sublessee on the Premises (the “Sublessee Business Information”). Within twenty (20) days of receipt of such notice from the Facility Owner containing the Sublessee Business Information, Landlord shall respond to the Facility Owner in writing as to whether the business or other primary activity of such proposed Sublessee meet the Compatibility Guidelines as of the effective date of the Sublease, with such determination to be made in Landlord’s reasonable discretion. If Landlord fails to respond within such twenty (20) day period, the Facility Owner shall be entitled to give Landlord a second notice. If Landlord fails to respond within ten (10) days of such second notice, Landlord shall be deemed to have determined that the business or other primary activity of such proposed Sublessee meet the Compatibility Guidelines as of the effective date of the Sublease. If Landlord determines within the required time periods that the business or other primary activity of such proposed Sublessee does not meet the Compatibility Guidelines as of the effective date of the Sublease, Landlord shall provide the Facility Owner with a reasonably detailed description of its reasons for such determination.

(d) All Sublessee Business Information shall be considered the proprietary information of the prospective Sublessee (but excluding any Sublessee Business Information previously released or otherwise in the public domain). Subject to the requirements of FOIA, and other Applicable Laws, Landlord shall not disclose or release any Sublessee Business Information.

(e) All Subleases effected pursuant to this Section 13.6 shall be on terms and conditions which are commercially reasonable in the circumstances, and Tenant shall provide copies of all Subleases to which Section 13.6(c) is applicable as soon as reasonably feasible after execution.

13.7 Master Developer Subleases.

(a) Landlord acknowledges and agrees that Tenant intends to enter into one or more Master Developer Subleases during the Predevelopment Period with one or more Master Developers pursuant to which Tenant will sublease the Premises or particular Phases. The other provisions of this ARTICLE 13 notwithstanding, each Master Developer Sublease (and all amendments, modifications and revisions thereof) shall be subject to the consent of Landlord, which shall not be unreasonably withheld or conditioned, and shall be given or withheld within thirty (30) days of the receipt by Landlord of a written request from Tenant for such consent, accompanied by the proposed Master Developer Sublease agreement. Landlord acknowledges that a Master Developer Sublease may have, consistent with common industry practice, a special purpose entity as the Sublessee, and Landlord shall not refuse to consent to a proposed Master Developer Sublease by reason of the Sublessee being a special purpose entity, if arrangements have been made to provide Reasonable Assurance that such special purpose entity will have the financial resources, through a reasonable combination of debt and equity to be available on a schedule consistent with the Development Plan (as the Development Plan pertains to the Phase or Phases to be sublet), to permit the Sublessee to perform its obligations under the proposed Master Developer Sublease. All information disclosed by Tenant to Landlord regarding the proposed Sublessee under the proposed Master Developer Sublease, including financial information, organizational information, information regarding past, current or future projects or undertakings, or other information related to the identity or business of such Master Developer (but excluding any such information previously released or otherwise in the public domain), shall be considered the proprietary information of such Master Developer and, subject to the requirements of FOIA and other Applicable Laws, Landlord shall not disclose or release any such information.

(b) Without limiting Landlord's right to withhold its consent on any reasonable basis, it shall be reasonable for Landlord to withhold its consent to any Master Developer Sublease which does not contain any of the following provisions, with such determination to be made in Landlord's reasonable discretion: (i) provisions specifying Tenant's and the proposed Master Developer's obligations to perform the obligations under ARTICLE 6 with respect to the portion of the Premises to be sublet and the Improvements and Infrastructure to be constructed thereon, by the terms of the proposed Master Developer Sublease and/or a proposed Development Agreement submitted to Landlord concurrently with the proposed Master Developer Sublease; (ii) the proposed Master Developer Sublessee shall provide Landlord with commercially reasonable guaranties or other Reasonable Assurance satisfactory to Landlord in the exercise of its reasonable judgment of the payment and performance of the obligations under the Master Developer Sublease; (iii) the provisions set forth in Section 13.14 and, notwithstanding the provisions of Section 13.14(b), any apportionment of obligations made by Tenant (as contemplated in Section 13.14(b)) shall be acceptable to Landlord in its reasonable judgment; and (iv) payments of base rent or other sums payable to Tenant under the proposed Master Developer Sublease shall be due at least thirty (30) days before the date on which Tenant is obligated to pay Rent under this Lease. Landlord shall not, however, withhold its consent to a Master Developer Sublease or a Development Agreement on the grounds that the terms of such document are not sufficiently favorable to the Master Developer.

13.8 Undeveloped Area Subleases. The other provisions of this ARTICLE 13 notwithstanding, each Undeveloped Area Sublease (and all amendments, modifications and revisions thereof entered into before the Completion of Construction of all initial Improvements on the portion of the Premises which is the subject of such Undeveloped Area Sublease) shall be subject to the consent of Landlord, which shall not be unreasonably withheld or conditioned, and shall be given or withheld within thirty (30) days of the receipt by Landlord of a written request from Tenant for such consent, accompanied by the proposed Undeveloped Area Sublease agreement. Landlord acknowledges that an Undeveloped Area Sublease may have, consistent with common industry practice, a special purpose entity as the Sublessee, and Landlord shall not refuse to consent to a proposed Undeveloped Area Sublease by reason of the Sublessee being a special purpose entity, if arrangements have been made to provide Reasonable Assurance that such special purpose entity will have the financial resources to be available on a schedule consistent with the Development Plan (as the Development Plan pertains to the portion of the Premises to be sublet), to permit the Sublessee to perform its obligations under the proposed Undeveloped Area Sublease. All information disclosed by Tenant to Landlord regarding the proposed Undeveloped Area Sublease, including financial information, organizational information, information regarding past, current or future projects or undertakings, or other information related to the identity or business of the Sublessee (but excluding any such information previously released or otherwise in the public domain), shall be considered the proprietary information of such Sublessee and, subject to the requirements of FOIA and other Applicable Laws, Landlord shall not disclose or release any such information.

13.9 Residential Facility Subleases. The other provisions of this ARTICLE 13 notwithstanding, each Residential Facility Sublease (and all amendments, modifications and revisions thereof) shall be subject to the consent of Landlord, which shall not be unreasonably withheld or conditioned, and shall be given or withheld within thirty (30) days of the receipt by Landlord of a written request from Tenant for such consent, accompanied by the proposed Residential Facility Sublease agreement. Landlord acknowledges that a Residential Facility Sublease may have, consistent with common industry practice, a special purpose entity as the Sublessee, and Landlord shall not refuse to consent to a proposed Residential Facility Sublease by reason of the Sublessee being a special purpose entity, if arrangements have been made to provide Reasonable Assurance that such special purpose entity will have the financial resources to be available on a schedule consistent with the Development Plan (as the Development Plan pertains to the portion of the Premises to be sublet), to permit the Sublessee to perform its obligations under the proposed Residential Facility Sublease. All information disclosed by Tenant to Landlord regarding the proposed Residential Facility Sublease, including financial information, organizational information, information regarding past, current or future projects or undertakings, or other information related to the identity or business of the Sublessee (but excluding any such information previously released or otherwise in the public domain), shall be considered the proprietary information of such Sublessee and, subject to the requirements of FOIA and other Applicable Laws, Landlord shall not disclose or release any such information.

13.10 Division of Lease Upon Master Developer Sublease. If the Premises is Subleased by Tenant pursuant to Section 13.7, 13.8 or 13.9, the Premises and this Lease may be divided as provided in Section 8.7. Tenant shall not be released from any of its obligations under this Lease in connection with or as a result of the consummation of any such Sublease (whether or not Landlord's consent is required).

13.11 Express Recognition of Sublessees. Landlord shall, promptly following Tenant's request and receipt by Landlord of a copy of the Sublease, enter into a mutually acceptable Recognition Agreement with any Sublessee subleasing all or any portion the Premises or space in the Improvements (whether such Sublessee is a direct Sublessee of Tenant, a Sublessee of a direct Sublessee of Tenant, or any other Sublessee farther removed therefrom), provided that the applicable Sublease provides: (i) for regular payments of rent throughout the term of such Sublease ; (ii) that such Sublease is subject to the terms of this Lease; (iii) that the only monetary consideration for possession of the Subleased space is in the form of rent and operating cost reimbursements; (iv) that Landlord shall have no liability for prior acts, omission or defaults of Tenant (or other sublessor, as applicable) under such Sublease; and (v) the remaining provisions of such Sublease are acceptable to Landlord in its reasonable judgment. The foregoing notwithstanding, Landlord shall not be required to, but may at its election, enter into a Recognition Agreement for any Sublessee occupying less than twenty-five thousand (25,000) Square Feet. As to Subleases under which the Transfer Property primarily consists of space within a building, such a Recognition Agreement shall be in the form attached hereto as Exhibit K and entitled "Recognition Agreement (Space Subtenant)", as such form may be modified in a commercially reasonable manner at the request of Tenant or such Sublessee and acceptable to Landlord in its reasonable judgment. As to other Subleases, such a Recognition Agreement shall be in a commercially reasonable form requested by Tenant or the Sublessee and acceptable to Landlord in its reasonable judgment, which form shall offer not less than the protections similar to those provided in the form attached hereto as Exhibit K and entitled "Recognition Agreement (Space Subtenant)." It is the express intention of the Parties that the provisions of this Section 13.11 expressly benefit, under applicable third-party beneficiary principles, Sublessees (and their successors) who are a party to a Recognition Agreement, whether such Sublessee is a direct Sublessee of Tenant, a Sublessee of a direct Sublessee of Tenant, or any other Sublessee under a Sublease of any portion of the leasehold created by this Lease, regardless of how many other Subleases may be prior in right to the particular Sublease as to which a Recognition Agreement is being sought.

13.12 Transactions with Affiliates and Other Permitted Transfers. Notwithstanding anything to the contrary contained in this ARTICLE 13, Tenant may enter into an Assignment or a Sublease with an Affiliate or Preapproved Member without having to obtain Landlord's prior consent or approval so long as such Affiliate or Preapproved Member (as applicable) satisfies, with respect to an Assignment, the criteria set forth in subparts (i) through (v) of Section 13.1(a), and with respect to a Sublease, the criteria set forth in subparts (i) through (iv) of Section 13.1(a); provided, however, that, unless prohibited or restricted by Applicable Law, Tenant shall give Landlord prior written notice of any such Transfer.

13.13 Non-Binding Arbitration Regarding Reasonableness.

(a) The Parties shall first attempt to resolve, in good faith, any dispute as to whether Landlord, in connection with any determination made by Landlord pursuant to this ARTICLE 13, acted unreasonably pursuant to Section 21.7; provided, however, each reference in Section 21.7 to a thirty (30) day period shall be shortened to a fifteen (15) day period. If the Parties fail to resolve any such dispute pursuant to Section 21.7, then the Parties shall submit the dispute to non-binding arbitration to a Judge mutually agreed upon by both Landlord and Tenant. If Landlord and Tenant are unable to mutually select a particular Judge to act as an arbitrator for

any reason, either Party may petition the United States District Court having jurisdiction over Santa Clara County, California to have it select a Judge to adjudicate the dispute under this Section 13.13 in accordance with the provisions herein. If and only if JAMS does not exist, all disputes covered by this Section 13.13 shall be submitted to non-binding arbitration as provided herein in front of any other retired judge of the United States District Court having jurisdiction over Santa Clara County, California or a retired judge of the Superior Court of the State of California mutually selected by Landlord and Tenant, and if the Parties are unable to agree to such a selection, by the United States District Court having jurisdiction over Santa Clara County, California.

(b) The arbitration shall be scheduled within thirty (30) days of demand by either Party following the failure to resolve the dispute pursuant to Section 21.7. The disputed issue shall be briefed by the Parties in an arbitration brief submitted to the Judge and each Party no later than one (1) week preceding the arbitration. The arbitration shall be conducted at the JAMS offices located in San Francisco, California (or at such other location agreed to by the Parties and the arbitrator chosen for such arbitration proceedings). Landlord and Tenant hereby agree and shall request that the Judge's decision in any matter submitted to arbitration be prepared within ten (10) days of the submission of all evidence at the arbitration. The Judge's decision shall be in writing, signed by the Judge and include only: (i) a determination of whether Landlord, in connection with any determination made by Landlord pursuant to this ARTICLE 13, acted unreasonably; and (ii) the factual findings and legal conclusions upon which the Judge's decision is based.

(c) The Judge's decision shall not be binding on the Parties, and either Party may seek judicial review of such decision and/or exercise any right or remedy set forth in this Lease or which is otherwise available at law or in equity.

13.14 Mandatory Sublessee Covenants.

(a) The instrument by which any Sublease is effected (whether or not Landlord's consent is required) shall expressly provide that the Sublessee will perform, for the benefit of Landlord, all of the Mandatory Sublessee Covenants insofar as they pertain (or are fairly allocated) to the Transfer Property subject to such Transfer as and when performance is due after the effective date of the Sublease and that Landlord will have the right to enforce such Mandatory Sublessee Covenants directly against such Sublessee without first exhausting any claims or remedies Landlord may have in connection therewith against or with respect to Tenant or any other Sublessee prior in right to the particular Sublessee that has failed to perform such Mandatory Sublessee Covenants. Without limiting the generality of the foregoing, if such instrument does not so expressly provide, it shall be deemed that the Sublessee has agreed to perform, for the benefit of Landlord, all of the Mandatory Sublessee Covenants insofar as they pertain (or are fairly allocated) to the Transfer Property subject to such Transfer as and when performance is due after the effective date of the Sublease and that Landlord will have the right to enforce such Mandatory Sublessee Covenants directly against such Sublessee without first exhausting any claims or remedies Landlord may have in connection therewith against or with respect to Tenant or any other Sublessee prior in right to the particular Sublessee that has failed to perform such Mandatory Sublessee Covenants. As used in this Section 13.14, the "right to enforce" shall include the right to terminate the Sublease pursuant to the terms of the Sublease,

subject to the rights of any Mortgagee of the Sublessee under such Sublease (including any rights of such Mortgagee contained in ARTICLE 14).

(b) Where a Sublease pertains to a Parcel, Phase or other portion of the Premises, the Mandatory Sublessee Covenants with respect to such Sublease shall be fairly allocated by Tenant in good faith to the Parcel, Phase or other portion of the Premises which is the subject of such Sublease and to the acts or omissions of the Sublessee and its Related Entities, and all such allocations shall be binding on Landlord and Tenant; provided, however, that Subleases of space within a building may allocate responsibility for repair, maintenance, insurance and indemnity between the parties to such Sublease in such manner as those parties may elect.

(c) In the event of a Sublease as to which the Sublessee has agreed, whether expressly under the terms of such Sublease, any Recognition Agreement, by effect of the provisions of Section 13.14(a) or otherwise, (a) to perform for the benefit of Landlord any Mandatory Sublessee Covenant insofar as its pertains (or is fairly allocated) to the Transfer Property, and (b) that Landlord will have the right to enforce such Mandatory Sublessee Covenant directly against such Sublessee, then Tenant shall be relieved, with respect to such Transfer Property and the acts or omissions of the Sublessee or its Related Entities, of its obligations under this Lease to the extent covered by such by Mandatory Sublessee Covenant, but only for acts or omissions occurring while such Sublease is in effect or the Sublessee is in possession of the Transfer Property which is the subject of such Sublease. In connection with the foregoing and with respect to the Mandatory Sublessee Covenant regarding insurance, Tenant may reduce any or all of the coverage and/or liability limits of the policies of insurance Tenant is required to carry or maintain under this Lease on a prorata basis based on the number of Square Feet of Entitled Use allocated to such Transfer Property in relation to the number of Square Feet of Entitled Use allocated to the Premises; provided, however, that Tenant shall at all times maintain with respect to the Premises the insurance coverage required under 12.2(a)(i) above.

13.15 Landlord's Right to Terminate Subleases and Occupancy Agreements Upon Default.

(a) Without limiting the provisions of Section 13.14 above, the instrument by which any Sublease or other occupancy agreement is effected (whether or not Landlord's consent is required) shall expressly provide that Landlord may terminate (subject to the rights of any Mortgagee of the Sublessee under any such Sublease, including any rights of such Mortgagee contained in ARTICLE 14 and any rights under any applicable Recognition Agreement) the Sublease or other occupancy agreement pursuant to the terms of the Sublease or other occupancy agreement, without first exhausting any other claims or remedies Landlord may have against or with respect to Tenant, the Sublessee or other occupant in connection therewith, in the event both (a) such Sublessee is or becomes a Defaulting Sublessee or such other occupant is in default under its occupancy agreement and (b) the act or omission of such Defaulting Sublessee or other occupant which resulted in such Sublessee becoming a Defaulting Sublessee results in Event of Default by Tenant under Section 15.1(c). Without limiting the generality of the foregoing, if such instrument does not so expressly provide, it shall be deemed that the Sublessee or other occupant has agreed that Landlord may terminate (subject to the rights of any

Mortgagee of the Sublessee under any such Sublease, including any rights of such Mortgagee contained in ARTICLE 14) the Sublease or other occupancy agreement pursuant to the terms of the Sublease or other occupancy agreement, without first exhausting any other claims or remedies Landlord may have against or with respect to Tenant, the Sublessee or other occupant in connection therewith, in the event (a) such Sublessee is or becomes a Defaulting Sublessee or such other occupant is in default under its occupancy agreement and (b) the act or omission of such Defaulting Sublessee or other occupant which resulted in such Sublessee becoming a Defaulting Sublessee results in Event of Default by Tenant under Section 15.1(c).

(b) The instrument by which any Sublease is effected (whether or not Landlord's consent is required) shall expressly provide that Landlord shall not be liable to the Sublessee under such Sublease, and such Sublessee waives and releases all Claims against Landlord, that arise or result from Landlord's exercise of its rights pursuant to Section 13.15(a) to the extent such Claims pertain (or are fairly allocated) to the Transfer Property subject to such Sublease. Without limiting the generality of the foregoing, if such instrument does not so expressly provide, it shall be deemed that such Sublessee has agreed that Landlord shall not be liable to such Sublessee, and such Sublessee waives and releases all Claims against Landlord, that arise or result from Landlord's exercise of its rights pursuant to Section 13.15 to the extent such Claims pertain (or are fairly allocated) to the Transfer Property subject to such Sublease.

13.16 Other Requirements. The acceptance of Rent by Landlord from any other person or entity shall not be deemed to be a waiver by Landlord of any provision of this Lease. Consent to one Transfer, Financing Transaction or Transfer of Ownership shall not be deemed consent to any subsequent Transfer, Financing Transaction or Transfer of Ownership. Tenant shall pay to Landlord all reasonable direct costs and shall reimburse Landlord for all third party expenses reasonably incurred by Landlord in connection with any such Transfer, Financing Transaction or Transfer of Ownership as to which Tenant has requested Landlord's consent. Except to the extent Tenant has been released from its obligations as specifically set forth in this Lease, if any transferee or successor of Tenant defaults in the performance of any obligation to be performed by Tenant under this Lease, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such transferee or successor.

ARTICLE 14 MORTGAGES

14.1 Right to Mortgage.

(a) Subject to Section 13.4, Tenant may, at any time and from time to time, Mortgage all or any portion of the right, title and interest of Tenant in the leasehold estate created by this Lease or in any or all Improvements on any portion of the Premises to one or more Mortgagees for security for a loan or loans or other obligations of Tenant; provided, however, in no event shall fee title to the Premises be subordinated to or encumbered by any Mortgage. However, the making of a Mortgage shall in no event constitute an assumption by the Mortgagee of Tenant's obligations under this Lease. Concurrently with executing each Mortgage, Tenant shall furnish Landlord with the name and address of the Mortgagee and shall prepare and deliver to Landlord a request for notice of default in recordable form providing that Landlord shall

receive copies of notices of default under that Mortgage at the address for notice to Landlord set forth in the Basic Lease Information.

(b) Any Sublessee (including, without limitation, any Master Developer) may, at any time and from time to time, Mortgage all or any portion of the right, title and interest of such Sublessee in the subleasehold estate created by the Sublease of such Sublessee or in any or all Improvements owned by such Sublessee on the portion of the Premises sublet under such Sublease to one or more Mortgagees for security for a loan or loans or other obligations of such Sublessee. However, the making of a Mortgage shall in no event constitute an assumption by the Mortgagee of the Sublessee's obligations under the Sublease of such Sublessee. Concurrently with executing each Mortgage, such Sublessee shall furnish Landlord with the name and address of the Mortgagee and shall prepare and deliver to Landlord a request for notice of default in recordable form providing that Landlord shall receive copies of notices of default under that Mortgage at the address for notice to Landlord set forth in the Basic Lease Information.

14.2 Mortgagee's Rights.

(a) Any Mortgagee shall have the right at any time during the Term:

(i) To do any act required of Tenant, the Master Developer or the Sublessee under the applicable Mortgaged Leasehold, and all such acts done or performed shall be effective to prevent a termination of the Mortgaged Leasehold, as if the same had been done or performed by the party obligated to perform it;

(ii) To rely on the security afforded by the Mortgaged Leasehold and to acquire and to succeed to the interest of the Mortgagor of the Mortgaged Leasehold by Foreclosure, and thereafter convey or assign title to the Mortgaged Leasehold so acquired to any other person as provided in Section 14.5; and

(iii) To enforce its Mortgage and acquire title to all or any portion of the Mortgaged Leasehold in any lawful manner and, pending Foreclosure of such Mortgage, to take possession of and enter into one (1) or more Subleases in accordance with Sections 13.7 and 13.5, respectively, and upon Foreclosure of such Mortgage to enter into one (1) or more Assignments of this Lease as provided in Section 14.5.

(b) The foregoing notwithstanding, subject to the remaining provisions of this ARTICLE 14, a Mortgagee or purchaser or other transferee of the leasehold estate created by this Lease pursuant to a Foreclosure shall not be liable to perform the Mortgagor's obligations with respect to the Mortgaged Leasehold until such Mortgagee or purchaser or other transferee of such leasehold interest pursuant to a Foreclosure succeeds to the interest of the Mortgagor with respect to the Mortgaged Leasehold by Foreclosure. After succeeding to the interest of the Mortgagor with respect to the Mortgaged Leasehold, such Mortgagee or purchaser or other transferee of such leasehold interest pursuant to the Foreclosure shall perform the Mortgagor's obligations with respect to the Mortgaged Leasehold. Such Mortgagee or purchaser or other transferee of such leasehold interest pursuant to the Foreclosure shall not, however, be required to cure the Mortgagor's defaults occurring before such Mortgagee or purchaser or other transferee of such leasehold interest pursuant to the Foreclosure succeeds to the interest of the

Mortgagor with respect to the Mortgaged Leasehold by Foreclosure. The obligation of such Mortgagee or purchaser or other transferee of such leasehold interest pursuant to the Foreclosure for the performance of the obligations of the Mortgagor with respect to the Mortgaged Leasehold shall terminate as of the Expiration Date or, if earlier, upon the Assignment of the right, title and interest of such Mortgagee or purchaser or other transferee of such leasehold interest pursuant to the Foreclosure in the Mortgaged Leasehold to any other person or entity in accordance with Sections 13.1 or 14.5.

14.3 Cure by Mortgagee.

(a) Until the earlier of the time, if any, that a Mortgage has been satisfied (or the Mortgagee has given written notice to Landlord that the Mortgage has been satisfied, Landlord being entitled to rely on such a notice), if a Mortgaged Leasehold Default occurs with respect to a Mortgaged Leasehold, Landlord shall not terminate the Mortgaged Leasehold pursuant to Section 13.15 or ARTICLE 15 by reason of such Mortgaged Leasehold Default if and so long as any of the circumstances described in Sections 14.3(b) through 14.3(i), inclusive, exists.

(b) With respect to an Event of Default described in Section 15.1(a), a Mortgagee has given a Mortgagee Request for Notice before the occurrence of such Event of Default and less than sixty (60) days have elapsed following the later of: (i) the giving by Landlord to such Mortgagee of the copy of the notice of such breaches to be given pursuant to Section 15.1(g); or (ii) the date by which Tenant was required to have made such payment to avoid an Event of Default pursuant to Section 15.1(a).

(c) With respect to an Event of Default described in Section 15.1(a), a Mortgagee has given a Mortgagee Request for Notice before the occurrence of such Event of Default and the Event of Default was cured within sixty (60) days following the later of: (i) the giving by Landlord to such Mortgagee of the copy of the notice of such breaches to be given pursuant to Section 15.1(g); or (ii) the date by which Tenant was required to have made such payment to avoid an Event of Default pursuant to Section 15.1(a).

(d) Subject to Section 14.3(g), with respect to an Event of Default described in Section 15.1(b), a Mortgagee has given a Mortgagee Request for Notice before the occurrence of such Event of Default and less than ninety (90) days have elapsed following the later of: (i) the giving by Landlord to such Mortgagee of the copy of the notice of such breaches to be given pursuant to Section 15.1(g); or (ii) the date by which Tenant was required to perform to avoid an Event of Default pursuant to Section 15.1(b).

(e) Subject to Section 14.3(g), with respect to an Event of Default described in Section 15.1(b), a Mortgagee has given a Mortgagee Request for Notice before the occurrence of such Event of Default and a Mortgagee has commenced (within the ninety (90) day period referred to in Section 14.3(d)) commercially reasonable efforts to cure those breaches of this Lease that reasonably can be cured by such Mortgagee (in light of the fact that it does not have the right to possession of the Premises and Improvements thereon, and does not have the right to control the actions of Tenant) and that gave rise to such Event of Default and such Mortgagee thereafter prosecutes such efforts with commercially reasonable diligence to completion.

(f) Subject to Section 14.3(g), with respect to an Event of Default described in Section 15.1(c), all such defaults described in the notice of default given by Landlord to Tenant (and, if such Mortgagee has given a Mortgagee Request for Notice, to such Mortgagee) that reasonably can be cured by Mortgagee (in light of the fact that it does not have the right to possession of the Premises and Improvements thereon, and does not have the right to control the actions of Tenant or any Sublessee of the Premises), the curing of same is commenced within ninety (90) days after the date on which Landlord notifies Mortgagee that Tenant has failed to cure such defaults pursuant to Section 15.1(c) and thereafter is prosecuted with commercially reasonable diligence to completion by or on behalf of Mortgagee.

(g) With respect to an Event of Default described in Section 15.1(b) or 15.1(c), all such defaults referenced in the notice of default given by Landlord to Tenant (and, if such Mortgagee has given a Mortgagee Request for Notice, to such Mortgagee) that are incurable by nature or which cannot reasonably be cured by Mortgagee because it does not have the right to possession of the Premises and Improvements thereon or because it does not have the right to control the actions of Tenant, the Master Developer or any Sublessee, Landlord shall forbear from terminating this Lease if a Mortgagee holding a Mortgage on the Mortgaged Leasehold Interest to which such Event of Default relates: (i) within ninety (90) days from the date Landlord gives such notice, initiates Foreclosure and thereafter proceeds with commercially reasonable diligence to Foreclose the Mortgage or to acquire by other means the Mortgaged Leasehold Interest, and (ii) uses with commercially reasonable diligence to keep and perform all of the covenants and conditions required of the owner of the Mortgaged Leasehold Interest requiring the payment of money and those non-monetary covenants and conditions which are reasonably susceptible of performance by Mortgagee, subject to all applicable notice and grace periods. Upon a failure of either of (i) or (ii) above, Landlord shall give to the Mortgagee written notice of such failure, specifying in detail the obligations which have not been performed and the nature of the performance required and stating that if such Mortgagee does not cure such failure within thirty (30) days, then Landlord shall be released of its obligation to forbear from terminating the Mortgaged Leasehold Interest. If such Mortgagee does not cure such failure within thirty (30) days, then Landlord shall be released of its obligation to forbear from terminating the Mortgaged Leasehold Interest, and may, at its option thereafter, terminate the Mortgaged Leasehold Interest forthwith. The foregoing notwithstanding, Mortgagee shall be relieved from its obligations to initiate Foreclosure of the Mortgage and to proceed with commercially reasonable diligence therewith (and Landlord shall not terminate the Mortgaged Leasehold Interest) during such time as Mortgagee is legally prevented, enjoined or stayed (whether by an automatic stay in bankruptcy proceedings or otherwise) from so proceeding, provided that Mortgagee has taken reasonable action to attempt to obtain relief from any such stay or injunction. Nothing herein shall be construed to extend the Term of this Lease beyond the then current Expiration Date; provided, however, that a Mortgagee of the leasehold estate of Tenant under this Lease have the right to exercise on behalf of Tenant any right to extend the Term for an Extended Term. If all Events of Default to which this Section 14.3(g) applies have been cured prior to the completion of Foreclosure of the Mortgage, Mortgagee need not complete such Foreclosure, but may elect to do so in its sole and absolute discretion.

(h) With respect to a Mortgaged Leasehold Default that occurs with respect to a Mortgaged Leasehold other than the leasehold estate of Tenant under this Lease, a Mortgagee has given a Mortgagee Request for Notice before the occurrence of such Mortgaged Leasehold

Default and less than ninety (90) days have elapsed following the later of: (i) the giving by Landlord to such Mortgagee of the copy of the notice of such breaches to be given pursuant to such Mortgagee Request for Notice; or (ii) the date by which the Defaulting Sublessee was required to have cured such breaches giving rise to such Mortgaged Leasehold Default.

(i) With respect to a Mortgaged Leasehold Default that occurs with respect to a Mortgaged Leasehold other than the leasehold estate of Tenant under this Lease, a Mortgagee has given a Mortgagee Request for Notice before the occurrence of such Mortgaged Leasehold Default and a Mortgagee has commenced (within the ninety (90) day period referred to in Section 14.3(h)) commercially reasonable efforts to cure those of such breaches that reasonably can be cured by such Mortgagee (in light of the fact that it does not have the right to possession of the portion of the Premises subject to the Mortgaged Leasehold and Improvements thereon, and does not have the right to control the actions of owner of the Mortgaged Leasehold) and that gave rise to the Mortgaged Leasehold Default and such Mortgagee thereafter prosecutes such efforts with commercially reasonable diligence to completion.

14.4 Right of Mortgagees of Subleasehold Interests. Any Mortgagee of a Mortgage which encumbers the subleasehold interest created by any Sublease shall have the same rights as any Mortgagee of the leasehold interest of Tenant under this Lease to cure Events of Default of Tenant under this Lease, provided that such rights to cure shall be subordinate to any such rights of any Mortgagee of the leasehold interest created under this Lease and there shall be no additional time to cure any such Event of Default beyond that applicable to any Mortgagee of the leasehold interest created under this Lease. Landlord shall accept any full or partial cure of a failure of performance under this Lease from Mortgagee of a Mortgage which encumbers a subleasehold interest.

14.5 Standards for Subletting and Assignment Following Foreclosure.

(a) The provisions of ARTICLE 13 and the other provisions of this ARTICLE 14 to the contrary notwithstanding, in connection with a Foreclosure of a Mortgage encumbering the leasehold estate created by this Lease (but not a subleasehold interest separately), the Mortgagee or purchaser or other transferee of such leasehold interest pursuant to the Foreclosure shall not be required to satisfy the requirements of ARTICLE 13, but only if such purchaser or other transferee: (i) does not comprise a security risk to the United States; and (ii) is not listed on the General Service Administration's List of Parties Excluded from Federal Procurement and Nonprocurement Programs. The Mortgagee (or, if the Foreclosure is to be completed through a judicial foreclosure, trustee's sale or other auction process, persons desiring to bid at such auction) may submit a written request to Landlord, in the manner provided in ARTICLE 20 for notices by Tenant to Landlord, for a determination by Landlord whether or not a purchaser or other transferee of such leasehold interest pursuant to the Foreclosure (or in the case of a request by a prospective bidder, that prospective bidder) is a security risk to the United States or is listed on the General Service Administration's List of Parties Excluded from Federal Procurement and Nonprocurement Programs. Landlord may request in writing, within five (5) Business Days of the receipt of such a request, such additional information as Landlord may reasonably require to make the determination requested, shall respond to such request within ten (10) Business Days of the latter of: (i) the receipt by Landlord of the request for such determination, or (ii) the receipt by Landlord of the additional information requested by Landlord. If Landlord fails to respond to

the request with such period of ten (10) Business Days, then the Mortgagee or prospective bidder may give a second notice to Landlord requesting that Landlord make the required determination. If Landlord fails to make the required determination within five (5) Business Days of the receipt by Landlord of such second notice, Landlord shall conclusively be deemed to have determined for the purposes of this Lease that the prospective bidder is not a security risk to the United States and is not listed on the General Service Administration's List of Parties Excluded from Federal Procurement and Nonprocurement Programs. Following a Foreclosure, further Assignments by the acquiring Mortgagee or purchaser or other transferee pursuant to the Foreclosure shall be governed by the provisions of ARTICLE 13, and sublettings shall be governed by the provisions of Section 14.5(b).

(b) The provisions of ARTICLE 13 and the foregoing provisions of this ARTICLE 14 to the contrary notwithstanding, following a Foreclosure of a Mortgage encumbering the leasehold estate created by this Lease (but not a subleasehold interest separately), the acquiring Mortgagee or purchaser or other transferee pursuant to the Foreclosure may sublease a Parcel at least eighty percent (80%) of which (by land area) is then developed with Improvements that have received final certificates of occupancy, and such subleases of such Parcels shall not be subject to the procedures and requirements applicable to the selection of a Master Developer by Tenant and shall not be subject to the procedures and requirements applicable to a Master Developer Sublease or Residential Facility Sublease, nor shall such subletting otherwise require consent of Landlord; provided, however, no additional Improvements, Infrastructure or Backbone Infrastructure may be constructed on such Parcels except as set forth in the Development Plan and in accordance with this Lease; and provided further, however, if the Sublessee thereunder intends to itself use the portion of the Premises so sublet for uses which would be subject to the provisions of Section 13.6, then such provisions shall apply. The provisions of ARTICLE 13 and the foregoing provisions of this ARTICLE 14 to the contrary notwithstanding, following a Foreclosure of a Mortgage encumbering the leasehold estate created by this Lease (but not a subleasehold interest separately), any subletting by the acquiring Mortgagee or purchaser or other transferee pursuant to the Foreclosure of a Parcel more than twenty percent (20%) of which (by land area) is not then developed with Improvements that have received final certificates of occupancy shall (i) be subject to the procedures and requirements applicable to the selection of a Master Developer by Tenant (to the extent such acquiring Mortgagee or purchaser or other transferee pursuant to the Foreclosure is seeking to enter into a Master Developer Sublease) and any subletting of such Parcels to such a Master Developer shall be subject to the procedures and requirements applicable to a Master Developer Sublease, and (ii) be subject to the procedures and requirements applicable to an Undeveloped Area Sublease or Residential Facility Sublease, as applicable.

(c) The provisions of ARTICLE 13 and the foregoing provisions of this ARTICLE 14 to the contrary notwithstanding, no subletting of office, research and development or educational space which is existing and vacant as of the completion of a Foreclosure shall be required to comply with the provisions of Section 13.6 nor shall the user thereof be required to comply with the Compatibility Guidelines, although such requirements shall apply to any further or subsequent subletting of such space following the initial subletting thereof following the Foreclosure.

(d) The provisions of ARTICLE 13 and the foregoing provisions of this ARTICLE 14 to the contrary notwithstanding, no subletting of residential space which is existing and vacant as of the completion of a Foreclosure shall be required to comply with the provisions of Section 13.9, although such requirements shall apply to any further or subsequent subletting of such space following the initial subletting thereof following the Foreclosure.

14.6 New Lease. If this Lease terminates by reason of an Event of Default by Tenant, or if this Lease is disaffirmed in a bankruptcy proceeding affecting Tenant, and if, within ninety (90) days after such termination or disaffirmation, a Mortgagee of a Mortgage encumbering the leasehold estate created by this Lease (but not a subleasehold interest separately) delivers written notice to Landlord requesting Landlord to enter into a new lease of the Premises or such portion thereof as was covered by the Mortgage of such Mortgagee, then Landlord shall enter into a new lease with such Mortgagee (or its nominee) within sixty (60) days after such Mortgagee's notice is deemed delivered. Simultaneously with the giving of its notice to request a new lease, such Mortgagee shall deliver to Landlord a written instrument (in a form reasonably acceptable to Landlord) agreeing to cure all Events of Default of Tenant under this Lease or the portion hereof that is applicable or allocable to the portion of the Premises to which the Mortgage of such Mortgagee pertained (other than Events of Default which are not reasonably susceptible of being cured by such Mortgagee) as soon as is reasonably feasible. The new lease shall commence, and rent and all obligations of the tenant under the new lease shall accrue, as of the date of termination or disaffirmation of this Lease. The term of the new lease shall continue for the period which would have constituted the remainder of the Term of this Lease had this Lease not been terminated or disaffirmed, including any rights to extend the Term, and shall otherwise be upon all of the terms, covenants, conditions, conditional limitations and agreements contained in this Lease which were in force and effect immediately prior to the termination or disaffirmation of this Lease. The new lease, and this covenant, shall be superior to all rights, liens and interests other than those to which this Lease was subject immediately prior to termination or disaffirmation and those matters to which this Lease may, by its terms, become subject. The provisions of the immediately preceding sentence shall be self-executing, and Landlord shall have no obligation to do anything other than to execute the new lease. Each Sublessee under a Sublease which was in force immediately prior to the delivery of the new lease shall attorn to the tenant under the new lease, unless such tenant, at its option, elects to dispossess any such Sublessee or otherwise terminate the Sublease. Each Sublessee shall be deemed to have agreed to the provisions of this Section 14.6. The foregoing shall not be deemed to obligate Landlord to keep any Sublease in force after the termination or disaffirmation of this Lease (although Landlord shall be bound by any Recognition Agreement pertaining to such Sublease), nor shall Landlord have any obligation to terminate any Sublease or to dispossess any Sublessee. Such Mortgagee shall, simultaneously with the delivery of the new lease, pay (a) all Rent and other sums of money due under this Lease (or any restatement of this Lease made in connection with such Financing Transaction) on the date of termination or disaffirmation of this Lease and remaining unpaid, plus (b) all rent and other sums of money due under the new lease as and when due under such new lease. Simultaneously therewith, Landlord shall pay over to such Mortgagee any rentals (except the UDA Services Amount and charges for Demand Services), less costs and expenses of collection, received by Landlord between the date of termination or disaffirmation of this Lease and the date of execution of the new lease, from Sublessees or other occupants of the Premises or the space in the Improvements, which shall not theretofore have been applied by Landlord towards the payment of Rent or any other sum of money payable by

Tenant or towards the cost of operating the Premises or performing the obligations of Tenant hereunder. If such Mortgagee exercises its right to obtain a new lease, but fails to execute the new lease when tendered by Landlord (but only if such new lease conforms to the terms of this Lease as applicable to the portion of the Premises to be covered thereby), or fails to use commercially reasonable efforts to comply timely with the other provisions of this Section 14.6, such Mortgagee shall have no further rights to a new lease or any other rights under this Lease. If such Mortgagee shall, however, execute a new lease, then such Mortgagee shall (notwithstanding anything to the contrary contained in the new lease) be entitled to enter into a Assignment to a third party in accordance with Section 13.1 of this Lease, and upon such Assignment such Mortgagee shall be relieved prospectively of all liability under the new lease.

14.7 Mortgagee Consent to Modification of Lease. At any time during which there is a Mortgage encumbering the leasehold estate created by this Lease (but not a subleasehold interest separately) which has not been satisfied (unless the Mortgagee has given written notice to Landlord that the Mortgage has been satisfied, Landlord being entitled to rely on such a notice), Landlord shall not, without the prior written consent of Mortgagee, accept any surrender of this Lease, consent to any modification hereof which increases the Base Rent payable hereunder or consent to the Transfer of the leasehold or subleasehold interest encumbered by the Mortgage (but not any Transfer of any other leasehold or subleasehold interest).

14.8 Notice. Service of any notice required to be served upon a Mortgagee under a Mortgage at the address contained in a recorded request for notice of default (or at such other address as Mortgagee has last specified by written notice to Landlord) shall be deemed to be made upon actual receipt. Without limiting the provisions of Section 15.1(g), no notice of default, notice of intention to terminate a Mortgaged Leasehold, or notice of termination of a Mortgaged Leasehold which is given by Landlord to Tenant or pursuant to Section 13.15 shall be binding upon or affect Mortgagee of such Mortgaged Leasehold unless a copy of said notice has been given at substantially the same time to any Mortgagee which has then given a Mortgagee Request for Notice at the address contained in such Mortgagee request for Notice.

14.9 Modification for Mortgagee. If, in connection with obtaining construction, interim or permanent financing for any Improvements, a Mortgagee of a Mortgage encumbering the leasehold estate created by this Lease (but not a subleasehold interest separately) shall request reasonable modifications or amendments to this Lease as a condition to financing, Landlord will not unreasonably withhold, delay or defer its consent, provided that such modifications do not materially decrease the obligations of Tenant (unless otherwise agreed to by Landlord in its sole and absolute discretion), materially increase the obligations of Tenant (unless otherwise agreed to by Tenant in its sole and absolute discretion), or materially adversely affect Landlord's fee interest or its rights and remedies under this Lease (unless otherwise agreed to by Landlord in its sole and absolute discretion). Landlord and Tenant acknowledge that the requirements of prospective Mortgagees providing leasehold financing are complex and may change in material respects over the Term.

14.10 Recognition Agreement for Mortgagee. Landlord shall enter into a mutually acceptable Recognition Agreement with any Mortgagee at the request of Tenant or such Mortgagee, which Recognition Agreement shall be in the form attached hereto as Exhibit K and entitled "Recognition Agreement (Mortgagee)", as such form may be modified in a

commercially reasonable manner at the request of Tenant or such Mortgagee and acceptable to Landlord in its reasonable judgment.

14.11 Public Financing. Nothing in the foregoing provisions of this ARTICLE 14 shall be deemed to prevent Tenant from obtaining public financing with respect to the development and operation of the Premises. Landlord shall reasonably cooperate with Tenant in connection with the procurement by Tenant of any such public financing, but only if that such public financing is approved by Landlord in advance, which approval shall not be unreasonably withheld, conditioned or delayed. Without limiting the generality of the foregoing, Landlord and Tenant shall enter into such amendments or restatements of this Lease as are reasonably necessary in order to procure such public financing, provided that such modifications do not materially decrease the obligations of Tenant or materially adversely affect Landlord's fee interest or its rights and remedies under this Lease.

14.12 Law Applicable to Foreclosure. Landlord agrees, for the purposes of Foreclosure, to recognize the results of proceedings (whether judicial or non-judicial) undertaken pursuant to the laws of the State of California. Tenant, Master Developer and any Sublessee, by accepting a leasehold estate in the Premises or any part thereof, shall conclusively be deemed to have agreed to submit to the subject matter and personal jurisdiction of the Superior Court of Santa Clara County, California with respect to matters arising in connection with any Mortgage encumbering such leasehold estate. The foregoing notwithstanding, if and to the extent that the provisions of any Mortgage or evidence of indebtedness expressly provide that the laws of a State other than California apply, then Landlord shall recognize the results of proceedings (whether judicial or non-judicial) undertaken pursuant to the laws of that State.

14.13 Mortgagees as Third Party Beneficiaries. Mortgagees hereafter holding or acquiring a Mortgage on any leasehold interest created pursuant to this Lease or any Sublease are intended, and shall be deemed, to be third party beneficiaries of the provisions of this ARTICLE 14.

ARTICLE 15 EVENTS OF DEFAULT AND REMEDIES

15.1 Default by Tenant. The occurrence of one (1) or more of the following circumstances shall constitute an Event of Default by Tenant:

(a) Tenant fails to pay any Rent payable by Tenant under this Lease, and such failure continues for more than thirty (30) days after the date Tenant receives notice from Landlord that such Rent is due and unpaid. The foregoing notwithstanding, to the extent that any such failure by Tenant is the result of a failure by any Defaulting Sublessee to pay base rent or other sums due Tenant under the Defaulting Sublessee's Sublease, then Tenant shall not be deemed in default if and for so long as: (i) it uses commercially reasonable due diligence (commencing promptly after the Defaulting Sublessee has failed to pay base rent or other sums due Tenant) to collect from the Defaulting Sublessee the unpaid base rent or other sums due which caused the failure by Tenant; (ii) Tenant has used all funds in its possession (other than funds held in the capacity of a trustee or which are necessary to pay the reasonable operating expenses of Tenant during the succeeding period of ninety (90) days, including the anticipated

cost of enforcing the rights of Tenant in connection with its efforts to collect from the Defaulting Sublessee the unpaid base rent or other sums which caused the failure by Tenant) to pay the Rent due and unpaid under this Lease; (iii) Tenant promptly pays to Landlord following the conclusion of the efforts by Tenant against the Defaulting Sublessee, all funds, to the extent necessary to cure the failure of performance by Tenant, which either (A) Tenant receives as a result of its efforts to collect from the Defaulting Sublessee the unpaid base rent or other sums which caused the failure by Tenant or (B) otherwise come into the possession of Tenant (other than funds held in the capacity of a trustee or necessary to pay the operating expenses of Tenant during the succeeding period of ninety (90) days, including the cost of enforcing the rights of Tenant in connection with its efforts to collect from the Defaulting Sublessee); and (iv) Tenant provides to Landlord a balance sheet and operating statement for Tenant, showing all funds then possessed by Tenant and certified by the managing member, general partner or chief financial officer of Tenant to be correct to the best of its knowledge based on the information then available to it, and Tenant provides, during the continuation of the failure by Tenant to pay Rent, updated balance sheets and operating statements at such intervals as Landlord may reasonably request.

(b) Except to the extent such failure of performance or breach is the result of an act or omission of any Defaulting Sublessee or other occupant of any portion of the Premises or the Improvements or Alterations thereon, Tenant fails to perform or breaches any agreement or covenant of this Lease (other than the obligations to pay Rent) to be performed or observed by Tenant as and when performance or observance is due and such failure or breach continues for more than sixty (60) days after Landlord gives written notice thereof to Tenant specifying the failure of performance or breach which Landlord contends constitutes or will constitute an Event of Default; provided, however, that if, by the nature of such agreement or covenant, such failure or breach cannot reasonably be cured within such period of sixty (60) days, an Event of Default shall not exist as long as Tenant commences with due diligence and dispatch the curing of such failure or breach within such period of sixty (60) days and, having so commenced, thereafter prosecutes with diligence and dispatch and completes the curing of such failure or breach.

(c) In the event an act or omission of any Defaulting Sublessee or other occupant of any portion of the Premises or the Improvements or Alterations thereon results in a breach by Tenant of any agreement or covenant of this Lease (other than the obligations to pay Rent) which has a material adverse effect upon the Premises or Landlord to be performed or observed by Tenant as and when performance or observance is due, and either: (i) Tenant fails to commence, within thirty (30) days after Landlord gives written notice thereof to Tenant specifying the failure of performance or breach which Landlord contends constitutes or will constitute an Event of Default, to use commercially reasonable due diligence to cause the Defaulting Sublessee to cure such act or omission; or (ii) Tenant has used commercially reasonable due diligence to cause the Defaulting Sublessee to cure such act or omission, but such act or omission is not cured within the longer of: (A) any commercially reasonable period for cure (including grace periods) by the Defaulting Sublessee in the Sublease, or (B) the period of the exercise of any rights of Mortgagees of the Defaulting Sublessee to prevent a termination of the Sublease or to obtain a new lease pursuant to Section 14.6, as applicable, have expired, as such rights are required to be recognized by Landlord under a Recognition Agreement. The sole remedies of Landlord for an Event of Default arising under this Section 15.1(c) shall be: (i) the

remedy set forth in Section 15.2(b); and (ii) an action for declaratory or injunctive relief or for damages (or any or all of them).

(d) Tenant (i) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (ii) makes an assignment for the benefit of its creditors, or (iii) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Tenant or of any substantial part of Tenant's property. No order or judgment given in connection with a challenge to the actions or omissions of Tenant or any of its members under CEQA shall be deemed to cause an Event of Default under this Section 15.1(d).

(e) Without consent by Tenant, a court or government authority enters an order, and such order is not vacated within ninety (90) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Tenant or with respect to any substantial part of Tenant's property, or (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, or (iii) ordering the dissolution, winding-up or liquidation of Tenant. No order or judgment given in connection with a challenge to the actions or omissions of Tenant or any of its members under CEQA shall be deemed to cause an Event of Default under this Section 15.1(e).

(f) This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within ninety (90) days.

(g) No notice required to be given by Landlord to Tenant as a condition precedent to the occurrence of an Event of Default under this Section 15.1 shall be effective for any purpose unless Landlord has also given a copy of such notice to each Mortgagee which has given a Mortgagee Request for Notice with respect to such a notice.

15.2 Termination.

(a) Following the occurrence of one of the Events of Default specified in Sections 15.1(a) or 15.1(b), Landlord shall have the right at any time before such Event of Default is cured to give a written notice to Tenant terminating this Lease, and, on the date specified in such notice, Tenant's right to possession shall terminate and this Lease shall terminate and the provisions of Section 3.6 shall apply.

(b) Following the occurrence of an Event of Default specified in Section 15.1(c), Landlord shall have the right, pursuant to Section 13.15, to terminate the Sublease of the Defaulting Sublessee or the occupancy agreement of the occupant which has caused the Event of Default under Section 15.1(c). If Landlord terminates the Sublease of a Defaulting Sublessee in the circumstances described in this Section 15.2(b), then Tenant shall reimburse Landlord for all of Landlord's costs and expenses incurred in effecting such termination.

15.3 Continuation. If an Event of Default occurs, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the

right to enforce all its rights and remedies under this Lease, including the right to recover all Rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession unless written notice of termination is given by Landlord to Tenant in accordance with the provisions of Section 15.2 above.

15.4 Remedies Cumulative. Upon the occurrence of an Event of Default, Landlord shall have the right to exercise and enforce all rights and remedies granted or permitted by law, subject to the limitation on Tenant's liability for unpaid Rent for the balance of the Term after termination of this Lease provided for in Section 15.2. The remedies provided for in this Lease are cumulative and in addition to all other remedies available to Landlord at law or in equity by statute or otherwise. Exercise by Landlord of any remedy shall not be deemed to be an acceptance of surrender of the Premises by Tenant, either by agreement or by operation of law. Surrender of the Premises can be effected only by the written agreement of Landlord and Tenant.

15.5 Tenant's Primary Duty. All agreements and covenants to be performed or observed by Tenant under this Lease shall be at Tenant's sole cost and expense and without any abatement of, or credit against, Rent except to the extent otherwise expressly provided herein. If an Event of Default occurs hereunder as a consequence of Tenant's failure to pay any sum of money to be paid by Tenant or to perform any other act to be performed by Tenant under this Lease, Landlord shall have the right, but shall not be obligated, and without waiving or releasing Tenant from any obligations of Tenant, to make any such payment or to perform any such other act on behalf of Tenant in accordance with this Lease. All sums so paid by Landlord and all costs incurred or paid by Landlord shall be deemed Additional Rent hereunder and Tenant shall pay the same to Landlord on written demand, together with interest on all such sums and costs from the date of expenditure by Landlord to the date of repayment by Tenant at the rate of ten percent (10%) per annum.

15.6 Abandoned Property. If Tenant abandons the Premises, or is dispossessed by process of law or otherwise, all Improvements made by Tenant and left in the Premises, and all Personal Property belonging to Tenant and left in the Premises, shall be deemed to be abandoned. Landlord may retain the same, or at the option of Landlord, dispose of the same as authorized by the Government, subject to Applicable Laws.

15.7 Landlord Default. If Landlord defaults under this Lease, Tenant shall give written notice to Landlord specifying such default with particularity, and, except as otherwise provided in this Lease, Landlord shall have thirty (30) days after receipt of such notice within which to cure such default. In the event of any default by Landlord, Tenant's exclusive remedy shall be an action for damages or specific performance.

ARTICLE 16 DAMAGE OR DESTRUCTION

16.1 Restoration. If the Improvements, or any part thereof, are damaged by fire or other casualty during the Term, and this Lease is not terminated pursuant to Section 16.2, Tenant shall promptly cause the commencement (in all events within three hundred sixty (360) days

after the fire or other casualty) and completion of the repairs, restoration and rebuilding of the Improvements such that, as of the date of completion, such Improvements are in or have substantially the same condition, utility and character as the Improvements which existed immediately before the occurrence of such fire or other casualty (whether or not the insurance proceeds, if any, are sufficient for the purpose) and this Lease shall remain in full force and effect. In the event Landlord, as a contingent loss payee, has received any insurance proceeds as a consequence of such casualty, Landlord shall promptly deliver such insurance proceeds to or as directed by Tenant, and Tenant's obligations under this Section 16.1 shall be suspended if and for so long as Landlord has failed to deliver such insurance proceeds to or as directed by Tenant; provided, however, if Tenant has the right to terminate this Lease pursuant to Section 16.2, then Landlord may retain from such insurance proceeds an amount equal to Landlord's reasonable estimate of the cost to remove the damaged Improvements as contemplated in Section 16.2.

16.2 Termination of Lease. If the Improvements, or any part thereof, are damaged by fire or other casualty during the last five (5) years of the then current Term, then Tenant shall have the right, by giving written notice to Landlord within one hundred eighty (180) days after the occurrence of such fire or other casualty, to terminate this Lease (or the portion thereof covering the applicable Parcel, in which case the terms of Section 8.7 shall apply) as of the date of such notice. If Tenant does not duly exercise the right to terminate this Lease, in whole or in part as the case may be, in accordance with this Section 16.2, Tenant shall cause the repair, restoration and rebuilding of the Improvements in accordance with Section 16.1 and this Lease shall remain in full force and effect. If this Lease is so terminated in whole or in part, Tenant shall cause the removal of any damaged Improvements to the extent required by Landlord and any debris, and Tenant shall deliver the Premises (or the applicable portion thereof) and any undamaged Improvements in a neat and orderly condition. If Tenant fails to do so, any net insurance proceeds shall be paid first to Landlord to remove such Improvements and debris, and the balance shall be paid to Tenant or any Mortgagee in accordance with the terms of the Mortgage or such other agreement between Tenant and any Mortgagee.

ARTICLE 17 EMINENT DOMAIN

17.1 Tenant's Notice of Takings. Tenant or Landlord, as the case may be, shall deliver to the other Party written notice of each Taking promptly after such Party receives notice of or otherwise becomes aware of the commencement of proceedings for a Taking or negotiations which might result in a Taking. Any such notice shall identify the entity exercising the power of eminent domain and shall describe in reasonable detail the nature and extent of the Taking (or negotiations, as the case may be). Landlord and Tenant may each file and prosecute their respective claims for an award, but all awards and other payments on account of a Taking shall be paid in accordance with this ARTICLE 17. With respect to their respective claims for an award, Landlord's claim shall be based upon and limited to the value of the Premises as unimproved and encumbered by this Lease, and Tenant's claim shall be based upon the value of its leasehold estate hereunder plus all Improvements thereon (including severance damages) as well as Tenant's Personal Property, goodwill and relocation costs; provided, however, that in any event any award shall first be paid to any Mortgagee to the extent of the indebtedness owing under any Mortgage encumbering a portion of the Premises taken (and the amount of any award

otherwise payable to Tenant shall be reduced by the amount thereof paid to any such Mortgagee).

17.2 Total Taking. If a Total Taking occurs, this Lease shall terminate as of the date of the Taking. Each Party shall be entitled to its award and other amounts paid on account of the Total Taking for its interest in the Premises and this Lease. With respect to such award and other amounts payable to Tenant, the same shall be paid to Tenant and any Mortgagee as provided in the Mortgage or other agreement between Tenant and such Mortgagee.

17.3 Partial Taking. If a Partial Taking occurs, this Lease shall terminate as to the portion of the Premises so taken and shall remain in effect as to the portion remaining (except that Rent shall abate as provided in Section 17.5). In such case, Tenant shall promptly cause the commencement and completion of repairs, restoration and rebuilding of the portion of the Premises and the Improvements remaining immediately after the Partial Taking to an architecturally complete and economically viable condition consistent with the then current Entitled Use. Tenant's obligations under this Section 17.3 shall be performed by Tenant whether or not the awards, if any, or other payments on account of the Taking, if any, are sufficient to pay the costs to repair, restore and rebuild the Premises and the Improvements.

17.4 Temporary Taking. If a Temporary Taking of all or any part of the Improvements or the Premises occurs during the Term (i) this Lease shall not be affected in any way; (ii) Tenant shall continue to pay and perform all of its obligations hereunder; and (iii) any award made as a result of said Temporary Taking shall be paid solely to Tenant.

17.5 Abatement of Rent. If a Partial Taking occurs, then, during the period while the Partial Taking is effective, Base Rent shall be equitably reduced based upon the Square Feet of the Premises and Improvements subject to such Partial Taking; and the Entitled Use shall thereafter reflect the Premises as reduced by such Partial Taking. All Additional Rent that is calculated by reference to Square Feet shall be reduced in the proportion that the Square Feet so taken bears to the total Square Feet of the Improvements immediately before such Partial Taking.

ARTICLE 18 PREEXISTING HAZARDOUS MATERIALS

18.1 Acknowledgement by Tenant. Tenant hereby acknowledges that it has been informed by Landlord of (a) the existence of the written reports and studies listed on Exhibit B, and (b) the matters that are the subject of (i) the Record of Decision issued on June 9, 1989, by the EPA for the Middlefield-Ellis-Whisman area of Mountain View California, (ii) an Administrative Order for Remedial Design and Remedial Action issued on November 29, 1990 regarding response actions to be performed on the NASA Ames Research Center Property, (iii) a Consent Decree in the case styled United States of America v. Intel Corporation and Raytheon Company, C 91 20275 JW (in the United States District Court for the Northern District of California), and (iv) the Navy Memorandum of Agreement. Tenant further acknowledges that it has conducted its own due diligence with respect to the history, investigation and assignment by the EPA of liability for and continuing remediation of contaminated soil and groundwater at Moffett Field by the MEW Companies and the Navy.

18.2 MEW Construction Coordination Agreement. In connection with the construction of Improvements, Infrastructure or Off-Premises Backbone Infrastructure, or the exercise of the license granted in Section 2.6, Tenant shall comply with its obligations pursuant to the MEW Construction Coordination Agreement; provided, however, that wherever in the MEW Construction Coordination Agreement it is stated that “NASA or Project Developer will” or “Project Developer or NASA will” take some action and/or assume some responsibility, then Tenant shall take such action and/or assume such responsibility at no cost or expense to Landlord. In order to ensure appropriate handling of potentially contaminated soil or groundwater during construction activities, Landlord reserves the right to conduct environmental sampling during construction, and all environmental sampling will be performed under Landlord’s oversight.

18.3 Navy Construction Coordination Document. In connection with the construction of Improvements, Infrastructure or Off-Premises Backbone Infrastructure, or the exercise of the license granted in Section 2.6, Tenant shall comply with the provisions of the Navy Construction Coordination Document; provided, however, that wherever in the Navy Construction Coordination Document it is stated that “NASA or Project Developer will” or “Project Developer or NASA will” take some action and/or assume some responsibility, then Tenant shall take such action and/or assume such responsibility at no cost or expense to Landlord. In order to ensure appropriate handling of potentially contaminated soil or groundwater during construction activities, Landlord reserves the right to conduct environmental sampling during construction, and all environmental sampling will be performed under Landlord’s oversight.

18.4 Generator Status. If and to the extent that the MEW Companies do not fulfill their obligations pursuant to the MEW Construction Coordination Agreement and/or the Navy does not fulfill its obligations pursuant to the Navy Construction Coordination Document, both solely with respect to Hazardous Materials at or from the Premises or the Subsurface Areas removed or to be removed, Landlord shall be deemed to be the generator of such Hazardous Materials for that sole purpose.

18.5 Benefit of Indemnification. With respect to Preexisting Hazardous Materials discovered in, on, or under the Premises or the Subsurface Areas, Tenant shall have all of the benefits, if any, to which it may be entitled with respect to the Premises deriving from that certain indemnification with respect to environmental restoration provided by the Secretary of the Defense, as set forth in 10 U.S.C. §2687, as amended, or any benefits provided under any similar or successor statute or regulation. Landlord shall, at no out-of-pocket cost to Landlord, cooperate with Tenant in Tenant’s efforts to obtain the benefits of such indemnification, including (a) by obtaining the benefits of such indemnification itself and then assigning such benefits to Tenant if Tenant cannot otherwise obtain the benefits of such indemnification, and/or (b) at Tenant’s request at any time during the Term, by enforcing, on behalf of and for the benefit of Tenant, any rights Landlord may have pursuant to 10 U.S.C. §2687 or any similar or successor statute or regulation.

18.6 Cooperation in Obtaining Other Benefits. With respect to Preexisting Hazardous Materials discovered in, on, or under the Premises or the Subsurface Areas, Landlord shall, at no-out-of-pocket cost to Landlord, cooperate with Tenant in Tenant’s efforts to obtain the benefit of any available release, indemnification, hold harmless agreement, obligation to defend or other

protection, if any, from any of the potentially responsible parties, including (a) by obtaining the benefits of any such indemnification, release, hold harmless agreement, obligation to defend or other protection itself and then assigning such benefits to Tenant if Tenant cannot otherwise obtain such benefits, and/or (b) at Tenant's request at any time during the Term, by enforcing, on behalf of and for the benefit of Tenant, any rights Landlord may have against any of the MEW Companies or the Navy for the benefit of Tenant. To the extent that Landlord obtains, at any time during the Term, the benefit of any such indemnification, release, hold harmless agreement, obligation to defend or other protection from any of the MEW Companies or the Navy or any other party with respect to any Hazardous Materials (including Preexisting Hazardous Materials), and to the extent such benefits are assignable, transferable or otherwise applicable to Landlord's successors, assigns, contractors and/or Tenants, Landlord shall take all necessary and/or appropriate steps to provide such benefits directly to Tenant.

ARTICLE 19 SALE OR CONVEYANCE; ESTOPPEL CERTIFICATES

19.1 Sale or Conveyance of the Premises. If the original Landlord hereunder, or any successor owner of the Premises, sells or conveys the Premises; all liabilities and obligations on the part of the original Landlord, or such successor owner, under this Lease accruing after such sale or conveyance shall terminate as to the original Landlord or such successor owner, and thereupon all such liabilities and obligations shall be binding upon the new owner. Tenant agrees to attorn to such new owner.

19.2 Estoppel Certificates.

(a) At any time and from time to time, Tenant shall, within twenty (20) days after written request by Landlord, execute, acknowledge and deliver to Landlord a certificate certifying to the extent factually correct: (i) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the date and nature of each modification); (ii) the commencement dates of the Predevelopment Period, Initial Term and any exercised Extended Term (if any), the Expiration Date, each Phase Commencement Date (if any) and the date, if any, to which all Rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Tenant of any Event of Default by Tenant which has not been cured, except as to defaults specified in such certificate; (iv) that to the actual knowledge of the person signing such certificate, without investigation or inquiry, Landlord is not in default under this Lease, except as to defaults specified in such certificate; and (v) such other matters as may be reasonably requested by Landlord or any actual or prospective purchaser of the Premises or mortgage lender of Landlord. Any such certificate may be relied upon by Landlord and any actual or prospective purchaser of the Premises or mortgage lender of Landlord.

(b) At any time and from time to time, Landlord shall, within twenty (20) days after written request by Tenant or any existing or prospective Mortgagee, execute and deliver to Tenant or such Mortgagee, a certificate certifying to the extent factually correct: (i) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the date and nature of each modification); (ii) the commencement dates of the Predevelopment Period, Initial Term and any

exercised Extended Term (if any), the Expiration Date, each Phase Commencement Date (if any) and the date, if any, to which all Rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Landlord of any default by Landlord hereunder which has not been cured, except as to defaults specified in such certificate; (iv) that to the actual knowledge of the person signing such certificate, without investigation or inquiry, Tenant is not in default under this Lease, except as to defaults specified in such certificate; and (v) such other matters as may be reasonably requested by Tenant or any such existing or prospective Mortgagee. Any such certificate may be relied upon by Tenant, any such existing or prospective Sublessee, any existing or prospective Mortgagee (or, if any Mortgagee has acquired Tenant's leasehold estate pursuant to ARTICLE 14, to a prospective transferee of such Mortgagee).

ARTICLE 20 NOTICES

20.1 Method. Except as otherwise specifically provided in this Lease, all requests, approvals, consents, notices and other communications under this Lease shall be properly given only if made in writing and either deposited in the United States mail, postage prepaid, certified with return receipt requested, or delivered by hand (which may be through a messenger or recognized delivery, courier or air express service), and addressed to the applicable Party as specified in the Basic Lease Information (or to such other personnel or place as a Party may from time to time designate in a written notice to the other Party). Such requests, approvals, consents, notices and other communications shall be effective on the date of receipt (evidenced by the certified mail receipt) if delivered by United States mail, or of hand delivery if hand delivered. If any such request, approval, consent, notice or other communication is not received or cannot be delivered due to a change in the address of the receiving Party of which notice was not previously given to the sending Party or due to a refusal to accept by the receiving Party, such request, approval, consent, notice or other communication shall be effective on the date delivery is attempted. Any request, approval, consent, notice or other communication under this Lease may be given on behalf of a Party by the attorney for such Party.

20.2 Parties Entitled to Notice. A Master Developer may give to Landlord and Tenant a written notice requesting copies of any notice given under ARTICLE 15, or any Mortgagee may give to Landlord a Mortgagee Request for Notice, and Landlord shall give such Master Developer and Mortgagees copies of the applicable notice at the same time as it gives such notice to Tenant and by the same method as such notice was given to Tenant. The obligation of Landlord to give such notices shall, with respect to notices to a Mortgagee, expire upon the reconveyance of the Mortgage held by such Mortgagee or, with respect to notices to a Master Developer, upon the expiration of the term or earlier termination of the Master Developer Sublease.

20.3 Close Calls and Mishaps.

(a) If, in Tenant's discretion, Tenant believes that a Close Call or Mishap may become highly visible outside of Tenant's organization (such as by the media or a governmental agency), then Tenant shall promptly notify Landlord by telephoning the NASA Ames Safety, Health and Medical Services Division at (650) 604-5602.

(b) In addition, if a Mishap involves the death of an employee, or the hospitalization for inpatient care of three (3) or more employees, then as soon as reasonably feasible after the Mishap but in no event more than eight (8) hours after Tenant has knowledge of any such Mishap, Tenant shall notify both the Occupational Safety and Health Administration by telephoning the area office nearest the site of the Mishap or its toll free number at (800) 321-6742, and the NASA Ames Safety, Health and Medical Services Division at (650) 604-5602. If Tenant obtains knowledge of a fatality or hospitalization of three (3) or more employees after the eight (8) hour period described above, Tenant shall notify the foregoing offices as soon as reasonably feasible but within thirty (30) days of the Mishap.

(c) The Center Director reserves the right to investigate any Mishap in accordance with Landlord's policies and procedures.

20.4 Current Officials. Landlord shall endeavor to deliver to Tenant notice of changes in the Center Director and the CBO; provided, however, Landlord shall not incur any liability as a result of its failure to do so.

ARTICLE 21 MISCELLANEOUS

21.1 General. When required by the context of this Lease, the singular includes the plural. The terms "include" and "including" as used in this Lease shall be construed as terms of illustration and not terms of exclusion, and Landlord and Tenant hereby agree that the provisions of Section 3534 of the California Civil Code shall not apply to this Lease, to the extent such provisions are inconsistent with that principle. The term "month," when not specified to be a calendar month, shall mean a period commencing as of a particular date and continuing to and including the date immediately preceding the same date of the next calendar month (or, if the next calendar month does not contain such a same date due to it being shorter in duration, then continuing to and including the last day of such next calendar month). The term "year," when not specified to be a Fiscal Year or calendar year, shall mean a period commencing as of a particular date and continuing to and including the date immediately preceding the same date of the next calendar year (or, if the next calendar year does not contain such a same date due to the previous year being a leap year, then continuing to and including February 28th of such next calendar year). References to sections or provisions of any statutes, codifications of statutes, rules, regulations, ordinances, or policy directives, procedural requirements, procedures and guidelines, standards or other policy guidance of Landlord or NASA Ames Research Center (including APDs), shall be deemed to also refer to any successor sections or provisions pertaining to the same subject matter. The words "approval," "consent," "notice" and "notification" shall be deemed to be preceded by the word "written." If there is more than one Tenant, the obligations hereunder imposed upon Tenant shall be joint and several. Time is of the essence of this Lease and each and all of its provisions. This Lease shall benefit and bind Landlord and Tenant and the permitted personal representatives, heirs, successors and assigns of Landlord and Tenant. The liability of Tenant under this Lease shall survive the termination of this Lease with respect to acts or omissions that occur before such termination. If any provision of this Lease is determined to be illegal or unenforceable, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect.

Article and Section headings in this Lease are for convenience only and are not to be construed as a part of this Lease or in any way limiting or amplifying the provisions thereof.

21.2 Delay.

(a) Except as otherwise provided in this Lease, Tenant shall not be considered in breach or default under this Lease (including any Exhibits hereto) in the event of a delay in the performance of its obligations due to Force Majeure Delay or Landlord Delay, and the time or times for performance of Tenant under this Lease (including any Exhibits hereto) shall be extended for the period of such delay (including any remobilization or recovery period required as a consequence of such event of Force Majeure Delay or Landlord Delay). Tenant shall give Landlord notice if Tenant becomes aware that a Landlord Delay has occurred or is in imminent danger of occurring, and if Landlord takes appropriate measures to prevent such delay or to cure the effects of such delay to Tenant's satisfaction, in Tenant's reasonable discretion, within five (5) Business Days after receipt of Tenant's notice, no Landlord Delay shall be deemed to have occurred. Notwithstanding the foregoing provisions of this Section 21.2(a), no Force Majeure Delay or Landlord Delay shall operate to excuse, abate or delay Tenant's obligation to pay Rent

(b) Landlord shall not be considered in breach or default under this Lease (including any Exhibits hereto) in the event of a delay in the performance of its obligations due to Force Majeure Delay, and the time or times for performance of Landlord under this Lease (including any Exhibits hereto) shall be extended for the period of such delay.

21.3 No Member Liability. Landlord shall look solely to Tenant for recovery of any judgment from Landlord. Without limiting the generality of the foregoing, if Tenant is a partnership, its partners whether general or limited, or if Tenant is a limited liability company, its members, managers or officers, or if Tenant is a corporation, its directors, officers or shareholders, shall never be personally liable for any such judgment. Any lien obtained to enforce any such judgment and any levy of execution thereon shall be subject and subordinate to the Mortgage of any Mortgagee of Tenant.

21.4 No Landlord's Lien. Landlord shall not have any lien, other than a judgment lien resulting from a judgment hereafter entered, against any Personal Property of Tenant or any Sublessee or against any rents or other proceeds payable under any Sublease.

21.5 Cooperation; Further Assurances. In light of the long term nature of this Lease and the significant investments that the Parties will make over the Term, the Parties agree that they shall cooperate reasonably and in good faith in the conduct of the landlord/tenant relationship arising hereunder. The Parties agree to cooperate with each other to minimize adverse impacts to, and unreasonable interference with, the other Party's operations and activities on and about the Property or the Premises as the case may be. The Parties further acknowledge that this Lease and the proposed development of the Premises may generate public inquiries, including inquiries from the media, and the Parties agree to use best efforts to address such inquiries and coordinate responses, as appropriate. During the Term, the Parties agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents and agreements as may be reasonably necessary or proper to carry out the purpose and effect the terms of this Lease.

21.6 Standard for Consents and Approvals. Except for any reference in this Lease to a decision or election to be made in sole and absolute discretion of a Party or words to that effect, any time the consent or approval of Landlord or Tenant is required under this Lease (including with respect to building and other permits, and certificates of occupancy), such consent or approval shall not be unreasonably withheld, delayed or conditioned. Whenever this Lease grants Landlord or Tenant the right to take action, exercise discretion, establish rules or regulations or make allocations or other determinations, Landlord and Tenant shall act reasonably and in good faith and take no action which is reasonably likely to result in the frustration of the reasonable expectations of Landlord and Tenant concerning the benefits to be enjoyed under this Lease.

21.7 Dispute Resolution. If either Party believes that a dispute exists under this Lease, then such Party may elect to declare a dispute by delivering a General Dispute Notice to the other Party. If a dispute is so declared, then the NASA Research Park Account Manager and Tenant's Authorized Representative assigned to the Premises shall meet and communicate (in person, by telephone, electronically or otherwise) as frequently as reasonably feasible during the thirty (30) days following delivery of the General Dispute Notice in a good faith effort to resolve the dispute. If such individuals are unable to resolve the dispute within that thirty (30) day period, then the dispute shall be referred to the NASA Ames Research Center's Director of NASA Research Park and Tenant's Vice President of Real Estate and Workplace Services (or an individual holding a similar ranking position within Tenant). Such individuals shall meet and communicate (in person, by telephone, electronically or otherwise) as frequently as reasonably feasible during the thirty (30) days following referral of the dispute in a good faith effort to resolve the dispute. If such individuals are unable to resolve the dispute within that thirty (30) day period, then the dispute shall be referred to the Center Director and Tenant's Chair (or their respective designees), who shall meet and communicate (in person, by telephone, electronically or otherwise) as frequently as reasonably feasible during the thirty (30) days following referral of the dispute in a good faith effort to resolve the dispute. If such individuals are unable to resolve the dispute within that thirty (30) day period, then either Party may exercise any right or remedy set forth in this Lease or which is otherwise available at law or in equity. Where a particular individual of Landlord is named in this Section 21.7, the Center Director may specify another individual of approximately equivalent rank to perform the duties assigned to the individual so named in this Section 21.7.

21.8 Diligence. In circumstances where Tenant or a Mortgagee is required to use "reasonable efforts," "commercially reasonable efforts," "reasonable (or due) diligence" or "commercially reasonable diligence" or the like, or in circumstances where the exercise of a right or remedy by Landlord is deferred during the use of such efforts or diligence by the other to cure a failure of performance, such standard shall not be deemed to preclude Tenant or a Mortgagee from granting to its counterparty (including a Sublessee or a borrower) commercially reasonable accommodations, including commercially reasonable extensions of the time in which to pay money or perform other obligations, to the extent that Tenant or such Mortgagee believes in good faith that such accommodations may materially increase the probability that the obligations as to which the counterparty is then in default will be performed.

21.9 No Waiver. The waiver by Landlord or Tenant of any breach of any covenant in this Lease shall not be deemed to be a waiver of any subsequent breach of the same or any other

covenant in this Lease, nor shall any custom or practice which may exist or be created between Landlord and Tenant in the administration of this Lease be construed to waive or to lessen the right of Landlord or Tenant to insist upon the performance by Landlord or Tenant in strict accordance with this Lease. The subsequent acceptance of Rent hereunder by Landlord or the payment of Rent by Tenant shall not waive any preceding breach by Tenant of any covenant in this Lease, nor cure any Event of Default, nor waive any forfeiture of this Lease or unlawful detainer action, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's or Tenant's knowledge of such preceding breach at the time of acceptance or payment of such Rent.

21.10 No Merger of Title. There shall be no merger of the leasehold estate created by this Lease with fee title to the Premises or any portion thereof by reason of the fact that the same person may own or hold both such leasehold estate and fee title. No such merger of title shall occur unless and until all persons, including any Mortgagee, with an interest in either the leasehold estate created by this Lease and fee title to the Premises shall join in a written instrument effecting such merger and shall duly record the same in the Official Records of Santa Clara County, California. The voluntary surrender of this Lease by Tenant to Landlord, or a mutual cancellation thereof, or the termination thereof by Landlord pursuant to any provision contained herein, shall not work a merger, but, at the option of Landlord, and subject to the terms of any applicable Recognition Agreement, shall either terminate any or all existing Subleases or subtenancies hereunder, or operate as an assignment to Landlord of any or all of such Subleases or subtenancies.

21.11 No Third Party Beneficiary. Except for a Mortgagee (whose rights and obligations are specifically set forth in ARTICLE 14), and except as expressly provided elsewhere in this Lease, this Lease shall not, nor be deemed nor construed to, confer upon any person or entity, other than the Parties hereto, any right or interest, including any third party beneficiary status or any right to enforce any provision of this Lease. Without limiting the foregoing, no provision of this Lease which refers to the Master Developer (including with respect to approvals or consents) shall be deemed to confer any right on the Master Developer (including any right of approval or consent), it being agreed that: (i) such references to the Master Developer are for the convenience of Landlord and Tenant only; and (ii) the Master Developer shall only have those rights expressly granted in an ENA, Master Developer Sublease, Development Agreement and Recognition Agreement as to which such Master Developer is a party.

21.12 Representations and Warranties of Tenant. Tenant hereby represents and warrants to Landlord as follows:

(a) Tenant is a limited liability company, duly formed and validly existing under the laws of the State of Delaware, and qualified to do business in the State of California.

(b) Tenant has the right, power, legal capacity and authority to enter into and perform its obligations under this Lease, and no approval or consent of any person is required in connection with Tenant's execution and performance of this Lease. The execution and performance of this Lease will not result in or constitute any default or event that would, with notice or lapse of time or both, be a default, breach or violation of the organizational instruments

governing Tenant or any agreement or any order or decree of any court or other governmental authority to which Tenant is a party or to which it is subject.

(c) Tenant has taken all necessary action to authorize the execution, delivery and performance of this Lease and this Lease constitutes the legal, valid and binding obligation of Tenant.

(d) All individuals executing this Lease on behalf of Tenant are authorized to execute and deliver this Lease on behalf of Tenant.

21.13 Authority of NASA Signatory. The individual executing this Lease on behalf of NASA has been delegated the authority to execute and deliver this Lease on behalf of NASA.

21.14 Exhibits. The exhibits and any other attachments specified in the Basic Lease Information are attached to and made a part of this Lease.

21.15 Broker(s). Each Party shall be responsible for the fees and commissions due to any broker or finder engaged by such Party, if any, in the consummation of the transaction contemplated by this Lease.

21.16 Waivers of Jury Trial and Certain Damages. Landlord and Tenant each hereby expressly, irrevocably, fully and forever releases, waives and relinquishes any and all right to trial by jury and any and all right to receive punitive, exemplary and consequential damages from the other (or any past, present or future member, trustee, director, officer, employee, agent, representative, or advisor of the other) with respect to any Claim as to which Landlord and Tenant are parties that in any way (directly or indirectly) arises out of, results from or relates to any of the following, in each case whether now existing or hereafter arising and whether based on contract or tort or any other legal basis: (i) this Lease; (ii) any past, present or future act, omission, conduct or activity with respect to this Lease; (iii) any transaction, event or occurrence contemplated by this Lease; (iv) the performance of any obligation or the exercise of any right under this Lease; or (v) the enforcement of this Lease. Landlord and Tenant reserve the right to recover actual or compensatory damages, with interest, attorneys' fees, costs and expenses as provided in this Lease, for any breach of this Lease.

21.17 Entire Agreement. There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, offers, agreements and understandings, oral or written, if any, between Landlord and Tenant or displayed by Landlord to Tenant with respect to the subject matter of this Lease, the Premises or Property. There are no commitments, representations or assurances between Landlord and Tenant or between any real estate broker and Tenant other than those expressly set forth in this Lease and all reliance with respect to any commitments, representations or assurances is solely upon commitments, representations and assurances expressly set forth in this Lease. Except as provided in Section 21.18 below, this Lease may not be amended or modified in any respect whatsoever except by an agreement in writing signed by Landlord and Tenant.

21.18 Memoranda of Understanding. For the mutual convenience of the Parties, the Parties may enter into one or more written memoranda of understanding or similar instruments to

record or affirm any agreement of the Parties regarding the implementation of the terms and conditions of this Lease and/or the transactions contemplated by this Lease. Any such memorandum of understanding or other instrument shall be binding upon the Parties to the extent provided therein.

21.19 Governing Law. Except to the extent the same may be in conflict with the laws of the United States, the laws of the State of California shall govern the validity, construction and effect of this Lease. In instances where the laws of the United States refer to the laws of the state applicable to a transaction, such reference shall be made to the laws of the State of California, including California Civil Code §§1542, 1951.2 (as limited by the last sentence of Section 1951.2) and 1951.4. The provisions of this Lease pertaining to appraisals or mediation shall not, however, be governed by the provisions of the laws of the State of California pertaining to arbitration.

21.20 Anti-Deficiency Act. Landlord's ability to perform its obligations under this Lease is subject to the availability of appropriated funds. Nothing in this Lease commits the United States Congress to appropriate funds for the purposes stated herein (pursuant to the Anti-Deficiency Act, 31 U.S.C. §1341). Without limiting the foregoing, Tenant agrees that: (a) except for the blended cost of capital described in Section 7.3(d), no interest shall accrue or be paid on any amount that is in-kind consideration or a credit pursuant to Sections 7.13 or 9.1(c); and (b) Landlord has no obligation to pay to Tenant the unused or uncredited balances of any amount that is in-kind consideration or a credit under this Lease upon the expiration or earlier termination of this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on December 12, 2008.

Tenant:

UNIVERSITY ASSOCIATES - SILICON VALLEY LLC, a Delaware limited liability company

By: 
George R. Blumenthal
Chair

Landlord:

THE UNITED STATES OF AMERICA,
acting by and through the NATIONAL
AERONAUTICS AND SPACE
ADMINISTRATION, an Agency of the United
States

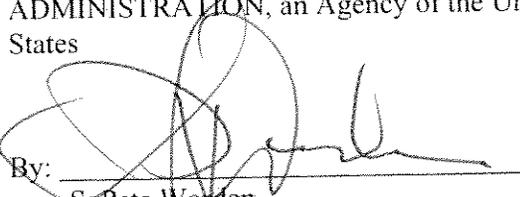
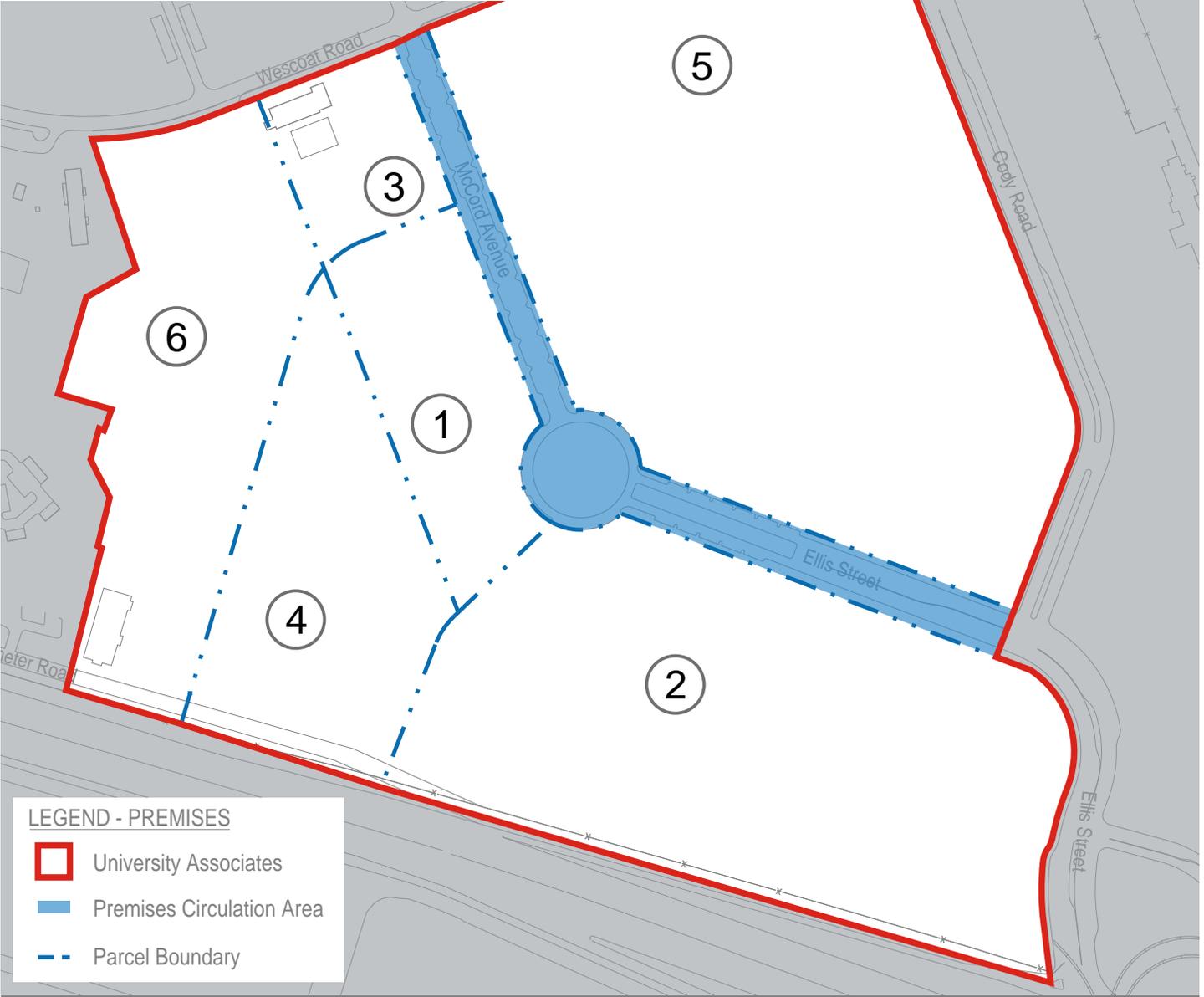
By: 
S. Pete Worden
Director, Ames Research Center

EXHIBIT A
DIAGRAM OF THE PREMISES

(please see following page)

University Associates Parcel Map - Premises

Parcel	Parcel Area (AC)
1	4.8
2	19.5
3	2.5
4	7.7
5	28.6
6	9.7
Premises Circulation Area	4.6
Sub Total	77.5



LEGEND - PREMISES

- University Associates
- Premises Circulation Area
- Parcel Boundary

NASA AMES RESEARCH CENTER

Moffett Federal Airfield, California

PROJECT:
NRP SOUTH CAMPUS PARCEL MAP
University Associates Premises

EXHIBIT:
A

DATE:
14 NOV 08

SCALE: **N.T.S.**

REFERENCE:
UDA Premises_13Nov08.dwg

EXHIBIT B

LIST OF ENVIRONMENTAL REPORTS

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- Harding Lawson Associates, Harding ESE. *Environmental Baseline Surveys*, October 18, 2000, March 5, 2001, October 3, 2001
- Harding Lawson Associates, Harding ESE. *Indoor Air Quality Investigation Buildings 476 and 543, Ames Research Center*; Prepared for PAI/ISSi, NASA Ames Research Center, Moffett Field, CA 94035-1000; Harding Project No. 50487 1, December 1, 2000
- Harding Lawson Associates, Harding ESE. *Indoor Air Quality Investigation Buildings 2, 15, 555, and 583C, Moffett Federal Airfield*; Prepared for PAI/ISSi, NASA Ames Research Center, Moffett Field, CA 94035-1000; Harding Project No. 54152 15.2, September 5, 2001
- Harding Lawson Associates, Harding ESE. *Revised Human Health Risk Assessment NASA Research Park Moffett Field, California* July 2003
- Harding ESE, Inc. *Lead Impacted Soil Summary Report and Sampling and Removal Action Workplan*, Final, NASA Research Park, Moffett Field, California July 24, 2002
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Neptune and Company, Inc. *Report for 2007 Annual Vapor Intrusion Sampling for Buildings N210 and 19 and Additional Baseline Sampling for Building 16*; Prepared for ISSI/SAIC, NASA Ames Research Center, Moffett Field, CA 94035-1000; Neptune Project No. 09501, August 30, 2007

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- US Navy. *Final Former Bldg. 88 Investigation Report*, Former Naval Air Station Moffett Field, Moffett Field, CA. March 7, 2008.
- US Navy. *Final Site 14 South Corrective Action Plan and Associated Work Plan*, Former Naval Air Station Moffett Field, Moffett Field, CA. May 25, 2004.
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- US Navy. *Final Addendum 2 to the Site 14 South Corrective Action Plan and Associated Work Plan for Underground Storage Tank Integrity Testing and Additional Site Assessment*, Former Naval Air Station Moffett Field, Moffett Field, CA. February 13, 2008.
- US Navy. *Draft Base-Wide Petroleum Site Evaluation Methodology Technical Memorandum, Appendix F, Naval Exchange Service Station*. May 21, 2001.
- US Navy. *Remaining UST Sites Investigation Field Work Plan*. Moffett Federal Airfield, August 17, 1999.
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- US Navy. *Final Base-Wide Petroleum Site Evaluation Methodology Technical Memorandum, Appendix L*, Moffett Federal Airfield. December 16, 2003.
- US Navy. *Draft Final Base-Wide Petroleum Site Evaluation Methodology Technical Memorandum, Appendix E, Site 19*, Moffett Federal Airfield. December 11, 2000.
- US Navy. *Final West-Side Aquifers Treatment System Piezometer Installation Work Plan*, Moffett Federal Airfield. November 19, 2001.
- US Navy. *Draft Final Phase II Basewide Tank Closure Report*, Moffett Federal Airfield. June 10, 2003.
- US Navy. *Engineering Evaluation/Cost Analysis, Revision 1*, Installation Restoration Site 29, Hangar 1, Former Naval Air Station Moffett Field, Moffett Field, CA, July 30, 2008.
- Zippin, D.B. and T.M. Engels. *Directed Rare Plant Surveys for California Sea- Blite and Point Reyes Bird's Beak at NASA Ames Research Center and Moffett Federal Airfield*, CA, 1997.

EXHIBIT C

FORM OF MEMORANDUM OF LEASE

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

University Associates – Silicon Valley LLC
c/o UC Santa Cruz
350 North Akron Road
Room 2091 Building 19
P.O. Box 58
Moffett Field, CA 94035

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (“Memorandum”) is dated as of _____, and entered into by and between THE UNITED STATES OF AMERICA, acting by and through the NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, an Agency of the United States (“Landlord”), and UNIVERSITY ASSOCIATES - SILICON VALLEY LLC, a Delaware limited liability company (“Tenant”).

RECITALS

A. Landlord is the owner of certain real property commonly known as NASA Ames Research Center (“NASA Ames”) located at Moffett Field, California.

B. On December 12, 2008, Landlord and Tenant executed a certain Enhanced Use Lease (“Lease”) pertaining to certain premises (“Premises”) that are a portion of NASA Ames, more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

NOW, THEREFORE, Landlord and Tenant hereby agree as follows:

1. Lease of Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises upon all of the terms, covenants and conditions set forth in the Lease.

2. Term. The Term commenced on December 30, 2008 and shall continue until expiration or earlier termination of the Term as provided in the Lease.

3. Incorporation by Reference. The purpose of this Memorandum is solely to provide notice of the existence of the Lease. The Lease is incorporated herein by this reference, and words and phrases used in this Memorandum which are not defined herein shall have the meanings given to them in the Lease. In the event, and to the extent, that any of the terms or provisions of this Memorandum are inconsistent with the terms or provisions of the Lease, the terms and provisions of the Lease shall govern and prevail.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum.

Tenant:

UNIVERSITY ASSOCIATES - SILICON VALLEY LLC, a Delaware limited liability company

By: _____
George R. Blumenthal
Chair

Landlord:

THE UNITED STATES OF AMERICA,
acting by and through the NATIONAL
AERONAUTICS AND SPACE
ADMINISTRATION, an Agency of the United
States

By: _____
S. Pete Worden
Director, Ames Research Center

EXHIBIT A
DESCRIPTION OF PREMISES

ACKNOWLEDGMENTS

STATE OF CALIFORNIA

COUNTY OF

On , before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public (Seal)

STATE OF CALIFORNIA

COUNTY OF

On , before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public (Seal)

EXHIBIT D

MEW CONSTRUCTION COORDINATION AGREEMENT

AGREEMENT FOR COORDINATION OF CONSTRUCTION
AND MEW REMEDIAL SYSTEM MODIFICATION WORK AT
NASA RESEARCH PARK, AMES RESEARCH CENTER, MOFFETT FIELD,
CALIFORNIA

**[Note: Landlord and Tenant acknowledge that this document is
subject to review, comment and approval by the MEW Companies]**

The National Aeronautics and Space Administration (“NASA”) enters into this Agreement for Coordination of Construction and MEW Remedial System Modification Work at NASA Research Park, Ames Research Center, Moffett Field, California (“Agreement”) with National Semiconductor (Maine), Inc. (formerly named Fairchild Semiconductor Corporation), a Delaware corporation, and Raytheon Company, a Delaware corporation (collectively, the “MEW Companies”), and University Associates - Silicon Valley LLC, a Delaware limited liability company (“Project Developer”). NASA enters into this Agreement pursuant to the authority of the National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. §§ 2451 et seq.

RECITALS

A. On June 9, 1989, the United States Environmental Protection Agency (“EPA”) issued a Record of Decision (the “MEW ROD”) for the Middlefield-Ellis-Whisman area of Mountain View, California. The MEW ROD was modified in September 1990 and April 1996 by EPA’s Explanations of Significant Differences. The MEW ROD requires the implementation of an EPA-approved regional groundwater remediation program (“RGRP”).

B. On November 29, 1990, pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (as so amended, “CERCLA”) (42 U.S.C. § 9606(a)), the EPA issued an Administrative Order for Remedial Design and Remedial Action for the MEW Site to Fairchild Semiconductor Corporation, Schlumberger Technology Corporation, National Semiconductor Corporation, NEC Electronics, Inc., Siltec Corporation, Sobrato Development Companies, General Instrument Corporation, Tracor X-Ray, Inc., and Union Carbide Chemicals and Plastics Company Inc. (the “106 Order”).

C. On May 9, 1991, pursuant to CERCLA, the EPA entered into a Consent Decree with Intel Corporation and Raytheon Company to compel them to perform remedial actions at the MEW Site.

D. As part of the RGRP, the MEW Companies have installed, operate, monitor and maintain a groundwater monitoring and remedial system (“Remedial System”) on Moffett Field (“Moffett”) under the direction of EPA. The Remedial System’s components include, but are not limited to, groundwater monitoring wells, groundwater extraction wells, single and double-contained pipelines, air relief structures, electrical power and instrumentation conduits, fiber-

optic instrument systems, electrical field control panels, leak detection systems, radio frequency communication links, settlement pin monuments and a groundwater treatment system (“GWTS”). The MEW Companies are required by EPA to operate the Remedial System GWTS and related extraction wells and components continuously except during maintenance. Approval for any shutdown of more than 24 hours duration must be obtained from the EPA Remedial Project Manager (“RPM”) in advance.

E. NASA has entered into a lease of approximately 75 acres of real property with the Project Developer to undertake redevelopment activities at Moffett. These activities include, but are not limited to, demolition, grading, trenching and other excavation work, and construction connected with the development of office, residential, educational, research and development, and other facilities (collectively, “Project Development”).

F. NASA, the MEW Companies and the Project Developer enter into this Agreement to minimize any impact of Project Development on the operation, monitoring, maintenance and modification of the Remedial System and to allow the MEW Companies and the EPA access to the Remedial System during and after Project Development; and to delineate the roles and responsibilities for managing contaminated soil and groundwater that is excavated during the Project Development. NASA, the MEW Companies and the Project Developer recognize that, to coordinate Project Development and the continued operation of the Remedial System effectively, it will be necessary for NASA, the Project Developer and the MEW Companies to be in regular, frequent communication.

G. The Parties to this Agreement all agree that all actions to be taken hereunder shall be in compliance with all applicable laws and, to the extent required by law, will receive the approval of all state and federal agencies having jurisdiction over such actions.

NOW, THEREFORE, NASA, Project Developer and the MEW Companies agree as follows:

AGREEMENT

1. Geographic Scope of Agreement

This Agreement applies only within those geographical parts of Moffett that are or will be physically affected by the construction work performed by the Project Developer in connection with the Project Development and located within the areas designated as AR-1 and AR-3 on the attached Figure 1, together with other areas that may be affected by extensions of portions of the Remedial System that extend from AR-1 and/or AR-3.

2. Scheduling of Work

The Project Developer shall meet with the MEW Companies as early as possible during Project Development planning to coordinate Project Development with the operation, monitoring, maintenance and modification of the Remedial System. Detailed drawings showing the locations of the Remedial System components shall be provided by the MEW Companies to the Project Developer in CAD form so they can be integrated into the Project Developer’s plans.

3. Remedial System Protection and Modification; Exacerbation of Contamination

During Project Development, (i) the Project Developer shall protect the integrity of all components of the Remedial System and shall take all reasonable measures to minimize Remedial System downtime, in each case to the extent the Remedial System may be affected as a result of the Project Development, and (ii) the MEW Companies shall operate the Remedial System in a manner that, to the extent reasonably possible and subject to the express requirements of this Agreement, minimizes interference with the ongoing Project Development. After completion of Project Development, the MEW Companies both (a) shall protect the integrity of all components of facilities resulting from the Project Development and (b) shall take all reasonable measures to minimize interference with the Project Developer's use of its facilities, in each case to the extent they may be affected as a result of the operation of the Remedial System, provided that the MEW Companies shall not be required to relocate components of the Remedial System as they exist on the date of this Agreement. The Project Developer shall pay any costs of relocation, replacement, alteration, protection, modification, or repair of the Remedial System caused by Project Development, to the extent any such relocation, replacement, alteration, protection, modification or repair is required by applicable laws and/or is required for the Remedial System to operate in substantially the same manner it operated prior to any such relocation, replacement, alteration, protection, modification or repair caused or necessitated by the Project Development. In addition, if the Project Developer damages any Remedial System component in a manner that causes a release of untreated groundwater or soil or if the Project Developer exacerbates existing soil or groundwater contamination, the Project Developer shall pay all costs of investigation, remediation, EPA oversight, and any penalties associated with such release or exacerbation. The design and construction of any modification to the Remedial System shall be performed by the MEW Companies; all modification costs, including EPA oversight costs, shall be paid by the Project Developer, subject to Section 18.

4. Well Protection

The Project Developer shall repair any damage to Remedial System wells caused by Project Development. Prior to the initial Project Development demolition or construction field work, the MEW Companies shall field locate all Remedial System wells. Prior to the start of Project Development field work, the Project Developer shall install brightly painted steel pipes over each Remedial System monitoring and extraction well designated by the MEW Companies. The painted pipe shall extend above ground not less than four feet, so as to be highly visible, and shall be buried sufficiently below the ground surface to protect the wellhead. Alternative equivalent well protection measures may be used by the Project Developer provided the MEW Companies approve any alternative protective measure in writing prior to its use.

Additionally, all Project Development work within two (2) feet of Remedial System wells shall be performed manually with hand tools. Fine grading work performed in areas more than two feet from the Remedial System wells but within close proximity shall be performed by light grading equipment.

5. Well Sealing and Well Replacement

If the Project Developer determines that a Remedial System well conflicts with the planned Project Development and must be removed, the Project Developer shall pay all costs of well sealing and replacement and all related MEW Companies' costs, including but not limited to the cost of installing replacement conduit, piping, boxes, controls and all other components needed to return a well to service, developing the well, conducting a baseline first round of groundwater sampling, and preparing all required plans, surveys and reports. The Project Developer shall be responsible for sealing all wells located within 15 feet of the outer wall of a new building. No well shall be sealed or relocated without the prior written approval of the EPA RPM. Well sealing and installation shall comply with Santa Clara Valley Water District ("SCVWD") guidance and take place under SCVWD permit. Coordination with EPA and well sealing and replacement shall be performed by the MEW Companies, at the Project Developer's sole cost, subject to Section 18.

6. Remedial System Pipeline Protection and Replacement

Prior to initial Project Development field work, the Project Developer shall provide and place steel plate or equivalent protective measures over the existing MEW Companies' pipelines and power and control conduits. If the Project Developer determines that a pipeline conflicts with the planned Project Development and must be removed and relocated, the Project Developer shall pay all costs related to pipeline removal and replacement, including but not limited to design, permitting, review, inspection, construction and independent quality assurance inspection costs. The Project Developer shall be responsible for removing and relocating all pipelines located within five feet of the outer edge of the footing or foundation of a new building. No pipeline shall be relocated without the prior approval of the EPA RPM. Replacement pipeline installation procedures shall also be approved by the EPA RPM. Coordination to obtain EPA approval, and pipeline removal and replacement work, shall be performed by the MEW Companies at the Project Developer's cost, subject to Section 18.

7. Notification of Shutdown of Groundwater Extraction Wells or GWTS

If, during Project Development, the Project Developer believes it to be necessary that either a Remedial System extraction well or the GWTS be shut down, the Project Developer shall make written request of same to the MEW Companies no later than five (5) working days in advance of the proposed shutdown. If such shutdown does not require EPA approval, the MEW Companies shall, within five (5) working days of receipt of the Project Developer's written request, notify Project Developer in writing either that (a) the MEW Companies consent to such request, including information on the anticipated timing of the shutdown or (b) the MEW Companies do not consent to such request and the reason(s) for such refusal. If such shutdown does require EPA approval, the MEW Companies shall, promptly upon receipt of the Project Developer's written request, make appropriate application to EPA for its consent and shall notify the Project Developer of EPA's response within one (1) working day of its receipt of EPA's response or, failing a response from EPA within fifteen (15) working days, shall notify the Project Developer of EPA's lack of response and any additional steps the MEW Companies have taken to elicit a response. In the event of an inadvertent shutdown of any component of the Remedial System, the Project Developer shall give immediate verbal notice to the MEW

Companies, and the MEW Companies shall be responsible for any required notice to EPA pursuant to the 106 Order. Additionally, the Project Developer shall provide to the MEW Companies a written explanation of the reason for and the duration of any inadvertent shutdown within 48 hours of the shutdown.

8. Access to Wells and the GWTS

Project Development shall be performed in such a way that all Remedial System wells, pull boxes and the GWTS and associated components remain accessible to the EPA and the MEW Companies and their equipment for sampling, operation, maintenance, removal and replacement of pumps, and well sealing to the maximum extent practicable during and after Project Development. If it becomes necessary to restrict access to a well or other Remedial System component during Project Development, the Project Developer shall provide written notice to the MEW Companies five working days in advance of creating the restriction, with an explanation of the reason for and the expected duration of the proposed restricted access. Prior to the initial Project Development field work, the MEW Companies shall provide the Project Developer with the schedule for well sampling.

9. Modifications to Well Vaults and Wellheads

Following completion of final grade by the Project Developer, the MEW Companies shall modify the MEW wells, well vaults, and pull boxes as needed based on the final grade established by the Project Developer. All costs associated with these modifications shall be paid by the Project Developer, subject to Section 18.

10. Communications

The Project Developer, all of its contractors, the MEW Companies, all of their contractors, and NASA shall each designate in writing a primary and alternate contact person, including all applicable mailing addresses, telephone numbers, email addresses and facsimile numbers. The MEW Companies shall have sole authority and responsibility for all communications with EPA regarding the Remedial System, including its operating status, any Project Development-related shutdowns and any modifications. The Project Developer shall provide the MEW Companies with all demolition, grading and construction work schedules, a full set of civil, landscaping, foundation and utility plans and specifications, and updates to these plans and specifications and schedules promptly as they occur. The MEW Companies and their contractor shall be notified of and invited to weekly construction meetings that pertain to these plans and schedules.

11. Monitoring and Sampling of Excavated Soil

The Project Developer or NASA shall monitor all excavated soil to determine if the soils contain volatile organic compounds (“VOCs”) or petroleum constituents. Vadose zone soils shall be stockpiled and managed separately from saturated zone soils. The Project Developer shall remove and segregate concrete, asphalt, wood, piping and other demolition debris from soil and shall manage and dispose of demolition debris in accordance with all applicable regulations. The Project Developer shall pay all costs related to demolition debris disposal.

NASA, at the Project Developer's expense and in compliance with applicable laws, shall monitor and sample soils generated from trenching and other excavation work throughout trenching and excavation activities. The soil being removed shall be visually observed for evidence of discoloration or staining. Soil exhibiting these characteristics shall be analyzed using an organic vapor analyzer ("OVA") or equivalent device before stockpiling. Excavated soil shall be field-screened using an OVA (or equivalent) to determine if the excavated soils are clean or may be chemically affected. Field screening shall be performed in a manner acceptable to EPA, which the Project Developer, NASA and the MEW Companies currently expect will be performed with an OVA (or equivalent) at a rate of one soil sample for every 15 cubic yards of excavated soil. Excavated soils that show a continuous reading of five parts per million ("ppm") or greater for at least ten seconds using the OVA (or equivalent) shall be considered as possibly containing chemicals, and shall be segregated. NASA shall transfer soil exhibiting these characteristics to a plastic-lined stockpile area in or near the area of trenching or excavation. Soil samples shall be collected from random locations within the stockpile at a rate of two samples for every 50 cubic yards of stockpiled soil. Each of the two samples shall consist of at least five composite samples representative of the stockpiled soil. The samples shall be submitted to a state-certified laboratory and analyzed using EPA Method 8260 (or its superceding EPA Method), including cis-1, 2-dichloroethene and Freon 113 and EPA Method 8015 (or its superceding EPA Method) for high and low boiling point total petroleum hydrocarbons ("TPH"). After the soil has been verified to conform to the soil cleanup standards specified in the MEW ROD, the soils may be used for on-site cover or backfill. Clean soil that is tested using the field head space method with an OVA (or equivalent) that does not have a reading greater than five ppm for at least ten seconds also may be used for on-site cover or backfill. Soil that does not qualify as clean soil shall be managed in accordance with Sections 13.2 through 13.6 of this Agreement.

11.1 Excavated Soil Classification and Monitoring Procedure

The Project Developer or NASA shall monitor excavated soil with an OVA (or equivalent) to determine if the soils are clean or may contain chemicals, as defined below:

Clean Soil: Soil that does not have a reading greater than five ppm continuously for ten seconds using the field head space method with an OVA (or equivalent) specified below will be considered clean soil.

Soil Containing Chemicals: Soil that does not meet the definition of clean soil will be considered soil containing chemicals.

11.2 Field Head Space Methods:

(a) A soil sample shall be taken from excavated soil in the backhoe bucket at a point out of the excavation.

(b) The soil to be tested shall be placed into an unused re-sealable plastic bag or clean mason jar container with a minimum volume of one quart or one liter, until the container is half full.

(c) The container shall be sealed and left to sit under direct sunlight for approximately five minutes.

(d) The container shall be opened just enough to allow the probe of the OVA (or equivalent) to be inserted into the container's headspace.

(e) Any sample having a reading of five ppm or greater continuously for at least ten seconds shall be considered soil containing chemicals.

12. Notification of Saturated Soil Containing VOC

If VOCs are determined to exist in saturated zone soils, the Project Developer shall immediately notify the MEW Companies' representative.

13. Management and Disposition of Soils

13.1 Clean Soil

NASA shall be responsible for the determination as to whether soil qualifies as clean soil either because it has been classified as clean soil in accordance with Section 11.1 of this Agreement or has been treated to the soil cleanup standards specified in the MEW ROD. Clean soil that does not require treatment may be reused for cover or backfill or shall be transported to the open field north of Electrical Substation West (N225A) on Moffett, shown as Area A on the attached Figure 2, or to other areas on Moffett designated by NASA, and spread by the Project Developer at the Project Developer's cost. NASA and the Project Developer agree that the MEW Companies shall not be responsible for (a) any determination made by NASA or the Project Developer that any soil qualifies as clean soil or that any soil may be used for any particular purpose at any particular location on Moffett, or (b) any other actions or omissions by NASA or the Project Developer with respect to their respective handling of soils pursuant to this Agreement.

13.2 Vadose Zone Soils and Saturated Soils Containing TPH

Vadose zone and saturated soils containing TPH from AR-1 (whether or not they also contain VOCs) shall be transported by the Project Developer to the bioremediation pad on the east side of Moffett, as shown on Figure 3, or to other areas on Moffett designated by NASA, and shall be managed by NASA in accordance with the procedures specified in the document entitled "Coordination of Construction and Navy Remedial System Modification Work."

Vadose zone and saturated soils containing TPH from AR-3 (whether or not they also contain VOCs) shall be transported by the Project Developer to the bioremediation pad at the northwest corner of Moffett, shown as Area C on Figure 2, or to other areas on Moffett designated by NASA, and shall be managed by NASA.

13.3 Saturated Zone Soils Containing Only VOCs

The Project Developer shall notify the MEW Companies promptly if any saturated zone soil in AR-1 or AR-3 is determined by analytical testing to contain only those

VOCs associated with the MEW plume at concentrations exceeding MEW ROD soil cleanup standards. The MEW Companies shall manage and dispose of these soils at their cost. The Project Developer or NASA shall promptly make available to the MEW Companies copies of analytical soil data. Following review of the data, any soils that are found to be the responsibility of the MEW Companies shall be delivered by the Project Developer to a soil aeration facility on Moffett at the location shown as Area B on Figure 2 (the “MEW Soil Aeration Facility”) and treated and/or disposed of by the MEW Companies. Treatment or offsite disposal of the soil shall be at the discretion and timing of the MEW Companies, in accordance with CERCLA Section 121(d). If treated, the soils shall be treated to the soil cleanup standards specified in the MEW ROD. The Project Developer shall pay all costs of excavating and delivering the soil to the MEW Soil Aeration Facility. The MEW Companies shall pay all costs of treating the soil and spreading the treated soil on-site or disposing of it offsite. If the MEW Companies elect to dispose of soil offsite, the MEW Companies shall select the offsite disposal site in accordance with CERCLA Section 121(d), subject to NASA’s approval, which shall not be withheld unreasonably, and NASA shall be designated the generator and sign all necessary waste manifests.

13.4 Polyethylene Liners

The Project Developer shall provide plastic liners and covers for the soil stockpiles located in the areas of trenching and excavation. The MEW Companies shall provide liners and covers for the soil at the MEW Soil Aeration Facility. The location of the soil stockpiles in the areas of trenching and excavation shall be designated by NASA.

13.5 MEW Soil Aeration Facility Sampling and Testing Procedures

Following aeration of soils treated by the MEW Companies pursuant to Section 13.3, the MEW Companies shall collect two discrete soil samples for every 50 cubic yards of treated soil. Each of the two samples shall consist of at least five composite samples representative of the treated soil. The samples shall be analyzed using EPA Method 8260 (or its superceding EPA Method), including cis-1,2-dichloroethene and Freon.

13.6 On-Site Reuse

After soil aerated by the MEW Companies has been determined to meet soil cleanup standards, the MEW Companies shall move the clean soil onto the open field adjacent to the MEW Soil Aeration Facility and spread it in a manner that effectively separates the clean soil from any soil remaining at or brought to the MEW Soil Aeration Facility for treatment.

13.7 Soil Management

All soil management plans (including, without limitation, those for screening, testing, treating and disposing of soils) shall be performed in accordance with EPA-approved plans to the extent required by the 106 Order.

14. Management and Discharge of Groundwater Generated During Excavation and Dewatering Activities

The Project Developer may be required to dewater pipeline trenches and other excavations and convey water away from excavations. Groundwater in the area of Project Development may contain VOCs or TPH. The Project Developer shall manage, contain and discharge all water removed from excavation areas. The Project Developer shall transport the water to above ground tanks, test the water by EPA Method 8260 and EPA Method 8015 (or their superceding EPA Methods) and discharge the water as follows:

14.1 Ground Water Containing TPH

If the groundwater from AR-1 contains TPH above 50 parts per billion (“ppb”) (or such lower standard as may in the future be established by EPA), as determined by EPA Method 8015 (or its superceding EPA Method), it shall not be discharged to the Remedial System GWTS. The Project Developer shall obtain all necessary approvals for discharge of such groundwater at alternate sites. (Depending on the chemical concentrations, the Project Developer may be able to obtain permission from the City of Sunnyvale Waste Water Treatment Plant or the City of Palo Alto Waste Water Treatment Plant to discharge the water to the NASA sanitary sewer systems.) The water shall be filtered before any discharge to the sewer system and the solids stored and subsequently managed by the Navy in accordance with the document entitled “Coordination of Construction and Navy Remedial System Modification Work.”

If the groundwater from AR-1 contains TPH above 50 ppb, and cannot be discharged to the sanitary sewer, the Project Developer shall deliver it to the Navy’s Westside Aquifer Treatment System on Moffett for treatment by the Navy.

If the groundwater from AR-3 contains TPH above 50 ppb, as determined by EPA Method 8015 (or its superceding EPA Method), it shall not be discharged to the Remedial System GWTS. The Project Developer shall obtain all necessary approvals for discharge of such groundwater at alternate sites. (Depending on the chemical concentrations, the Project Developer may be able to obtain permission from the City of Sunnyvale Waste Water Treatment Plant or the City of Palo Alto Waste Water Treatment Plant to discharge the water to the NASA sanitary sewer systems.) The water shall be filtered before any discharge to the sewer system and the solids stored and subsequently managed by the Navy in accordance with the document entitled “Coordination of Construction and Navy Remedial System Modification Work.”

If the groundwater from AR-3 contains TPH above 50 ppb, and cannot be discharged to the sanitary sewer, the Project Developer shall deliver it to NASA’s RGRP Treatment System on Moffett for treatment by NASA.

14.2 Groundwater Containing VOCs

If the groundwater from AR-1 or AR-3 contains TPH below 50 ppb (or such lower standard as may in the future be established by EPA) and contains VOCs that are identified as those associated with the MEW plume, the groundwater can be discharged, if acceptable to EPA (to the extent EPA approval is required by the 106 Order), to the Remedial System GWTS. If EPA approves (if such approval is so required), then the Project Developer

shall deliver the groundwater to clean Baker or similar tanks adjacent to the Remedial System GWTS at the location shown as the MEW Baker Tank Staging Area on Figure 4. The Project Developer shall inspect and sample the storage tanks before using them to insure that they are clean. Sample results shall be provided to the MEW Companies, and the MEW Companies shall have an opportunity to inspect the tanks before their use. Treatment and discharge of groundwater through the Remedial System GWTS shall be performed by the MEW Companies. All groundwater shall be filtered before it is pumped into the clean storage tanks to minimize sediment buildup in the storage tanks. All solids removed from the groundwater and any filters shall be stored and subsequently characterized, managed and disposed of in the same manner as contaminated soils as specified in Sections 11 through 13 of this Agreement. NASA shall be designated the generator and shall sign all necessary waste manifests for the solids and filter wastes. The Project Developer shall pay all costs associated with extraction, delivery and storage of groundwater prior to treatment at the GWTS. The MEW Companies shall pay all costs of pumping the groundwater from the storage tanks and treating it through the Remedial System GWTS. The MEW Companies shall treat the stored water within a reasonable timeframe.

15. Contractor Compliance With This Agreement

NASA, the MEW Companies, and the Project Developer each shall provide a copy of this Agreement to their respective contractors and subcontractors and shall ensure that compliance with this Agreement is made a material part of their respective agreements with their contractors and subcontractors.

16. NASA Appropriations

NASA agrees to use its best efforts in the performance of this Agreement. However, all NASA activities under or pursuant to this Agreement are subject to the availability of appropriated funds. No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that NASA or any other Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. Section 1341. Notwithstanding the foregoing, NASA agrees that, during the period in which this Agreement remains operative, NASA will be diligent in seeking appropriation of funds for the purpose of performing NASA's obligations set forth in this Agreement.

17. Notices

All written notices required by this Agreement shall be deemed effective (1) when delivered, if personally delivered to the person being served or (2) three business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

If To: "Project Developer":

University Associates - Silicon Valley LLC

Attn: _____

Facsimile: (____) ____ - _____

If To: "MEW Companies"

Fairchild Semiconductor Corporation

Clifford E. Kirchof

Remediation Manager

Schlumberger Limited

225 Sugar Land Drive

Sugar Land, TX 77478

Facsimile: (281) 285-8597

Jeffrey B. Axelrod, Esq.

Senior Counsel

Raytheon Corporation

141 Spring Street

Lexington, MA 02421

Facsimile: (781) 860-2788

If To: "NASA"

Mr. Don Chuck

NASA Ames Research Center

MS 237-14

Moffett Field, CA 94035

Facsimile: (650) 604-0680

18. Review/Audit of MEW Costs

With respect to any and all work to be performed by the MEW Companies hereunder at Project Developer's cost, including, without limitation, work performed pursuant to Sections 3, 5, 6 and 9 hereof:

18.1 All such work shall be conducted only to the extent required by applicable laws and/or to enable the Remedial System to operate in substantially the manner it operated prior to any damage, modification or alteration caused or required by the Project Development, and all costs related to such work shall be commercially reasonable and subject to Project Developer's prior approval in accordance with this Section 18, which approval shall not be unreasonably withheld or delayed;

18.2 Prior to commencing such work and incurring such costs, the MEW Companies shall provide to Project Developer a detailed description of such work and cost estimates and such back-up documentation as Project Developer may reasonably request, and Project Developer shall be given an opportunity to recommend revisions or modifications to such scope of work and cost estimates. Project Developer shall either approve or disapprove (with reasonable detail as to grounds for disapproval) such work scope and cost estimate within thirty (30) days after receipt of same, unless sooner approval or disapproval is required for emergency repairs, in which case Project Developer shall respond as promptly as reasonable practicable;

18.3 After completing such work and incurring such costs, the MEW Companies shall provide to Project Developer paid invoices and such other evidence of payment of such costs previously approved by Project Developer as Project Developer may reasonably request; and

18.4 Project Developer shall have a period of thirty (30) days after submission of such proof of payment to review such costs and the work performed and, at Project Developer's sole option and expense, to complete an audit of the MEW Companies' records with respect to such costs and work performed. If, as a result of such review and/or audit, Project Developer determines that any such work and/or costs are outside the scope of Project Developer's responsibility hereunder and/or were not approved by Project Developer as required hereunder, then Project Developer shall so notify the MEW Companies and the parties shall attempt to resolve such dispute extrajudicially. If the Project Developer and MEW Companies are unable to resolve such dispute extrajudicially, then either party may pursue any available remedy pursuant to applicable law or, by mutual agreement, may submit the dispute to such alternative dispute resolution procedure as may be mutually acceptable.

19. Effective Date

This Agreement shall take effect on _____, 20__.

IN WITNESS THEREOF, the following parties have entered into this Agreement.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

By: _____ Dated: _____
S. Pete Worden
Title: Director, Ames Research Center

UNIVERSITY ASSOCIATES - SILICON VALLEY LLC

By: _____ Dated: _____

Title: _____

RAYTHEON COMPANY

By: _____ Dated: _____
Title: _____

NATIONAL SEMICONDUCTOR (MAINE), INC.

By: _____ Dated: _____
Title: _____

EXHIBIT E

NAVY CONSTRUCTION COORDINATION DOCUMENT

AGREEMENT FOR COORDINATION OF CONSTRUCTION AND NAVY REMEDIAL SYSTEM MODIFICATION WORK AT NASA RESEARCH PARK, AMES RESEARCH CENTER, MOFFETT FIELD, CALIFORNIA

The National Aeronautics and Space Administration (“NASA”) enters into this Agreement for Coordination of Construction and Navy Remedial System Modification Work at the proposed NASA Research Park (“NRP”), Ames Research Center, Moffett Field, California (“Agreement”) with the United States Navy. NASA enters into this Agreement with the Navy pursuant to the authority of the National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. §§ 2451 et seq.

RECITALS

A. On June 9, 1989, the United States Environmental Protection Agency (“EPA”) issued a Record of Decision (the “MEW ROD”) for the Middlefield-Ellis-Whisman area of Mountain View, California. The MEW ROD was modified in September 1990 and April 1996 by EPA’s Explanations of Significant Differences. The MEW ROD requires the implementation of an EPA-approved regional groundwater remediation program (“RGRP”).

B. In September, 1990, a Federal Facility Agreement (“FFA”) under CERCLA Section 120 was signed by the EPA, the Navy, and the State of California, represented by the California Department of Health Services (“DHS”), and the California Regional Water Quality Control Board (“RWQCB”). The FFA states the Navy’s responsibilities for the investigation and remediation of contaminated soil and groundwater within the proposed NRP area.

C. On December 22, 1992, the Navy and NASA signed a Memorandum of Understanding (“MOU”) that stated the Navy would continue to be responsible for the investigation and remediation of its environmental contamination after the transfer of the

former Naval Air Station Moffett Field to NASA. In addition to the groundwater contamination, the MOU includes Navy responsibility for petroleum contamination in the soil and groundwater, and for lead in the soil caused by lead based paint on the buildings. This MOU was further clarified by the Navy in a letter signed on October 4, 1993, which stated that “The Navy’s obligations under the MOU shall include taking possession of, and properly managing any contaminated soil or groundwater that has been left in place in accordance with a CERCLA, RCRA, or other cleanup remedy but subsequently upon its excavation, disturbance, or discharge by NASA during development for reuse of Moffett Field becomes hazardous waste, or requires treatment prior to discharge.”

D. On December 17, 1993, EPA signed the Moffett Field FFA amendment, which had already been signed by the Navy, the California Department of Toxic Substance Control (“DTSC”) and the RWQCB. In this FFA amendment, the Navy adopted the MEW ROD for the remediation of soil and groundwater contaminated with chlorinated solvents within the proposed NRP area.

E. By 1998, the Navy, NASA, and the MEW Companies had agreed in principle to an allocation and settlement of each party’s responsibilities for the RGRP. NASA and the MEW Companies signed this Allocation and Settlement Agreement on March 16, 1998.

F. As part of the RGRP, the MEW Companies have installed, operate, monitor and maintain a groundwater monitoring and remedial system on Moffett Field (“Moffett”) under the direction of EPA. These components include, but are not limited to, groundwater monitoring wells, groundwater extraction wells, single and double-contained pipelines, air relief structures, electrical power and instrumentation conduits, fiber-optic instrument systems, electrical field control panels, leak detection systems, radio frequency communication links, settlement pin monuments and a groundwater treatment system (“GWTS”). The MEW Companies are required by EPA to operate the GWTS and related extraction wells and components continuously except during maintenance. Approval for any shutdown of more than 24 hours duration must be obtained from the EPA Remedial Project Manager (“RPM”) in advance.

G. Pursuant to its FFA, the Navy has installed, operates, monitors and maintains a groundwater monitoring and remedial system, the Westside Aquifer Treatment System (“WATS”) on Moffett under the direction of EPA and the RWQCB. The WATS’ components include, but are not limited to, groundwater monitoring wells, groundwater extraction wells, pipelines, air relief structures, electrical power and instrumentation conduits, fiber-optic instrument systems, electrical field control panels, leak detection systems, settlement pin monuments and a groundwater treatment system. The Navy is required by EPA to operate the WATS and related extraction wells and components continuously except during maintenance. Approval for any shutdown of more than 24 hours duration must be obtained from the EPA RPM in advance.

H. The Navy is also responsible for investigation and remediation of petroleum sites at Moffett, with oversight by the RWQCB. The Navy had installed a treatment system at Site 14 South to address petroleum contamination. The Navy had also installed an Iron Curtain demonstration project west of Hangar 1.

I. NASA plans to sign agreements with “Project Developers” to undertake redevelopment activities at Moffett in connection with the Project Developers’ leases of certain improvements at Moffett. These activities include, but are not limited to, demolition, grading, trenching and other excavation work, and construction connected with the development of office, educational, and research and development facilities (collectively, “Project Development”).

J. NASA and the Navy enter into this Agreement to minimize any impact of Project Development on the operation, monitoring, maintenance and modification of the WATS and to allow Navy access to the WATS during and after Project Development; and to clarify the roles and responsibilities for managing contaminated soil and groundwater that is excavated during the Project Development. NASA and the Navy recognize that, to coordinate Project Development and the continued operation of the WATS, it will be necessary for NASA and the Navy to be in regular, frequent communication.

NOW, THEREFORE, NASA and the Navy agree as follows:

AGREEMENT

1. Geographic Scope of Agreement

This Agreement applies only within those geographical parts of Moffett designated as AR-1, AR-2, and AR-6 on the attached Figure 1.

2. Scheduling of Work

NASA shall meet with the Navy as early as possible during Project Development planning to coordinate Project Development with the operation, monitoring, maintenance and modification of the WATS and any petroleum site or other remedial work (collectively, the “Remedial System”). Detailed drawings showing the locations of the WATS and any other treatment system components shall be provided by the Navy to NASA in CAD form so they can be integrated into the Project Developer’s plans.

3. Remedial System Protection and Modification; Exacerbation of Contamination

The Project Developer shall protect the integrity of all components of the Remedial System during Project Development and shall take all reasonable measures to minimize Remedial System downtime. The Project Developer shall pay any costs of relocation, replacement, alteration, protection, modification, or repair of the Remedial System caused by Project Development. In addition, if the Project Developer damages any Remedial System component in a manner that causes a release of untreated groundwater or soil or if the Project Developer exacerbates existing soil or groundwater contamination, the Project Developer shall pay all costs of investigation, remediation, EPA oversight, and any penalties associated with such release or exacerbation. The design and construction of any modification to the Remedial System shall be performed by the Navy contractors, under separate contract to the Project Developer; all modification costs, including EPA oversight costs, shall be paid by the Project Developer.

4. Well Protection

The Project Developer shall repair any damage to Remedial System wells caused by Project Development. Prior to the initial Project Development demolition or construction fieldwork, the Navy shall field locate all Remedial System wells. Prior to the start of Project Development fieldwork, the Project Developer shall install brightly painted steel pipes over each Remedial System monitoring and extraction well designated by the Navy. The painted pipe shall extend above ground not less than four feet, so as to be highly visible, and shall be buried sufficiently below the ground surface to protect the wellhead. Alternative equivalent well protection measures may be used by the Project Developer provided the Navy approves any alternative protective measure in writing prior to its use.

Additionally, all Project Development work within two feet of Remedial System wells shall be performed manually with hand tools. Fine grading work performed in areas more than two feet from the Remedial System wells but within close proximity shall be performed by light grading equipment.

5. Well Sealing and Well Replacement

If the Project Developer determines that a Remedial System well conflicts with the planned Project Development and must be removed, the Project Developer shall pay all costs of well sealing and replacement and all related Navy costs, including but not limited to the cost of installing replacement conduit, piping, boxes, controls and all other components needed to return a well to service, developing the well, conducting a baseline first round of groundwater sampling, and preparing all required plans, surveys and reports. The Project Developer shall be responsible for sealing all wells located within 15 feet of the outer wall of a new building. No well shall be sealed or relocated without the prior written approval of the EPA and RWQCB RPMs. Well sealing and installation shall comply with Santa Clara Valley Water District (“SCVWD”) guidance and take place under SCVWD permit. Coordination with EPA and the RWQCB, and well sealing and replacement shall be performed by the Navy’s contractor, under separate contract with the Project Developer, at the Project Developer’s sole cost.

6. Remedial System Pipeline Protection and Replacement

Prior to initial Project Development field work, the Project Developer shall provide and place steel plate or equivalent protective measures over the existing Navy pipelines and power and control conduits. If the Project Developer determines that a pipeline, or other treatment system component, conflicts with the planned Project Development and must be removed and relocated, the Project Developer shall pay all costs related to pipeline, and other treatment system component, removal and replacement, including but not limited to design, permitting, review, inspection, construction and independent quality assurance inspection costs. The Project Developer shall be responsible for removing and relocating all pipelines and other components located within five feet of the outer edge of the footing or foundation of a new building. No pipeline or other component shall be relocated without the prior approval of the EPA and RWQCB RPMs. Replacement pipeline installation procedures shall also be approved by the EPA and RWQCB RPMs. Coordination to obtain the approval of EPA and the RWQCB, and pipeline removal and replacement work shall be performed by the Navy's contractor, under separate contract to the Project Developer, at the Project Developer's cost.

7. Notification of Shutdown of Groundwater Extraction Wells or GWTS

If it appears necessary to shut down a Remedial System extraction well or the WATS during Project Development, NASA shall give written notice to the Navy five working days in advance of the proposed shutdown. In the event of an inadvertent shutdown of any component of the Remedial System, the Project Developer shall give immediate verbal notice to the Navy. Additionally, NASA shall provide to the Navy a written explanation of the reason for and the duration of any inadvertent shutdown within 48 hours of the shutdown.

8. Access to Wells and the GWTS

Project Development shall be performed in such a way that all Remedial System wells, pull boxes and the WATS and associated components remain accessible to the EPA, RWQCB, and the Navy and their equipment for sampling, operation, maintenance,

removal and replacement of pumps, and well sealing to the maximum extent practicable during and after Project Development. If it becomes necessary to restrict access to a well or other Remedial System component during Project Development, NASA shall provide written notice to the Navy five working days in advance of creating the restriction, with an explanation of the reason for and the expected duration of the proposed restricted access. Prior to the initial Project Development fieldwork, the Navy shall provide NASA with the schedule for well sampling.

9. Modifications to Well Vaults and Wellheads

Following completion of final grade by the Project Developer, the Navy's contractor, under separate contract to the Project Developer, shall modify the Navy wells, well vaults, and pull boxes as needed based on the final grade established by the Project Developer. All costs associated with these modifications shall be paid by the Project Developer.

10. Communications

The Project Developer, all of its contractors, the Navy, all of their contractors, and NASA shall each designate in writing a primary and alternate contact person, including all applicable mailing addresses, telephone numbers, email addresses and facsimile numbers. The Navy shall have sole authority and responsibility for all communications with EPA and RWQCB regarding the Remedial System, including its operating status, any Project Development-related shutdowns and any modifications. NASA shall provide the Navy with all demolition, grading and construction work schedules, a full set of civil, landscaping, foundation and utility plans and specifications, and updates to these plans and specifications and schedules promptly as they occur. The Navy and their contractor shall be notified of and invited to weekly construction meetings that pertain to these plans and schedules.

11. Monitoring and Sampling of Excavated Soil

The Project Developer shall remove soils contaminated with lead from lead-based paint around the buildings that have been identified by NASA, prior to building demolition. NASA shall properly dispose of this soil at the Navy's expense.

The Project Developer or NASA, at the Project Developer's expense, shall monitor all excavated soil to determine if the soils contain volatile organic compounds ("VOCs") or petroleum constituents. Vadose zone soils shall be stockpiled and managed separately from saturated zone soils. The Project Developer shall remove and segregate concrete, asphalt, wood, piping and other demolition debris from soil and shall manage and dispose of demolition debris in accordance with all applicable regulations. The Project Developer shall pay all costs related to demolition debris disposal.

The Project Developer or NASA, at the Project Developer's expense, shall monitor and sample soils generated from trenching and other excavation work throughout trenching and excavation activities. The soil being removed shall be visually observed for evidence of discoloration or staining. Soil exhibiting these characteristics shall be analyzed using an organic vapor analyzer ("OVA") or equivalent device before stockpiling. Excavated soil shall be field-screened using an OVA (or equivalent) to determine if the excavated soils are clean or may be chemically affected. Field screening with an OVA (or equivalent) shall be performed at a rate of one soil sample for every 15 cubic yards of excavated soil. Excavated soils that show a continuous reading of five parts per million ("ppm") or greater for at least ten seconds using the OVA (or equivalent) shall be considered as possibly containing chemicals, and shall be segregated. The Project Developer shall transfer soil exhibiting these characteristics to a plastic-lined stockpile area in or near the area of trenching or excavation. Soil samples shall be collected from random locations within the stockpile at a rate of two samples for every 50 cubic yards of stockpiled soil. Each of the two samples shall consist of at least five composite samples representative of the stockpiled soil. The samples shall be submitted to a state-certified laboratory and analyzed using EPA Method 8260 (or its superseding EPA Method), including cis-1, 2-dichloroethene and Freon 113 and EPA Method 8015 (or its superseding EPA Method) for high and low boiling point total petroleum hydrocarbons ("TPH"). After the soil has been verified to conform to the soil cleanup standards specified in the MEW ROD, and the Navy petroleum site cleanup standards, the soils may be used for on-site cover or backfill. Clean soil that is tested using the field head space method with an OVA (or equivalent) that does not have a reading greater than

five ppm for at least ten seconds also may be used for on-site cover or backfill. Soil that does not qualify as clean soil shall be managed in accordance with Sections 13.2 through 13.6 of this Agreement.

11.1 Excavated Soil Classification and Monitoring Procedure

The Project Developer or NASA shall monitor excavated soil with an OVA (or equivalent) to determine if the soils are clean or may contain chemicals, as defined below:

Clean Soil: Soil that does not have a reading greater than five ppm continuously for ten seconds using the field head space method with an OVA (or equivalent) specified below will be considered clean soil.

Soil Containing Chemicals: Soil that does not meet the definition of clean soil will be considered soil containing chemicals.

11.2 Field Head Space Methods:

(a) A soil sample shall be taken from excavated soil in the backhoe bucket at a point out of the excavation.

(b) The soil to be tested shall be placed into an unused re-sealable plastic bag or clean mason jar container with a minimum volume of one quart or one liter, until the container is half full.

(c) The container shall be sealed and left to sit under direct sunlight for approximately five minutes.

(d) The container shall be opened just enough to allow the probe of the OVA (or equivalent) to be inserted into the container's headspace.

(e) Any sample having a reading of five ppm or greater continuously for at least ten seconds shall be considered soil containing chemicals.

12. Notification of Saturated Soil Containing VOCs or TPH

If VOCs are determined to exist in saturated zone soils in AR-1, the Project Developer shall immediately notify the MEW Companies' representative. If VOCs are determined to exist in saturated zone soils in AR-2 or AR-6, NASA shall immediately notify the Navy. If TPH is determined to exist in saturated zone soils in AR-1, AR-2, or AR-6, NASA shall immediately notify the Navy.

13. Management and Disposal of Soils

13.1 Clean Soil

NASA shall be solely responsible for the determination as to whether soil qualifies as clean soil either because it has been classified as clean soil in accordance with Section 11.1 of this Agreement or has been treated to the soil cleanup standards specified in the MEW ROD or the Navy petroleum sites standards. Clean soil that does not require treatment may be reused for cover or backfill or shall be transported to the open field north of Electrical Substation West (N225A) on Moffett, shown as Area A on the attached Figure 2, or to other areas on Moffett designated by NASA, and spread by the Project Developer at the Project Developer's cost. NASA agrees that Navy shall not be responsible for any determination made by NASA or the Project Developer that any soil qualifies as clean soil or that any soil may be used for any particular purpose at any particular location on Moffett.

13.2 Vadose Zone Soils and Saturated Soils Containing TPH

Vadose zone and saturated soils containing TPH (whether or not they also contain VOCs) shall be transported by the Project Developer to the bioremediation pad on the east side of Moffett, as shown on Figure 3, or to other areas on Moffett designated by NASA, and shall be managed by NASA, at the Navy's expense.

13.3 Saturated Zone Soils Containing Only VOCs

The Project Developer shall notify the MEW Companies promptly if any saturated zone soil in AR-1 is determined by analytical testing to contain only those

VOCs associated with the MEW plume at concentrations exceeding MEW ROD soil cleanup standards. The MEW Companies shall manage and dispose of these soils as stated in the Agreement for Coordination of Construction and MEW Remedial System Modification Work (the “MEW Agreement”).

NASA shall notify the Navy promptly if any saturated zone soil in AR-2 or AR-6 is determined by analytical testing to contain VOCs at concentrations exceeding MEW ROD soil cleanup standards, or if any saturated zone soil in AR-1, AR-2, or AR-6 is determined by analytical testing to contain TPH above the Navy petroleum site cleanup standards. NASA shall manage and dispose, pursuant to CERCLA Section 121(d), these soils at the Navy’s cost.

NASA shall promptly make available to the Navy copies of analytical soil data. Following review of the data, any soils that are found to be the responsibility of the Navy shall be delivered by the Project Developer to the bioremediation pad on the east side of Moffett, as shown on Figure 3, where it will be managed by NASA at the Navy’s expense. Treatment or offsite disposal of the soil, pursuant to CERCLA Section 121(d) shall be at the discretion and timing of NASA. If treated, the soils shall be treated to the soil cleanup standards specified in the MEW ROD or Navy’s petroleum site cleanup standards. The Project Developer shall pay all costs of excavating and delivering the soil to the East Side Bioremediation Pad. The Navy shall pay all costs of treating the soil and spreading the treated soil on-site or disposing of it offsite. If NASA elects to dispose of soil offsite pursuant to CERCLA Section 121(d), NASA shall be designated the generator and sign all necessary waste manifests.

13.4 Polyethylene Liners

The Project Developer shall provide plastic liners and covers for the soil stockpiles located in the areas of trenching and excavation. The MEW Companies shall provide liners and covers for the soil at the MEW Soil Aeration Facility. NASA, at the Navy’s expense, shall provide plastic liners and covers for the soil stockpiles at the East Side Bioremediation Pad. The location of the soil stockpiles in the areas of trenching and excavation shall be designated by NASA.

13.5. East Side Bioremediation Pad Sampling and Testing Procedures

Following aeration, NASA shall collect two discrete soil samples for every 50 cubic yards of treated soil. Each of the two samples shall consist of at least five composite samples representative of the treated soil. The samples shall be analyzed using EPA Method 8260 and 8015 (or their superseding EPA Methods), including cis-1, 2-dichloroethene and Freon. Sample collection and analytical costs shall be paid by the Navy.

13.6 On-Site Reuse

After soil treated by NASA has been determined to meet soil cleanup standards, NASA shall move the clean soil onto an open field at the Navy's expense.

14. Management and Disposal of Groundwater Generated During Excavation and Dewatering Activities

The Project Developer may be required to dewater pipeline trenches and other excavations and convey water away from excavations. Groundwater in the area of Project Development may contain VOCs or TPH. The Project Developer shall manage and contain all water removed from excavation areas. The Project Developer shall transport the water to above ground tanks, test the water by EPA Method 8260 and EPA Method 8015 (or their superseding EPA Methods) and dispose of the water as follows:

14.1 Ground Water Containing TPH

If the groundwater contains TPH above 50 parts per billion ("ppb"), as determined by EPA Method 8015 (or its superseding EPA Method), it shall not be discharged to the MEW GWTS. Depending on the chemical concentrations, the Project Developer may be able to obtain permission from the City of Sunnyvale Waste Water Treatment Plant or the City of Palo Alto Waste Water Treatment Plant to dispose of the water to the NASA sanitary sewer systems. Request for permission to discharge to sanitary sewer shall be coordinated with NASA. The water shall be filtered before any discharge to the sewer system and the solids stored and subsequently managed by NASA at the Navy's expense, as described above in Section 13.

If the groundwater contains TPH above 50 ppb, the Project Developer shall deliver it to the WATS for treatment by the Navy.

14.2 Groundwater Containing VOCs

If the groundwater from AR-1 contains TPH below 50 ppb and contains VOCs that are identified as those associated with the MEW plume, the groundwater can be discharged to the MEW GWTS. The Project Developer shall follow the procedures described in the MEW Agreement.

If the groundwater from AR-2 or AR-6 contains VOCs above the MEW ROD cleanup levels, the groundwater can be discharged to the WATS. The Project Developer shall deliver the groundwater to clean Baker or similar tanks adjacent to WATS at the location shown as Area B –WATS Baker Tank Staging on Figure 4. The Project Developer shall inspect and sample the storage tanks before using them to insure that they are clean. Sample results shall be provided to the Navy, and the Navy shall have an opportunity to inspect the tanks before their use. Treatment and discharge of groundwater through the WATS shall be performed by the Navy. All groundwater shall be filtered before it is pumped into the clean storage tanks to minimize sediment buildup in the storage tanks. All solids removed from the groundwater and any filters shall be stored and subsequently characterized, managed and disposed of in the same manner as contaminated soils as specified in Sections 11 through 13 of this Agreement. NASA shall be designated the generator and shall sign all necessary waste manifests for the solids and filter wastes. The Project Developer shall pay all costs associated with extraction, delivery and storage of groundwater prior to treatment at the WATS. The Navy shall pay all costs of pumping the groundwater from the storage tanks and treating it through the WATS. The Navy shall treat the stored water within a reasonable timeframe.

15. Contractor Compliance With This Agreement

NASA, the Navy, and the Project Developer each shall provide a copy of this Agreement to their respective contractors and shall ensure that compliance with this Agreement is made a material part of their respective agreements with their contractors.

16. Notices

All written notices required by this Agreement shall be deemed effective (1) when delivered, if personally delivered to the person being served or (2) three business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

If To: "Navy"
Lawrence Lansdale
Navy SouthWest Div
Address
San Diego,CA zip

If To: "NASA"
Don Chuck
NASA Ames Research Center
MS 218-1
Moffett Field, CA 94035

17. Effective Date

This Agreement shall take effect upon the date of the last signature appearing below.

IN WITNESS THEROF, the following parties have entered into this Agreement.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

By: _____

Dated: _____

Title: _____

U.S. Navy

By: _____

Dated: _____

Title: _____

EXHIBIT F

PREDEVELOPMENT MILESTONES

1. Certification of the EIR pursuant to Section 4.3 of this Lease by the Lead Agency in accordance with CEQA, and the expiration of all applicable statutes of limitations under Applicable Laws to challenge such certification with no unresolved challenge pending.
2. Completion of the MIMP and adoption of the MIMP by the Lead Agency, and adoption of the EIMP by the Lead Agency, all pursuant to Section 4.4.
3. Selection of the Master Developer by Tenant, and approval of the selected Master Developer by Landlord, all pursuant to Section 4.6 of this Lease.
4. Completion and approval of the Development Plan by Landlord and Tenant (and each of its members) pursuant to Section 4.8 of this Lease.
5. Completion and approval by Landlord and Tenant pursuant to Section 4.8 of this Lease, of thirty percent (30%) of the detailed design under the Infrastructure Plan of the Phase Improvements for the first Phase and of twenty percent (20%) of the detailed design under the Infrastructure Plan of the Infrastructure for the entire Premises.
6. Submission by Tenant to Landlord of all Master Developer Subleases for Landlord's approval pursuant to Section 13.7 of this Lease, or submission by Tenant of a plan for the development of the Premises (to the extent of the portion thereof either (a) not to be Subleased pursuant to a Master Developer Sublease or (b) as to which a Master Developer Sublease is not ready for submission to Landlord) for Landlord's approval.
7. UCSC is a member of Tenant on the last day of the Predevelopment Period.
8. Approval by Landlord of each of the constituent members of Tenant which are not Preapproved Members pursuant to Section 4.11 of this Lease.
9. Submission by Tenant to Landlord of Tenant's organizational documents for Landlord's review and comment.
10. Approval by the Lead Agency of a (i) conceptual plan for the uses of the University of California facilities at the Premises (or approval of the Lead Agency of the portion, if any, of the Development Plan containing or otherwise depicting a conceptual plan for the uses of the University of California facilities at the Premises), and (ii) conceptual funding or financing plan with respect to such facilities.
11. Delivery of a written notice by Tenant to Landlord indicating that Tenant has completed its due diligence with respect to this Lease and the development of the Premises.
12. The Master Developer (or Tenant) being prepared to commence construction of the Phase Infrastructure for the first Phase in accordance with the Development Plan.

EXHIBIT G

PREDEVELOPMENT SCHEDULE

(please see following page)

**Exhibit G
Pre-Development Schedule
NASA Research Park; EPS#17055**

Action	1/1/2009	6/30/2009	1/1/2010	6/30/2010	1/1/2011	6/30/2011	1/1/2012	6/30/2012	1/1/2013	6/30/2013	1/1/2014
Master Developer Solicitation/ Selection	X										
Selection Criteria Established and Approved											
Solicitation—including package preparator											
Review solicitations and select Master Developer											
ENA Prepared, Negotiated and Signed with Master Developer											
Negotiate Ground Sublease with Master Developer, Obtain NASA Approval				X							
Due Diligence Studies			X								
- Land Use Planning											
- Environmental Investigations											
- Energy Conservation Designs											
- Infrastructure Planning											
CEQA Study/ EIR											
Prepare and Approve Development Plan											
Negotiate Operational Issues and Services (i.e. TDM, services, schools, VTA extension, permitting, etc.)											
Public Financing Plan and Execution											
First Phase Detailed Development Plan and Building Design and Approva											
Infrastructure Design and Engineering											
First Phase Project											
First Phase Land Takedown											

Note: phasing estimates are approximate; every effort will be made to expedite the timing of the pre-development schedule.

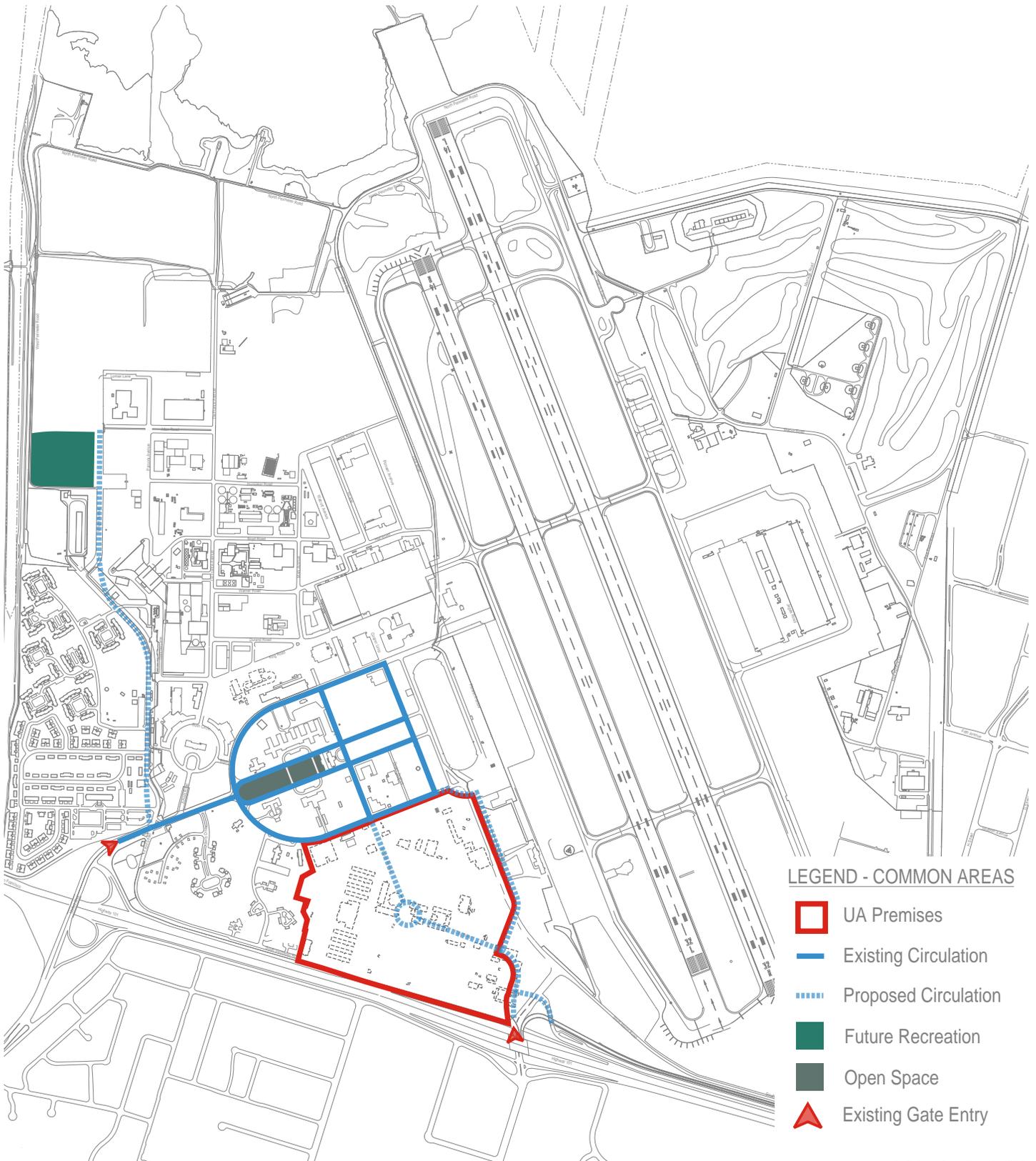
X = start or end

→ = ongoing

EXHIBIT H

DIAGRAM OF PROPERTY COMMON AREA AS OF THE EFFECTIVE DATE

(please see following page)



LEGEND - COMMON AREAS

- UA Premises
- Existing Circulation
- Proposed Circulation
- Future Recreation
- Open Space
- ▲ Existing Gate Entry

NASA AMES RESEARCH CENTER

Moffett Federal Airfield, California

PROJECT:
NRP SOUTH CAMPUS PARCEL MAP
ARC PROPOSED COMMON AREAS

EXHIBIT:
H

DATE:
21 NOV 08

REFERENCE:
UDA Premises_13Nov08.dwg

DMJM DESIGN | AECOM

SCALE: **N.T.S.**

405 HOWARD STREET SUITE 400 SAN FRANCISCO CALIFORNIA 94105
T: 415.365.3200 F: 415.267.4957 www.dmjmdesign.com

EXHIBIT I

FORM OF SUPPORT AGREEMENT

(please see following three (3) pages)

1. AGREEMENT NUMBER <i>(Provided by Supplier)</i> SAA2-402326		2. SUPERSEDED AGREEMENT NO. Support Agreement		3. EFFECTIVE DATE December 30, 2008		4. EXPIRATION DATE <i>(May be "Indefinite")</i> September 30, 2009	
5. SUPPLYING ACTIVITY				6. RECEIVING ACTIVITY			
a. NAME AND ADDRESS National Aeronautics and Space Administration Ames Research Center Moffett Field, CA 94035-1000				a. NAME AND ADDRESS University Associates-Silicon Valley LLC			
b. MAJOR COMMAND National Aeronautics and Space Administration				b. MAJOR COMMAND University Associates-Silicon Valley LLC			
7. SUPPORT PROVIDED BY SUPPLIER							
a. SUPPORT <i>(Specify what, when, where, and how much)</i> FY 2009 Demand Services provided upon request				b. BASIS FOR REIMBURSEMENT		c. ESTIMATED REIMBURSEMENT	
ADDITIONAL SUPPORT REQUIREMENTS ATTACHED: <input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No			
8. SUPPLYING COMPONENT				9. RECEIVING COMPONENT			
a. COMPTROLLER SIGNATURE		b. DATE SIGNED		a. COMPTROLLER SIGNATURE		b. DATE SIGNED	
c. APPROVING AUTHORITY				c. APPROVING AUTHORITY			
(1) Typed Name Paul Agnew				(1) Typed Name			
(2) Organization Chief Financial Officer		(3) Telephone Number (650) 604-1301		(2) Organization University Associates-Silicon Valley LLC		(3) Telephone Number	
(4) Signature		(5) Date Signed		(4) Signature		(5) Date Signed	
10. TERMINATION <i>(Complete only when agreement is terminated prior to scheduled expiration date.)</i>							
a. APPROVING AUTHORITY SIGNATURE		b. DATE SIGNED		a. APPROVING AUTHORITY SIGNATURE		b. DATE SIGNED	

11. GENERAL PROVISIONS (Complete blank spaces and add additional general provisions as appropriate: e.g., exceptions to printed provisions, additional parties to this agreement, billing and reimbursement instructions.)

- a. The receiving components will provide the supplying component projections of requested support. (Significant changes in the receiving component's support requirements should be submitted to the supplying component in a manner that will permit timely modification of resources requirements.)
- b. It is the responsibility of the supplying component to bring any required or requested change in support to the attention of _____ prior to changing or cancelling support.
- c. The component providing reimbursable support in this agreement will submit statements of costs to: _____
- d. All rates expressing the unit cost of services provided in this agreement are based on current rates which may be subject to change for uncontrollable reasons, such as legislation, DoD directives, and commercial utility rate increases. The receiver will be notified immediately of such rate changes that must be passed through to the support receivers.
- e. This agreement may be cancelled at any time by mutual consent of the parties concerned. This agreement may also be cancelled by either party upon giving at least 180 days written notice to the other party.
- f. In case of mobilization or other emergency, this agreement will remain in force only within supplier's capabilities.

ADDITIONAL SUPPORT REQUIREMENTS ATTACHED: Yes No

12. SPECIFIC PROVISIONS (As appropriate: e.g., location and size of occupied facilities, unique supplier and receiver responsibilities, conditions, requirements, quality standards, and criteria for measurement/reimbursement of unique requirements.)

ADDITIONAL SUPPORT REQUIREMENTS ATTACHED: Yes No

13. ADDITIONAL PROVISIONS *(Use this space to continue general and/or specific provisions as needed.)*

EXHIBIT J

LIST OF REPORTS PROVIDED

NASA Ames Development Plan (NADP)

NASA Research Park Design Guide, November 2001

NASA Ames Development Plan Final Programmatic Environmental Impact Statement (EIS), including Appendices: A, B, C, D, E, F, G, & H

NADP EIS Record of Decision (ROD)

Shenandoah Historic District Development Plan- 2002 (HDDP)

NASA Research Park and Bay View Transportation Demand Management Plan (TDM), July 2002

Mitigation Implementation and Monitoring Plan (MIMP)

Environmental Issues Management Plan (EIMP) - March 2005

Revised Human Health Risk Assessment (HHRA), July 28, 2003

NRP Business Plan, September 2006

Services and Cost Sharing Methodologies for Resident Agencies, NASA Ames Research Center, Moffett Field, California; "The Blue Book"

Master Permit Fee Schedule and Table

NASA Ames Final Master Plan

Memorandum: Initial Review of Mitigation Measures Required for Residential Development at Parcels 1, 2, 3, 4, and 6 at NASA Research Park, Santa Clara County, California, December 1, 2006 (EKI A20044.01)

EXHIBIT K

FORM OF RECOGNITION AGREEMENT

(please see following twenty-seven (27) pages)

RECOGNITION AGREEMENT

(Space Subtenant)

THIS RECOGNITION AGREEMENT (this "Recognition Agreement") is made and entered into as of _____, 20____, by and between THE UNITED STATES OF AMERICA, acting by and through the NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, an Agency of the United States (the "Master Lessor"), and _____, a _____ (the "Recognized Sublessee"). Master Lessor enters into this Recognition Agreement pursuant to sections [203(c) and 315] of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. §2451 et seq.) and section 13.11 of the Master Lease (as defined in Recital A below).

RECITALS

A. Master Lessor and University Associates - Silicon Valley LLC, a Delaware limited liability company (the "Master Sublessor"), entered into that certain Enhanced Use Lease, bearing an Effective Date (as defined in the Master Lease) of December 30, 2008 (as amended from time to time, the "Master Lease"), pursuant to which Master Lessor leased to Master Sublessor the premises described in the Master Lease (such premises, as the same may have been changed and may hereafter change, the "Master Leased Premises").

B. Pursuant to a [**First Tier Sublease Agreement**], dated as of _____, 20____ (as amended from time to time, the "First Tier Sublease"), Master Sublessor subleased to _____, a _____ (the "First Tier Sublessee"), a portion of the Master Leased Premises (the "First Tier Sublet Premises") described in the First Tier Sublease.

C. Pursuant to a [**Second Tier Sublease Agreement**], dated as of _____, 20____ (as amended from time to time, the "Second Tier Sublease"), First Tier Sublessee subleased to _____, a _____ (the "Second Tier Sublessee"), a portion of the First Tier Sublet Premises (the "Second Tier Sublet Premises") described in the Second Tier Sublease.

D. Pursuant to a [**Third Tier Sublease Agreement**], dated as of _____, 20____ (as amended from time to time, the "Third Tier Sublease"), Second Tier Sublessee subleased to _____, a _____ (the "Third Tier Sublessee"), a portion of the Second Tier Sublet Premises (the "Third Tier Sublet Premises").

E. [Similar descriptions of any additional superior tier subleases.]

F. The First Tier Sublease, Second Tier Sublease, Third Tier Sublease [**etc.**] are referred to herein collectively as "Superior Tier Subleases." The sublessee under any Superior Tier Sublease is referred to herein as a "Superior Tier Sublessee." In the event that any Superior Tier Sublease is terminated for any reason, and any holder (a "Superior Tier Mortgagee") of a mortgage, deed of trust or other security interest (a "Superior Tier Mortgage") encumbering the

subleasehold interest created under such Superior Tier Sublease obtains a new leasehold estate (a “New Lease”) in the same or substantially the same property, whether from Master Lessor or any Superior Tier Sublessee, pursuant to such Mortgage or any agreement between such Mortgagee and Master Lessor or any Superior Tier Sublessee or Superior Tier Mortgagee, then such New Lease shall also be deemed a Superior Tier Sublease as of the date of its creation.

G. Pursuant to a **[Recognized Sublease Agreement]**, dated as of _____, 20____ (as amended from time to time, the “Recognized Sublease”), **[Immediately Superior Tier Sublease]** subleased to Recognized Sublessee a portion of the _____ Tier Sublet Premises (the “Recognized Sublet Premises”). A copy of the Recognized Sublease is attached hereto as Exhibit A.

H. [Recognized Sublessee has granted to _____ a _____, dated as of _____, **[a memorandum of which was recorded in the Official Records of Santa Clara County, California as Instrument No. _____ on _____ and]** encumbering, among other things, the leasehold estate of Recognized Sublessee created under the Recognized Sublease. Such instrument, together with all other documents or instruments creating a security interest in the subleasehold created under the Recognized Sublease given by Recognized Sublessee to secure all or any part of the same obligation as is secured by such instrument, is referred to herein as “Mortgage.”] **or** [Recognized Sublessee may hereafter grant a mortgage or deed of trust or other security instrument or interest encumbering, among other things, the leasehold estate of Recognized Sublessee created under the Recognized Sublease. Such instrument, together with all other documents or instruments given by Recognized Sublease to secure all or any part of the same obligation as is secured by such instrument, is referred to herein as “Mortgage.”] **and** The term “Mortgage” shall also include any other mortgage or deed of trust or other security instrument or interest hereafter granted by Recognized Sublessee and encumbering, among other things, the leasehold estate of Recognized Sublessee created under the Recognized Sublease. The term “Mortgage” shall mean the holder, from time to time, of any Mortgage provided that Master Lessor has received (i) a written notice of the name and address of such Mortgagee, and (ii) a written request for notice of default, both as required by the provisions of the Master Lease and given in the same manner as described for the giving of notices to Master Lessor pursuant to the Master Lease.

I. Master Lessor acknowledges that the Master Lease is in full force and effect and, to the actual knowledge (without investigation or inquiry) of the person executing this Recognition Agreement on behalf of Master Lessor, no Event of Default (as defined in the Master Lease) exists thereunder.

J. Master Lessor and Recognized Sublessee now enter into this Recognition Agreement to provide for the Recognized Sublease to become a direct lease between them under certain conditions, subject to the terms and conditions of this Recognition Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Master Lessor and Recognized Sublessee agree as follows:

1. Attornment, Recognition and Non-disturbance.

(a) Recognition Event. For the purposes of this Recognition Agreement, a “Recognition Event” shall mean the occurrence of both of the following: (i) a termination of the Master Lease and all of the Superior Tier Subleases (but not less than the Master Lease and all then existing Superior Tier Subleases), for any reason; and (ii) a written request from the Recognized Sublessee that Master Lessor recognize the Recognized Sublease pursuant to this Recognition Agreement; provided, however, that if Recognized Sublessee has assigned or otherwise granted to any Mortgagee a right to request recognition of the Recognized Sublease pursuant to this Recognition Agreement, such a written request from such Mortgagee shall be accepted by Master Lessor as if given by Recognized Sublessee (although no such assignment shall limit the right of Recognized Sublessee to give such a request, unless the terms of such assignment expressly deny Recognized Sublessee the right to give such a notice and Master Lessor has been notified in writing of such terms). The written request for recognition given to Master Lessor by Recognized Sublessee shall state the good faith belief of Recognized Sublessee, based on the information then available to Recognized Sublessee, that the Master Lease and all of the Superior Tier Subleases then existing have terminated, together with a statement that the Recognized Sublessee intends to commence paying the rent and other sums due under the Recognized Sublease to Master Lessor as of a date specified in the request (which date shall be at least thirty (30) days after the date of such request). A copy of such request shall be given as promptly as is feasible in the circumstances to Master Lessee, each Superior Tier Sublessee and each Mortgagee in the same manner as required for the giving of notices to each such party under the Master Lease or the Superior Tier Sublease, as applicable, and without regard for the prior termination of such Master Lease and Superior Tier Subleases, as provided in this Recognition Agreement.

(b) Recognition by Master Lessor. Upon the occurrence of a Recognition Event: (i) Recognized Sublessee shall attorn to Master Lessor and perform all of Recognized Sublessee’s obligations under the Recognized Sublease directly to Master Lessor, as if Master Lessor were the sublandlord under the Recognized Sublease; (ii) subject to the provisions of Section 2 below, Master Lessor shall continue to recognize the estate of Recognized Sublessee created under the Recognized Sublease and the Recognized Sublease shall continue with the same force and effect as if Master Lessor and Recognized Sublessee had entered into a lease as of the date on which the Recognition Event occurs on the same provisions as those contained in the Recognized Sublease (as modified by this Recognition Agreement, except that the priority of the Recognized Sublease with respect to other interests in the Recognized Sublet Premises shall not be changed and shall be determined with reference to the original execution of the Recognized Sublease); and (iii) Recognized Sublessee’s possession of the Recognized Sublet Premises and Recognized Sublessee’s other rights and interests under the Recognized Sublease (except as expressly restricted herein) shall not be disturbed by Master Lessor or affected by any Recognition Event or by any action or proceeding instituted under or in connection with the Master Lease or any Superior Tier Sublease, save and except for the right of Master Lessor to terminate the Recognized Sublease under certain circumstances as expressly granted to Master Lessor in Section 13.15 of the Master Lease, and except for the right of Master Lessor to enforce the Recognized Sublease (as modified by this Recognition Agreement) against the Recognized Sublessee following a Recognition Event. The provisions of this Section 1 shall be self-executing upon the occurrence of a Recognition Event, provided, however, either Master

Lessor or Recognized Sublessee shall execute and deliver at the other's written request: (i) an instrument confirming Recognized Sublessee's attornment and other obligations pursuant to this Recognition Agreement and Master Lessor's agreement to be bound by the terms of the Recognized Sublease as modified pursuant to this Recognition Agreement; and/or (ii) a new lease containing all of the terms and provisions of the Recognized Sublease, as modified by this Recognition Agreement.

2. Terms of Recognition and Attornment. From the date of a Recognition Event, Master Lessor shall have the same rights to enforce as against Recognized Sublessee the terms of the Recognized Sublease as **[Immediately Superior Tier Sublessee]** had or would have had (as such terms are modified by this Recognition Agreement), and Recognized Sublessee shall have the same rights as against Master Lessor as it had as against **[Immediately Superior Tier Sublessee]** under the Recognized Sublease. The foregoing notwithstanding, but subject to the provisions of Section 5 below, Master Lessor shall not: (i) be liable for, or required to cure, any event, occurrence or condition that preceded the Recognition Event or any act or omission of any Superior Tier Sublessee and/or its employees, agents or contractors; (ii) be subject to any offsets or defenses that Recognized Sublessee then has against any Superior Tier Sublessee (except to the extent that such offsets or defenses derive from offsets or defenses that Master Sublessor had under the Master Lease); (iii) be bound by, or obligated to return or credit, any prepaid rent, any estimated operating expense prepayments made, any security deposit, or any other prepaid sum that Recognized Sublessee had previously paid, unless, and only to the extent, the same is delivered to Master Lessor; or (iv) have any obligation to Recognized Sublessee with respect to the condition of the Recognized Sublet Premises as of the occurrence of the Recognition Event (subject to Master Lessor's obligations under the Master Lease (as if such document remained in effect)), it being agreed that Recognized Sublessee shall be deemed to have accepted the condition of the Recognized Sublet Premises as of the Recognition Date (subject to Master Lessor's obligations under the Master Lease (as if such document remained in effect)). Within ten (10) days following any Recognition Event, Recognized Sublessee shall: (a) cause Master Lessor to be named as an additional insured under the policies of commercial general liability insurance which were to have been obtained by Recognized Sublessee under the Recognized Sublease with respect to the Recognized Sublet Premises or the business of Recognized Sublessee, and (b) deliver to Master Lessor reasonable and customary evidence of all policies of insurance which Recognized Sublessee is required to carry pursuant to Section 8 below, together with all endorsements to such policies as required under this Recognition Agreement.

3. Recognition of Rights of Mortgagees.

(a) Effect of Recognition Agreement with Mortgagee. Without limiting the rights of any Mortgagee to enforce the terms of this Recognition Agreement as a third party beneficiary, if Master Lessor has entered into, or hereafter enters into, a recognition agreement with any Mortgagee, the provisions of this Recognition Agreement shall be subordinate to the provisions of such other recognition agreement and, if the provisions of this Recognition Agreement conflict with the provisions of any such recognition agreement with a Mortgagee, then the provisions of such recognition agreement with a Mortgagee shall control.

(b) Rights of Mortgagees under Master Lease. All Mortgagees shall be entitled to the rights and protections granted to a “Mortgagee” under the terms of the Master Lease, even if the Master Lease may hereafter be terminated.

(c) Effect of New Lease. If, following a Recognition Event, any Superior Tier Mortgagee obtains a New Lease in replacement of, or substitution for, a Superior Tier Sublease encumbered by the Superior Tier Mortgage held by such Superior Tier Mortgagee, which Superior Tier Sublease was then the Superior Tier Sublease then immediately prior in right to the Recognized Sublease, and thereafter demands in writing that Recognized Sublessee recognize such New Lease and attorn to such Superior Tier Mortgagee in place of Master Lessor, then: (i) Recognized Sublessee shall so promptly recognize such New Lease and so attorn; (ii) the obligations of Master Lessor under the Recognized Sublease or this Recognition Agreement (including the obligation to give Recognized Sublessee rent credits pursuant to Section 5 below) shall be equitably apportioned or prorated as between Master Lessor and such Superior Tier Mortgagee (or, if such Superior Tier Mortgagee is not the sublandlord under such New Lease, the sublandlord under the New Lease) as of the date of such recognition and attornment by Recognized Sublessee to the Superior Tier Mortgagee, and thereafter Master Lessor shall have no further obligations or liability to Recognized Sublessee or (or, if such Superior Tier Mortgagee is not the sublandlord under such New Lease, the sublandlord under the New Lease) under the Recognized Sublease (or any new lease executed by Master Lessor and Recognized Sublessee pursuant to clause (ii) of Section 1(b)) or this Recognition Agreement; (iii) such Superior Tier Mortgagee (or, if such Superior Tier Mortgagee is not the sublandlord under such New Lease, the sublandlord under the New Lease) shall assume the obligations of Master Lessor under the Recognized Sublease (as modified by this Recognition Agreement) (or any new lease executed by Master Lessor and Recognized Sublessee pursuant to clause (ii) of Section 1(b)) which accrue after such recognition and attornment by Recognized Sublessee to the Superior Tier Mortgagee and thereafter Master Lessor shall have no further obligations or liability under any such document; and (iv) the obligations of Recognized Sublessee, and the rights and benefits of Master Lessor, under the Recognized Sublease or this Recognition Agreement shall be equitably apportioned or prorated as between Master Lessor and such Superior Tier Mortgagee (or, if such Superior Tier Mortgagee is not the sublandlord under such New Lease, the sublandlord under the New Lease) as of the date of such recognition and attornment by Recognized Sublessee to the Superior Tier Mortgagee.

(d) Limitation on Liability of Mortgagees. No Mortgagee or purchaser at a judicial or foreclosure sale or trustee’s sale shall have any liability under this Recognition Agreement until it succeeds to the interest of Recognized Sublessee under the Recognized Sublease, at which time it will not have any obligation or liability hereunder for any previous breach by Recognized Sublessee. Any Mortgagee which succeeds to the interest of Recognized Sublessee under the Recognized Sublease shall not have any liability for any obligation which accrues after such Mortgagee assigns its interest under the Recognized Sublease to another person or entity in accordance with the provisions of Article 14 of the Master Lease.

4. Modification of Sublease. Upon the occurrence of a Recognition Event, the Recognized Sublease shall be deemed modified such that all references to “[**Immediately Superior Tier Sublessee**]” shall be deemed to be Master Lessor, and in addition:

(a) Rent. Subject to the provisions of Section 3(b) above and Section 5 below, Recognized Sublessee shall pay, as and when due, all rent and other sums due under the Recognized Sublease with respect to the Recognized Sublet Premises to Master Lessor, by such method and to such address as Master Lessor may direct by written notice to Recognized Sublessee, such notice to be delivered as promptly as is feasible after Recognized Sublessee delivers to Master Lessor the written request that Master Lessor recognize the Recognized Sublease as required in Section 1(a).

(b) Allocation of Liability. Notwithstanding any other provision of the Recognized Sublease, Master Lessor's and Recognized Sublessee's rights and obligations with respect to indemnification and insurance shall be as provided in Section 8 below.

(c) Notices. Every notice or other communication to be given by either party to the other with respect hereto shall be given in accordance with Article 20 of the Master Lease. The addresses for purposes of the notices or demands shall be as follows:

If to Master Lessor:

NASA Ames Research Center
Mail Stop 204-2
Moffett Field, CA 94035-1000
Attn: Chief, NASA Research Park Branch

NASA Ames Research Center
Mail Stop 200-12
Moffett Field, CA 94035-1000
Attn: Office of the Chief Counsel

If to Recognized Sublessee:

With a copy to:

5. Credit for Obligations not Performed.

(a) Availability of Credit. Except to the extent that Master Lessor elects to perform the obligations of the **[Immediately Superior Tier Sublessee]** under the Recognized Sublease pursuant to Section 5(b) below, Recognized Sublessee, as its sole remedy shall be entitled to a credit against rent and other sums payable to Master Lessor pursuant to Section 4 above (but subject to the terms and conditions of this Section 5) in an amount equal to all reasonable, out-of-pocket costs and expenses incurred and paid by Recognized Sublessee in performing, or obtaining the performance by others, of all obligations under the Recognized

Sublease that Master Lessor did not elect to perform or did not perform, including, without limitation any obligations which Master Lessor is excused from performing by reason of the provisions of Section 2 above and does not timely perform. If Recognized Sublessee is entitled to such a credit, Recognized Sublessee shall claim such credit by written notice to Master Lessor accompanied by evidence reasonably satisfactory to Master Lessor of the amounts incurred and paid by Recognized Sublessee for such purposes. The foregoing notwithstanding, the maximum amount of any credit in respect of any installment of rent under the Recognized Sublease shall be seventy-five percent (75%) of the amount of rent then being paid, such that Master Lessor shall receive not less than twenty-five percent (25%) of the amount (before application of the credit) of rent then to be paid. If and to the extent that any credit to which Recognized Sublessee is due pursuant to this Section 5(a) is not applied to a particular installment of rent due to the limitation on the maximum amount of the credit which can be applied to such installment, the amount of the credit which is not so applied shall be deferred and, subject to the provisions of Section 3(c) above and Section 11 below, shall be applied against the next installment or installments of rent until so applied. The foregoing notwithstanding, Recognized Sublessee shall not be entitled to a credit against either: (i) any reimbursement due under the Recognized Sublease for any component of the "UDA Services" or for "Demand Services" (as those terms are defined in the Master Lease); or (ii) the portion of the then current "UDA Services Amount" allocable on a per square foot of gross building area basis to the Recognized Sublet Premises.

(b) Voluntary Assumption by Master Lessor of Obligations. Master Lessor may elect to assume (but shall have no obligation to assume) all or any of the obligations of **[Immediately Superior Tier Sublessee]** under the Recognized Sublease to construct tenant improvements in the Recognized Sublet Premises which Master Lessor would otherwise have been excused from performing by reason of the provisions of Section 2 above, which election shall only be made by Master Lessor's written notice to Recognized Sublessee. Upon the giving of such a notice, which shall specify in detail the obligations being assumed by Master Lessor, and the full or partial performance of such obligations by Master Lessor, Recognized Sublessee shall not be entitled to a credit pursuant to Section 5(a) above for expenses incurred and paid in connection with the performance of any obligation already performed, as of the date of performance by or on behalf of Recognized Sublessee, by Master Lessor, to the extent of such performance by Master Lessor.

6. Assignment by Master Lessor. If, following a Recognition Event, Master Lessor enters into a lease (an "Intervening Lease") with a lessee of all or any portion of the Master Leased Premises which includes the Recognized Sublet Premises, then Master Lessor may subordinate the Recognized Sublease (or any new lease executed by Master Lessor and Recognized Sublessee pursuant to clause (ii) of Section 1(b)) to such Intervening Lease, assign the landlord's interest under the Recognized Sublease to such lessee and may require that Recognized Sublessee attorn to the lessee under such Intervening Lease; provided, however, that: (i) such lessee under the Intervening Lease recognizes in writing all of the rights of Recognized Sublessee under the Recognized Sublease; and (ii) such lessee, in the good faith opinion of Master Lessor, has the experience and financial capability to perform the obligations of the sublandlord under the Recognized Sublease. Upon any such assignment, Master Lessor shall cease be liable for any obligations or liabilities thereafter accruing under the Recognized Sublease. The obligations to be assumed by such lessee under the Recognized Sublease shall be those which Master Lessor had at the time of the assignment and such other obligations as such

lessee elects to perform on and after the time of the assignment, and Recognized Sublessee shall be entitled to the credits described in Section 5 above (subject to the terms and conditions of Section 3(c), Section 5 and Section 11) in respect of any obligations under the Recognized Sublease not then required to be performed by the Master Lessor or such lessee by reason of the provisions of this Recognition Agreement. If Master Lessor so assigns the Recognized Sublease, the provisions of this Recognition Agreement shall remain in full force and effect.

7. Use Restrictions. Without limiting the obligation of Recognized Sublessee with respect to compliance with the Master Lease, Recognized Sublessee hereby acknowledges and agrees that the restrictions on the use of the Recognized Premises and the common areas of the development set forth in the Master Lease and the Development Plan (as adopted by Master Sublessor pursuant to the Master Lease) shall be binding on Recognized Sublessee to the extent they pertain to the Recognized Sublet Premises.

8. Indemnification and Insurance.

(a) Replacement of Provisions. As provided in Section 4 above, notwithstanding any other provision of the Recognized Sublease, the provisions of this Section 8 shall govern Master Lessor's and Recognized Sublessee's rights and obligations with respect to indemnification and insurance following a Recognition Event and before any attornment by Recognized Sublessee to another landlord pursuant to the other provisions of this Recognition Agreement.

(b) Definitions. As used in this Section 8, the following terms shall have the following meanings, applicable, as appropriate, to both the singular and plural forms of the terms so defined.

(i) "Claims" means claims, actions, causes of action, suits, proceedings, demands, judgments, liens, damages (including but not limited to compensatory, punitive and consequential damages), penalties, fines, costs, expenses (including but not limited to reasonable attorneys' fees and costs), liabilities and losses.

(ii) "Environmental Law" means all Federal, state and local laws, statutes, ordinances, regulations, rules, judicial and administrative orders and decrees, permits, licenses, approvals and authorizations of all Federal, state and local governmental agencies (including Master Lessor) or other governmental authorities pertaining to the protection of human health and safety or the environment, now existing or later adopted.

(iii) "Hazardous Material" means any substance that is (a) defined under any Environmental Law as a hazardous substance, hazardous waste, hazardous material, pollutant or contaminant, (b) a petroleum hydrocarbon, including crude oil or any fraction or mixture thereof, (c) hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic or a reproductive toxicant, or (d) otherwise regulated pursuant to any Environmental Law.

(iv) "Physical Condition Claims" means Claims against Master Lessor which arise or result from (a) the physical condition of the Recognized Sublet Premises,

not including in the determination of such condition any matter arising or from or in connection with Hazardous Materials not placed there by Recognized Sublessee, (b) the physical condition of, the use or occupancy of, or the development, construction, maintenance, repair or restoration of, any improvements on or in the Recognized Sublet Premises, not including in the determination of such condition any matter arising or from or in connection with Hazardous Materials not placed there by Recognized Sublessee, or (c) the use, storage, transportation, treatment, disposal, release or other handling, on or about or beneath the Recognized Sublet Premises, of any Hazardous Material by Recognized Sublessee.

(v) "Property" means the land, the buildings and other improvements known as NASA Ames Research Center, Moffett Field, California 94035-1000 excluding the Master Leased Premises.

(vi) "Related Entities" means with respect to any person or entity, all officers, directors, shareholders, partners, members, employees, agents, contractors, consultants, licensees and invitees.

(c) Damage or Injury.

(i) Master Lessor shall not be liable to Recognized Sublessee, and Recognized Sublessee hereby waives and releases all Claims against Master Lessor, for any damage to or loss or theft of any property or for any bodily or personal injury, illness or death of any person in, on or about the Master Leased Premises or Property, arising or resulting at any time from the use or occupancy of the Recognized Sublet Premises by Recognized Sublessee or its Related Entities, except to the extent that Claims arise or result from (i) the willful misconduct of Master Lessor or its employees, (ii) the active negligence of Master Lessor or its employees if such Claims are not covered by insurance, or (iii) any default in the performance of Master Lessor's obligations under the Recognized Sublease (as modified by the terms of this Recognition Agreement) or this Recognition Agreement. In addition, Recognized Sublessee hereby waives and releases all Claims against Master Lessor arising or resulting at any time from the exercise of Master Lessor's rights under Section 13.15 of the Master Lease.

(ii) Recognized Sublessee shall indemnify and defend Master Lessor against and hold Master Lessor harmless from all (i) Physical Condition Claims, (ii) all other Claims arising or resulting from the acts or omission of Recognized Sublessee or its Related Entities, and (iii) Claims arising or resulting from any default in the performance of Recognized Sublessee's obligations under the Recognized Sublease (as modified by the terms of this Recognition Agreement) or this Recognition Agreement. The foregoing notwithstanding, Recognized Sublessee shall not be required to indemnify and defend Master Lessor against or hold Master Lessor harmless from any Claims or defaults arising or resulting from (A) Master Lessor's entry on the Recognized Sublet Premises, (B) the willful misconduct of Master Lessor or its employees, (C) the active negligence of Master Lessor or its employees if such Claims are not covered by insurance, or (D) any default in the performance of Master Lessor's obligations under the Recognized

Sublease (as modified by the terms of this Recognition Agreement) or this Recognition Agreement.

(d) Insurance Coverages and Amounts.

(i) Recognized Sublessee shall, at all times during the term of the Recognized Sublease (except as provided below) and at Recognized Sublessee's sole cost and expense, obtain and keep in force the insurance coverages and amounts set forth in this Section 8(d)(i):

(A) Recognized Sublessee shall maintain commercial general liability insurance, including contractual liability, broad form property damage liability, fire legal liability, premises and completed operations, and medical payments, with limits not less than the amount or amounts specified in the Recognized Sublease, insuring against claims for bodily injury, personal injury and property damage arising from the use, occupancy or maintenance of the Master Leased Premises and Property. The policy shall contain an exception to any pollution exclusion which insures damage or injury arising out of heat, smoke or fumes from a hostile fire. Any general aggregate shall apply on a per occurrence basis.

(B) If Recognized Sublessee uses owned, hired or non-owned vehicles, Recognized Sublessee shall maintain business auto liability insurance with limits not less than one million dollars (\$1,000,000.00) per accident covering such vehicles.

(C) Recognized Sublessee shall maintain, and shall cause its agents and contractors to maintain, worker's compensation insurance in statutory limits to the extent required by California law. In addition, to the extent Recognized Sublessee employs one (1) or more employees, Recognized Sublessee shall maintain employers liability insurance which affords coverage of not less than one million dollars (\$1,000,000.00) per occurrence.

(D) Recognized Sublessee shall maintain property insurance (without deduction for depreciation) on the improvements and personal property located on or in the Recognized Sublet Premises for the perils covered by a standard fire insurance policy, extended coverage perils and vandalism and malicious mischief, including coverage for increased costs due to changes in building codes and, if applicable, boiler machinery and pressure vessel insurance. The amount of such insurance shall be the full replacement value of such property.

(E) All other insurance that Recognized Sublessee customarily maintains to adequately protect the Recognized Sublet Premises, consistent with Recognized Sublessee's insurance program for other similar properties. Master Lessor may from time to time request such reasonable evidence that the Recognized Sublet Premises are being so insured by Recognized Sublessee.

(ii) In addition to the insurance required by Section 8(d)(i), but only to the extent not covered by other property insurance maintained by Recognized Sublessee, Recognized Sublessee (or Recognized Sublessee's contractors) shall obtain and keep in force during the period of any construction comprehensive "all risk" or "special form" builder's risk insurance, including vandalism and malicious mischief. Such builder's risk insurance shall cover all portions of the improvements under construction on the Recognized Sublet Premises, all materials and equipment of Recognized Sublessee or any Recognized Sublessee's contractor stored at the Recognized Sublet Premises in connection with such construction, and all materials and equipment that are in the process of fabrication at the Recognized Sublet Premises, or when title to or an insurable interest in such materials or equipment has passed to Recognized Sublessee. Such builder's risk insurance shall be written on a completed value basis in an amount not less than the full estimated replacement cost of such improvements.

(e) Conditions on Property Insurance. In addition to the other conditions and requirements for insurance policies set forth in Section 8(d), Recognized Sublessee's construction and property insurance policies shall satisfy the following conditions. The policy or policies evidencing construction and property insurance shall provide that, in the event of loss thereunder, and subject to the terms of any Mortgage, the proceeds of the policy or policies shall be payable to Recognized Sublessee (or to a Mortgagee or a trustee approved or appointed by a Mortgagee) to be used solely for the repairs or replacement of the property damaged or destroyed, with any balance of the proceeds not required for such repairs or replacement to be paid to Recognized Sublessee (or to a Mortgagee or a trustee approved or appointed by a Mortgagee); provided, however, that the insurer, after payment of any proceeds in accordance with the provisions of the policy or policies shall have no obligation or liability with respect to the use or disposition of the proceeds.

(f) Insurance Requirements.

(i) All insurance and all renewals thereof shall be issued by companies with a rating of at least "A-" "VII" (or its equivalent successor) or better in the current edition of Best's Insurance Reports (or its equivalent successor, or, if there is no equivalent successor rating, otherwise reasonably acceptable to Master Lessor).

(ii) Each policy shall provide that the policy shall not be canceled or materially altered without thirty (30) days prior written notice to Master Lessor (ten (10) days in the case of cancellation for non-payment of premiums) and shall remain in effect notwithstanding any such cancellation or alteration until such notice shall have been given to Master Lessor and such period of thirty (30) days (or ten (10) days, if applicable) shall have expired; provided, however, if any insurance company of Recognized Sublessee agrees only to "endeavor" to notify Master Lessor of cancellation or alteration of any such insurance policy, then it shall be the responsibility of Recognized Sublessee to notify Master Lessor at least twenty (20) days prior to such cancellation or alteration of insurance coverage.

(iii) The commercial general liability insurance and any automobile liability insurance shall be endorsed to name Master Lessor (and any other parties

reasonably designated by Master Lessor) as an additional insured and shall be primary and noncontributing with any insurance which may be carried by Master Lessor.

(iv) Recognized Sublessee shall deliver certificates of insurance and endorsements, in a form reasonably acceptable to Master Lessor, to Master Lessor within ten (10) days of a Recognition Event and thereafter prior to the expiration of each policy. Such documents shall be delivered to the address for certificate holder set forth below. If Recognized Sublessee fails to insure or fails to furnish any such insurance certificate or endorsement, Master Lessor shall have the right from time to time and after written notice to Recognized Sublessee to effect such insurance for the benefit of Recognized Sublessee or Master Lessor or both of them, and Recognized Sublessee shall pay to Master Lessor on written demand all premiums paid by Master Lessor. Each certificate of insurance shall list the certificate holder as follows:

National Aeronautics and Space Administration
Ames Research Center
Attn: Office of the Chief Counsel
Mail Stop 200-12
Moffett Field, CA 94035-1000

(v) No approval by Master Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by Master Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible. By requiring insurance herein, Master Lessor makes no representation or warranty that coverage or limits will necessarily be adequate to protect Recognized Sublessee, and such coverage and limits shall not be deemed as a limitation on Recognized Sublessee's liability under the indemnities granted to Master Lessor in this Recognition Agreement.

(vi) Failure of Master Lessor to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Master Lessor to identify a deficiency from evidence that is provided shall not be construed as a waiver of Recognized Sublessee's obligation to maintain such insurance.

(g) Waiver of Subrogation. Recognized Sublessee hereby waives all rights of recovery, claim, action or cause of action, against Master Lessor and Master Sublessor, and their respective Related Entities, for any loss or damage that may occur to the Recognized Sublet Premises, or any improvements thereto, or any personal property of such party therein, by reason of fire, the elements, or any other cause that are insured against under the terms of an "all risk" insurance policy or other property insurance coverages which are required to be obtained pursuant to this Recognition Agreement (or would be insured against under such a policy if the parties thereunder were carrying all insurance required hereunder), regardless of cause or origin, including negligence of Master Lessor or and Master Sublessor or their respective Related Entities; and Recognized Sublessee shall obtain or cause to be obtained an endorsement on, or a clause in, each such insurance policy which it carries applicable to property located in the Recognized Sublet Premises pursuant to which each insurance company waives its right of

subrogation against Master Lessor and Master Sublessor or consent to a waiver of right of recovery stating substantially the following: “The insurer waives any right of subrogation against the United States of America which might arise by reason of any payment made under this policy.”

9. Representations and Warranties of Recognized Sublessee. Recognized Sublease hereby represents and warrants to Master Lessor as follows:

(a) Due Organization. Recognized Sublessee is a _____, duly formed and validly existing under the laws of the State of _____, and qualified to do business in the State of California.

(b) Power and Authority. Recognized Sublessee has the right, power, legal capacity and authority to enter into and perform its obligations under this Recognition Agreement, and no approval or consent of any person is required in connection with Recognized Sublessee’s execution and performance of this Recognition Agreement. The execution and performance of this Recognition Agreement will not result in or constitute any default or event that would, with notice or lapse of time or both, be a default, breach or violation of the organizational instruments governing Recognized Sublease or any agreement or any order or decree of any court or other governmental authority to which Recognized Sublessee is a party or to which it is subject.

(c) Actions to Authorize. Recognized Sublessee has taken all necessary action to authorize the execution, delivery and performance of this Recognition Agreement and this Recognition Agreement constitutes the legal, valid and binding obligation of Recognized Sublessee. All individuals executing this Recognition Agreement on behalf of Recognized Sublessee are authorized to execute and deliver this Recognition Agreement on behalf of Recognized Sublessee.

10. Governing Law. Except to the extent the same may be in conflict with the laws of the United States, the laws of the State of California shall govern the validity, construction and effect of this Recognition Agreement. In instances where the laws of the United States refer to the laws of the state applicable to a transaction, such reference shall be made to the laws of the State of California.

11. Anti-Deficiency Act. Master Lessor’s ability to perform its obligations under this Recognition Agreement is subject to the availability of appropriated funds. Nothing in this Recognition Agreement commits the United States Congress to appropriate funds for the purposes stated herein (pursuant to the Anti-Deficiency Act, 31 U.S.C. §1341). Without limiting the foregoing, Recognized Sublessee agrees that: (a) no interest shall accrue or be paid on any amount that is a credit pursuant to Section 5 above; and (b) Master Lessor has no obligation to pay to Recognized Sublessee, a Mortgagee or any other person or entity the unused or uncredited balance of any such credit.

12. Dispute Resolution. If either Master Lessor or Recognized Sublessee believes that a dispute exists under this Recognition Agreement, then such party may elect to declare a dispute by delivering a notice of such dispute delivered by either Master Lessor or Recognized

Sublessee to the other (a “General Dispute Notice”), which notice describes the nature of the dispute in reasonable detail and invokes the procedure for dispute resolution set forth in this Section 12. If a dispute is so declared, then the NASA Research Park Account Manager (as defined in the Master Lease) and the individual to whom notices to Recognized Sublessee are addressed pursuant to Section 4(c) shall meet and communicate (in person, by telephone, electronically or otherwise) as frequently as reasonably feasible during the thirty (30) days following delivery of the General Dispute Notice in a good faith effort to resolve the dispute. If such individuals are unable to resolve the dispute within that thirty (30) day period, then the dispute shall be referred to the NASA Ames Research Center’s Director of NASA Research Park and a representative appointed by Recognized Sublessee (which representative shall be at the rank of senior manager or supervisor, or equivalent). Such individuals shall meet and communicate (in person, by telephone, electronically or otherwise) as frequently as reasonably feasible during the thirty (30) days following referral of the dispute in a good faith effort to resolve the dispute. If such individuals are unable to resolve the dispute within that thirty (30) day period, then the dispute shall be referred to the Center Director (as defined in the Master Lease) and Recognized Sublessee’s Chief Executive Officer (or their respective designees), who shall meet and communicate (in person, by telephone, electronically or otherwise) as frequently as reasonably feasible during the thirty (30) days following referral of the dispute to them in a good faith effort to resolve the dispute. If such individuals are unable to resolve the dispute within that thirty (30) day period, then either Party may exercise any right or remedy set forth in this Recognition Agreement or which is otherwise available at law or in equity. Where a particular individual of Master Lessor is named in this Section 12, the Center Director may specify another individual of approximately equivalent rank to perform the duties assigned to the individual so named in this Section 12.

13. Waivers of Jury Trial and Certain Damages. Master Lessor and Recognized Sublessee each hereby expressly, irrevocably, fully and forever releases, waives and relinquishes any and all right to trial by jury and any and all right to receive punitive, exemplary and consequential damages from the other (or any past, present or future member, trustee, director, officer, employee, agent, representative, or advisor of the other) with respect to any Claim as to which Master Lessor and Recognized Sublessee are parties that in any way (directly or indirectly) arises out of, results from or relates to any of the following, in each case whether now existing or hereafter arising and whether based on contract or tort or any other legal basis: (i) this Recognition Agreement; (ii) any past, present or future act, omission, conduct or activity with respect to this Recognition Agreement; (iii) any transaction, event or occurrence contemplated by this Recognition Agreement; (iv) the performance of any obligation or the exercise of any right under this Recognition Agreement; or (v) the enforcement of this Recognition Agreement. Master Lessor and Recognized Sublessee reserve the right to recover actual or compensatory damages, with interest, attorneys’ fees, costs and expenses as provided in this Recognition Agreement, for any breach of this Recognition Agreement.

14. Exhibit. The exhibit attached hereto is hereby made a part of this Recognition Agreement as though set forth in full herein.

15. Interpretation. All capitalized terms used in this Recognition Agreement and not defined herein have the same meaning as in the Recognized Sublease or, if not defined in the Recognized Sublease, as defined in the Master Lease. When required by the context of this

Recognition Agreement, the singular includes the plural. The terms “include” and “including” as used in this Recognition Agreement shall be construed as terms of illustration and not terms of exclusion, and Master Lessor and Lessee hereby agree that the provisions of Section 3534 of the California Civil Code shall not apply to this Recognition Agreement, to the extent such provisions are inconsistent with that principle. References to sections or provisions of any statutes, codifications of statutes, rules, regulations and ordinances, shall be deemed to also refer to any successor sections or provisions pertaining to the same subject matter. The words “approval,” “consent,” “notice” and “notification” shall be deemed to be preceded by the word “written.” If there is more than one Recognized Sublessee, the obligations hereunder imposed upon Lessee shall be joint and several. The parties hereto acknowledge and agree that no rule of construction, to the effect that any ambiguities are to be resolved against the drafting party, shall be employed in the interpretation of this Recognition Agreement. The term “Recognized Sublessee” also includes any assignee of the Recognized Sublease which: (i) received the assignment in compliance with terms and conditions of the Recognized Sublease; and (ii) delivers to Master Lessor and Master Sublessor a copy of this Recognition Agreement executed by such assignee. Section headings in this Recognition Agreement are for convenience only and are not to be construed as a part of this Recognition Agreement or as in any way limiting or amplifying the provisions thereof.

16. Third Party Beneficiaries. Mortgagees hereafter holding or acquiring a Mortgage on any leasehold interest created with respect to the Recognized Sublease are intended, and shall be deemed, to be third party beneficiaries of the provisions of this Recognition Agreement. Except for such Mortgagees, this Recognition Agreement shall not, nor be deemed nor construed to, confer upon any person or entity, other than Master Lessor and Recognized Sublessee, any right or interest, including any third party beneficiary status or any right to enforce any provision of this Recognition Agreement.

17. Covenants for Benefit of Master Lessor. Without limiting the rights of other beneficiaries, Recognized Sublessee hereby acknowledges and agrees that the covenants of Recognized Sublessee under the Recognized Sublease are expressly for the benefit of Master Lessor and shall be fully enforceable by Master Lessor (subject to the provisions of this Recognition Agreement) upon the occurrence of a Recognition Event. Master Lessor shall, however, have no right to enforce the covenants of Recognized Sublessee under the Recognized Sublease until the occurrence of a Recognition Event.

18. Survival of Obligations. The liability of Recognized Sublessee under this Recognition Agreement shall survive the termination of the Recognized Sublease or this Recognition Agreement with respect to acts or omissions that occur before such termination.

19. Further Assurances. Master Lessor and Recognized Sublessee shall execute such other and further documents as may reasonably be required to implement the purposes of this Recognition Agreement.

20. Brokers. Recognized Sublessee represents and warrants to Master Lessor that it has no obligation to any broker or agent with respect to the Recognition Agreement and the transactions contemplated hereunder and Recognized Sublessee shall indemnify and hold Master Lessor harmless as to any claim or liability based upon a contrary claim.

21. Successors and Assigns. The terms, covenants and conditions of this Recognition Agreement shall apply to and bind the permitted heirs, successors, assigns, executors and administrators of all the parties hereto.

22. Estoppel Certificates. Not more than once in any six (6) month period, Recognized Sublessee may request, and Master Lessor shall provide, an estoppel certificate in the form and with the substance described in the Master Lease.

23. Assignment of Rights. Recognized Sublessee shall not have any right to assign its interest under this Recognition Agreement, except: (i) in connection with an assignment of the Recognized Sublease made in accordance with the Recognized Sublease; or (ii) to a Mortgagee holding a Mortgage on the subleasehold interest created under the Recognized Sublease (or any New Lease given to such Mortgagee in replacement thereof).

24. Severability. If any provision of this Recognition Agreement is determined to be illegal or unenforceable, such determination shall not affect any other provisions of this Recognition Agreement and all such other provisions shall remain in full force and effect.

25. Time. Time is of the essence of this Recognition Agreement and of each provision hereof.

IN WITNESS WHEREOF Master Lessor and Recognized Sublessee have executed this Recognition Agreement as of the date first written above.

“Master Lessor”

THE UNITED STATES OF AMERICA,
acting by and through the NATIONAL
AERONAUTICS AND SPACE
ADMINISTRATION, an Agency of the United
States

By: _____
Name: _____
Director, Ames Research Center

“Recognized Sublessee”

_____,

By: _____
Name: _____
Its: _____

EXHIBIT A

[Copy of Recognized Sublease.]

RECOGNITION AGREEMENT

(Mortgagee)

THIS RECOGNITION AGREEMENT (this "Recognition Agreement") is made and entered into as of _____, 20____, by and between THE UNITED STATES OF AMERICA, acting by and through the NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, an Agency of the United States (the "Master Lessor"), and _____, a _____ (the "Recognized Mortgagee"). Master Lessor enters into this Recognition Agreement pursuant to sections [203(c) and 315] of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. §2451 et seq.) and section 14.10 of the Master Lease (as defined in Recital A below).

RECITALS

A. Master Lessor and University Associates - Silicon Valley LLC, a Delaware limited liability company (the "Master Sublessor"), entered into that certain Enhanced Use Lease, bearing an Effective Date (as defined in the Master Lease) of December 30, 2008 (as amended from time to time, the "Master Lease"), pursuant to which Master Lessor leased to Master Sublessor the premises described in the Master Lease (such premises, as the same may have been changed and may hereafter change, the "Master Leased Premises").

B. Pursuant to a [**First Tier Sublease Agreement**], dated as of _____, 20____ (as amended from time to time, the "First Tier Sublease"), Master Sublessor subleased to _____, a _____ (the "First Tier Sublessee"), a portion of the Master Leased Premises (the "First Tier Sublet Premises") described in the First Tier Sublease.

C. Pursuant to a [**Second Tier Sublease Agreement**], dated as of _____, 20____ (as amended from time to time, the "Second Tier Sublease"), First Tier Sublessee subleased to _____, a _____ (the "Second Tier Sublessee"), a portion of the First Tier Sublet Premises (the "Second Tier Sublet Premises") described in the Second Tier Sublease.

D. Pursuant to a [**Third Tier Sublease Agreement**], dated as of _____, 20____ (as amended from time to time, the "Third Tier Sublease"), Second Tier Sublessee subleased to _____, a _____ (the "Third Tier Sublessee"), a portion of the Second Tier Sublet Premises (the "Third Tier Sublet Premises").

E. [Similar descriptions of any additional superior tier subleases.]

F. The First Tier Sublease, Second Tier Sublease, Third Tier Sublease [**etc.**] are referred to herein collectively as "Superior Tier Subleases." The sublessee under any Superior Tier Sublease is referred to herein as a "Superior Tier Sublessee." In the event that any Superior Tier Sublease is terminated for any reason, and any holder (a "Superior Tier Mortgagee") of a mortgage, deed of trust or other security interest (a "Superior Tier Mortgage") encumbering the

subleasehold interest created under such Superior Tier Sublease obtains a new leasehold estate (a “New Lease”) in the same or substantially the same property, whether from Master Lessor or any Superior Tier Sublessee, pursuant to such Superior Tier Mortgage or any agreement between such Superior Tier Mortgagee and Master Lessor or any Superior Tier Sublessee or Superior Tier Mortgagee, then such New Lease shall also be deemed a Superior Tier Sublease as of the date of its creation.

G. Pursuant to a **[Recognized Sublease Agreement]**, dated as of _____, 20__ (as amended from time to time, the “Recognized Sublease”), **[Immediately Superior Tier Sublease]** subleased to _____, a _____ (“Recognized Sublessee”) a portion of the ____ Tier Sublet Premises (the “Recognized Sublet Premises”). A copy of the Recognized Sublease is attached hereto as Exhibit A.

H. Recognized Sublessee has or is about to grant to Recognized Mortgagee a _____ which has been or is about to be recorded in the Official Records of Santa Clara County, California and which encumbers, among other things, the leasehold estate of Recognized Sublessee created under the Recognized Sublease (the “Recognized Leasehold Estate”). Such instrument, together with all other documents or instruments creating a security interest in the subleasehold created under the Recognized Sublease given by Recognized Sublessee to Recognized Mortgagee to secure all or any part of the same obligation as is secured by such instrument, as each of the same may be amended from time-to-time, is referred to herein as the “Recognized Mortgage.”

I. Master Lessor acknowledges that the Master Lease is in full force and effect and, to the actual knowledge (without investigation or inquiry) of the person executing this Recognition Agreement on behalf of Master Lessor, no Event of Default (as defined in the Master Lease) exists thereunder.

J. Pursuant to the provisions of Section 14.10 of the Master Lease, Master Sublessor has requested that Master Lessor enter into this Recognition Agreement. Master Lessor and Recognized Mortgagee now enter into this Recognition Agreement to confirm certain of Recognized Mortgagee’s rights and to provide for the Recognized Sublease to become a direct lease between Master Lessor and Recognized Mortgagee under certain conditions, subject to the terms and conditions of this Recognition Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Master Lessor and Recognized Mortgagee agree as follows:

1. Recognition of Rights of Recognized Mortgagee. Master Lessor acknowledges and agrees that Recognized Mortgagee is and shall be entitled to all of the rights and protections granted to a “Mortgagee” under the terms of the Master Lease even if the Master Lease may hereafter be terminated, including without limitation the rights and protections set forth in Article 14 of the Master Lease on the date hereof (which rights and protections are set forth on Exhibit B attached hereto and incorporated herein as if fully set forth in this Recognition Agreement) and any additional or greater rights and protections which may be created pursuant to an amendment

to the Master Lease entered into by Master Lessor and Master Sublessor. Without limiting the generality of the foregoing, Master Lessor acknowledges and agrees that:

(a) Until the earlier of the time, if any, that the Recognized Mortgage has been satisfied (or Recognized Mortgagee has given written notice to Master Lessor that the Recognized Mortgage has been satisfied, Master Lessor being entitled to rely on such a notice), if a Mortgaged Leasehold Default (as defined in Section 1.106 of the Master Lease) occurs with respect to the Recognized Leasehold Estate, Master Lessor shall not terminate, pursuant to Section 13.15 or Article 15 of the Master Lease, the leasehold interest created by the Recognized Sublease by reason of such Mortgaged Leasehold Default if and so long as any of the circumstances described in Sections 14.3(b) through 14.3(i), inclusive, of the Master Lease exists; and

(b) If the Master Lease terminates by reason of an “Event of Default” on the part of Master Sublessor, or if the Master Lease is disaffirmed in a bankruptcy proceeding affecting Master Sublessor, and if, within ninety (90) days after such termination or disaffirmation, Recognized Mortgagee delivers written notice to Master Lessor requesting Master Lessor to enter into a new lease of the Recognized Sublet Premises or such portion thereof as was covered by the Recognized Mortgage, then Master Lessor shall enter into a new lease with Recognized Mortgagee (or its nominee) on the terms and conditions set forth in Section 14.6 of the Master Lease within sixty (60) days after Recognized Mortgagee’s notice is deemed delivered.

2. Right to New Recognition Agreement. Master Lessor acknowledges and agrees that if Recognized Mortgagee or a purchaser at a judicial or foreclosure sale or trustee’s sale conducted pursuant the Recognized Mortgage becomes the owner of the Recognized Leasehold Estate and Recognized Mortgagee or such purchaser does not request that Master Lessor enter into a new lease as provided in Section 1(b) above, Recognized Mortgagee or such purchaser shall have the right to obtain a new recognition agreement from Master Lessor pursuant to the provisions of Section 14.10 of the Master Lease provided that the Recognized Sublease meets the criteria set forth in said Section 14.10, which recognition agreement shall be in the form attached to the Master Lease as Exhibit K (as such form may be modified in a commercially reasonable manner at the request of Recognized Mortgagee or such purchaser and acceptable to Master Lessor in its reasonable judgment).

3. Limitation on Liability of Recognized Mortgagee. Neither Recognized Mortgagee nor a purchaser at a judicial or foreclosure sale or trustee’s sale conducted pursuant to the Recognized Mortgage shall have any liability under this Recognition Agreement until it succeeds to the interest of Recognized Sublessee under the Recognized Sublease, at which time it will not have any obligation or liability hereunder for any previous breach by Recognized Sublessee. Additionally, if Recognized Mortgagee succeeds to the interest of Recognized Sublessee under the Recognized Sublease, it shall not have any liability for any obligation which accrues after Recognized Mortgagee assigns its interest under the Recognized Sublease to another person or entity in accordance with the provisions of Article 14 of the Master Lease.

4. Representations and Warranties of Recognized Mortgagee. Recognized Mortgagee hereby represents and warrants to Master Lessor as follows:

(a) Due Organization. Recognized Mortgagee is a _____, duly formed and validly existing under the laws of the State of _____, and qualified to do business in the State of California.

(b) Power and Authority. Recognized Mortgagee has the right, power, legal capacity and authority to enter into and perform its obligations under this Recognition Agreement, and no approval or consent of any person is required in connection with Recognized Mortgagee's execution and performance of this Recognition Agreement. The execution and performance of this Recognition Agreement will not result in or constitute any default or event that would, with notice or lapse of time or both, be a default, breach or violation of the organizational instruments governing Recognized Mortgagee or any agreement or any order or decree of any court or other governmental authority to which Recognized Mortgagee is a party or to which it is subject.

(c) Actions to Authorize. Recognized Mortgagee has taken all necessary action to authorize the execution, delivery and performance of this Recognition Agreement and this Recognition Agreement constitutes the legal, valid and binding obligation of Recognized Mortgagee. All individuals executing this Recognition Agreement on behalf of Recognized Mortgagee are authorized to execute and deliver this Recognition Agreement on behalf of Recognized Mortgagee.

5. Governing Law. Except to the extent the same may be in conflict with the laws of the United States, the laws of the State of California shall govern the validity, construction and effect of this Recognition Agreement. In instances where the laws of the United States refer to the laws of the state applicable to a transaction, such reference shall be made to the laws of the State of California.

6. Anti-Deficiency Act. Master Lessor's ability to perform its obligations under this Recognition Agreement is subject to the availability of appropriated funds. Nothing in this Recognition Agreement commits the United States Congress to appropriate funds for the purposes stated herein (pursuant to the Anti-Deficiency Act, 31 U.S.C. §1341).

7. Dispute Resolution. If either Master Lessor or Recognized Mortgagee believes that a dispute exists under this Recognition Agreement, then such party may elect to declare a dispute by delivering a notice of such dispute delivered by either Master Lessor or Recognized Mortgagee to the other (a "General Dispute Notice"), which notice describes the nature of the dispute in reasonable detail and invokes the procedure for dispute resolution set forth in this Section 7. If a dispute is so declared, then the NASA Research Park Account Manager (as defined in the Master Lease) and the individual to whom notices to Recognized Mortgagee are addressed pursuant to Section 9 shall meet and communicate (in person, by telephone, electronically or otherwise) as frequently as reasonably feasible during the thirty (30) days following delivery of the General Dispute Notice in a good faith effort to resolve the dispute. If such individuals are unable to resolve the dispute within that thirty (30) day period, then the dispute shall be referred to the NASA Ames Research Center's Director of NASA Research Park and a representative appointed by Recognized Mortgagee (which representative shall be at the rank of senior manager or supervisor, or equivalent). Such individuals shall meet and communicate (in person, by telephone, electronically or otherwise) as frequently as reasonably

feasible during the thirty (30) days following referral of the dispute in a good faith effort to resolve the dispute. If such individuals are unable to resolve the dispute within that thirty (30) day period, then the dispute shall be referred to the Center Director (as defined in the Master Lease) and Recognized Mortgagee's Chief Executive Officer (or their respective designees), who shall meet and communicate (in person, by telephone, electronically or otherwise) as frequently as reasonably feasible during the thirty (30) days following referral of the dispute to them in a good faith effort to resolve the dispute. If such individuals are unable to resolve the dispute within that thirty (30) day period, then either Party may exercise any right or remedy set forth in this Recognition Agreement or which is otherwise available at law or in equity. Where a particular individual of Master Lessor is named in this Section 7, the Center Director may specify another individual of approximately equivalent rank to perform the duties assigned to the individual so named in this Section 7.

8. Waivers of Jury Trial and Certain Damages. Master Lessor and Recognized Mortgagee each hereby expressly, irrevocably, fully and forever releases, waives and relinquishes any and all right to trial by jury and any and all right to receive punitive, exemplary and consequential damages from the other (or any past, present or future member, trustee, director, officer, employee, agent, representative, or advisor of the other) with respect to any Claim as to which Master Lessor and Recognized Mortgagee are parties that in any way (directly or indirectly) arises out of, results from or relates to any of the following, in each case whether now existing or hereafter arising and whether based on contract or tort or any other legal basis: (i) this Recognition Agreement; (ii) any past, present or future act, omission, conduct or activity with respect to this Recognition Agreement; (iii) any transaction, event or occurrence contemplated by this Recognition Agreement; (iv) the performance of any obligation or the exercise of any right under this Recognition Agreement; or (v) the enforcement of this Recognition Agreement. Master Lessor and Recognized Mortgagee reserve the right to recover actual or compensatory damages, with interest, attorneys' fees, costs and expenses as provided in this Recognition Agreement, for any breach of this Recognition Agreement.

9. Notices. Every notice or other communication to be given by either party to the other with respect hereto shall be given in accordance with Article 20 of the Master Lease. The addresses for purposes of the notices or demands shall be as follows:

If to Master Lessor:

NASA Ames Research Center
Mail Stop 204-2
Moffett Field, CA 94035-1000
Attn: Chief, NASA Research Park Branch

NASA Ames Research Center
Mail Stop 200-12
Moffett Field, CA 94035-1000
Attn: Office of the Chief Counsel

If to Recognized Mortgagee:

With a copy to:

10. Exhibits. The exhibits attached hereto are hereby made a part of this Recognition Agreement as though set forth in full herein.

11. Interpretation. All capitalized terms used in this Recognition Agreement and not defined herein have the same meaning as in the Recognized Sublease or, if not defined in the Recognized Sublease, as defined in the Master Lease. When required by the context of this Recognition Agreement, the singular includes the plural. The terms “include” and “including” as used in this Recognition Agreement shall be construed as terms of illustration and not terms of exclusion, and Master Lessor and Recognized Mortgagee hereby agree that the provisions of Section 3534 of the California Civil Code shall not apply to this Recognition Agreement, to the extent such provisions are inconsistent with that principle. References to sections or provisions of any statutes, codifications of statutes, rules, regulations and ordinances, shall be deemed to also refer to any successor sections or provisions pertaining to the same subject matter. The words “approval,” “consent,” “notice” and “notification” shall be deemed to be preceded by the word “written.” If there is more than one Recognized Mortgagee, the obligations hereunder imposed upon Recognized Mortgagee shall be joint and several. The parties hereto acknowledge and agree that no rule of construction, to the effect that any ambiguities are to be resolved against the drafting party, shall be employed in the interpretation of this Recognition Agreement. Section headings in this Recognition Agreement are for convenience only and are not to be construed as a part of this Recognition Agreement or as in any way limiting or amplifying the provisions thereof.

12. No Third Party Beneficiaries. This Recognition Agreement shall not, nor be deemed nor construed to, confer upon any person or entity, other than Master Lessor and Recognized Mortgagee, any right or interest, including any third party beneficiary status or any right to enforce any provision of this Recognition Agreement.

13. Further Assurances. Master Lessor and Recognized Mortgagee shall execute such other and further documents as may reasonably be required to implement the purposes of this Recognition Agreement.

14. Brokers. Recognized Mortgagee represents and warrants to Master Lessor that it has no obligation to any broker or agent with respect to the Recognition Agreement and the transactions contemplated hereunder and Recognized Mortgagee shall indemnify and hold Master Lessor harmless as to any claim or liability based upon a contrary claim.

15. Successors and Assigns. The terms, covenants and conditions of this Recognition Agreement shall apply to and bind the permitted heirs, successors, assigns, executors and administrators of all the parties hereto.

16. Estoppel Certificates. Not more than once in any six (6) month period, Recognized Mortgagee may request, and Master Lessor shall provide, an estoppel certificate in the form and with the substance described in the Master Lease.

17. Assignment of Rights. Recognized Mortgagee shall not have any right to assign its interest under this Recognition Agreement, except (i) in connection with an assignment of the Recognized Mortgage, or (ii) to a purchaser of the Recognized Leasehold Estate through judicial or non-judicial foreclosure of the Recognized Mortgage, and in any such event described in clauses (i) or (ii) above, in accordance with the provision of Article 14 of the Master Lease.

18. Severability. If any provision of this Recognition Agreement is determined to be illegal or unenforceable, such determination shall not affect any other provisions of this Recognition Agreement and all such other provisions shall remain in full force and effect.

19. Time. Time is of the essence of this Recognition Agreement and of each provision hereof.

IN WITNESS WHEREOF Master Lessor and Recognized Sublessee have executed this Recognition Agreement as of the date first written above.

“Master Lessor”

THE UNITED STATES OF AMERICA,
acting by and through the NATIONAL
AERONAUTICS AND SPACE
ADMINISTRATION, an Agency of the United
States

By: _____
Name: _____
Director, Ames Research Center

“Recognized Mortgagee”

By: _____
Name: _____
Its: _____

EXHIBIT A

[Copy of Recognized Sublease.]

EXHIBIT B

[Article 14 of Master Lease.]

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Exhibit B	List of Environmental Reports
Exhibit C	Form of Memorandum of Lease
Exhibit D	MEW Construction Coordination Agreement
Exhibit E	Navy Construction Coordination Document
Exhibit F	Predevelopment Milestones
Exhibit G	Predevelopment Schedule
Exhibit H	Diagram of Property Common Area as of the Effective Date
Exhibit I	Form of Support Agreement
Exhibit J	List of Reports Provided
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