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

FORM 10-K

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

For the fiscal year ended December 31, 2013

OR

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

For the transition period from to

Commission File No. 0-14710

XOMA Corporation

(Exact name of registrant as specified in its charter)

Delaware	**52-2154066**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
2910 Seventh Street, Berkeley, California 94710	**(510) 204-7200**
(Address of principal executive offices, including zip code)	(Telephone number)

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

Title of each class	**Name of each exchange on which registered**
Common Stock, $0.0075 par value Preferred Stock Purchase Rights	The NASDAQ Stock Market, LLC

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes ☐ No ☒

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act.
Yes ☐ No ☒

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):
Large Accelerated Filer ☐ Accelerated Filer ☒ Non-Accelerated filer ☐ Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act of 1934). Yes ☐ No ☒

The aggregate market value of voting common equity held by non-affiliates of the registrant is $300,612,834 as of June 30, 2013

Number of shares of Common Stock outstanding as of March 10, 2014: 106,571,513

DOCUMENTS INCORPORATED BY REFERENCE:

Portions of the Company's Proxy Statement for the Company's 2014 Annual General Meeting of Stockholders are incorporated by reference into Part III of this Report.

XOMA Corporation
2013 FORM 10-K ANNUAL REPORT
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PART I

Certain statements contained herein related to the anticipated size of clinical trials, the anticipated timing of initiation of clinical trials, the expected availability of clinical trial results, the sufficiency of our cash resources, the estimated costs of clinical trials and the amounts of certain revenues and certain costs in comparison to prior years, or that otherwise relate to future periods, are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The words "believe," "may," "estimate," "continue," "could," "anticipate," "assume," "intend," "expect," "predict," "potential" "should," "would," and similar expressions are intended to identify forward-looking statements. These statements are based on assumptions that may not prove accurate. Actual results could differ materially from those anticipated due to certain risks inherent in the biotechnology industry and for companies engaged in the development of new products in a regulated market. Among other things: our product candidates are still being developed, and we will require substantial funds to continue development which may not be available; we have sustained losses in the past and we expect to sustain losses in the future; we are substantially dependent on Servier for the development and commercialization of gevokizumab and for other aspects of our business; we have received negative results from certain of our clinical trials, and we face uncertain results of other clinical trials of our product candidates; if our therapeutic product candidates do not receive regulatory approval, neither our third-party collaborators, our contract manufacturers nor we will be able to manufacture and market them; we may not obtain orphan drug exclusivity or we may not receive the full benefit of orphan drug exclusivity even if we obtain such exclusivity; even once approved, a product may be subject to additional testing or significant marketing restrictions, its approval may be withdrawn or it may be voluntarily taken off the market; we may not be successful in commercializing our products, which could also affect our development efforts; we are subject to various state and federal healthcare related laws and regulations that may impact the commercialization of our product candidates and could subject us to significant fines and penalties; and certain of our technologies are in-licensed from third parties, so our capabilities using them are restricted and subject to additional risks. These and other risks, including those related to current economic and financial market conditions, are contained principally in Item 1, Business; Item 1A, Risk Factors; Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations; and other sections of this Annual Report on Form 10-K. Factors that could cause or contribute to these differences include those discussed in Item 1A, Risk Factors, as well as those discussed elsewhere in this Annual Report on Form 10-K.

Forward-looking statements are inherently uncertain and you should not place undue reliance on these statements, which speak only as of the date that they were made. These cautionary statements should be considered in connection with any written or oral forward-looking statements that we may issue in the future. We do not undertake any obligation to release publicly any revisions to these forward-looking statements after completion of the filing of this Annual Report on Form 10-K to reflect later events or circumstances or to reflect the occurrence of unanticipated events.

Item 1. Business

Overview

XOMA Corporation ("XOMA"), a Delaware corporation, discovers and develops innovative antibody-based therapeutics, including those that have unique allosteric modulating properties. Our lead product candidate, gevokizumab, is a proprietary potent, fully humanized allosteric-modulating monoclonal antibody that binds to the inflammatory cytokine interleukin-1 beta ("IL-1 beta"). We believe that by targeting IL-1 beta, gevokizumab has the potential to address the underlying inflammatory causes of a wide range of diseases that have been identified as having unmet medical needs.

Together with our development partner, Servier ("Servier"), a leading independent French pharmaceutical company, we initiated three Phase 3 clinical trials evaluating gevokizumab for the treatment of non-infectious intermediate, posterior or pan-uveitis ("NIU") and Behçet's uveitis, a severe subset of NIU. XOMA is responsible for all of the clinical study sites in the United States, and Servier is responsible for all of the clinical study sites outside of the United States. These studies are known as the EYEGUARD™ program, which includes EYEGUARD-A (patients with active NIU), EYEGUARD-B (patients with Behçet's uveitis), and EYEGUARD-C (patients currently controlled with systemic treatment).

In addition to the NIU clinical trials, we also are conducting a trial of gevokizumab in pyoderma gangrenosum ("PG"), a rare ulcerative skin disease. Based upon what we believe are compelling data from our pilot study in patients with PG, we requested an End of Phase 2 meeting with the U.S. Food and Drug Administration ("FDA") to solicit feedback on our proposed Phase 3 clinical development program. We have been granted a Type B meeting, which we expect to occur in March 2014 and to receive feedback from the FDA early in the second quarter of 2014.

We also have an active gevokizumab Proof-of-Concept ("POC") development program to identify indications for pivotal development. We conducted POC trials in moderate-to-severe inflammatory acne and in erosive osteoarthritis of the hand ("EOA"), and we have several other ongoing POC studies. In early 2013, we reported top-line results from our moderate-to-severe inflammatory acne study. Based upon market analysis, we have decided not to pursue a pivotal program in moderate-to-severe inflammatory acne; however, we will consider conducting pilot studies in rare acne indications classified under the umbrella diagnosis of neutrophilic dermatoses. In October 2013, we reported promising results from the Day 84 pain, stiffness and function endpoints in our gevokizumab POC study in patients with EOA and elevated C-reactive protein ("CRP"), known as Study 160. At the same time, we announced we completed patient enrollment in a supplemental study for patients with EOA and non-elevated CRP, known as Study 162. On March 4, 2014, we reported that despite early positive results in Study 160, the top-line data at Day 168 in that study, as well as data at Day 84 in Study 162, were not positive. These results led to our decision not to pursue Phase 3 testing in the broad EOA population. We will continue to review the data to determine if there is a subgroup of the EOA population that could benefit from gevokizumab therapy.

Gevokizumab has been generally well tolerated across all of our clinical studies. In both the acne and EOA studies, there were no drug-related serious adverse events reported. The most common adverse events were headache, pain, arthralgia, urinary tract infections, upper respiratory tract infections and pneumonia, and they were comparable between gevokizumab and placebo.

We also have ongoing clinical studies assessing gevokizumab's potential to treat several other rare diseases. Two studies are being conducted in collaboration with the U.S. National Institutes of Health ("NIH"). In March 2013, we announced that a gevokizumab study in patients with non-infectious anterior scleritis had opened for enrollment at the National Eye Institute ("NEI"). In August 2013, we announced a gevokizumab clinical study in patients with inflammatory autoimmune inner ear disease ("AIED") run by the North Shore-Long Island Jewish Health System in collaboration with the National Institute on Deafness and Other Communication Disorders ("NIDCD").

Separately, Servier instituted its own active development program for gevokizumab beyond the NIU and Behçet's uveitis Phase 3 program. In 2012, Servier initiated a gevokizumab Phase 2 study in patients with acute coronary syndrome, a cardiovascular disease. In 2013, Servier also began testing gevokizumab in a variety of POC studies, including polymyositis/dermatomyositis, Schnitzler syndrome, and giant cell arteritis. Servier has indicated these are the first studies in an extensive multi-indication exploratory program it expects to conduct.

Our proprietary preclinical pipeline includes classes of allosteric modulating antibodies that activate, sensitize or deactivate the insulin receptor*in vivo*, which we have named XMet. This portfolio of antibodies represents potential new therapeutic approaches to the treatment of diabetes and several rare diseases that have insulin involvement.

We have developed these and other antibodies using some or all of our ADAPT™ antibody discovery and development platform, our ModulX™ technologies for generating allosterically modulating antibodies, and our OptimX™ technologies for optimizing biophysical properties of antibodies, including affinity, immunogenicity, stability and manufacturability.

Our biodefense initiatives include XOMA 3AB, a biodefense anti-botulism product candidate comprised of a combination of three antibodies. XOMA 3AB is directed against botulinum toxin serotype A and has been developed through funding from the National Institute of Allergy and Infectious Diseases ("NIAID"), a part of the NIH. A Phase 1 trial was completed on XOMA 3AB, with no product-related serious adverse events. In January 2012, we announced that we will complete our NIAID biodefense contracts currently in place but will not actively pursue future contracts. Should the government choose to acquire XOMA 3AB or other biodefense products in the future, we expect to be able to produce these antibodies through an outside manufacturer.

We also have developed antibody product candidates with premier pharmaceutical companies including Novartis AG ("Novartis") and Takeda Pharmaceutical Company Limited ("Takeda"). Two antibodies developed with Novartis, LFA102 and HCD122 (lucatumumab), are in clinical development by Novartis.

Corporate Strategy

To ensure we capture the value from our product discovery and development programs, we are committed to establishing XOMA as a commercial organization in the United States. Our commercialization strategy is to market XOMA's products to the U.S.-based specialist prescriber through our own focused sales teams. For example, when selecting indications for gevokizumab clinical development, we investigate published data that supports IL-1 beta's role in the disease state and supplement the clinical evidence with data that indicates the affected patients are treated by a specialized physician base. When our compounds target indications that will require clinical studies that are prohibitively large or the targeted patient populations are not treated by specialist providers, we will seek a development and commercialization partner. For example, we will seek a partner for two of the compounds in the XMet platform, as they target Type 1 and Type 2 diabetes, and we will retain the third, which targets several rare indications for individuals with dysregulated insulin production.

Additionally, we may seek to expand our pipeline by developing additional proprietary products and technologies and by entering into additional licensing and collaborative arrangements with pharmaceutical and biotechnology companies.

The principal elements of our corporate strategy are to:

- ***Complete Phase 3 clinical development for gevokizumab, our lead product candidate, in non-infectious uveitis.*** With Servier, we launched the global gevokizumab Phase 3 clinical development program, named EYEGUARD™, in 2012. The global program includes two Phase 3 trials in active and controlled NIU (EYEGUARD-A and EYEGUARD-C, respectively) and a Phase 3 trial outside the United States in a subset of NIU patients who suffer from Behçet's disease (EYEGUARD-B). The EYEGUARD-A study defines active NIU as a vitreous haze score of equal to or greater than two on the SUN/NEI scale. The vitreous is a normally transparent gel that fills the eyeball behind the lens, and vitreous haze is the clouding of that gel. The EYEGUARD-C study is designed to determine if physicians can reduce or eliminate corticosteroid use from NIU patients without causing their disease to flare, or exacerbate. The EYEGUARD-B study also is designed to determine if physicians can reduce or eliminate corticosteroid use from Behçet's disease patients without causing an acute exacerbation of their uveitis. In addition to establishing efficacy, we believe these trials have been designed to provide data necessary to meet the FDA minimum safety requirements for ophthalmic indications: at least 300 patients must be treated for at least six months and 100 patients for one year at the to-be-marketed dose.

  EYEGUARD-A and -C require 300 patients to be enrolled in each study. The pace of enrollment in both studies has been slower than both Servier and we had anticipated. We increased the number of study sites in the U.S. to 70, 69 of which are now open, and we have implemented and continue to implement a variety of activities to accelerate patient enrollment. We are seeing slow but steady progress in enrolling patients in the United States, particularly in EYEGUARD-C. As of March 1, 2014, Servier has obtained regulatory approval for EYEGUARD-A and EYEGUARD-C in 19 of its targeted 23 territories. These countries represent 61 of the planned 70 clinical sites in the Servier territory, and opening the study sites in Servier's territories is crucial to getting the EYEGUARD-A and -C studies completed. For the EYEGUARD-A and -C studies to reach their primary end points in 2014, we must increase the pace of enrollment at the U.S. sites, and both studies need a sizable bolus of patients from the recently approved countries of Argentina, Mexico, Turkey, Armenia, and Brazil. We believe we need positive results from any two of these three studies in order to file a Biologics License Application ("BLA") in NIU with the FDA.

- ***Pursue a Phase 3 program in PG, a rare skin disease classified under the broader indication of neutrophilic dermatoses*** In late 2013, we launched a pilot study to determine gevokizumab's ability to treat acute inflammatory PG, one of several rare skin diseases classified under the broader cluster of neutrophilic dermatoses. We designed the study to enroll as many as eight patients to receive gevokizumab, dosed once monthly for three months. Of the six patients dosed with 60mg of gevokizumab, five patients had a reduction in the size of the target ulcer and four achieved complete closure of the target ulcer with no sign of active PG by day 84. We will present the data from all six patients to the FDA as a part of the Type B meeting, which will be held in March 2014, during which time we will request FDA guidance on the requirements for a Phase 3 program in PG. We anticipate having the FDA's feedback on our proposed PG Phase 3 program early in the second quarter of 2014.

- ***Advance secondary Phase 3 clinical development strategy for gevokizumab in Behçet's uveitis.*** As a parallel strategy to accelerate our path to commercialization, we plan to seek guidance from the FDA to determine the requirements necessary to support a BLA in Behçet's uveitis. In 2012, Servier launched an open-label Phase 2 study in patients with Behçet's disease and a history of severe uveitis who were treated with corticosteroids and at least one pre-specified immunosuppressant. Fifteen evaluable patients presented with elevated vitreous haze resulting from their Behçet's uveitis. All of the evaluable patients responded to gevokizumab treatment, most within one week, and all of the patients had vitreous haze reduction of at least one unit. Eleven of the fifteen patients met a prerequisite for enrollment in our Phase 3 EYEGUARD-A study, a vitreous haze score of greater than or equal to two on the NEI/SUN scale. Eight of these eleven patients showed a two-unit reduction in vitreous haze at about day 70.

We believe positive results from both Servier's and our Phase 2 Behçet's uveitis studies, combined with positive data from EYEGUARD-B, could support a Behçet's uveitis BLA submission. The FDA expects clinical evidence of activity in U.S. patients with Behçet's uveitis to support a BLA filing in this indication. We are developing the protocol for this additional study, which would be used to supplement potential positive data from EYEGUARD-B study and form the basis of a BLA filing for Behçet's uveitis in the United States.

- ***Continue to assess gevokizumab's ability to treat a variety of diseases that have IL-1β involvement.*** We believe that by targeting IL-1 beta, gevokizumab has the potential to address the underlying inflammatory causes of a wide range of diseases. We designed our POC program to study gevokizumab's potential in diseases that have IL-1β involvement and that are recognized as those with unmet medical needs. This program is structured in such a way that the success or failure of a single study does not have an impact on the other indications we are studying.

  We are continuing our open-label safety and efficacy study gevokizumab in patients with EOA, as our analysis may determine that patients benefit from longer-term therapy or identify a subset of the patient population that could benefit from gevokizumab treatment. This study, Study 161, has over 240 patients enrolled who are receiving gevokizumab 60 mg once monthly.

  In April 2013, the NEI, one of the institutes of the NIH, opened its non-infectious, active, anterior scleritis trial for patient enrollment. The open-label single-arm Phase 1/2 study is designed to assess the safety and potential efficacy of gevokizumab in 10 patients experiencing non-infectious, active, anterior scleritis, which is the inflammation of the sclera (the fibrous white membrane surrounding the eyeball excluding the cornea).

  In August 2013, we announced a single-center clinical trial in ten patients with AIED, which falls under the umbrella of sensorineural hearing loss. Patients with AIED usually experience multiple episodes of rapid hearing loss either concurrently or sequentially in both ears. This study is being run by the Feinstein Institute for Medical Research, Hearing & Speech Center at North Shore-Long Island Jewish Health System in collaboration with, and with funding from, the NIDCD and the NIH.

- ***Establish commercial-scale manufacturing for gevokizumab***. In August 2012, Servier and we announced an agreement with Boehringer Ingelheim to transfer XOMA's technology and processes for the validation of our technology and processes in preparation for the commercial manufacture of gevokizumab. Boehringer Ingelheim has completed GMP runs with successful biological comparability including all process validation batches of the XOMA processes. Boehringer Ingelheim is making preparations for the production of gevokizumab commercial batches at its facility in Biberach, Germany.

- ***Advance our proprietary preclinical pipeline candidates and generate revenues from our proprietary technologies.*** We will continue to develop our proprietary preclinical pipeline, primarily focusing on the development of allosteric modulating monoclonal antibodies. Our most advanced program, which targets the insulin receptor, has generated three new classes of fully human monoclonal antibodies known as Selective Insulin Receptor Modulators ("SIRMs"). These allosteric modulating antibodies activate ("XMet A"), sensitize ("XMet S") or deactivate/antagonize ("XOMA 247") the insulin receptor *in vivo*. XMet A and XMet S represent the potential for distinct, new therapeutic approaches for the treatment of patients with diabetes. Separate studies of XMet A and XMet S have demonstrated reduced fasting blood glucose levels and improved glucose tolerance in mouse models of diabetes. We expect to out license XMet A and XMet S development and commercialization at a future date.

  In the case of XOMA 247, a fully human, allosteric modulating monoclonal antibody engineered to deactivate the insulin receptor, we plan to develop this compound internally, as it has the potential to treat a variety of rare, severely debilitating diseases including congenital hyperinsulinism ("CHI"), hyperinsulinemic hypoglycemia in post-gastric bypass surgery patients and insulinomas.. In preclinical models, XOMA 247 has emulated the glucose lowering seen in patients with insulinomas, a beta cell tumor that over secretes insulin, and with CHI, a hereditary disease resulting in lack of insulin regulation and profound hypoglycemia that can result in seizures and brain damage. These models demonstrated XOMA 247 was capable of restoring fasting blood glucose to normal levels. We anticipate filing an IND for endogenous hypoglycemia in 2014.

- ***Complete current biodefense contracts.*** To date, we have been awarded four contracts totaling approximately $120 million from NIAID to support development of XOMA 3AB and several additional product candidates for the treatment of botulism poisoning with botulinum toxin serotypes A, B and E, as well as C and D. In addition, our biodefense programs included two subcontracts from SRI International totaling $4.3 million, funded through NIAID, for the development of antibodies to neutralize H1N1 and H5N1 influenza viruses and the virus that causes severe acute respiratory syndrome ("SARS").

  NIAID has completed a Phase 1 trial of XOMA 3AB, a novel formulation of three antibodies designed to prevent and treat botulism poisoning from serotype A. This double-blind, dose-escalation study in 24 healthy volunteers was designed to assess the safety and tolerability and determine the pharmacokinetic profile of XOMA 3AB. This trial has been completed, and no drug product-related Serious Adverse Events have been observed. The results of this trial strongly support our platform approach for the remaining serotype-directed anti-toxins.

  In 2012, we announced we will complete NIAID biodefense contracts currently in place but will not actively pursue future contracts. If the government chooses to acquire XOMA 3AB or other biodefense products in the future, we expect to be able to provide these antibodies through an outside manufacturer.

Proprietary Products

As part of our strategy, we are focusing our technology and resources on advancing our emerging proprietary pipeline. Below is a summary of our proprietary products:

- **Gevokizumab** is a proprietary potent humanized monoclonal antibody with unique allosteric modulating properties and has the potential to treat patients with a wide variety of inflammatory diseases.. Gevokizumab binds strongly to IL-1 beta, a pro-inflammatory cytokine involved in NIU and Behçet's uveitis, PG, active non-infectious anterior scleritis, cardiovascular disease, diseases under the neutrophilic dermatoses designation, Schnitzler syndrome and other diseases.. By binding to IL-1 beta, gevokizumab modulates the activation of the IL-1 receptor, thereby preventing the cellular signaling events that produce inflammation Based on its binding properties, specificity for IL-1 beta and its half-life (the time it takes for the amount administered to be reduced by one-half) in the body, gevokizumab may provide convenient dosing of once per month or less frequently.

  In December 2010, we entered into an agreement with Servier to jointly develop and commercialize gevokizumab in multiple indications. Under the terms of that agreement, Servier has worldwide rights to gevokizumab for cardiovascular disease and diabetes indications and rights outside the United States and Japan to all other indications. We retain development and commercialization rights in the United States and Japan to all indications except cardiovascular disease and diabetes and have an option to reacquire rights to these indications from Servier in these territories. In 2012, Servier initiated a gevokizumab Phase 2 study in patients with acute coronary syndrome, a cardiovascular disease. In 2013, Servier also began testing gevokizumab in a variety of proof-of-concept studies, including polymyositis/dermatomyositis, Schnitzler syndrome, and giant cell arteritis.

- **XMet: XOMA Metabolic Activating, Sensitizing and Antagonizing/Deactivating Antibodies.** "SIRMs, such as XMet A, are designed to provide long-acting insulin-like activity to diabetic patients who cannot make sufficient insulin, potentially reducing the number of insulin injections needed to control their blood glucose levels. Insulin receptor-sensitizing antibodies, such as XMet S, are designed to reduce insulin resistance and could enable diabetic patients to use their own insulin more effectively to control blood glucose levels. Insulin receptor deactivating/antagonizing antibodies, such as XOMA 247, are designed to treat several diseases that result from the continuous over-production of or inappropriate reaction to insulin. There are three rare disease indications that may benefit from XOMA 247 that are of greatest interest to us: congenital hyperinsulinism ("CHI"), hyperinsulinemic hypoglycemia in post-gastric bypass surgery patients and insulinomas.

  Studies presented on XMet A have demonstrated it reduced fasting blood glucose levels and improved glucose tolerance in a mouse model of diabetes. After six weeks of treatment, mice treated with XMet A had a statistically significant reduction in HbA1c levels, a standard measure of average blood glucose levels over time, compared to the control mice. In addition, there was a statistically significant reduction in elevated non-high-density lipoprotein cholesterol levels.

  Studies presented on XMet S have indicated that it is an allosteric antibody that binds to the insulin receptor ("INSR") and enhances the binding of insulin to the INSR. In diabetic mouse models, we saw enhanced insulin sensitivity and statistically significant improvements in fasting blood glucose levels and glucose tolerance as compared to the control mice.

- **XOMA 3AB** is a multi-antibody product designed to neutralize the most potent of the botulinum toxins, Type A, which causes paralysis and is a bioterrorism threat. Our anti-botulism program also includes additional product candidates and is the first of its kind to combine multiple human antibodies in each product candidate to target a broad spectrum of the most toxic botulinum toxins, including the three most toxic serotypes, Types A, B and E. The antibodies are designed to bind to each toxin and enhance the clearance of the toxin from the body. The use of multiple antibodies increases the likelihood of clearing the harmful toxins by providing specific protection against each toxin type. In contrast to existing agents that treat botulism, XOMA uses advanced human monoclonal antibody technologies in an effort to achieve superior safety, potency and efficacy and avoid life-threatening immune reactions associated with animal-derived products. NIAID has completed a Phase 1 trial of XOMA 3AB.

- **XOMA 629** is a topical anti-bacterial formulation of a peptide derived from bactericidal/permeability-increasing protein ("BPI"), an integral part of the protective human immune system. In 2012, XOMA entered into a license agreement with Margaux Biologics, Inc. ("Margaux"), under which XOMA transferred its rights, title, and interest in BPI. As consideration for the transferred assets and licenses, Margaux issued shares of its common stock to XOMA, representing an amount of capital stock equal to 7% of the outstanding capital stock of Margaux. Under the terms of this agreement, we may receive milestone payments aggregating up to $5.6 million and low- to mid-single-digit royalties on future sales of products subject to this license.

- **Preclinical Product Pipeline:** We are pursuing additional opportunities to further broaden our preclinical product pipeline, including internal discovery programs.

Partnership Products

Historically, we have provided research and development collaboration services for world-class organizations, such as Novartis and Takeda, in pursuit of new antibody products. In more recent years, we have evolved our business focus from a service provider model to a proprietary product development model. However, we will continue to capitalize on partnered product arrangements as opportunities arise. Below is a list of such partnerships:

- **Therapeutic Antibodies with Takeda:** Since 2006, Takeda has been a collaboration partner for therapeutic monoclonal antibody discovery and development against multiple targets selected by them. In February 2009, we expanded our existing collaboration to provide Takeda with access to multiple antibody technologies, including a suite of research and development technologies and integrated information and data management systems. We may receive potential milestones and royalties on sales of antibody products in the future.

- **Therapeutic Antibodies with Novartis:** In November 2008, we restructured our product development collaboration with Novartis, which was entered into in 2004 with Novartis (then Chiron Corporation). Under the restructured agreement, Novartis received control over the two ongoing programs. We may, in the future, receive milestones and/or double-digit royalty rates for the programs and options to develop or receive royalties from four additional programs.

Technologies

We have a unique set of antibody discovery, optimization and development technologies, including:

- ADAPT™ (Antibody Discovery Advanced Platform Technologies): proprietary phage display libraries integrated with yeast and mammalian display to enable antibody discovery;

- ModulX™: technology that enables positive and negative modulation of biological pathways using allosterically modulating antibodies; and

- OptimX™: technologies used for optimizing biophysical properties of antibodies, including affinity, immunogenicity, stability and manufacturability.

Technology Licenses

Below is a summary of certain proprietary technologies owned by us and available for licensing to other companies:

- **Antibody Discovery Technologies:** We use human antibody phage display libraries, integrated with yeast and mammalian display, which we call ADAPT™ Integrated Display, in our discovery of therapeutic candidates. We offer access to this platform, including novel phage libraries developed internally, as part of our collaboration business. We believe access to ADAPT™ Integrated Display offers a number of benefits to us and our collaboration partners because it enables us to combine the diversity of phage libraries with accelerated discovery due to rapid IgG reformatting and FACS-based screening using yeast and mammalian display. This increases the probability of technical and business success in finding rare and unique functional antibodies directed to targets of interest.

- **ModulX™ technology:** ModulX™ technology allows modulation of biological pathways using monoclonal antibodies and offers insights into regulation of signaling pathways, homeostatic control, and disease biology. Using ModulX™, XOMA is generating product candidates with novel mechanisms of action that specifically alter the kinetics of interaction between molecular constituents (e.g. receptor-ligand). ModulX™ technology enables expanded target and therapeutic options and offers a unique approach in the treatment of disease.

- **OptimX™ technologies:**

  Human Engineering™ ("HE™"): HE™ is a proprietary humanization technology that allows modification of non-human monoclonal antibodies to reduce or eliminate detectable immunogenicity and make them suitable for medical purposes in humans. The technology uses a unique method developed by us, based on analysis of the conserved structure-function relationships among antibodies. The method defines which residues in a non-human variable region are candidates to be modified. The result is an HE™ antibody with preserved antigen binding, structure and function that has eliminated or greatly reduced immunogenicity. HE™ technology was used in development of gevokizumab and is used in the development of certain other antibody products.

  Targeted Affinity Enhancement™ ("TAE™"): TAE™ is a proprietary technology involving the assessment and guided substitution of amino acids in antibody variable regions, enabling efficient optimization of antibody binding affinity and selectivity modulation. TAE™ generates a comprehensive map of the effects of amino acid mutations in the CDR region likely to impact binding. The technology is utilized by XOMA scientists and has been licensed to a number of our collaborators.

Financial and Legal Arrangements of Product Collaborations, Licensing and Other Arrangements

Collaboration and Licensing Agreements

Servier -- Gevokizumab

We have entered into a license and collaboration agreement with Servier to jointly develop and commercialize gevokizumab in multiple indications that provided a non-refundable upfront payment of $15 million, which we received in January 2011. Under the terms of the agreement, Servier has worldwide rights to cardiovascular disease and diabetes indications and rights outside the United States and Japan to all other indications, including NIU, Behçet's uveitis and other inflammatory and oncology indications. XOMA retains development and commercialization rights in the United States and Japan for all indications other than cardiovascular disease and diabetes. XOMA has an option to reacquire rights to cardiovascular disease and diabetes indications from Servier in the United States and Japan (the "Cardiometabolic Indications Option"). If we exercise the Cardiometabolic Indications Option, we will be required to pay Servier an option fee and partially reimburse their incurred development expenses. Each party has the right in certain circumstances to pursue development in indications not specified in the agreement, and in such event, the other party will have the option to participate in such development in certain circumstances, including reimbursement of a portion of the developing party's expenses.

Under this agreement, Servier will fund all activities to advance the global clinical development and future commercialization of gevokizumab in cardiovascular-related diseases and diabetes. Also, Servier funded the first $50 million of gevokizumab global clinical development and CMC expenses and continues to fund 50% of further expenses related to the NIU and Behçet's uveitis indications.

In addition, under the agreement, we are eligible to receive a combination of Euro- and U.S. Dollar ("USD")-denominated, development and sales milestones for multiple indications aggregating to a potential maximum of approximately $488 million when converted using the December 31, 2013, Euro to USD exchange rate (the "12/31/13 Exchange Rate of 1.3766"), if XOMA reacquires cardiovascular and/or diabetes rights for use in the United States and Japan. If XOMA does not reacquire these rights, then the milestone payments aggregate to a potential maximum of approximately $827 million converted using the 12/31/13 Exchange Rate of 1.3766. Servier's obligation to pay development and commercialization milestones will continue for so long as Servier is developing or selling products under the agreement.

We are eligible to receive royalties on gevokizumab sales from sales outside of the United States and Japan, and from global sales in cardio-metabolic indications, that are tiered based on sales levels and range from a mid-single digit to up to a mid-teens percentage rate. Our right to royalties with respect to a particular product and country will continue for so long as such product is sold in such country.

The collaboration is carried out and managed by committees mutually established by XOMA and Servier. In general, in the event of any disputes, each party has decision-making authority over matters relating to its areas of responsibility and territory, but neither party has unilateral decision-making rights if the decision would have a material adverse impact on the other party's rights in its territory. The agreement contains customary termination rights relating to matters such as material breach by either party, safety issues and patents. Servier also has a unilateral right to terminate the agreement on a country-by-country basis or in its entirety on six months' notice.

We also entered into a loan agreement with Servier (the "Servier Loan Agreement") that provided for an advance of up to €15.0 million. The loan was fully funded in January 2011, with the proceeds converting to approximately $19.5 million at the date of funding. The loan is secured by an interest in XOMA's intellectual property rights to all gevokizumab indications worldwide, excluding certain rights in the United States and Japan. Interest is calculated at a floating rate based on a Euro Inter-Bank Offered Rate ("EURIBOR") and is subject to a cap. The interest rate is reset semi-annually in January and July of each year. The interest rate for the initial interest period was 3.22% and was reset semi-annually ranging from 2.33% to 3.83%. Interest for the six-month period from January 2014 through July 2014 was reset to 2.39%. Interest is payable semi-annually; however, the Servier Loan Agreement provides for a deferral of interest payments over a period specified in the agreement. During the deferral period, accrued interest will be added to the outstanding principal amount for the purpose of interest calculation for the next six-month interest period. On the repayment commencement date, all unpaid and accrued interest shall be paid to Servier, and thereafter, all accrued and unpaid interest shall be due and payable at the end of each six-month period. In January 2014, the Company paid $1.9 million in accrued interest to Servier.

The loan matures in 2016; however, after a specified period prior to final maturity, the loan is to be repaid (i) at Servier's option, by applying up to a significant percentage of any milestone or royalty payments owed by Servier under our collaboration agreement and (ii) using a significant percentage of any upfront, milestone or royalty payments we receive from any third-party collaboration or development partner for rights to gevokizumab in the United States and/or Japan. In addition, the loan becomes immediately due and payable upon certain customary events of default. At December 31, 2013, the outstanding principal balance under this loan was $20.6 million using the 12/31/13 Exchange Rate of 1.3766. Refer to *Management's Discussion and Analysis of Financial Condition and Results of Operations* for further information regarding the Servier Loan Agreement.

NIAID

In September 2008, we were awarded a third NIAID contract for $64.8 million under Contract No. HHSN272200800028C ("NIAID 3") to continue development of our anti-botulinum antibody product candidates, including XOMA 3AB and additional product candidates directed against the B and E toxin serotypes. As part of the contract, we have developed, evaluated and produced the clinical supplies to support an IND filing with the FDA for XOMA 3AB. Independently, XOMA has funded preclinical studies required to support human clinical trials. A Phase 1 trial was completed on XOMA 3AB, with no product-related serious adverse events. Subsequently, XOMA manufactured XOMA 3B and XOMA 3E, which are currently on stability.

In October 2011, we announced we had been awarded a fourth NIAID contract for up to $28.0 million over five years under Contract No. HHSN 272201100031C ("NIAID 4") to develop broad-spectrum antitoxins for the treatment of human botulism poisoning.

In January 2012, we announced we will complete NIAID biodefense contracts currently in place but will not actively pursue future contracts. Should the government choose to acquire XOMA 3AB or other biodefense products in the future, we expect to be able to provide these antibodies through an outside manufacturer.

Takeda

In November 2006, we entered into a fully funded collaboration agreement with Takeda for therapeutic monoclonal antibody discovery and development activities under which we agreed to discover and optimize therapeutic antibodies against multiple targets selected by Takeda. Takeda agreed to make up-front, annual maintenance and milestone payments to us, fund our research and development and manufacturing activities for preclinical and early clinical studies and pay royalties on sales of products resulting from the collaboration. Takeda is responsible for clinical trials and commercialization of drugs after an IND submission and is granted the right to manufacture once a product enters into Phase 2 clinical trials. We have completed a technology transfer and do not expect to perform any further research and development services under this program. From 2011 through 2013, we received milestone payments relating to one currently active program.

Under the terms of this agreement, we may receive milestone payments aggregating up to $19.0 million relating to one undisclosed product candidate and low single-digit royalties on future sales of all products subject to this license. In addition, in the event Takeda were to develop additional future qualifying product candidates under the terms of our agreement, we would be eligible for milestone payments aggregating up to $20.75 million for each such qualifying product candidate. Our right to milestone payments expires on the later of the receipt of payment from Takeda of the last amount to be paid under the agreement or the cessation by Takeda of all research and development activities with respect to all program antibodies, collaboration targets and/or collaboration products. Our right to royalties expires on the later of 13.5 years from the first commercial sale of each royalty-bearing discovery product or the expiration of the last-to-expire licensed patent.

In February 2009, we expanded our existing collaboration to provide Takeda with access to multiple antibody technologies, including a suite of research and development technologies and integrated information and data management systems. We may receive milestones of up to $3.25 million per discovery product candidate and low single-digit royalties on future sales of all antibody products subject to this license. Our right to milestone payments expires on the later of the receipt of payment from Takeda of the last amount to be paid under the agreement or the cessation by Takeda of all research and development activities with respect to all program antibodies, collaboration targets and/or collaboration products. Our right to royalties expires on the later of 10 years from the first commercial sale of such royalty-bearing discovery product or the expiration of the last-to-expire licensed patent.

Novartis

In November 2008, we restructured our product development collaboration with Novartis. Under the restructured agreement, Novartis made a payment to us of $6.2 million in cash and reduced our existing debt by $7.5 million; will fund all future research and development expenses; may pay potential milestones of up to $14.0 million and royalty rates ranging from low-double digit to high-teen percentage rates for two ongoing product programs, HCD122 and LFA102; and has provided us with options to develop or receive royalties on four additional programs. In exchange, Novartis has control over the HCD122 and LFA102 programs, as well as the right to expand the development of these programs into additional indications outside of oncology. In 2013, we received a $7.0 million milestone relating to one currently active program. Our right to milestone payments expires at such time as no collaboration product or former collaboration product is being developed or commercialized anywhere in the world and no royalty payments on these products are due. Our right to royalty payments expires on the later of the expiration of any licensed patent covering each product or 20 years from the launch of each product.

In connection with the collaboration between XOMA and Novartis (then Chiron Corporation), a secured note agreement was executed in May 2005. The note agreement is secured by our interest in the collaboration and is due and payable in full in June 2015. At December 31, 2013, the outstanding principal balance under this note agreement totaled $14.8 million, and pursuant to the terms of the arrangement as restructured in November 2008, we will not make any additional borrowings on the Novartis note. Pursuant to our obligations under the Agreement, in January 2014, we made a payment, equal to 25 percent of a $7.0 million milestone received, or $1.75 million, toward our outstanding debt obligation to Novartis.

Pfizer

In August 2007, we entered into a license agreement with Pfizer Inc. (“Pfizer”) for non-exclusive, worldwide rights for XOMA’s patented bacterial cell expression technology for research, development and manufacturing of antibody products. Under the terms of the agreement, we received a license fee payment of $30 million in 2007.

From 2011 through 2013, we received milestone payments relating to ten undisclosed product candidates. We may also be eligible for additional milestone payments aggregating up to $15.2 million relating to twelve product candidates and low single-digit royalties on future sales of all products subject to this license. In addition, we may receive potential milestone payments aggregating up to $1.7 million for each additional qualifying product candidate. Our right to milestone payments expires on the later of the expiration of the last-to-expire licensed patent or the tenth anniversary of the effective date. Our right to royalties expires upon the expiration of the last-to-expire licensed patent. We expect recognize ant revenue on milestones when and if they are achieved and on royalties when and if the underlying sales occur.

Financing Agreements

Outstanding Warrants

In June of 2009, we issued warrants to certain institutional investors as part of a registered direct offering, which represent the right to acquire an aggregate of up to 347,826 shares of common stock over a five-year period beginning December 11, 2009, at an exercise price of $19.50 per share. As of December 31, 2013, all of these warrants were outstanding.

In February 2010, we issued warrants to purchase 1,260,000 shares of XOMA's common stock in connection with an underwritten offering, which were exercisable beginning six months and one day after issuance and have a five-year term and an exercise price of $10.50 per share. As of December 31, 2013, all of these warrants were outstanding.

In December 2011, we issued warrants in connection with a debt financing, which entitle the holder to purchase up to an aggregate of 263,158 unregistered shares of XOMA common stock at an exercise price equal to $1.14 per share. The warrants are exercisable immediately and will expire on December 30, 2016. As of December 31, 2013, all of these warrants were outstanding.

In March 2012, we issued warrants in connection with an underwritten public offering, which entitle the holders to purchase up to an aggregate of 14,834,577 shares of XOMA common stock at an exercise price equal to $1.76 per share. The warrants are exercisable immediately and will expire on March 6, 2017. As of December 31, 2013, 12,562,682 of these warrants were outstanding.

In September 2012, we issued warrants in connection with an amendment to an existing debt financing, which entitle the holder to purchase up to an aggregate of 39,346 unregistered shares of XOMA common stock at an exercise price equal to $3.54 per share. The warrants are exercisable immediately and will expire on September 27, 2017. As of December 31, 2013, all of these warrants were outstanding.

ATM Agreement

On February 4, 2011, we entered into an At Market Issuance Sales Agreement (the "2011 ATM Agreement"), with McNicoll, Lewis & Vlak LLC (now known as MLV & Co. LLC, "MLV"), under which we may sell shares of our common stock from time to time through MLV, as our agent for the offer and sale of the shares, in an aggregate amount not to exceed the amount that can be sold under our registration statement on Form S-3 (File No. 333-172197) filed with the SEC on February 11, 2011, and amended on March 10, 2011, June 3, 2011 and January 3, 2012, which was most recently declared effective by the SEC on January 17, 2012. MLV may sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, including without limitation sales made directly on The NASDAQ Global Market, on any other existing trading market for our common stock or to or through a market maker. MLV also may sell the shares in privately negotiated transactions, subject to our prior approval. We will pay MLV a commission equal to 3% of the gross proceeds of the sales price of all shares sold through it as sales agent under the 2011 ATM Agreement. From the inception of the 2011 ATM Agreement through December 31, 2012, we sold a total of 7,572,327 shares of common stock under this agreement for aggregate gross proceeds of $14.6 million. No shares of common stock have been sold under this agreement since February 3, 2012. Total offering expenses incurred related to sales under the 2011 ATM Agreement from inception to December 31, 2013, were $0.5 million. The registration statement under which the 2011 ATM was entered expires in June of 2014.

General Electric Capital Corporation Term Loan

In December 2011, we entered into a loan agreement (the "GECC Loan Agreement") with General Electric Capital Corporation ("GECC"), under which GECC agreed to make a term loan in an aggregate principal amount of $10 million (the "Term Loan") to us, and upon execution of the GECC Loan Agreement, GECC funded the Term Loan. As security for our obligations under the GECC Loan Agreement, we granted a security interest in substantially all of our existing and after-acquired assets, excluding its intellectual property assets (such as those relating to our gevokizumab and anti-botulism products). The Term Loan accrued interest at a fixed rate of 11.71% per annum and was to be repaid over a period of 42 consecutive equal monthly installments of principal and accrued interest and was due and payable in full on June 15, 2015. We incurred debt issuance costs of approximately $1.3 million in connection with the Term Loan and were required to pay a final payment fee equal to $500,000 on the maturity date, or such earlier date as the Term Loan is paid in full. The debt issuance costs and final payment fee were being amortized and accreted, respectively, to interest expense over the term of the Term Loan using the effective interest method.

In connection with the GECC Loan Agreement, we issued to GECC unregistered warrants that entitle GECC to purchase up to an aggregate of 263,158 unregistered shares of XOMA common stock at an exercise price equal to $1.14 per share. These warrants are exercisable immediately and have a five-year term. We allocated the aggregate proceeds of the GECC Term Loan between the warrants and the debt obligation based on their relative fair values. The fair value of the warrants issued to GECC was determined using the Black-Scholes Model. The warrants' fair value of $0.2 million was recorded as a discount to the debt obligation and was being amortized over the term of the loan using the effective interest method.

In September 2012, we entered into an amendment to the GECC Loan Agreement providing for an additional term loan in the amount of $4.6 million, increasing the term loan obligation to $12.5 million (the "Amended Term Loan") and providing for an interest-only monthly repayment period following the effective date of the amendment through March 1, 2013, at a stated interest rate of 10.9% per annum. Thereafter, we are obligated to make monthly principal payments of $347,222, plus accrued interest, over a 27-month period commencing on April 1, 2013, and through June 15, 2015, at which time the remaining outstanding principal amount of $3.1 million, plus accrued interest, is due. We incurred debt issuance costs of approximately $0.2 million and are required to make a final payment fee in the amount of $875,000 on the date upon which the outstanding principal amount is required to be repaid in full. This final payment fee replaced the original final payment fee of $500,000. The debt issuance costs and final payment fee are being amortized and accreted, respectively, to interest expense over the term of the Amended Term Loan using the effective interest method.

In connection with the amendment, on September 27, 2012, we issued to GECC unregistered stock purchase warrants, which entitle GECC to purchase up to an aggregate of 39,346 shares of XOMA common stock at an exercise price equal to $3.54 per share. These warrants are exercisable immediately and have a five-year term. The warrants' fair value of $0.1 million was recorded as a discount to the debt obligation and is being amortized over the term of the loan using the effective interest method. The warrants are classified in permanent equity on the consolidated balance sheets.

The Amended Term Loan does not change the remaining terms of the GECC Loan Agreement. The GECC Loan Agreement contains customary representations and warranties and customary affirmative and negative covenants, including restrictions on the ability to incur indebtedness, grant liens, make investments, dispose of assets, enter into transactions with affiliates and amend existing material agreements, in each case subject to various exceptions. In addition, the GECC Loan Agreement contains customary events of default that entitle GECC to cause any or all of the indebtedness under the GECC Loan Agreement to become immediately due and payable. The events of default include any event of default under a material agreement or certain other indebtedness.

We may prepay the Amended Term Loan voluntarily in full, but not in part, and any voluntary and certain mandatory prepayments are subject to a prepayment premium of 3% in the first year after the effective date of the amendment to the GECC Loan Agreement, 2% in the second year and 1% thereafter, with certain exceptions. We will also be required to pay the $875,000 final payment fee in connection with any voluntary or mandatory prepayment. On the effective date of the amendment to the GECC Loan Agreement, we paid an accrued final payment fee in the amount of $0.2 million relating to the original final payment fee of $500,000.

At December 31, 2013, the outstanding principal balance under the Amended Term Loan was $9.4 million.

Underwritten Offerings

On March 9, 2012, we completed an underwritten public offering of 29,669,154 shares of our common stock, and accompanying warrants to purchase one half of a share of common stock for each share purchased, at a public offering price of $1.32 per share. Total gross proceeds from the offering were approximately $39.2 million, before deducting underwriting discounts and commissions and estimated offering expenses totaling approximately $3.0 million. The warrants, which represent the right to acquire an aggregate of up to 14,834,577 shares of common stock, are exercisable immediately and have a five-year term and an exercise price of $1.76 per share. As of December 31, 2013, 12,562,682 of these warrants were outstanding.

On October 29, 2012, we completed an underwritten public offering of 13,333,333 shares of our common stock, at a public offering price of $3.00 per share. Total gross proceeds from the offering were approximately $40.0 million, before deducting underwriting discounts and commissions and estimated offering expenses totaling approximately $3.0 million.

On August 23, 2013, the Company completed an underwritten public offering of 8,736,187 shares of its common stock, including 1,139,502 shares of its common stock that were issued upon the exercise of the underwriters' 30-day over-allotment option, at a public offering price of $3.62 per share. Total gross proceeds from the offering were approximately $31.6 million, before deducting underwriting discounts and commissions and estimated offering expenses totaling approximately $2.2 million.

On December 18, 2013, the Company completed an underwritten public offering of 10,925,000 shares of its common stock, including 1,425,000 shares of its common stock that were issued upon the exercise of the underwriters' 30-day over-allotment option, at a public offering price of $5.25 per share. Total gross proceeds from the offering were approximately $57.4 million, before deducting underwriting discounts and commissions and estimated offering expenses totaling approximately $3.8 million.

Research and Development

Our research and development expenses currently include costs of personnel, supplies, facilities and equipment, consultants, third-party costs and other expenses related to preclinical and clinical testing. In 2013, our research and development expenses were $74.9 million, compared with $68.5 million in 2012 and $68.1 million in 2011.

Our research and development activities can be divided into those related to our internal projects and those related to collaborative and contract arrangements, which are reimbursed by our customers. In 2013, research and development expenses relating to internal projects were $47.5 million, compared with $30.5 million in 2012 and $24.4 million in 2011. In 2013, research and development expenses related to collaborative and contract arrangements were $27.4 million, compared with $37.9 million in 2012 and $43.7 million in 2011. Refer to *Management's Discussion and Analysis of Financial Condition and Results of Operations- Research and Development Expenses* for further information regarding our research and development expenses.

Competition

The biotechnology and pharmaceutical industries are subject to continuous and substantial technological change. Competition in antibody-based technologies is intense and is expected to increase as new technologies emerge and established biotechnology firms and large chemical and pharmaceutical companies continue to advance in the field. A number of these large pharmaceutical and chemical companies have enhanced their capabilities by entering into arrangements with or acquiring biotechnology companies or entering into business combinations with other large pharmaceutical companies. Many of these companies have significantly greater financial resources, larger research and development and marketing staffs and larger production facilities than ours. Moreover, certain of these companies have extensive experience in undertaking preclinical testing and human clinical trials. These factors may enable other companies to develop products and processes competitive with or superior to ours. In addition, a significant amount of research in biotechnology is being carried out in universities and other non-profit research organizations. These entities are becoming increasingly interested in the commercial value of their work and may become more aggressive in seeking patent protection and licensing arrangements. Furthermore, many companies and universities tend not to announce or disclose important discoveries or development programs until their patent position is secure or, for other reasons, later. As a result, we may not be able to track development of competitive products, particularly at the early stages. There can be no assurance that developments by others will not render our products or technologies obsolete or uncompetitive.

Without limiting the foregoing, we are aware of the following competitors for the products and candidates shown in the table below. This table is not intended to be representative of all existing competitors in the market:

Product/Candidate	Competitors
Gevokizumab	AbbVie Inc. Biovitrum AB Eli Lilly and Company MedImmune Novartis AG pSivida Regeneron Pharmaceuticals, Inc. Santen Pharmaceutical Co., Ltd.
XOMA 3AB	Emergent BioSolutions, Inc.

Government Regulation

The FDA and comparable regulatory agencies in state and local jurisdictions and in foreign countries impose substantial requirements upon the clinical development, pre-market approval, manufacture, marketing, import, export and distribution of biopharmaceutical products. These agencies and other regulatory agencies regulate research and development activities and the testing, approval, manufacture, quality control, safety, effectiveness, labeling, storage, recordkeeping, advertising and promotion of products and product candidates. Failure to comply with applicable FDA or other regulatory requirements may result in Warning Letters, civil or criminal penalties, suspension or delays in clinical development, recall or seizure of products, partial or total suspension of production or withdrawal of a product from the market. The development and approval process requires substantial time, effort and financial resources, and we cannot be certain that any approvals for our product candidates will be granted on a timely basis, if at all. We must obtain approval of our product candidates from the FDA before we can begin marketing them in the United States. Similar approvals are also required in other countries.

Product development and approval within this regulatory framework is uncertain, can take many years and requires the expenditure of substantial resources. The nature and extent of the governmental review process for our product candidates will vary, depending on the regulatory categorization of particular product candidates and various other factors.

The necessary steps before a new biopharmaceutical product may be sold in the United States ordinarily include:

- preclinical *in vitro* and *in vivo* tests, which must comply with Good Laboratory Practices, or GLP;
- submission to the FDA of an IND which must become effective before clinical trials may commence, and which must be updated annually with a report on development;
- completion of adequate and well controlled human clinical trials to establish the safety and efficacy of the product candidate for its intended use;
- submission to the FDA of a Biologics License Application, or BLA, which must often be accompanied by payment of a substantial user fee;
- FDA pre-approval inspection of manufacturing facilities for current Good Manufacturing Practices, or GMP, compliance and FDA inspection of select clinical trial sites for Good Clinical Practice, or GCP, compliance; and
- FDA review and approval of the BLA and product prescribing information prior to any commercial sale.

The results of preclinical tests (which include laboratory evaluation as well as preclinical GLP studies to evaluate toxicity) for a particular product candidate, together with related manufacturing information and analytical data, are submitted as part of an IND to the FDA. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA, within the 30-day time period, raises concerns or questions about the conduct of the clinical trial, including concerns that human research subjects will be exposed to unreasonable health risks. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical trial can begin. IND submissions may not result in FDA authorization to commence a clinical trial. A separate submission to an existing IND must also be made for each successive clinical trial conducted during product development. Further, an independent institutional review board, or IRB, for each medical center proposing to conduct the clinical trial must review and approve the plan for any clinical trial before it commences at that center and it must monitor the study until completed. The FDA, the IRB or the sponsor may suspend a clinical trial at any time on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk. Clinical testing also must satisfy extensive GCP regulations and regulations for informed consent and privacy of individually identifiable information.

Clinical trials generally are conducted in three sequential phases that may overlap or in some instances, be skipped. In Phase 1, the initial introduction of the product into humans, the product is tested to assess safety, metabolism, pharmacokinetics and pharmacological actions associated with increasing doses. Phase 2 usually involves trials in a limited patient population to evaluate the efficacy of the potential product for specific, targeted indications, determine dosage tolerance and optimum dosage and further identify possible adverse reactions and safety risks. Phase 3 and pivotal trials are undertaken to evaluate further clinical efficacy and safety often in comparison to standard therapies within a broader patient population, generally at geographically dispersed clinical sites. Phase 4, or post-marketing, trials may be required as a condition of commercial approval by the FDA and may also be voluntarily initiated by us or our collaborators. Phase 1, Phase 2 or Phase 3 testing may not be completed within any specific period of time, if at all, with respect to any of our product candidates. Similarly, suggestions of safety, tolerability or efficacy in earlier-stage trials do not necessarily predict findings of safety and effectiveness in subsequent trials. Furthermore, the FDA, an IRB or we may suspend a clinical trial at any time for various reasons, including a finding that the subjects or patients are being exposed to an unacceptable health risk. Clinical trials are subject to central registration and results reporting requirements, such as on www.clinicaltrials.gov.

The results of preclinical studies, pharmaceutical development and clinical trials, together with information on a product's chemistry, manufacturing, and controls, are submitted to the FDA in the form of a BLA, for approval of the manufacture, marketing and commercial shipment of the biopharmaceutical product. Data from clinical trials are not always conclusive and the FDA may interpret data differently than we or our collaborators interpret data. For all compounds seeking their first marketing approval, the FDA convenes an Advisory Committee of external advisors to answer questions regarding the compound's approvability and what labeling the compound should receive based upon its NDA or BLA. Approved compounds seeking to expand their label may also be the subject of an Advisory Committee depending upon the indication. The FDA may also convene an Advisory Committee of external advisors to answer questions regarding the approvability and labeling of an application. The FDA is not obligated to follow the Advisory Committee's recommendation. The submission of a BLA is required to be accompanied by a substantial user fee, with few exceptions or waivers. The user fee is administered under the Prescription Drug User Fee Act, or PDUFA, which sets goals for the timeliness of the FDA's review. A standard review period is twelve months from submission of the application, while priority review is eight months from submission of the application. The testing and approval process is likely to require substantial time, effort and resources, and there can be no assurance that any approval will be granted on a timely basis, if at all. The FDA may deny review of an application by refusing to file the application or not approve an application by issuance of a complete response letter if applicable regulatory criteria are not satisfied, require additional testing or information, or require risk management programs and post-market testing and surveillance to monitor the safety or efficacy of the product. Approval may occur with significant Risk Evaluation and Mitigation Strategies, or REMS, which limit the clinical use in the prescribing information, distribution or promotion of a product. Once issued, the FDA may withdraw product approval if ongoing regulatory requirements are not met or if safety problems occur after the product reaches the market.

Orphan drugs are those intended for use in rare diseases or conditions. As a result of the high cost of development and the low return on investment for rare diseases, governments provide regulatory and commercial incentives for the development of drugs for small disease populations. In the United States, the term ''rare disease or condition'' means any disease or condition that affects fewer than 200,000 persons in the United States. Applications for U.S. orphan drug status are evaluated and granted by the Office of Orphan Products Development ("OOPD") of the FDA and must be requested before submitting a BLA. In the United States, orphan drugs are subject to the standard regulatory process for marketing approval but are exempt from the payment of user fees for licensure, may receive market exclusivity for a period of seven years and some tax benefits, and are eligible for OOPD grants. If a product with orphan designation subsequently receives the first FDA approval for the disease or condition for which it has such designation, the product is entitled to orphan product exclusivity, which means the FDA may not approve any other applications to market the same drug or biological product for the same indication, except in very limited circumstances, for seven years. Competitors, however, may receive approval of different products for the indication for which the orphan product has exclusivity or obtain approval for the same product but for a different indication for which the orphan product has exclusivity. Orphan product exclusivity also could block the approval of one of our products for seven years if a competitor obtains approval of the same drug or biological product as defined by the FDA or if our product candidate is determined to be contained within the competitor's product for the same indication or disease. If a drug or biological product designated as an orphan product receives marketing approval for an indication broader than what is designated, it may not be entitled to orphan product exclusivity.

Products manufactured or distributed pursuant to FDA approvals are subject to continuing regulation by the FDA, including manufacture, labeling, advertising, distribution, advertising, promotion, recordkeeping, annual product quality review and reporting requirements. Adverse event experience with the product must be reported to the FDA in a timely fashion and pharmacovigilance programs to proactively look for these adverse events are mandated by the FDA. Manufacturers and their subcontractors are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with ongoing regulatory requirements, including cGMPs, which impose certain procedural and documentation requirements upon us and our third-party manufacturers. Following such inspections, the FDA may issue notices on Form 483 and Warning Letters that could cause us to modify certain activities. A Form 483 notice, if issued at the conclusion of an FDA inspection, can list conditions the FDA investigators believe may have violated cGMP or other FDA regulations or guidance. Failure to adequately and promptly correct the observations(s) can result in further regulatory enforcement action. In addition to Form 483 notices and Warning Letters, failure to comply with the statutory and regulatory requirements can subject a manufacturer to possible legal or regulatory action, such as suspension of manufacturing, seizure of product, injunctive action or possible civil penalties. We cannot be certain that we or our present or future third-party manufacturers or suppliers will be able to comply with the cGMP regulations and other ongoing FDA regulatory requirements. If we or our present or future third-party manufacturers or suppliers are not able to comply with these requirements, the FDA may halt our clinical trials, not approve our products, require us to recall a product from distribution or withdraw approval of the BLA for that product. Failure to comply with ongoing regulatory obligations can result in delay of approval or Warning Letters, product seizures, criminal penalties, and withdrawal of approved products, among other enforcement remedies.

The FDA strictly regulates marketing, labeling, advertising and promotion of products that are placed on the market. These regulations include standards and restrictions for direct-to-consumer advertising, industry-sponsored scientific and educational activities, promotional activities involving the internet, and off-label promotion. While physicians may prescribe for off-label uses, manufacturers may only promote for the approved indications and in accordance with the provisions of the approved label. The FDA has very broad enforcement authority under the FDCA, and failure to abide by these regulations can result in penalties, including the issuance of a warning letter directing entities to correct deviations from FDA standards, and state and federal civil and criminal investigations and prosecutions.

Federal and state healthcare laws, including fraud and abuse and health information privacy and security laws, are also applicable to our business. We could face substantial penalties and our business, results of operations, financial condition and prospects could be adversely affected. The laws that may affect our ability to operate include: the federal Anti-Kickback Statute, which prohibits soliciting, receiving, offering or paying remuneration, directly or indirectly, to induce, or in return for, the purchase or recommendation of an item or service reimbursable under a federal healthcare program, such as the Medicare and Medicaid programs; federal civil and criminal false claims laws and civil monetary penalty laws, which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payers that are false or fraudulent; and the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, which created new federal criminal statutes that prohibit executing a scheme to defraud any healthcare benefit program and making false statements relating to healthcare matters and was amended by the Health Information Technology and Clinical Health Act, or HITECH, and its implementing regulations, which imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information. State law equivalents of each of the above federal laws exist, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

International Regulation

In addition to regulations in the United States, we are subject to a variety of foreign regulations governing clinical trials and commercial sales and distribution of any future products. Whether or not we obtain FDA approval for a product, we must obtain approval by the comparable regulatory authorities of foreign countries before we can commence clinical trials or marketing of the product in those countries. The approval process varies from country to country, and the time may be longer or shorter than that required for FDA approval. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary greatly from country to country.

Patents and Trade Secrets

Patent and trade secret protection are important to our business and our future will depend in part on our ability to obtain patents, maintain trade secret protection and operate without infringing on the proprietary rights of others. As a result of our ongoing activities, we hold and have filed applications for a number of patents in the United States and internationally to protect our products and important processes. We also have obtained or have the right to obtain exclusive licenses to certain patents and applications filed by others. However, the patent position of biotechnology companies generally is highly uncertain and consistent policy regarding the breadth of allowed claims has not emerged from the actions of the U.S. Patent and Trademark Office (“Patent Office”) with respect to biotechnology patents. Accordingly, no assurance can be given that our patents will afford protection against competitors with similar technologies or others will not obtain patents claiming aspects similar to those covered by our patent applications.

We have established a portfolio of patents in the United States, Europe and certain other countries for our gevokizumab program. U.S. Patent Nos. 7,531,166 (which expires in 2027) and 7,582,742 cover gevokizumab and other antibodies and antibody fragments with similar binding properties for IL-1 beta, as well as nucleic acids, expression vectors and production cell lines for the manufacture of such antibodies and antibody fragments. U.S. Patent Nos. 7,744,865, 7,744,866 and 7,943,121 relate to additional IL-1 beta binding antibodies and binding fragments. U.S. Patent Nos. 7,695,718, 8,101,166 and 8,586,036 relate to methods of treating Type 2 diabetes or Type 2 diabetes-induced diseases or conditions with high affinity antibodies and antibody fragments that bind to IL-1 beta, including gevokizumab. U.S. Patent No. 7,695,717 relates to methods of treating certain IL-1 related inflammatory diseases, including rheumatoid arthritis and osteoarthritis, with gevokizumab and other antibodies and antibody fragments with similar binding properties for IL-1 beta. U.S. Patent No. 7,829,093 relates to methods of treating diabetes mellitus ("Type 1") with gevokizumab or other IL-1 beta antibodies and fragments having similar binding properties. U.S. Patent No. 7,829,094 relates to methods of treating certain cancers with gevokizumab or other IL-1 beta antibodies and fragments having similar binding properties, with the cancer being selected from multiple myeloma, acute myelogenous leukemia and chronic myelogenous leukemia. U.S. Patent No. 7,988,968 relates to methods of treating certain IL-1 beta related coronary conditions, including myocardial infarction, with gevokizumab or other IL-1 beta antibodies and fragments having similar binding properties. U.S. Patent No. 8,377,442 relates to methods of treating certain IL-1 beta related conditions, including inflammatory eye disease or uveitis, with gevokizumab or other IL-1 beta antibodies and fragments having similar binding properties. US 8,551,487 relates to methods of treating refractory uveitis with IL-1 beta binding antibodies and binding fragments. Also, patents have been granted by the European Patent Office and certain other countries for gevokizumab, as well as nucleic acids, expression vectors and production cell lines for the manufacture of gevokizumab.

We have exclusively in-licensed a portfolio of patents and applications covering anti-botulinum toxin antibodies from the Regents of the University of California. These include U.S. Patent Nos. 7,700,738, 7,999,079, and 8,263,747 covering certain XOMA 3AB antibodies, the longest of which expire in 2026, and U.S. Patent No 8,598,321 covering a XOMA 3B antibody.

We have established a portfolio of patents related to our bacterial expression technology, including claims to methods for expression and secretion of recombinant proteins from bacteria, including immunoglobulin gene products, and improved methods and cells for expression of recombinant protein products. U.S. Patent No. 5,618,920 relates to secretable immunoglobulin chains, DNA encoding the chains and methods for their recombinant production. U.S. Patent Nos. 5,693,493, 5,698,417 and 6,204,023 relate to methods for recombinant production/secretion of functional immunoglobulin molecules. U.S. Patent Nos. 7,094,579, 7,396,661, 7,972,811, 7,977,068 and 8, 476,040 relate to particular eukaryotic signal sequences and their use in methods for prokaryotic expression of polypeptides and for preparing polypeptide display libraries. U.S. Patent Nos. 8,546,307 and 8,546,308 relate to novel triple tag sequences, phage display antibody libraries with such sequences, and methods of screening the libraries. U.S. Patent No. 6,803,210 relates to improved bacterial host cells that are deficient in one or more of the active transport systems for an inducer of an inducible promoter, such as arabinose for an araB promoter, and methods for the use of such cells for the production of recombinant proteins. Most of the more important European patents in this portfolio expired in July 2008 or earlier. We have granted more than 60 licenses to biotechnology and pharmaceutical companies to use the Company's patented and proprietary technologies relating to bacterial expression of recombinant pharmaceutical products.

We also have established a portfolio of patents related to our mammalian expression technology, including U.S. Patent Nos. 7,192,737, 7,993,915 and 7,794,976, which relate to methods of producing recombinant proteins using particular vectors, including expression vectors comprising multiple copies of a transcription unit encoding a polypeptide separated by at least one selective marker gene.

We have established a portfolio of patents related to our Human Engineering™ technology, including U.S. Patent No. 5,766,886, directed to methods of modifying antibody variable domains to reduce immunogenicity. We believe our patented Human Engineering™ technology provides an attractive alternative to other humanization technologies.

In November 2013, we were awarded U.S. Patent No. 8,584,349, entitled "Flexible Manufacturing System." This patent is directed to a flexible system of movable manufacturing bays, adapted to easily and quickly connect to a central supply of utilities such as air, water, and electricity. This unique arrangement facilitates flexible design and eliminates change-over downtime, which translates into significantly reduced capital expenditures, production costs, and maintenance costs. The flexible manufacturing system can be applied to fields as diverse as pharmaceuticals, biologics, and electronics.

If certain patents issued to others are upheld or if certain patent applications filed by others issue and are upheld, we may require certain licenses from others in order to develop and commercialize certain potential products incorporating our technology. There can be no assurance that such licenses, if required, will be available on acceptable terms.

Where appropriate, we also rely on trade secrets to protect aspects of our technology. However, trade secrets are difficult to protect. We protect our proprietary technology and processes, in part, by confidentiality agreements with our employees, consultants and collaborators. These parties may breach these agreements, and we may not have adequate remedies for any breach. Our trade secrets may otherwise become known or be independently discovered by competitors. To the extent that we or our consultants or collaborators use intellectual property owned by others, we may have disputes with our collaborators or consultants or other third parties as to the rights in related or resulting know-how and inventions.

International Operations; Financial Information About Geographic Areas

We believe, because the pharmaceutical industry is global in nature, international activities will be a significant part of our future business activities and, when and if we are able to generate income, a substantial portion of that income may be derived from product sales and other activities outside the United States. As one of our immediate strategic goals is to establish XOMA as a commercial organization in the United States, we will rely upon other companies to market our product outside of the United States for the foreseeable future. Our decision to retain the U.S. commercial rights to our product candidates while licensing the rights to our product candidates outside the United States, or to license our product candidates globally to one or more partners, depends upon a number of factors, including the primary indication and size of the potential patient population, the size of the clinical trials required to obtain marketing approval in the United States and globally, and the size of the sales force required to sell the product.

A number of risks are inherent in international operations. Foreign regulatory agencies often establish standards different from those in the United States. An inability to obtain foreign regulatory approvals on a timely basis could have an adverse effect on our international business, financial condition and results of operations. International operations may be limited or disrupted by the imposition of government controls, export license requirements, political or economic instability, trade restrictions, changes in tariffs, restrictions on repatriating profits, taxation or difficulties in staffing and managing international operations. In addition, our business, financial condition and results of operations may be adversely affected by fluctuations in currency exchange rates. There can be no assurance that we will be able to successfully operate in any foreign market.

Financial information regarding the geographic areas in which we operate and segment information is included in*Note 12 to the December 31, 2013, Financial Statements: Concentration of Risk, Segment and Geographic Information*.

Concentration of Risk

In 2013, Servier, NIAID and Novartis accounted for 43 percent, 26 percent and 20 percent, respectively, of our total revenue. Servier and NIAID accounted for 47 percent and 33 percent, respectively, of our total revenue in 2012 and 61 percent and 32 percent, respectively, in 2011. At December 31, 2013, Servier and NIAID accounted for 13 percent and 73 percent of the accounts receivable balance, compared to 58 percent and 35 percent, respectively, at the same period in 2012, and 57 percent and 43 percent, respectively, at the same period of 2011. None of these parties represent a related party to XOMA and the loss of one or more of these customers could have a material effect on our business and financial condition.

Organization

We were incorporated in Delaware in 1981 and became a Bermuda-exempted company in December 1998. Effective December 31, 2011, we changed our jurisdiction of incorporation from Bermuda to Delaware and changed our name from XOMA Ltd. to XOMA Corporation. When referring to a time or period before December 31, 1998, or when the context so requires, the terms “Company” and “XOMA” refer to XOMA Corporation, a Delaware corporation, and when referring to a time or period after December 31, 1998, and before December 31, 2011, such terms refer to XOMA Ltd., a Bermuda company.

Employees

As of March 10, 2014, we employed 168 full-time employees, none of whom are unionized, at our facilities, principally in Berkeley, California. Our employees primarily are engaged in clinical, process development, research and product development, and in executive, business development, finance and administrative positions. We consider our employee relations to be excellent.

Available Information

For information on XOMA's investment prospects and risks, please contact Investor Relations and Corporate Communications at (510) 204-7200 or by sending an e-mail message to investorrelations@xoma.com. Our principal executive offices are located at 2910 Seventh Street, Berkeley, California 94710, U.S.A. Our telephone number is (510) 204-7200.

The following information can be found on our website at http://www.xoma.com or can be obtained free of charge by contacting our Investor Relations Department:

- Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act will be available as soon as reasonably practicable after such material is electronically filed or otherwise furnished to the SEC. All reports we file with the SEC also can be obtained free of charge via EDGAR through the SEC's website at http://www.sec.gov.

- Our policies related to corporate governance, including our Code of Ethics applying to our directors, officers and employees (including our principal executive officer and principal financial and accounting officer) that we have adopted to meet the requirements set forth in the rules and regulations of the SEC and its corporate governance principles, are available.

- The charters of the Audit, Compensation and Nominating & Governance Committees of our Board of Directors are available.

We intend to satisfy the applicable disclosure requirements regarding amendments to, or waivers from, provisions of our Code of Ethics by posting such information on our website.

Item 1A. Risk Factors

The following risk factors and other information included in this annual report should be carefully considered. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us also may impair our business operations. If any of the following risks occur, our business, financial condition, operating results and cash flows could be materially adversely affected.

Because our product candidates are still being developed, we will require substantial funds to continue; we cannot be certain that funds will be available, and if they are not available, we may have to take actions that could adversely affect your investment and may not be able to continue operations.

We will need to commit substantial funds to continue development of our product candidates, and we may not be able to obtain sufficient funds on acceptable terms, or at all. If we raise additional funds by issuing equity securities, our stockholders will experience dilution. Any debt financing or additional equity that we raise may contain terms that are not favorable to our stockholders or us. If we raise additional funds through collaboration and licensing arrangements with third parties, we may be required to relinquish some rights to our technologies or our product candidates, grant licenses on terms that are not favorable to us or enter into a collaboration arrangement for a product candidate at an earlier stage of development or for a lesser amount than we might otherwise choose.

Additional funds may not be available when we need them on terms that are acceptable to us, or at all. If adequate funds are not available on a timely basis, we may:

- terminate or delay clinical trials for one or more of our product candidates;
- further reduce our headcount and capital or operating expenditures; or
- curtail our spending on protecting our intellectual property.

We finance our operations primarily through our multiple revenue streams resulting from discovery and development collaborations, biodefense contracts, the licensing of our antibody technologies, and through sales of our common stock.

Based on our cash, cash equivalents and short-term investments of $121.6 million at December 31, 2013, anticipated spending levels, anticipated cash inflows from collaborations, biodefense contracts and licensing transactions, funding availability included under our loan agreements, the proceeds from our equity offerings and other sources of funding that we believe to be available, we believe we have sufficient cash resources to meet our anticipated net cash needs into 2015. Any significant revenue shortfalls, increases in planned spending on development programs, more rapid progress of development programs than anticipated, or the initiation of new clinical trials, as well as the unavailability of anticipated sources of funding, could shorten this period or otherwise have a material adverse impact on our ability to finance our continued operations. Progress or setbacks by potentially competing products also may affect our ability to raise new funding on acceptable terms. We do not know when or whether:

- operations will generate meaningful funds;
- additional agreements for product development funding can be reached;
- strategic alliances can be negotiated; or
- adequate additional financing will be available for us to finance our own development on acceptable terms, or at all.

If adequate funds are not available, we will be required to delay, reduce the scope of, or eliminate one or more of our product development programs and further reduce personnel-related costs.

We have sustained losses in the past, and we expect to sustain losses in the future.

We have been and are developing numerous product candidates, and as a result have experienced significant losses. As of December 31, 2013, we had an accumulated deficit of $1,081.2 million.

For the year ended December 31, 2013, we had a net loss of approximately $124.1 million, or $1.43 per share of common stock (basic and diluted). For the year ended December 31, 2012, we had a net loss of approximately $71.1 million, or $1.10 per share of common stock (basic and diluted).

Our ability to achieve profitability is dependent in large part on the success of our development programs, obtaining regulatory approval for our product candidates and licensing certain of our preclinical compounds, all of which are uncertain. Our product candidates are still being developed, and we do not know whether we will ever achieve sustained profitability or whether cash flow from future operations will be sufficient to meet our needs.

We are substantially dependent on Servier for the development and commercialization of gevokizumab and for other aspects of our business, and if we are unable to maintain our relationship with Servier, or Servier does not perform under its agreements with us, our business would be harmed significantly.

We have a number of agreements with Servier that are material to the conduct of our business, including:

- In December 2010, we entered into a license and collaboration agreement with Servier, to jointly develop and commercialize gevokizumab in multiple indications. Under the terms of the agreement, Servier has worldwide rights to cardiovascular disease and diabetes indications and rights outside the United States and Japan to all other indications, including Behçet's uveitis and other inflammatory and oncology indications. In late 2011, we announced Servier agreed to include the NIU Phase 3 trials under the terms of the collaboration agreement for Behçet's uveitis. We retain development and commercialization rights for NIU and other inflammatory disease and oncology indications in the United States and Japan and have an option to reacquire rights to cardiovascular disease and diabetes indications from Servier in these territories. Should we exercise this option, we will be required to pay an option fee to Servier and partially reimburse a specified portion of Servier's incurred development expenses. The agreement contains mutual customary termination rights relating to matters such as material breach by either party. Servier may terminate for safety issues, and we may terminate the agreement, with respect to a particular country or the European Patent Organization ("EPO") member states, for any challenge to our patent rights in that country or any EPO member state, respectively, by Servier. Servier also has a unilateral right to terminate the agreement for the European Union ("EU") or for non-EU countries, on a country-by-country basis, or in its entirety, in each case with six months' notice.

- In December 2010, we entered into a loan agreement with Servier (the "Servier Loan Agreement"), which provides for an advance of up to €15.0 million and was funded fully in January 2011 with the proceeds converting to approximately $19.5 million at the January 13, 2011, Euro-to-U.S.-dollar exchange rate of 1.3020. This loan is secured by an interest in our intellectual property rights to all gevokizumab indications worldwide, excluding the United States and Japan. The loan has a final maturity date in 2016; however, after a specified period prior to final maturity, the loan is required to be repaid (1) at Servier's option, by applying up to a significant percentage of any milestone or royalty payments owed by Servier under our collaboration agreement and (2) using a significant percentage of any upfront, milestone or royalty payments we receive from any third-party collaboration or development partner for rights to gevokizumab in the United States and/or Japan. In addition, the loan becomes immediately due and payable upon certain customary events of default. At December 31, 2013, the €15.0 million outstanding principal balance under this Servier Loan Agreement would have equaled approximately $20.6 million using the December 31, 2013 Euro-to-U.S.-dollar exchange rate of 1.3766.

Because Servier is an independent third party, it may be subject to different risks than we are and has significant discretion in, and different criteria for, determining the efforts and resources it will apply related to its agreements with us. Even though we have a collaborative relationship with Servier, our relationship could deteriorate or other circumstances may prevent our relationship with Servier from resulting in successful development of marketable products. If we are not able to maintain our working relationship with Servier, or if Servier does not perform under its agreements with us, our ability to develop and commercialize gevokizumab would be materially and adversely affected.

If our therapeutic product candidates do not receive regulatory approval, neither our third-party collaborators nor we will be able to market them.

Our product candidates (including gevokizumab, XMetA, XMetD, XMetS, and XOMA 3AB) cannot be manufactured and marketed in the United States or any other countries without required regulatory approvals. The U.S. government and governments of other countries extensively regulate many aspects of our product candidates, including:

- clinical development and testing;
- manufacturing;
- labeling;
- storage;
- record keeping;
- promotion and marketing; and
- importing and exporting.

In the United States, the FDA regulates pharmaceutical products under the Federal Food, Drug, and Cosmetic Act and other laws, including, in the case of biologics, the Public Health Service Act. At the present time, we believe many of our product candidates (including gevokizumab, XMetA, XMetD, XMetS and XOMA 3AB) will be regulated by the FDA as biologics and some of our product candidates will be regulated by the FDA as drugs. Initiation of clinical trials requires approval by health authorities. Clinical trials involve the administration of the investigational new drug to healthy volunteers or to patients under the supervision of a qualified principal investigator. Clinical trials must be conducted in accordance with FDA and International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use Good Clinical Practices and the European Clinical Trials Directive under protocols that detail the objectives of the study, the parameters to be used to monitor safety and the efficacy criteria to be evaluated. Other national, foreign and local regulations also may apply. The developer of the drug must provide information relating to the characterization and controls of the product before administration to the patients participating in the clinical trials. This requires developing approved assays of the product to test before administration to the patient and during the conduct of the trial. In addition, developers of pharmaceutical products must provide periodic data regarding clinical trials to the FDA and other health authorities, and these health authorities may issue a clinical hold upon a trial if they do not believe, or cannot confirm, that the trial can be conducted without unreasonable risk to the trial participants. We cannot assure you that U.S. and foreign health authorities will not issue a clinical hold with respect to any of our clinical trials in the future.

The results of the preclinical studies and clinical testing, together with chemistry, manufacturing and controls information, are submitted to the FDA and other health authorities in the form of an NDA for a drug, and in the form of a Biologic License Application ("BLA") for a biological product, requesting approval to commence commercial sales. In responding to an NDA or BLA, the FDA or foreign health authorities may grant marketing approvals, request additional information or further research, or deny the application if it determines the application does not satisfy its regulatory approval criteria. Regulatory approval of an NDA, BLA, or supplement never is guaranteed, the approval process can take several years, is extremely expensive and can vary substantially based upon the type, complexity, and novelty of the products involved, as well as the target indications. FDA regulations and policies permit applicants to request accelerated or priority review pathways for products intended to treat certain serious or life-threatening illnesses in certain circumstances. If granted by the FDA, these review pathways can provide a shortened timeline to commercialize the product, although the shortened review timeline is often accompanied with additional post-market requirements. Although we may pursue the FDA's accelerated or priority review programs, we cannot guarantee the FDA will permit us to utilize these pathways or the FDA's review of our application will not be delayed. Moreover, even if the FDA agrees to an accelerated or priority review of any of our applications, we may not ultimately be able to obtain approval of our application in a timely fashion or at all. The FDA and foreign health authorities have substantial discretion in the drug and biologics approval processes. Despite the time and expense incurred, failure can occur at any stage, and we could encounter problems that cause us to abandon clinical trials or to repeat or perform additional preclinical, clinical or manufacturing-related studies.

Changes in the regulatory approval policy during the development period, changes in, or the enactment of additional regulations or statutes, or changes in regulatory review for each submitted product application may cause delays in the approval or rejection of an application. State regulations may also affect our proposed products.

The FDA and other regulatory agencies have substantial discretion in both the product approval process and manufacturing facility approval process, and as a result of this discretion and uncertainties about outcomes of testing, we cannot predict at what point, or whether, the FDA or other regulatory agencies will be satisfied with our or our collaborators' submissions or whether the FDA or other regulatory agencies will raise questions that may be material and delay or preclude product approval or manufacturing facility approval. In light of this discretion and the complexities of the scientific, medical and regulatory environment, our interpretation or understanding of the FDA's or other regulatory agencies' requirements, guidelines or expectations may prove incorrect, which also could delay further or increase the cost of the approval process. As we accumulate additional clinical data, we will submit it to the FDA and other regulatory agencies, as appropriate, and such data may have a material impact on the approval process.

Given that regulatory review is an interactive and continuous process, we maintain a policy of limiting announcements and comments upon the specific details of regulatory review of our product candidates, subject to our obligations under the securities laws, until definitive action is taken.

We have received negative results from certain of our clinical trials, and we face uncertain results of other clinical trials of our product candidates.

Drug development has inherent risk, and we are required to demonstrate through adequate and well-controlled clinical trials that our product candidates are effective, with a favorable benefit-risk profile for use in their target profiles before we can seek regulatory approvals for their commercial use. It is possible we may never receive regulatory approval for any of our product candidates. Even if a product candidate receives regulatory approval, the resulting product may not gain market acceptance among physicians, patients, healthcare payors and the medical community. In March 2011, we announced our 421-patient Phase 2b trial of gevokizumab in Type 2 diabetes did not achieve the primary endpoint of reduction in hemoglobin A1c ("HbA1c") after six monthly treatments with gevokizumab compared to placebo. In June 2011, we announced top-line trial results from our six-month 74-patient Phase 2a trial of gevokizumab in Type 2 diabetes, and there were no differences in glycemic control between the drug and placebo groups as measured by HbA1c levels.

Many of our product candidates, including gevokizumab, XMet and XOMA 3AB, require significant additional research and development, extensive preclinical studies and clinical trials and regulatory approval prior to any commercial sales. This process is lengthy and expensive, often taking a number of years. As clinical results frequently are susceptible to varying interpretations that may delay, limit or prevent regulatory approvals, the length of time necessary to complete clinical trials and to submit an application for marketing approval for a final decision by a regulatory authority varies significantly. As a result, it is uncertain whether:

- our future filings will be delayed;
- our preclinical and clinical studies will be successful;
- we will be successful in generating viable product candidates to targets;
- we will be able to provide necessary additional data;
- results of future clinical trials will justify further development; or
- we ultimately will achieve regulatory approval for any of these product candidates.

The timing of the commencement, continuation and completion of clinical trials may be subject to significant delays relating to various causes, including completion of preclinical testing and earlier-stage clinical trials in a timely manner, engaging contract research organizations and other service providers, scheduling conflicts with participating clinicians and clinical institutions, difficulties in identifying and enrolling patients who meet trial eligibility criteria and shortages of available drug supply. Patient enrollment is a function of many factors, including the size of the patient population, the proximity of patients to clinical sites, the eligibility criteria for the trial, the existence of competing clinical trials and the availability of alternative or new treatments. Regardless of the initial size or relative complexity of a clinical trial, the costs of such trial may be higher than expected due to increases in duration or size of the trial, changes in the protocol pursuant to which the trial is being conducted, additional or special requirements of one or more of the healthcare centers where the trial is being conducted, or changes in the regulatory requirements applicable to the trial or in the standards or guidelines for approval of the product candidate being tested or for other unforeseen reasons. In addition, we conduct clinical trials in foreign countries, which may subject us to further delays and expenses as a result of increased drug shipment costs, additional regulatory requirements and the engagement of foreign clinical research organizations, as well as expose us to risks associated with foreign currency transactions insofar as we might desire to use U.S. Dollars to make contract payments denominated in the foreign currency where the trial is being conducted.

All of our product candidates are prone to the risks of failure inherent in drug development. Preclinical studies may not yield results that satisfactorily support the filing of an Investigational New Drug application ("IND") (or a foreign equivalent) with respect to our product candidates. Even if these applications would be or have been filed with respect to our product candidates, the results of preclinical studies do not necessarily predict the results of clinical trials. Similarly, early stage clinical trials in healthy volunteers do not predict the results of later-stage clinical trials, including the safety and efficacy profiles of any particular product candidates. In addition, there can be no assurance the design of our clinical trials is focused on appropriate indications, patient populations, dosing regimens or other variables that will result in obtaining the desired efficacy data to support regulatory approval to commercialize the drug. Moreover, FDA officials or foreign regulatory agency officials may question the integrity of our data or otherwise subject our clinical trials to additional scrutiny when the clinical trials are conducted by principal investigators who serve, or previously served, as scientific advisors or consultants to us and receive cash compensation in connection with such services. Preclinical and clinical data can also be interpreted in different ways. Accordingly, FDA officials or officials from foreign regulatory authorities could interpret the data differently than we or our collaboration or development partners do, which could delay, limit or prevent regulatory approval.

Administering any of our products or potential products may produce undesirable side effects, also known as adverse effects. Toxicities and adverse effects that we have observed in preclinical studies for some compounds in a particular research and development program may occur in preclinical studies or clinical trials of other compounds from the same program. Such toxicities or adverse effects could delay or prevent the filing of an IND (or a foreign equivalent) with respect to such products or potential products or cause us to cease clinical trials with respect to any drug candidate. In clinical trials, administering any of our products or product candidates to humans may produce adverse effects. These adverse effects could interrupt, delay or halt clinical trials of our products and product candidates and could result in the FDA or other regulatory authorities denying approval of our products or product candidates for any or all targeted indications. The FDA, other regulatory authorities, our collaboration or development partners or we may suspend or terminate clinical trials at any time. Even if one or more of our product candidates were approved for sale, the occurrence of even a limited number of toxicities or adverse effects when used in large populations may cause the FDA to impose restrictions on, or stop, the further marketing of such drugs. Indications of potential adverse effects or toxicities that may occur in clinical trials and that we believe are not significant during the course of such clinical trials may actually turn out later to constitute serious adverse effects or toxicities when a drug has been used in large populations or for extended periods of time. Any failure or significant delay in completing preclinical studies or clinical trials for our product candidates, or in receiving and maintaining regulatory approval for the sale of any drugs resulting from our product candidates, may severely harm our reputation and business.

We rely on third parties to provide services in connection with our product candidate development and manufacturing programs. The inadequate performance by or loss of any of these service providers could affect our product candidate development.

Several third parties provide services in connection with our preclinical and clinical development programs, including *in vitro* and *in vivo* studies, assay and reagent development, immunohistochemistry, toxicology, pharmacokinetics, clinical trial support, manufacturing and other outsourced activities. If these service providers do not adequately perform the services for which we have contracted or cease to continue operations and we are not able to find a replacement provider quickly or we lose information or items associated with our product candidates, our development programs may be delayed.

We may not obtain orphan drug exclusivity, or we may not receive the full benefit of orphan drug exclusivity even if we obtain such exclusivity.

The FDA has awarded orphan drug status to gevokizumab for the treatment of non-infectious, intermediate, posterior or pan uveitis, and chronic non-infectious anterior uveitis and Behçet's uveitis. Under the Orphan Drug Act, the first company to receive FDA approval for gevokizumab for the designated orphan drug indication will obtain seven years of marketing exclusivity, during which time the FDA may not approve another company's application for gevokizumab for the same orphan indication. Even though we have obtained orphan drug designation for certain indications for gevokizumab and even if we obtain orphan drug designation for our future product candidates or other indications, due to the uncertainties associated with developing pharmaceutical products, we may not be the first to obtain marketing approval for any particular orphan indication, or we may not obtain approval for an indication for which we have obtained orphan drug designation. Further, even if we obtain orphan drug exclusivity for a product, that exclusivity may not protect the product effectively from competition because different drugs can be approved for the same condition. Even after an orphan drug is approved, the FDA can subsequently approve the same drug for the same condition if the FDA concludes that the later drug is safer, more effective or makes a major contribution to patient care. Orphan drug designation neither shortens the development time or regulatory review time of a drug, nor gives the drug any advantage in the regulatory review or approval process.

Even after FDA approval, a product may be subject to additional testing or significant marketing restrictions, its approval may be withdrawn or it may be removed voluntarily from the market.

Even if we receive regulatory approval for our product candidates, we will be subject to ongoing regulatory oversight and review by the FDA and other regulatory entities. The FDA, the European Commission or another regulatory agency may impose, as a condition of the approval, ongoing requirements for post-approval studies or post-approval obligations, including additional research and development and clinical trials, and the FDA, European Commission or other regulatory agency subsequently may withdraw approval based on these additional trials. For example, we initiated commercial operations in January 2012 through the licensing of U.S. commercial rights to Servier's ACEON® (perindopril erbumine) and certain U.S. rights to a patent-protected portfolio of fixed dose combination ("FDC") product candidates where perindopril is combined with other active ingredients to treat cardiovascular disease. Although we transferred the U.S. development and commercialization rights to the perindopril franchise to Symplmed Pharmaceuticals, LLC ("Symplmed"), we continue to hold the ACEON® NDA until transferred. As the holder of the ACEON NDA, we are subject to post-approval obligations for ACEON, including that we are required to submit annual reports to the FDA and are responsible for pharmacovigilance activities related to the product.

Even for approved products, the FDA, European Commission or other regulatory agency may impose significant restrictions on the indicated uses, conditions for use, labeling, advertising, promotion, marketing and/or production of such product. In addition, the labeling, packaging, adverse event reporting, storage, advertising, promotion and record-keeping for our products are subject to extensive regulatory requirements.

Furthermore, a marketing approval of a product may be withdrawn by the FDA, the European Commission or another regulatory agency or such a product may be withdrawn voluntarily by the company marketing it based, for example, on subsequently arising safety concerns. In February 2009, the European Medicines Agency ("EMA") announced it had recommended suspension of the marketing authorization of RAPTIVA® in the EU and its Committee for Medicinal Products for Human Use ("CHMP") had concluded the benefits of RAPTIVA no longer outweigh its risks because of safety concerns, including the occurrence of progressive multifocal leukoencephalopathy ("PML") in patients taking the medicine. In the second quarter of 2009, Genentech announced and carried out a phased voluntary withdrawal of RAPTIVA from the U.S. market, based on the association of RAPTIVA with an increased risk of PML. We had participated in the development of RAPTIVA.

The FDA, European Commission and other agencies also may impose various civil or criminal sanctions for failure to comply with regulatory requirements, including withdrawal of product approval.

We may issue additional equity securities and thereby materially and adversely affect the price of our common stock.

We are authorized to issue, without stockholder approval, 1,000,000 shares of preferred stock, of which none were issued and outstanding as of March 10, 2014, which may give other stockholders dividend, conversion, voting, and liquidation rights, among other rights, which may be superior to the rights of holders of our common stock. In addition, we are authorized to issue, generally without stockholder approval, up to 138,666,666 shares of common stock, of which 106,571,513 were issued and outstanding as of March 10, 2014. If we issue additional equity securities, the price of our common stock may be materially and adversely affected.

On February 4, 2011, we entered into an At Market Issuance Sales Agreement (the "2011 ATM Agreement") with McNicoll, Lewis & Vlak LLC (now known as MLV & Co. LLC, "MLV"), under which we may sell shares of our common stock from time to time through the MLV, as our agent for the offer and sale of the shares, in an aggregate amount not to exceed the amount that can be sold under our Registration Statement on Form S-3 (File No. 333-172197) filed with the SEC on February 11, 2011, and amended on March 10, 2011, June 3, 2011, and January 3, 2012, which was most recently declared effective by the SEC on January 17, 2012. MLV may sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, including without limitation sales made directly on The NASDAQ Global Market, on any other existing trading market for our common stock or to or through a market maker. MLV also may sell the shares in privately negotiated transactions, subject to our prior approval. From the inception of the 2011 ATM Agreement through March 10, 2014, we sold a total of 7,572,327 shares of common stock under this agreement for aggregate gross proceeds of $14.6 million. The registration statement under which the 2011 ATM was entered expires in June of 2014.

As part of our fundraising efforts, from time to time we offer securities through underwritten public offerings. In 2013, we completed two such offerings, one in August 2013 where we sold 8,736,187 shares of our common stock at a public offering price of $3.62 per share and the other in December 1 2013, where we sold 10,925,000 shares of our common stock at a public offering price of $5.25 per share.

In addition, funding from collaboration partners and others has in the past and may in the future involve issuance by us of our shares of common stock. We cannot be certain how the purchase price of such shares, the relevant market price or premium, if any, will be determined or when such determinations will be made.

Any issuance by us of equity securities, whether through an underwritten public offering, an at the market offering, a private placement, in connection with a collaboration or otherwise could result in dilution in the value of our issued and outstanding shares, and a decrease in the trading price of our common stock.

Our share price may be volatile and there may not be an active trading market for our common stock.

There can be no assurance the market price of our common stock will not decline below its present market price or there will be an active trading market for our common stock. The market prices of biotechnology companies have been and are likely to continue to be highly volatile. Fluctuations in our operating results and general market conditions for biotechnology stocks could have a significant impact on the volatility of our common stock price. We have experienced significant volatility in the price of our common stock. From January 1, 2013, through March 10, 2014, the share price of our common stock has ranged from a high of $9.57 to a low of $2.43. Factors contributing to such volatility include, but are not limited to:

- results of preclinical studies and clinical trials;
- information relating to the safety or efficacy of products or product candidates;
- developments regarding regulatory filings;
- announcements of new collaborations;
- failure to enter into collaborations;
- developments in existing collaborations;
- our funding requirements and the terms of our financing arrangements;
- technological innovations or new indications for our therapeutic products and product candidates;
- introduction of new products or technologies by us or our competitors;
- sales and estimated or forecasted sales of products for which we receive royalties, if any;
- government regulations;
- developments in patent or other proprietary rights;
- the number of shares issued and outstanding;
- the number of shares trading on an average trading day;
- announcements regarding other participants in the biotechnology and pharmaceutical industries; and
- market speculation regarding any of the foregoing.

We may not be successful in commercializing our products, which could affect our development efforts.

We began commercializing our first product, ACEON, in January 2012, and we have limited experience in the sales, marketing and distribution of pharmaceutical products. We transferred U.S. development and commercialization rights to ACEON and the perindopril franchise to Symplmed in July 2013. Although Symplmed, under a sublicense agreement, assumes U.S. marketing responsibilities for ACEON (perindopril erbumine), XOMA continues to manage and be reimbursed for sales and distribution within its established commercial infrastructure until the ACEON NDA is transferred to Symplmed. There can be no assurance we will be able to successfully manage the transfer or commercialization activities to Symplmed or maintain the arrangements we have with third-party suppliers, distributors and other service providers that are necessary for us to perform these activities or our efforts will be successful. Transferring, maintaining or expanding these arrangements, or developing our own capabilities, may divert attention and resources from or otherwise negatively affect our development programs.

We are subject to various state and federal healthcare related laws and regulations that may impact the commercialization of our product candidates or could subject us to significant fines and penalties.

Our operations may be directly or indirectly subject to various state and federal healthcare laws, including, without limitation, the federal Anti-Kickback Statute, the federal False Claims Act and state and federal privacy and security laws. These laws may impact, among other things, the commercial operations for ACEON and any of our product candidates that may be approved for commercial sale.

The federal Anti-Kickback Statute prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing or arranging for a good or service, for which payment may be made under a federal healthcare program, such as the Medicare and Medicaid programs. Several courts have interpreted the statute's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the statute has been violated. The Anti-Kickback Statute is broad and prohibits many arrangements and practices that are lawful in businesses outside of the healthcare industry. Penalties for violations of the federal Anti-Kickback Statute include criminal penalties and civil sanctions such as fines, penalties, imprisonment and possible exclusion from Medicare, Medicaid and other federal healthcare programs.

The federal False Claims Act prohibits persons from knowingly filing, or causing to be filed, a false claim to, or the knowing use of false statements to obtain payment from the federal government. Suits filed under the False Claims Act, known as "qui tam" actions, can be brought by any individual on behalf of the government and such individuals, commonly known as "whistleblowers", may share in any amounts paid by the entity to the government in fines or settlement. The filing of qui tam actions has caused a number of pharmaceutical, medical device and other healthcare companies to have to defend a False Claims Act action. When an entity is determined to have violated the False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties for each separate false claim. Various states also have enacted laws modeled after the federal False Claims Act.

The Federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), created new federal criminal statutes that prohibit executing a scheme to defraud any healthcare benefit program and making false statements relating to healthcare matters. The health care fraud statute prohibits knowingly and willfully executing a scheme to defraud any health care benefit program, including private payors. The false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for health care benefits, items or services. HIPAA, as amended by the Health Information Technology and Clinical Health Act ("HITECH"), and its implementing regulations, also impose certain requirements relating to the privacy, security and transmission of individually identifiable health information. We take our obligation to maintain our compliance with these various laws and regulations seriously.

In addition, there has been a recent trend of increased federal and state regulation of payments made to physicians. The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010, or collectively, PPACA, among other things, imposed new requirements on manufacturers of drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program (with certain exceptions) to report annually to the Centers for Medicare & Medicaid Services, or CMS, information related to payments or other "transfers of value" made to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors) and teaching hospitals, and applicable manufacturers and group purchasing organizations to report annually to CMS ownership and investment interests held by physicians (as defined above) and their immediate family members and payments or other "transfers of value" to such physician owners and their immediate family members. Manufacturers were required to begin data collection on August 1, 2013 and will be required to report such data to the government by March 31, 2014 and by the 90th calendar day of each year thereafter. Failure to submit required information may result in civil monetary penalties of up to an aggregate of $150,000 per year (or up to an aggregate of $1 million per year for "knowing failures"), for all payments, transfers of value or ownership or investment interests not reported in an annual submission.

Many states also have adopted laws similar to each of the federal laws described above, some of which apply to healthcare items or services reimbursed by any source, not only the Medicare and Medicaid programs. In addition, some states have laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government, or otherwise restrict payments that may be made to healthcare providers and other potential referral sources, and to report information related to payments and other transfers of value to physicians and other healthcare providers; and state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

Because of the breadth of these laws, it is possible that some of our business activities could be subject to challenge under one or more of such laws. The PPACA also make several important changes to the federal Anti-Kickback Statute, false claims laws, and health care fraud statute by weakening the intent requirement under the anti-kickback and health care fraud statutes that may make it easier for the government, or whistleblowers to charge such fraud and abuse violations. A person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it. In addition, the PPACA provides that the government may assert that a claim including items or services resulting from a violation of the federal anti-kickback statute constitutes a false or fraudulent claim for purposes of the false claims statutes.

If we are found to be in violation of any of the laws and regulations described above or other applicable state and federal healthcare laws, we may be subject to penalties, including civil and criminal penalties, damages, fines, exclusion from government healthcare reimbursement programs and the curtailment or restructuring of our operations, any of which could have a material adverse effect on our business and results of operations.

Certain of our technologies are in-licensed from third parties, so our capabilities using them are restricted and subject to additional risks.

We license technologies from third parties. These technologies include but are not limited to phage display technologies licensed to us in connection with our bacterial cell expression technology licensing program and antibody products. However, our use of these technologies is limited by certain contractual provisions in the licenses relating to them, and although we have obtained numerous licenses, intellectual property rights in the area of phage display are particularly complex. If the owners of the patent rights underlying the technologies that we license do not properly maintain or enforce those patents, our competitive position and business prospects could be harmed. Our success will depend in part on the ability of our licensors to obtain, maintain and enforce our in-licensed intellectual property. Our licensors may not be successful in prosecuting the patent applications to which we have licenses, or our licensors may fail to maintain existing patents. They may determine not to pursue litigation against other companies that are infringing these patents, or they may pursue such litigation less aggressively than we would. Our licensors also may seek to terminate our license, which could cause us to lose the right to use the licensed intellectual property and adversely affect our ability to commercialize our technologies, products or services.

We do not know whether there will be, or will continue to be, a viable market for the products in which we have an ownership or royalty interest.

Even if products in which we have an interest receive approval in the future, they may not be accepted in the marketplace. In addition, we or our collaborators or licensees may experience difficulties in launching new products, many of which are novel and based on technologies that are unfamiliar to the healthcare community. We have no assurance healthcare providers and patients will accept such products, if developed. For example, physicians and/or patients may not accept a product for a particular indication because it has been biologically derived (and not discovered and developed by more traditional means) or if no biologically derived products are currently in widespread use in that indication. Similarly, physicians may not accept a product if they believe other products to be more effective or more cost effective or are more comfortable prescribing other products.

Safety concerns also may arise in the course of on-going clinical trials or patient treatment as a result of adverse events or reactions. For example, in February 2009, the EMA announced it had recommended suspension of the marketing authorization of RAPTIVA in the EU and EMD Serono Inc., the company that marketed RAPTIVA in Canada ("EMD Serono") announced that in consultation with Health Canada, the Canadian health authority ("Health Canada"), it would suspend marketing of RAPTIVA in Canada. In March 2009, Merck Serono Australia Pty Ltd, the company that marketed RAPTIVA in Australia ("Merck Serono Australia"), following a recommendation from the Therapeutic Goods Administration, the Australian health authority ("TGA"), announced it was withdrawing RAPTIVA from the Australian market. In the second quarter of 2009, Genentech announced and carried out a phased voluntary withdrawal of RAPTIVA from the U.S. market, based on the association of RAPTIVA with an increased risk of PML, and sales of the product ceased.

Furthermore, government agencies, as well as private organizations involved in healthcare, from time to time publish guidelines or recommendations to healthcare providers and patients. Such guidelines or recommendations can be very influential and may adversely affect product usage directly (for example, by recommending a decreased dosage of a product in conjunction with a concomitant therapy or a government entity withdrawing its recommendation to screen blood donations for certain viruses) or indirectly (for example, by recommending a competitive product over our product). Consequently, we do not know if physicians or patients will adopt or use our products for their approved indications.

Even approved and marketed products are subject to risks relating to changes in the market for such products. Introduction or increased availability of generic versions of products can alter the market acceptance of branded products, such as ACEON. In addition, unforeseen safety issues may arise at any time, regardless of the length of time a product has been on the market.

In addition to our agreements with Servier, our agreements with other third parties, many of which are significant to our business, expose us to numerous risks.

Our financial resources and our marketing experience and expertise are limited. Consequently, our ability to develop products successfully depends, to a large extent, upon securing the financial resources and/or marketing capabilities of third parties other than Servier. For example:

- In March 2004, we announced we had agreed to collaborate with Chiron Corporation (now Novartis) for the development and commercialization of antibody products for the treatment of cancer. In April 2005, we announced the initiation of clinical testing of the first product candidate out of the collaboration, HCD122, an anti-CD40 antibody, in patients with advanced chronic lymphocytic leukemia. In October 2005, we announced the initiation of the second clinical trial of HCD122 in patients with multiple myeloma. In November 2008, we announced the restructuring of this product development collaboration, which involved six development programs including the ongoing HCD122 and LFA102 programs. In exchange for cash and debt reduction on our existing loan facility with Novartis, Novartis has control over the HCD122 and LFA102 programs, as well as the right to expand the development of these programs into additional indications outside of oncology.

- In March 2005, we entered into a contract with the National Institute of Allergy and Infectious Diseases (“NIAID”) to produce three monoclonal antibodies designed to protect U.S. citizens against the harmful effects of botulinum neurotoxin used in bioterrorism. In July 2006, we entered into an additional contract with NIAID for the development of an appropriate formulation for human administration of these three antibodies in a single injection. In September 2008, we announced we had been awarded an additional contract with NIAID to support our on-going development of drug candidates toward clinical trials in the treatment of botulism poisoning. In October 2011, we announced we had been awarded an additional contract with NIAID to develop broad-spectrum antitoxins for the treatment of human botulism poisoning.

- We have licensed our bacterial cell expression technology, an enabling technology used to discover and screen, as well as develop and manufacture, recombinant antibodies and other proteins for commercial purposes, to over 60 companies. As of March 10, 2014, we were aware of two antibody products manufactured using this technology that have received FDA approval, Genentech’s LUCENTIS ® (ranibizumab injection) for treatment of neovascular wet age-related macular degeneration and UCB’s CIMZIA® (certolizumab pegol) for treatment of Crohn’s disease and rheumatoid arthritis. In the third quarter of 2009, we sold our LUCENTIS royalty interest to Genentech. In the third quarter of 2010, we sold our CIMZIA royalty interest.

- On July 24, 2012, Servier and we entered into an agreement with Boehringer Ingelheim to transfer XOMA's technology and processes for the manufacture of gevokizumab to Boehringer lngelheim for Boehringer Ingelheim's implementation and validation in preparation for the commercial manufacture of gevokizumab. Upon the successful completion of the transfer and the establishment of biological comparability, including validation of the XOMA processes as implemented by Boehringer Ingelheim, we intend Boehringer Ingelheim will produce gevokizumab for XOMA's commercial use at its facility in Biberach, Germany. Servier and we retain all rights to the development and commercialization of gevokizumab. Transferring of our technology to Boehringer Ingelheim exposes us to numerous risks, including the possibility that Boehringer Ingelheim may not perform under the agreement as anticipated, and that we will need to successfully conduct a comparability trial demonstrating to the FDA’s satisfaction the similarity between XOMA-manufactured and Boehringer Ingelheim-manufactured product.

Because our collaborators, licensees, suppliers and contractors are independent third parties, they may be subject to different risks than we are and have significant discretion in, and different criteria for, determining the efforts and resources they will apply related to their agreements with us. If these collaborators, licensees, suppliers and contractors do not successfully perform the functions for which they are responsible, we may not have the capabilities, resources or rights to do so on our own.

We do not know whether we, our collaborators or licensees will successfully develop and market any of the products that are or may become the subject of any of our collaboration or licensing arrangements. In some cases these arrangements provide for funding solely by our collaborators or licensees, and in other cases, all of the funding for certain projects and a significant portion of the funding for other projects is to be provided by our collaborator or licensee, and we provide the balance of the funding. Even when we have a collaborative relationship, other circumstances may prevent it from resulting in successful development of marketable products. In addition, third-party arrangements such as ours also increase uncertainties in the related decision-making processes and resulting progress under the arrangements, as we and our collaborators or licensees may reach different conclusions, or support different paths forward, based on the same information, particularly when large amounts of technical data are involved. Furthermore, our contracts with NIAID contain numerous standard terms and conditions provided for in the applicable Federal acquisition regulations and customary in many government contracts, some of which could allow the U.S. government to exercise certain rights under the technology developed under these contracts. Uncertainty exists as to whether we will be able to comply with these terms and conditions in a timely manner, if at all. In addition, we are uncertain as to the extent of NIAID's demands and the flexibility that will be granted to us in meeting those demands.

Although we continue to evaluate additional strategic alliances and potential partnerships, we do not know whether or when any such alliances or partnerships will be entered into.

Products and technologies of other companies may render some or all of our products and product candidates noncompetitive or obsolete.

Developments by others may render our products, product candidates, or technologies obsolete or uncompetitive. Technologies developed and utilized by the biotechnology and pharmaceutical industries are changing continuously and substantially. Competition in antibody-based technologies is intense and is expected to increase in the future as a number of established biotechnology firms and large chemical and pharmaceutical companies advance in these fields. Many of these competitors may be able to develop products and processes competitive with or superior to our own for many reasons, including that they may have:

- significantly greater financial resources;
- larger research and development and marketing staffs;
- larger production facilities;
- entered into arrangements with, or acquired, biotechnology companies to enhance their capabilities; or
- extensive experience in preclinical testing and human clinical trials.

These factors may enable others to develop products and processes competitive with or superior to our own or those of our collaborators. In addition, a significant amount of research in biotechnology is being carried out in universities and other non-profit research organizations. These entities are becoming increasingly interested in the commercial value of their work and may become more aggressive in seeking patent protection and licensing arrangements. Furthermore, many companies and universities tend not to announce or disclose important discoveries or development programs until their patent position is secure or, for other reasons, later; as a result, we may not be able to track development of competitive products, particularly at the early stages. Positive or negative developments in connection with a potentially competing product may have an adverse impact on our ability to raise additional funding on acceptable terms. For example, if another product is perceived to have a competitive advantage, or another product's failure is perceived to increase the likelihood that our product will fail, then investors may choose not to invest in us on terms we would accept or at all.

The examples below pertain to competitive events in the market that we review quarterly yet are not intended to be representative of all existing competitive events.

Gevokizumab

We, in collaboration with Servier, are developing gevokizumab, a potent monoclonal antibody with unique allosteric modulating properties that binds strongly to interleukin-1 beta (IL-1 beta), a pro-inflammatory cytokine. In binding to IL-1 beta, gevokizumab inhibits the activation of the IL-1 receptor, thereby modulating the cellular signaling events that produce inflammation. Other companies are developing other products based on the same or similar therapeutic targets as gevokizumab, and these products may prove more effective than gevokizumab. We are aware that:

- Novartis markets and is developing ILARIS® (canakinumab, ACZ885), a fully human monoclonal antibody that selectively binds to and neutralizes IL-1 beta. Since 2009, canakinumab has been approved in over 50 countries for the treatment of children and adults suffering from Cryopyrin-Associated Periodic Syndrome ("CAPS"). Novartis has filed for regulatory approval of canakinumab in the United States and Europe for the treatment of acute attacks in gouty arthritis. On March 1, 2013, Novartis announced that they received EU approval for Ilaris in patients suffering acute gouty arthritis attacks which cannot gain relief from current treatments. It is administered as a single 150 mg subcutaneous injection. In May 2013, Novartis received FDA approval, and in September 2013 Novartis received EU approval, to treat active systemic juvenile idiopathic arthritis. Novartis also is pursuing other diseases in which IL-1 beta may play a prominent role, such as systemic secondary prevention of cardiovascular events.

- Eli Lilly and Company ("Lilly") was developing a monoclonal antibody to IL-1 beta in Phase 1 studies for the treatment of cardiovascular disease. In June 2011, Lilly reported results from a Phase 2 study of LY2189102 in 106 patients with Type 2 diabetes, showing a significant ($p<0.05$), early reduction in C reactive protein ("CRP"), moderate reduction in HbA1c and anti-inflammatory effects. We do not know whether LY2189102 remains in development.

- In 2008, Swedish Orphan Biovitrum obtained from Amgen the global exclusive rights to Kineret® (anakinra) for rheumatoid arthritis as currently indicated in its label. In November 2009, the agreement regarding Swedish Orphan Biovitrum's Kineret license was expanded to include certain orphan indications. Kineret is an IL-1 receptor antagonist (IL-1ra) that has been evaluated in multiple IL-1-mediated diseases, including indications we are considering for gevokizumab. In addition to other on-going studies, a proof-of-concept clinical trial in the United Kingdom investigating Kineret in patients with a certain type of myocardial infarction, or heart attack, has been completed. In August 2010, Biovitrum announced the FDA had granted orphan drug designation to Kineret for the treatment of CAPS, and in January 2013 they obtained FDA approval for NOMID, a severe form of CAPS. Shanghai CP Guojian Pharmaceutical is developing an injectable formulation of recombinant human IL-1Ra, presumed to be a follow-on biologic version of anakinra, for the potential treatment of rheumatoid arthritis. In February 2010, an NDA was filed with the SFDA; in January 2012, supplemental materials were required by the SFDA to conclude the review.

- AbbVie is developing ABT-981, a dual variable domain immunoglobulin (DVD-Ig) that incorporates anti-IL-1 alpha and anti-IL-1 beta antibodies, for the potential treatment of osteoarthritis. By January 2012, the drug had entered phase I development.

- Amgen was developing AMG 108, a fully human monoclonal antibody that targets inhibition of the action of IL-1. In April 2008, Amgen reported results from a Phase 2 study in rheumatoid arthritis. AMG 108 showed statistically significant improvement in the signs and symptoms of rheumatoid arthritis and was well tolerated. In January 2011, MedImmune, the worldwide biologics unit for AstraZeneca PLC, announced Amgen granted it rights to develop AMG 108 worldwide except in Japan.

- In June 2009, Cytos Biotechnology AG announced the initiation of an ascending dose Phase 1/2a study of CYT013-IL1bQb, a therapeutic vaccine targeting IL-1 beta, in Type 2 diabetes. In 2010, this study was extended to include two additional groups of patients. However, in August 2011, the company put development on hold in order to reduce costs.

- The following companies have completed or are conducting or planning Phase 3 clinical trials of the following products for the treatment of noninfectious intermediate, posterior or pan-uveitis: AbbVie - HUMIRA® (adalimumab); Lux Biosciences, Inc. – LUVENIQ® (voclosporin); Novartis - Myfortic® (mycophenalate sodium) and secukinumab, Santen Pharmaceutical Co., Ltd. – Sirolimus® (rapamycin), and pSivida Corp. – Fluacinolone Acetonide Intravitreal.

XOMA 3AB

We also are developing XOMA 3AB, a combination, or cocktail, of antibodies designed to neutralize the most potent of botulinum toxins. Other companies are developing other products targeting botulism poisoning, and these products may prove more effective than XOMA 3AB. We are aware:

- Emergent Biosolutions Inc. has a contract with the U.S. Department of Health & Human Services, expected to be worth $423.0 million, to manufacture and supply an equine heptavalent botulism anti-toxin. In March 2013, the product was approved by the FDA.

Manufacturing risks and inefficiencies may adversely affect our ability to manufacture products for ourselves or others.

To the extent we continue to provide manufacturing services for our own benefit or to third parties, we are subject to manufacturing risks. Additionally, unanticipated fluctuations in customer requirements have led and may continue to lead to manufacturing inefficiencies, which if significant could lead to an impairment on our long-lived assets or restructuring activities. We must utilize our manufacturing operations in compliance with regulatory requirements, in sufficient quantities and on a timely basis, while maintaining acceptable product quality and manufacturing costs. Additional resources and changes in our manufacturing processes may be required for each new product, product modification or customer or to meet changing regulatory or third-party requirements, and this work may not be completed successfully or efficiently.

Manufacturing and quality problems may arise in the future to the extent we continue to perform these manufacturing activities for our own benefit or for third parties. Consequently, our development goals or milestones may not be achieved in a timely manner or at a commercially reasonable cost, or at all. In addition, to the extent we continue to make investments to improve our manufacturing operations, our efforts may not yield the improvements that we expect.

Failure of our products to meet current Good Manufacturing Practices standards may subject us to delays in regulatory approval and penalties for noncompliance.

Our contract manufacturers are required to produce ACEON and our clinical product candidates under current Good Manufacturing Practices ("cGMP") to meet acceptable standards for use in our clinical trials and for commercial sale, as applicable. If such standards change, the ability of contract manufacturers to produce our product candidates and ACEON on the schedule we require for our clinical trials or to meet commercial requirements may be affected. In addition, contract manufacturers may not perform their obligations under their agreements with us or may discontinue their business before the time required by us to successfully produce clinical and commercial supplies of our product candidates and ACEON.

We and our contract manufacturers are subject to pre-approval inspections and periodic unannounced inspections by the FDA and corresponding state and foreign authorities to ensure strict compliance with cGMP and other applicable government regulations and corresponding foreign standards. We do not have control over a third-party manufacturer's compliance with these regulations and standards. Any difficulties or delays in our contractors' manufacturing and supply of our product candidates and ACEON or any failure of our contractors to maintain compliance with the applicable regulations and standards could increase our costs, cause us to lose revenue, make us postpone or cancel clinical trials, prevent or delay regulatory approval by the FDA and corresponding state and foreign authorities, prevent the import and/or export of our product candidates and ACEON, or cause any of our product candidates that may be approved for commercial sale and ACEON to be recalled or withdrawn.

Because many of the companies with which we do business also are in the biotechnology sector, the volatility of that sector can affect us indirectly as well as directly.

As a biotechnology company that collaborates with other biotechnology companies, the same factors that affect us directly also can adversely impact us indirectly by affecting the ability of our collaborators, partners and others with which we do business to meet their obligations to us and reduce our ability to realize the value of the consideration provided to us by these other companies.

For example, in connection with our licensing transactions relating to our bacterial cell expression technology, we have in the past and may in the future agree to accept equity securities of the licensee in payment of license fees. The future value of these or any other shares we receive is subject both to market risks affecting our ability to realize the value of these shares and more generally to the business and other risks to which the issuer of these shares may be subject.

As we do more business internationally, we will be subject to additional political, economic and regulatory uncertainties.

We may not be able to operate successfully in any foreign market. We believe that because the pharmaceutical industry is global in nature, international activities will be a significant part of our future business activities and when and if we are able to generate income, a substantial portion of that income will be derived from product sales and other activities outside the United States. Foreign regulatory agencies often establish standards different from those in the United States, and an inability to obtain foreign regulatory approvals on a timely basis could put us at a competitive disadvantage or make it uneconomical to proceed with a product or product candidate's development. International operations and sales may be limited or disrupted by:

- imposition of government controls;
- export license requirements;
- political or economic instability;
- trade restrictions;
- changes in tariffs;
- restrictions on repatriating profits;
- exchange rate fluctuations;
- withholding and other taxation; and
- difficulties in staffing and managing international operations.

We are subject to foreign currency exchange rate risks.

We are subject to foreign currency exchange rate risks because substantially all of our revenues and operating expenses are paid in U.S. Dollars, but we incur certain expenses, as well as interest and principal obligations with respect to our loan from Servier in Euros. To the extent the U.S. Dollar declines in value against the Euro, the effective cost of servicing our Euro-denominated debt will be higher. Changes in the exchange rate result in foreign currency gains or losses. Although we have managed some of our exposure to changes in foreign currency exchange rates by entering into foreign exchange option contracts, there can be no assurance foreign currency fluctuations will not have a material adverse effect on our business, financial condition, liquidity or results of operations. In addition, our foreign exchange option contracts are re-valued at each financial reporting period, which also may result in gains or losses from time to time.

If we and our partners are unable to protect our intellectual property, in particular our patent protection for our principal products, product candidates and processes, and prevent its use by third parties, our ability to compete in the market will be harmed, and we may not realize our profit potential.

We rely on patent protection, as well as a combination of copyright, trade secret, and trademark laws to protect our proprietary technology and prevent others from duplicating our products or product candidates. However, these means may afford only limited protection and may not:

- prevent our competitors from duplicating our products;
- prevent our competitors from gaining access to our proprietary information and technology; or
- permit us to gain or maintain a competitive advantage.

Because of the length of time and the expense associated with bringing new products to the marketplace, we and our collaboration and development partners hold and are in the process of applying for a number of patents in the United States and abroad to protect our product candidates and important processes and also have obtained or have the right to obtain exclusive licenses to certain patents and applications filed by others. However, the mere issuance of a patent is not conclusive as to its validity or its enforceability. The U.S. Federal Courts or equivalent national courts or patent offices elsewhere may invalidate our patents or find them unenforceable. In addition, the laws of foreign countries may not protect our intellectual property rights effectively or to the same extent as the laws of the United States. If our intellectual property rights are not protected adequately, we may not be able to commercialize our technologies, products, or services, and our competitors could commercialize our technologies, which could result in a decrease in our sales and market share that would harm our business and operating results. Specifically, the patent position of biotechnology companies generally is highly uncertain and involves complex legal and factual questions. The legal standards governing the validity of biotechnology patents are in transition, and current defenses as to issued biotechnology patents may not be adequate in the future. Accordingly, there is uncertainty as to:

- whether any pending or future patent applications held by us will result in an issued patent, or that if patents are issued to us, that such patents will provide meaningful protection against competitors or competitive technologies;
- whether competitors will be able to design around our patents or develop and obtain patent protection for technologies, designs or methods that are more effective than those covered by our patents and patent applications; or
- the extent to which our product candidates could infringe on the intellectual property rights of others, which may lead to costly litigation, result in the payment of substantial damages or royalties, and/or prevent us from using technology that is essential to our business.

We have established a portfolio of patents, both United States and foreign, related to our bacterial cell expression technology, including claims to novel promoter sequences, secretion signal sequences, compositions and methods for expression and secretion of recombinant proteins from bacteria, including immunoglobulin gene products. Most of the more important European patents in our bacterial cell expression patent portfolio expired in July 2008 or earlier.

If certain patents issued to others are upheld or if certain patent applications filed by others issue and are upheld, we may require licenses from others to develop and commercialize certain potential products incorporating our technology or we may become involved in litigation to determine the proprietary rights of others. These licenses, if required, may not be available on acceptable terms, and any such litigation may be costly and may have other adverse effects on our business, such as inhibiting our ability to compete in the marketplace and absorbing significant management time.

Due to the uncertainties regarding biotechnology patents, we also have relied and will continue to rely upon trade secrets, know-how and continuing technological advancement to develop and maintain our competitive position. All of our employees have signed confidentiality agreements under which they have agreed not to use or disclose any of our proprietary information. Research and development contracts and relationships between us and our scientific consultants and potential customers provide access to aspects of our know-how that are protected generally under confidentiality agreements. These confidentiality agreements may be breached or may not be enforced by a court. To the extent proprietary information is divulged to competitors or to the public generally, such disclosure may affect our ability to develop or commercialize our products adversely by giving others a competitive advantage or by undermining our patent position.

Litigation regarding intellectual property can be costly and expose us to risks of counterclaims against us.

We may be required to engage in litigation or other proceedings to protect our intellectual property. The cost to us of this litigation, even if resolved in our favor, could be substantial. Such litigation also could divert management's attention and resources. In addition, if this litigation is resolved against us, our patents may be declared invalid, and we could be held liable for significant damages. In addition, we may be subject to a claim that we are infringing another party's patent. If such claim is resolved against us, we or our collaborators may be enjoined from developing, manufacturing, selling or importing products, processes or services unless we obtain a license from the other party.

Such license may not be available on reasonable terms, thus preventing us from using these products, processes or services and adversely affecting our revenue.

We may be unable to price our products effectively or obtain adequate reimbursement for sales of our products, which would prevent our products from becoming profitable.

If we or our third-party collaborators or licensees succeed in bringing our product candidates to the market, they may not be considered cost effective, and reimbursement to the patient may not be available or may not be sufficient to allow us to sell our products on a competitive basis. In both the United States and elsewhere, sales of medical products and treatments are dependent, in part, on the availability of reimbursement to the patient from third-party payors, such as government and private insurance plans. Third-party payors are increasingly challenging the prices charged for pharmaceutical products and services. Our business is affected by the efforts of government and third-party payors to contain or reduce the cost of healthcare through various means. In the United States, there have been and will continue to be a number of federal and state proposals to implement government controls on pricing.

In addition, the emphasis on managed care in the United States has increased and will continue to increase the pressure on the pricing of pharmaceutical products. We cannot predict whether any legislative or regulatory proposals will be adopted or the effect these proposals or managed care efforts may have on our business.

Healthcare reform measures and other statutory or regulatory changes could adversely affect our business.

In both the United States and certain foreign jurisdictions, there have been a number of legislative and regulatory proposals to change the healthcare system in ways that could impact our business. In March 2010, the U.S. Congress enacted and President Obama signed into law the PPACA, which includes a number of healthcare reform provisions that are expected to significantly impact the pharmaceutical industry. The PPACA, among other things, imposes a non-deductible annual fee on pharmaceutical manufacturers or importers who sell "branded prescription drugs"; increases the minimum level of Medicaid rebates payable by manufacturers of brand-name drugs from 15.1% to 23.1%; requires collection of rebates for drugs paid by Medicaid managed care organizations; addresses new methodologies by which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for drugs that are inhaled, infused, instilled, implanted or injected, and for drugs that are line extension products; and requires manufacturers to participate in a coverage gap discount program, under which they must agree to offer 50% point-of-sale discounts off negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period, as a condition for the manufacturer's outpatient drugs to be covered under Medicare Part D. While the law may increase the number of patients who have insurance coverage for our products or product candidates, its cost containment measures also could adversely affect coverage and reimbursement for our existing or potential products; however, the full effects of this law cannot be known until these provisions are implemented and the relevant Federal and state agencies issue applicable regulations or guidance.

Other legislative changes have been proposed and adopted since the PPACA was enacted. On August 2, 2011, the President signed into law the Budget Control Act of 2011, which, among other things, created the Joint Select Committee on Deficit Reduction to recommend proposals in spending reductions to Congress. The Joint Select Committee did not achieve its targeted deficit reduction of at least $1.2 trillion for the years 2013 through 2021, triggering the legislation's automatic reductions to several government programs. These reductions include aggregate reductions to Medicare payments to providers of up to 2% per fiscal year, which went into effect on April 1, 2013. On January 2, 2013, President Obama signed into law the American Taxpayer Relief Act of 2012, or the ATRA, which, among other things, further reduced Medicare payments to several providers, including hospitals, imaging centers and cancer treatment centers. We expect that additional state and federal healthcare reform measures will be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and services, which could result in reduced demand for our products once approved or additional pricing pressures, a decrease in the share price of our common stock, limit our ability to raise capital or to obtain strategic collaborations or licenses or successfully commercialize our products.

The pharmaceutical and biotechnology industries are subject to extensive regulation, and from time to time, legislative bodies and governmental agencies consider changes to such regulations that could have significant impact on industry participants. For example, in light of certain highly publicized safety issues regarding certain drugs that had received marketing approval, the U.S. Congress has considered various proposals regarding drug safety, including some that would require additional safety studies and monitoring and could make drug development more costly. We are unable to predict what additional legislation or regulation, if any, relating to safety or other aspects of drug development may be enacted in the future or what effect such legislation or regulation would have on our business.

We are exposed to an increased risk of product liability claims.

The testing, marketing and sales of medical products entails an inherent risk of allegations of product liability. In the past, we were party to product liability claims filed against Genentech Inc. and, even though Genentech agreed to indemnify us in connection with these matters and these matters have been settled, there can be no assurance other products liability lawsuits will not result in liability to us or that our insurance or contractual arrangements will provide us with adequate protection against such liabilities. In the event of one or more large, unforeseen awards of damages against us, our product liability insurance may not provide adequate coverage. A significant product liability claim for which we were not covered by insurance or indemnified by a third party would have to be paid from cash or other assets, which could have an adverse effect on our business and the value of our common stock. To the extent we have sufficient insurance coverage, such a claim would result in higher subsequent insurance rates. In addition, product liability claims can have various other ramifications, including loss of future sales opportunities, increased costs associated with replacing products, a negative impact on our goodwill and reputation, and divert our management's attention from our business, each of which could also adversely affect our business and operating results.

The loss of key personnel, including our Chief Executive Officer, could delay or prevent achieving our objectives.

Our research, product development and business efforts could be affected adversely by the loss of one or more key members of our scientific or management staff, particularly our executive officers: John Varian, our Chief Executive Officer; Patrick J. Scannon, M.D., Ph.D., our Executive Vice President and Chief Scientific Officer; Fred Kurland, our Vice President, Finance, Chief Financial Officer and Secretary; Paul D. Rubin, M.D., our Senior Vice President, Research and Development and Chief Medical Officer; and Tom Klein, our Vice President and Chief Commercial Officer. We currently do not have key person insurance on any of our employees.

Our ability to use our net operating loss carry-forwards and other tax attributes will be substantially limited by Section 382 of the U.S. Internal Revenue Code.

Section 382 of the U.S. Internal Revenue Code of 1986, as amended, generally limits the ability of a corporation that undergoes an "ownership change" to utilize its net operating loss carry-forwards ("NOLs") and certain other tax attributes against any taxable income in taxable periods after the ownership change. The amount of taxable income in each taxable year after the ownership change that may be offset by pre-change NOLs and certain other pre-change tax attributes is generally equal to the product of (a) the fair market value of the corporation's outstanding shares (or, in the case of a foreign corporation, the fair market value of items treated as connected with the conduct of a trade or business in the United States) immediately prior to the ownership change and (b) the long-term tax exempt rate (i.e., a rate of interest established by the U.S. Internal Revenue Service ("IRS") that fluctuates from month to month). In general, an "ownership change" occurs whenever the percentage of the shares of a corporation owned, directly or indirectly, by "5-percent shareholders" (within the meaning of Section 382 of the Internal Revenue Code) increases by more than 50 percentage points over the lowest percentage of the shares of such corporation owned, directly or indirectly, by such "5-percent shareholders" at any time over the preceding three years.

Based on an analysis under Section 382 of the Internal Revenue Code (which subjects the amount of pre-change NOLs and certain other pre-change tax attributes that can be utilized to an annual limitation), the Company experienced ownership changes in 2009 and 2012 which substantially limit the future use of our pre-change NOLs and certain other pre-change tax attributes per year. As of December 31, 2013, the Company has excluded the NOLs and R&D credits that will expire as a result of the annual limitations. To the extent that the Company does not utilize its carry-forwards within the applicable statutory carry-forward periods, either because of Section 382 limitations or the lack of sufficient taxable income, the carry-forwards will also expire unused.

Because we are a relatively small biopharmaceutical company with limited resources, we may not be able to attract and retain qualified personnel.

Our success in developing marketable products and achieving a competitive position will depend, in part, on our ability to attract and retain qualified scientific and management personnel, particularly in areas requiring specific technical, scientific or medical expertise. We had approximately 168 employees as of March 10, 2014. We may require additional experienced executive, accounting, research and development, legal, administrative and other personnel from time to time in the future. There is intense competition for the services of these personnel, especially in California. Moreover, we expect that the high cost of living in the San Francisco Bay Area, where our headquarters and manufacturing facilities are located, may impair our ability to attract and retain employees in the future. If we do not succeed in attracting new personnel and retaining and motivating existing personnel, our operations may suffer and we may be unable to implement our current initiatives or grow effectively.

Our business and operations would suffer in the event of system failures.

Despite the implementation of security measures, our internal computer systems and those of our current and any future collaborators, licensees, suppliers, contractors and consultants are vulnerable to damage from cyber−attacks, computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. We could experience failures in our information systems and computer servers, which could be the result of a cyber−attack and could result in an interruption of our normal business operations and require substantial expenditure of financial and administrative resources to remedy. System failures, accidents or security breaches can cause interruptions in our operations and can result in a material disruption of our development programs, commercialization activities and other business operations. The loss of clinical trial data from completed or future clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. Similarly, we rely on third parties to supply components for and manufacture our product and product candidates, conduct clinical trials of our product candidates and warehouse and distribute ACEON, and similar events relating to their computer systems could also have a material adverse effect on our business. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability and the development of gevokizumab or any of our other product candidates and the commercialization of ACEON could be delayed or otherwise adversely affected.

Calamities, power shortages or power interruptions at our Berkeley headquarters and manufacturing facility could disrupt our business and adversely affect our operations.

Our principal operations are located in Northern California, including our corporate headquarters and manufacturing facility in Berkeley, California. This location is in an area of seismic activity near active earthquake faults. Any earthquake, terrorist attack, fire, power shortage or other calamity affecting our facilities may disrupt our business and could have material adverse effect on our business and results of operations.

We have a significant stockholder, which may limit other stockholders' ability to influence corporate matters and may give rise to conflicts of interest.

Entities controlled by Felix J. Baker and Julian C. Baker beneficially own approximately 26.8% of our outstanding common stock as of March 10, 2014, which includes warrants to purchase approximately 7.6 million shares of XOMA's common stock at an exercise price of $1.76 per share. On July 19, 2012, our Board of Directors elected Kelvin Neu, M.D., to serve on our Board of Directors. Dr. Neu is a Managing Director at Baker Bros. Advisors, LLC, an entity controlled by Felix J. Baker and Julian C. Baker. Accordingly, these entities may exert significant influence over us and any action requiring the approval of the holders of our stock, including the election of directors and approval of significant corporate transactions. Furthermore, conflicts of interest could arise in the future between us, on the one hand, and these entities, on the other hand, concerning potential competitive business activities, business opportunities, the issuance of additional securities and other matters.

Our organizational documents contain provisions that may prevent transactions that could be beneficial to our stockholders and may insulate our management from removal.

Our charter and by-laws:

- require certain procedures to be followed and time periods to be met for any stockholder to propose matters to be considered at annual meetings of stockholders, including nominating directors for election at those meetings; and
- authorize our Board of Directors to issue up to 1,000,000 shares of preferred stock without stockholder approval and to set the rights, preferences and other designations, including voting rights, of those shares as the Board of Directors may determine.

In addition, we are subject to the provisions of Section 203 of the Delaware General Corporation Law (the "DGCL"), that may prohibit large stockholders, in particular those owning 15% or more of our outstanding common stock, from merging or combining with us.

These provisions of our organizational documents and the DGCL, alone or in combination with each other, may discourage transactions involving actual or potential changes of control, including transactions that otherwise could involve payment of a premium over prevailing market prices to holders of common stock, could limit the ability of stockholders to approve transactions that they may deem to be in their best interests, and could make it considerably more difficult for a potential acquirer to replace management.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

Our corporate headquarters and development and manufacturing facilities are located in Berkeley and Emeryville, California. We currently lease three buildings and space in a fourth building, for which we have a sublease tenant under contract through May 2014. These buildings house our research and development laboratories, manufacturing facilities and office space. A separate pilot scale manufacturing facility is owned by us. Our building leases expire in the period from 2014 to 2023 and total minimum lease payments due from January 2014 until expiration of the leases are $34.7 million. We have the option to renew our lease agreements for periods ranging from three to ten years.

Item 3. Legal Proceedings

None.

Item 4. Mine Safety Disclosures

Not applicable.

Supplementary Item: Executive Officers of the Registrant

Our executive officers and their respective ages, as of December 31, 2013, and positions are as follows:

Name	Age	Title
John Varian	54	Chief Executive Officer
Patrick J. Scannon, M.D., Ph.D.	66	Executive Vice President and Chief Scientific Officer
Paul D. Rubin, M.D.	60	Senior Vice President, Research and Development and Chief Medical Officer
Fred Kurland	63	Vice President, Finance, Chief Financial Officer, and Secretary
Tom Klein	52	Vice President, Chief Commercial Officer

The Board of Directors elects all officers annually. There is no family relationship between or among any of the officers or directors.

Business Experience

Mr. Varian was appointed Chief Executive Officer of XOMA in January 2012 after serving as Interim Chief Executive Officer since August 31, 2011. He has served as a XOMA director since December 2008. He was Chief Operating Officer of Aryx Therapeutics from December 2003 through August 2011 and was its Chief Financial Officer from April 2006 through March 2011. Previously, Mr. Varian was Chief Financial Officer of Genset S.A., where he was a key member of the team negotiating the company's sale to Serono S.A. in 2002. From October 1998 to April 2000, Mr. Varian served as Senior Vice President, Finance and Administration of Elan Pharmaceuticals, Inc., joining the company as part of its acquisition of Neurex Corporation. Prior to the acquisition, he served as Neurex Corporation's Chief Financial Officer from June 1997 until October 1998. From 1991 until 1997, Mr. Varian served as the Vice President Finance and Chief Financial Officer of Anergen Inc. Mr. Varian was an Audit Principal / Senior Manager at Ernst & Young from 1987 until 1991 where he focused on life sciences. He is a founding member of the Bay Area Bioscience Center and a former chairman of the Association of Bioscience Financial Officers International Conference. Mr. Varian received a B.B.A. degree from Western Michigan University.

Dr. Scannon is one of our founders and has served as a Director since our formation. Dr. Scannon became Executive Vice President and Chief Scientific Officer in February 2011. In January 2014, Dr. Scannon’s employment agreement was amended to change his status from full- to part-time, continuing to serve in his previous roles a Director and Executive Vice President and Chief Scientific Officer. Previously he was our Executive Vice President and Chief Medical Officer beginning in March 2009 and served as Executive Vice President and Chief Biotechnology Officer from May 2006 until March 2009, Chief Scientific and Medical Officer from March 1993 until May 2006, Vice Chairman, Scientific and Medical Affairs from April 1992 to March 1993 and our President from our formation until April 1992. From 2007 until 2012, Dr. Scannon served on the National Biodefense Science Board, reporting to the Secretary for the Department of Health and Human Services. In 2007, he also became a member of the Board of Directors for Pain Therapeutics, Inc, a biopharmaceutical company. He has served on the Defense Sciences Research Council for the Defense Advanced Research Projects Agency (DARPA) and on the Threat Reduction Advisory Committee for the Department of Defense. From 1979 until 1981, Dr. Scannon was a clinical research scientist at the Letterman Army Institute of Research in San Francisco. A Board-certified internist, Dr. Scannon holds a Ph.D. in organic chemistry from the University of California, Berkeley and an M.D. from the Medical College of Georgia.

Dr. Rubin is our Senior Vice President, Research and Development and Chief Medical Officer. Dr. Rubin joined the Company in June 2011. Prior to joining XOMA, Dr. Rubin was Chief Medical Officer at Funxional Therapeutics Ltd. He was Chief Executive Officer of Resolvyx Pharmaceuticals, Inc. from 2007 to 2009 and President and Chief Executive Officer of Critical Therapeutics, Inc. from 2002 to 2007. From 1996 to 2002, Dr. Rubin served as Senior Vice President, Development, and later as Executive Vice President, Research & Development at Sepracor. He was responsible for the successful development of all of Sepracor's internally developed approved products including Xopenex®, Lunesta®, Xopenex HFA® and Brovana®. From 1993 to 1996, Dr. Rubin held senior level positions at Glaxo-Wellcome Pharmaceuticals, most recently as Vice President of Worldwide Clinical Pharmacology and Early Clinical Development. During his tenure with Abbott from 1987 to 1993, Dr. Rubin served as Vice President, Immunology and Endocrinology, where he successfully advanced zileuton, the first 5-lipoxygenase inhibitor, from discovery to approval for the treatment of asthma. Dr. Rubin received a BA from Occidental College and his M.D. from Rush Medical College. He completed his training in internal medicine at the University of Wisconsin.

Mr. Kurland is our Vice President, Finance, Chief Financial Officer, and Secretary. He joined XOMA in December 2008. Mr. Kurland is responsible for directing the Company's financial strategy, accounting, financial planning and investor relations functions. He has more than 30 years of experience in biotechnology and pharmaceutical companies including Aviron/MedImmune, Protein Design Labs and Syntex/Roche. Prior to joining XOMA, Mr. Kurland served as Chief Financial Officer of Bayhill Therapeutics, Inc., Corcept Therapeutics Incorporated and Genitope Corporation. From 1998 to 2002, Mr. Kurland served as Senior Vice President and Chief Financial Officer of Aviron, acquired by MedImmune in 2001 and developer of FluMist. From 1996 to 1998, he was Vice President and Chief Financial Officer of Protein Design Labs, Inc., an antibody design company, and from 1995 to 1996, he served as Vice President and Chief Financial Officer of Applied Immune Sciences, Inc. Mr. Kurland also held a number of financial management positions at Syntex Corporation, a pharmaceutical company acquired by Roche, including Vice President and Controller between 1991 and 1995. He received his J.D. and M.B.A. degrees from the University of Chicago and his B.S. degree from Lehigh University.

Mr. Klein is our Vice President**,** Chief Commercial Officer. He joined XOMA in 2013 from Genentech, where he was Vice President, Business Unit Head, Virology and Specialty Care. He joined Genentech from Roche, where he had direct oversight over the Roche Hepatology and HIV sales and marketing teams and was responsible for ensuring affiliate and global strategic alignment. Prior to his 12 years with Roche, Tom spent 11 years with Westwood-Squibb/Bristol Myers-Squibb in several sales and product management roles. He has an MBA, Management from Temple University and a BA, Marketing, from Pennsylvania State University.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market for Registrant's Common Equity

Our common stock trades on The NASDAQ Global Market under the symbol"XOMA." All references to numbers of shares of common stock and per-share information in this Annual Report have been adjusted retroactively to reflect the Company's reverse stock split effective August of 2010. The following table sets forth the quarterly range of high and low reported sale prices of our common stock on The NASDAQ Global Market for the periods indicated:

	Price Range	
	High	Low
2013		
First Quarter	$ 3.67	$ 2.43
Second Quarter	$ 4.40	$ 3.02
Third Quarter	$ 5.53	$ 3.61
Fourth Quarter	$ 7.45	$ 3.67
2012		
First Quarter	$ 2.93	$ 1.12
Second Quarter	$ 3.24	$ 2.22
Third Quarter	$ 4.13	$ 2.91
Fourth Quarter	$ 3.78	$ 2.37

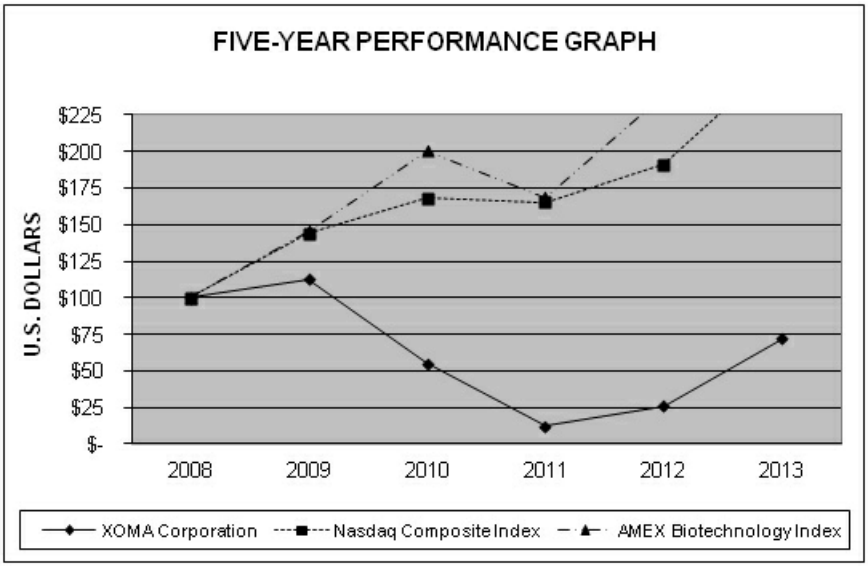
On March 10, 2014, there were 823 stockholders of record of our common stock, one of which was Cede & Co., a nominee for Depository Trust Company ("DTC"). All of the shares of our common stock held by brokerage firms, banks and other financial institutions as nominees for beneficial owners are deposited into participant accounts at DTC and are therefore considered to be held of record by Cede & Co. as one stockholder.

Dividend Policy

We have not paid dividends on our common stock. We currently intend to retain any earnings for use in the development and expansion of our business. We, therefore, do not anticipate paying cash dividends on our common stock in the foreseeable future. In addition, our loan agreement with General Electric Capital Corporation generally restricts the declaration and payment of dividends.

Performance Graph

The following graph compares the five-year cumulative total stockholder return for XOMA common stock with the comparable cumulative return of certain indices. The graph assumes $100 invested on the same date in each of the indices. Returns of the company are not indicative of future performance.



As of December 31,	XOMA Corporation	Nasdaq Composite Index	AMEX Biotechnology Index
2008	$ 100.00	$ 100.00	$ 100.00
2009	$ 112.90	$ 143.89	$ 145.58
2010	$ 55.16	$ 168.22	$ 200.51
2011	$ 12.37	$ 165.19	$ 168.65
2012	$ 25.81	$ 191.47	$ 239.05
2013	$ 72.37	$ 264.84	$ 360.10

Item 6. Selected Financial Data

The following table contains our selected financial information including consolidated statement of operations and consolidated balance sheet data for the years 2009 through 2013. The selected financial information has been derived from our audited consolidated financial statements. The selected financial information should be read in conjunction with *Item 8: Financial Statements and Supplementary Data* and *Item 7: Management's Discussion and Analysis of Financial Condition and Results of Operations* included in this Annual Report. The data set forth below is not necessarily indicative of the results of future operations.

	Year Ended December 31,				
	2013	2012	2011	2010	2009
	(In thousands, except per share amounts)				
Consolidated Statement of Operations Data					
Total revenues [1]	$ 35,451	$ 33,782	$ 58,196	$ 33,641	$ 98,430
Total operating costs and expenses	93,328	85,332	92,151	100,663	81,867
Restructuring costs	328	5,074	-	82	3,603
(Loss) income from operations	(58,205)	(56,624)	(33,955)	(67,104)	12,960
Other (expense) income, net [2]	(65,867)	(14,515)	1,227	(1,625)	(6,683)
Net (loss) income before taxes	(124,072)	(71,139)	(32,728)	(68,729)	6,277
Income tax benefit (expense), net [3]	14	74	(15)	(27)	(5,727)
Net (loss) income	$ (124,058)	$ (71,065)	$ (32,743)	$ (68,756)	$ 550
Basic and diluted net (loss) income per share of common stock	$ (1.43)	$ (1.10)	$ (1.04)	$ (3.69)	$ 0.05

	December 31,				
	2013	2012	2011	2010	2009
			(In thousands)		
Balance Sheet Data					
Cash and cash equivalents	$ 101,659	$ 45,345	$ 48,344	$ 37,304	$ 23,909
Short-term investments	$ 19,990	$ 39,987	$ -	$ -	$ -
Current assets	$ 127,060	$ 95,837	$ 62,695	$ 58,880	$ 32,152
Working capital	$ 97,415	$ 72,004	$ 42,064	$ 23,352	$ 13,474
Total assets	$ 134,782	$ 105,676	$ 78,036	$ 74,252	$ 52,824
Current liabilities	$ 29,645	$ 23,833	$ 20,631	$ 35,528	$ 18,678
Long-term liabilities [4]	$ 109,124	$ 60,376	$ 42,394	$ 15,133	$ 16,620
Redeemable convertible preferred stock, at par value	$ -	$ -	$ -	$ 1	$ 1
Accumulated deficit	$ (1,081,176)	$ (957,118)	$ (886,053)	$ (853,310)	$ (784,554)
Total stockholders' equity	$ (3,987)	$ 21,467	$ 15,011	$ 23,591	$ 17,526

We have paid no dividends in the past five years.

(1) 2010 includes a non-recurring fee of $4.0 million related to the sale of our CIMZIA® royalty interest to an undisclosed buyer. 2009 includes a non-recurring fee of $25.0 million related to the sale of our LUCENTIS® royalty interest to Genentech, Inc., a member of the Roche Group ("Genentech").

(2) 2013 and 2012 include $59.9 million and $9.5 million, respectively, related to the revaluation of contingent warrant liabilities issued in connection of an equity financing in March 2012. 2010 includes a loss associated with the $4.5 million paid in the first quarter of 2010 to the holders of warrants issued in June 2009, upon modification of the terms.

(3) 2009 includes foreign income tax expense of $5.8 million recognized in connection with the expansion of our existing collaboration with Takeda.

(4) 2013 and 2012 include $68.7 million and $15.0 million, respectively, related to contingent warrant liabilities in connection with an equity financing in March 2012. The balance in 2013, 2012, and 2011 includes a €15.0 million loan from Servier, which had a principal balance equal to approximately $20.6 million, $19.8 million, and $19.4 million as of December 31, 2013, 2012, and 2011, respectively, and a Term Loan from GECC, which had a principal balance equal to $9.4 million, $12.5 million, and $10.0 million as of December 31, 2013, 2012, and 2011, respectively.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Overview

XOMA discovers and develops innovative antibody-based therapeutics that have unique allosteric modulating properties. Our lead drug candidate, gevokizumab, is a proprietary potent, fully humanized allosteric-modulating monoclonal antibody that binds to the inflammatory cytokine interleukin-1 beta ("IL-1 beta"). We believe that by targeting IL-1 beta, gevokizumab has the potential to address the underlying inflammatory causes of a wide range of diseases that have been identified as having unmet medical needs.

Together with our development partner, Servier ("Servier"), a leading independent French pharmaceutical company, we initiated three Phase 3 clinical trials evaluating gevokizumab for the treatment of non-infectious intermediate, posterior or pan-uveitis ("NIU") and Behçet's uveitis, a severe subset of NIU. XOMA is responsible for all of the clinical study sites in the United States, and Servier is responsible for all of the clinical study sites outside of the United States. These studies are known as the EYEGUARD™ program, which includes EYEGUARD-A (patients with active NIU), EYEGUARD-B (patients with Behçet's uveitis), and EYEGUARD-C (patients currently controlled with systemic treatment).

In addition to the NIU clinical trials, we also are conducting a trial of gevokizumab in pyoderma gangrenosum ("PG"), a rare ulcerative skin disease. Based upon what we believe are compelling data from our pilot study in patients with PG, we requested an End of Phase 2 meeting with the U.S. Food and Drug Administration ("FDA") to solicit feedback on our proposed Phase 3 clinical development program. We have been granted a Type B meeting, which we expect to occur in March 2014 and to receive feedback from the FDA early in the second quarter of 2014.

We also have an active gevokizumab Proof-of-Concept ("POC") development program to identify indications for pivotal development. We conducted POC trials in moderate-to-severe inflammatory acne and in erosive osteoarthritis of the hand ("EOA"), and we have several other ongoing POC studies. In early 2013, we reported top-line results from our moderate-to-severe inflammatory acne study. Based upon market analysis, we have decided not to pursue a pivotal program in moderate-to-severe inflammatory acne; however, we will consider conducting pilot studies in rare acne indications classified under the umbrella diagnosis of neutrophilic dermatoses. In October 2013, we reported promising results from the Day 84 pain, stiffness and function endpoints in our gevokizumab POC study in patients with EOA and elevated C-reactive protein ("CRP"), known as Study 160. At the same time, we announced we completed patient enrollment in a supplemental study for patients with EOA and non-elevated CRP, known as Study 162. On March 4, 2014, we reported that despite early positive results in Study 160, the top-line data at Day 168 in that study, as well as data at Day 84 in Study 162, were not positive. These results led to our decision not to pursue Phase 3 testing in the broad EOA population. We will continue to review the data to determine if there is a subgroup of the EOA population that could benefit from gevokizumab therapy.

Gevokizumab has been generally well tolerated across all of our clinical studies. In both the acne and EOA studies, there were no drug-related serious adverse events reported. The most common adverse events were headache, pain, arthralgia, urinary tract infections, upper respiratory tract infections and pneumonia, and they were comparable between gevokizumab and placebo.

We also have ongoing clinical studies assessing gevokizumab's potential to treat several other rare diseases. Two studies are being conducted in collaboration with the U.S. National Institutes of Health ("NIH"). In March 2013, we announced that a gevokizumab study in patients with non-infectious anterior scleritis had opened for enrollment at the National Eye Institute ("NEI"). In August 2013, we announced a gevokizumab clinical study in patients with inflammatory autoimmune inner ear disease ("AIED") run by the North Shore-Long Island Jewish Health System in collaboration with the National Institute on Deafness and Other Communication Disorders ("NIDCD").

Separately, Servier instituted its own active development program for gevokizumab beyond the NIU and Behçet's uveitis Phase 3 program. In 2012, Servier initiated a gevokizumab Phase 2 study in patients with acute coronary syndrome, a cardiovascular disease. In 2013, Servier also began testing gevokizumab in a variety of POC studies, including polymyositis/dermatomyositis, Schnitzler syndrome, and giant cell arteritis. Servier has indicated these are the first studies in an extensive multi-indication exploratory program it expects to conduct.

Our proprietary preclinical pipeline includes classes of allosteric modulating antibodies that activate, sensitize or deactivate the insulin receptor*in vivo*, which we have named XMet. This portfolio of antibodies represents potential new therapeutic approaches to the treatment of diabetes and several rare diseases that have insulin involvement.

We have developed these and other antibodies using some or all of our ADAPT™ antibody discovery and development platform, our ModulX™ technologies for generating allosterically modulating antibodies, and our OptimX™ technologies for optimizing biophysical properties of antibodies, including affinity, immunogenicity, stability and manufacturability.

Our biodefense initiatives include XOMA 3AB, a biodefense anti-botulism product candidate comprised of a combination of three antibodies. XOMA 3AB is directed against botulinum toxin serotype A and has been developed through funding from the National Institute of Allergy and Infectious Diseases ("NIAID"), a part of the NIH. A Phase 1 trial was completed on XOMA 3AB, with no product-related serious adverse events. In January 2012, we announced that we will complete our NIAID biodefense contracts currently in place but will not actively pursue future contracts. Should the government choose to acquire XOMA 3AB or other biodefense products in the future, we expect to be able to produce these antibodies through an outside manufacturer.

We also have developed antibody product candidates with premier pharmaceutical companies including Novartis AG ("Novartis") and Takeda Pharmaceutical Company Limited ("Takeda"). Two antibodies developed with Novartis, LFA102 and HCD122 (lucatumumab), are in clinical development by Novartis.

Significant Developments in 2013

Gevokizumab

- In January 2013, we announced preliminary top-line data from an interim analysis of our Phase 2 proof-of-concept study to evaluate the safety and efficacy of gevokizumab for the treatment of moderate-to-severe inflammatory acne. Preliminary data from the 125-patient trial demonstrated clear activity according to the Investigator's Global Assessment ("IGA") parameter. Gevokizumab was well-tolerated in this trial, with no significant differences in adverse events between gevokizumab and placebo and no serious drug-related adverse events were reported. Based upon market analysis, we have decided not to pursue a pivotal program in moderate-to-severe inflammatory acne; however, we will consider conducting pilot studies in rare acne indications classified under the umbrella diagnosis of neutrophilic dermatoses.

- In April 2013, the NEI opened a non-infectious, active, anterior scleritis trial for patient enrollment. The open-label single-arm Phase 1/2 study is designed to assess the safety and potential efficacy of gevokizumab in patients experiencing non-infectious, active, anterior scleritis, which is the inflammation of the sclera.

- In May 2013, we announced we had initiated a second clinical study in inflammatory osteoarthritis of the hand based upon our findings that patients who met all of the eligibility criteria for our original study were not able to participate due to the requirement C-reactive protein (CRP) levels must be greater than or equal to 2.5 mg/L. This second study has the same design and eligibility requirements with the exception that participants with a CRP level of less than 2.5 mg/L may enroll. The study is capturing the same pain and functional endpoints as the primary study, yet the design does not include radiographic/MRI images of the affected joints.

- In June 2013, we opened enrollment in an open-label pilot study to determine gevokizumab's potential to treat acute inflammatory PG. In October 2013, we announced compelling data from our pilot study in patients with PG, and we have requested a meeting with the FDA to solicit feedback regarding PG as a potential indication for gevokizumab in Phase 3 trials.

- In June 2013, Servier launched its own independent proof-of-concept clinical program to evaluate the safety and efficacy of gevokizumab in indications different from ours. The first such studies are in polymyositis/dermatomyositis, Schnitzler syndrome, and giant cell arteritis.

- In July 2013, we announced the completion of patient enrollment in our Phase 2 proof-of-concept study in EOA.

- In August 2013, we announced that a gevokizumab clinical study in patients with AIED will be conducted by the North Shore-Long Island Jewish Health System in collaboration with the National Institute on Deafness and Other Communication Disorders.

- In October 2013, we announced three-month results from our gevokizumab Phase 2 clinical study in patients with EOA who also have CRP levels greater than or equal to 2.5 mg/L. The three-month results demonstrated that gevokizumab has a clinical effect on the target patient population. On March 4, 2014, we reported that despite early positive results in the first Study, the top-line data at Day 168 in that study, as well as data at Day 84 in the second study, were not positive. These results led to our decision not to pursue Phase 3 testing in the broad EOA population. We will continue to review the data to determine if there is a subgroup of the EOA population that could benefit from gevokizumab therapy.

Perindopril Franchise

- In July 2013, we transferred U.S. development and commercialization rights to the perindopril franchise to Symplmed Pharmaceuticals, LLC ("Symplmed"). Under the terms of the arrangement, we received a minority equity position in Symplmed and up to double-digit royalties on sales of the first fixed-dose combination containing perindopril arginine and amlodipine besylate, if it is approved by the FDA. We recorded the minority equity position in the other assets line of our consolidated balance sheets. Symplmed, under a sublicense agreement, assumes U.S. marketing responsibilities for ACEON (perindopril erbumine), and we continue to manage and be reimbursed for sales and distribution within our established commercial infrastructure until the ACEON New Drug Application ("NDA") is transferred to Symplmed. The ACEON NDA was to be transferred on March 1, 2014, but Symplmed has requested an extension. Terms of an extension agreement, if any, are being negotiated. We will continue to record gross ACEON sales in the contracts and other revenue line of our consolidated statements of comprehensive loss until the ACEON NDA is transferred. Following the ACEON NDA transfer, Symplmed will pay us single-digit royalties on sales of ACEON.

Management Addition

- On March 18, 2013, the Company announced Tom Klein has joined the Company as Vice President, Chief Commercial Officer, a newly created position reporting to John Varian, Chief Executive Officer.

Financing

- In August 2013, we completed an underwritten public offering of 8,736,187 shares of our common stock for gross proceeds of $31.6 million, before deducting underwriting discounts and commissions and estimated offering expenses totaling approximately $2.2 million.

- In December 2013, we completed an underwritten public offering of 10,925,000 shares of our common stock for gross proceeds of $57.4 million, before deducting underwriting discounts and commissions and estimated offering expenses totaling approximately $3.8 million.

Other

- In December 2013, we received a milestone payment of $7.0 million from Novartis under the 2008 Amended and Restated Research, Development and Commercialization Agreement between Novartis and XOMA (US) LLC, in connection with the clinical advancement of an undisclosed product in an undisclosed indication. Pursuant to our obligations under the Agreement, in January 2014, we made a payment, equal to 25 percent of the milestone received, or $1.75 million, toward our outstanding debt obligation to Novartis.

Critical Accounting Estimates

The accompanying discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements and the related disclosures, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates, assumptions and judgments that affect the reported amounts in our consolidated financial statements and accompanying notes. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

The consolidated financial statements include the accounts of XOMA and its wholly-owned subsidiaries. All significant intercompany accounts and transactions have been eliminated.

We believe the following policies to be the most critical to an understanding of our financial condition and results of operations because they require us to make estimates, assumptions and judgments about matters that are inherently uncertain.

Revenue Recognition

License and Collaborative Fees

Revenue from non-refundable license, technology access or other payments under license and collaborative agreements where we have a continuing obligation to perform is recognized as revenue over the expected period of the continuing performance obligation. We estimate the performance period at the inception of the arrangement and re-evaluate it each reporting period. This re-evaluation may shorten or lengthen the period over which the remaining revenue is recognized. Changes to these estimates are recorded on a prospective basis.

Milestone payments under collaborative and other arrangements are recognized as revenue upon completion of the milestone event, once confirmation is received from the third party and collectability is reasonably assured. This represents the culmination of the earnings process because we have no future performance obligations related to the payment. Milestone payments that require a continuing performance obligation on our part are recognized over the expected period of the continuing performance obligation. Amounts received in advance are recorded as deferred revenue until the related milestone is completed.

Contract Revenue

Contract revenue for research and development involves our providing research and development and manufacturing services to collaborative partners, biodefense contractors or others. Revenue for certain contracts is accounted for by a proportional performance, or output-based, method where performance is based on estimated progress toward elements defined in the contract. The amount of contract revenue and related costs recognized in each accounting period are based on estimates of the proportional performance during the period. Adjustments to estimates based on actual performance are recognized on a prospective basis and do not result in reversal of revenue should the estimate to complete be extended.

In addition, revenue related to certain research and development contracts is billed based on actual hours incurred by XOMA related to the contract, multiplied by full-time equivalent ("FTE") rates plus a mark-up. The FTE rates are developed based on our best estimates of labor, materials and overhead costs. For certain contracts, such as our government contracts, the FTE rates are agreed upon at the beginning of the contract and are subject to review or audit by the contracting party at any time. Under our contracts with NIAID, a part of the NIH, we bill using NIH provisional rates and thus are subject to future audits at the discretion of NIAID's contracting office. These audits can result in adjustments to previously reported revenue.

In 2011, the NIH conducted an audit of our actual data under two contracts for the period from January 1, 2007, through December 31, 2009, and developed final billing rates for this period. As a result, we retroactively applied these NIH rates to the invoices from this period which resulted in an increase in revenue of $3.1 million from the NIH, excluding $0.9 million billed to the NIH in 2010 resulting from our performance of a comparison of 2009 calculated costs incurred and costs billed to the government under provisional rates. Final rates were settled for one contract resulting in the recognition of revenue of $2.0 million in 2012. The remaining contract will be settled through negotiations with the NIH. This revenue has been deferred and will be recognized upon completion of negotiations with and approval by the NIH.

Upfront fees are recognized ratably over the expected benefit period under the arrangement. Given the uncertainties of research and development collaborations, significant judgment is required to determine the duration of the arrangement.

Stock-based Compensation

The valuation of stock-based compensation awards is determined at the date of grant using the Black-Scholes option pricing model (the "Black-Scholes Model"). This model requires inputs such as the expected term of the option, expected volatility, and risk-free interest rate. Further, the forfeiture rate also impacts the amount of aggregate compensation. These inputs are subjective and generally require significant analysis and judgment to develop. To establish an estimate of expected term, we consider the vesting period and contractual period of the award and our historical experience of stock option exercises, post-vesting cancellations and volatility. To establish an estimate of forfeiture rate, we consider our historical experience of option forfeitures and terminations. The risk-free rate is based on the yield available on United States Treasury zero-coupon issues. We review our valuation assumptions quarterly and, as a result, it is likely we will change our valuation assumptions used to value stock-based awards granted in future periods. Stock-based compensation expense is recognized ratably over the requisite service period.

Income Taxes

We account for uncertain tax positions in accordance with Accounting Standards Codification Topic 740, Income Taxes ("ASC 740"). The application of income tax law and regulations is inherently complex. Interpretations and guidance surrounding income tax laws and regulations change over time. As such, changes in our subjective assumptions and judgments can materially affect amounts recognized in our financial statements.

ASC 740 provides for the recognition of deferred tax assets if realization of such assets is more likely than not. Based upon the weight of available evidence, which includes our historical operating performance and carry-back potential, we have determined that total deferred tax assets should be fully offset by a valuation allowance.

Warrants

We have issued warrants to purchase shares of our common stock in connection with financing activities. We account for some of these warrants as a liability at fair value and others as equity at fair value. The fair value of the outstanding warrants is estimated using the Black-Scholes Model. The Black-Scholes Model requires inputs such as the expected term of the warrants, expected volatility and risk-free interest rate. These inputs are subjective and require significant analysis and judgment to develop. For the estimate of the expected term, we use the full remaining contractual term of the warrant. We base our estimate of expected volatility on our historical stock price volatility. The assumptions associated with contingent warrant liabilities are reviewed each reporting period and changes in the estimated fair value of these contingent warrant liabilities are recognized in other income (expense).

Results of Operations

Revenue

Total revenues for the years ended December 31, 2013, 2012, and 2011, were as follows (in thousands):

	Year ended December 31,			2012-2013 Increase (Decrease)	2011-2012 Increase (Decrease)
	2013	2012	2011		
License and collaborative fees	$ 11,028	$ 5,727	$ 17,991	$ 5,301	$ (12,264)
Contract and other revenue	24,423	28,055	40,205	(3,632)	(12,150)
Total revenues	$ 35,451	$ 33,782	$ 58,196	$ 1,669	$ (24,414)

License and Collaborative Fees

License and collaborative fee revenue includes fees and milestone payments related to the out-licensing of our products and technologies. The primary components of license and collaboration fee revenue in 2013 were $8.6 million in milestone payments relating to various out-licensing arrangements, including a $7.0 million milestone payment from Novartis, $0.8 million in upfront fees and annual maintenance fees relating to various out-licensing arrangements, and $1.6 million in revenue recognized related to the loan agreement with Servier.

The primary components of license and collaboration fee revenue in 2012 were $3.3 million in upfront fees and annual maintenance fees relating to various out-licensing arrangements, $1.4 million in revenue recognized related to the loan agreement with Servier, and $1.0 million recognized for six milestone payments.

The primary components of license and collaboration fee revenue in 2011 were $16.2 million in revenue recognized related to the collaboration and loan agreements with Servier to jointly develop and commercialize gevokizumab in multiple indications. In addition, we recognized two milestone payments for an aggregate amount of $1.0 million and $0.8 million in up-front fees and annual maintenance fees relating to various out-licensing arrangements.

The generation of future revenue related to license fees and collaborative arrangements is dependent on our ability to attract new licensees to our antibody and proprietary technologies and new collaboration partners. We expect an increase in license and collaboration fee revenue in 2014 compared to 2013 levels.

Contract and Other Revenue

Contract and other revenues include agreements where we provide contracted research and development services to our contract and collaboration partners, including Servier and NIAID. Contract and other revenues also include net product sales and royalties. The following table shows the activity in contract and other revenue for the years ended December 31, 2013, 2012, and 2011 (in thousands):

	Year ended December 31,			2012-2013 Increase (Decrease)	2011-2012 Increase (Decrease)
	2013	2012	2011		
Servier	$ 13,568	$ 14,529	$ 19,348	$ (961)	$ (4,819)
NIAID	9,098	11,191	18,781	(2,093)	(7,590)
Other	1,757	2,335	2,076	(578)	259
Total revenues	$ 24,423	$ 28,055	$ 40,205	$ (3,632)	$ (12,150)

The 2013 decrease in contract and other revenue, as compared to 2012, was primarily due to the 2012 recognition of $2.0 million in revenue related to an adjustment to previously reported revenue from NIAID resulting from an audit by NIAID's contracting office. Also contributing to the decrease were decreases of $1.4 million in CMC activity and $0.6 million in gevokizumab clinical development activity under our collaboration with Servier, partially offset by a $0.9 million increase in partial funding received from Servier for the FDC1 Phase 3 trial.

The 2012 decrease in contract and other revenue, as compared to 2011, was primarily due to decreased activity under NIAID Contract No. HHSN272200800028C ("NIAID 3"). This decrease of $12.0 million in NIAID 3 revenue was partially offset by the recognition of $2.0 million in revenue related to an adjustment to previously reported revenue from NIAID resulting from an audit by NIAID's contracting office. This revenue, which was previously deferred, was recognized upon the completion of negotiations with and approval by the NIH in March 2012. Also partially offsetting the decreases in NIAID revenue was a $2.4 million increase in activity under Contract No. HHSN272201100031C ("NIAID 4"). The NIAID 4 contract was executed in October 2011. In addition, a reduction in CMC activity under the collaboration with Servier contributed to the decrease in contract and other revenue in 2012, as compared to 2011, partially offset by an increase in gevokizumab clinical development activity under the collaboration with Servier and the recognition of partial funding received from Servier for the FDC1 Phase 3 trial.

We expect contract and other revenue to decrease in 2014 compared to 2013 levels. Revenue generating activity related to our Servier contract is expected to be reduced due to the collaboration reaching the $50 million fully reimbursable cap for NIU expenses.

The following table shows the activity in deferred revenue for the years ended December 31, 2013, 2012, and 2011 (in thousands):

	Year ended December 31,		
	2013	2012	2011
Beginning deferred revenue	$ 9,724	$ 13,234	$ 18,130
Revenue deferred	1,478	5,881	12,673
Revenue recognized	(4,879)	(9,391)	(17,569)
Ending deferred revenue	$ 6,323	$ 9,724	$ 13,234

We defer revenue until all requirements under our revenue recognition policy are met. In 2013, we deferred revenue from contracts including Servier and NIAID. In 2012 and 2011, we deferred revenue from contracts including Servier, NIH and Takeda.

We expect a significant portion of the $6.3 million in deferred revenue to be recognized in 2014 with the remainder to be earned during 2015. Future amounts may be affected by additional consideration received, if any, under existing or any future licensing or other collaborative arrangements as well as changes in the estimated period of obligation or services to be provided under the arrangements.

Research and Development Expenses

Biopharmaceutical development includes a series of steps, including *in vitro* and *in vivo* preclinical testing, and Phase 1, 2 and 3 clinical studies in humans. Each of these steps is typically more expensive than the previous step, but actual timing and the cost to us depends on the product being tested, the nature of the potential disease indication and the terms of any collaborative or development arrangements with other companies or entities. After successful conclusion of all of these steps, regulatory filings for approval to market the products must be completed, including approval of manufacturing processes and facilities for the product. Our research and development expenses currently include costs of personnel, supplies, facilities and equipment, consultants, other third-party costs and expenses related to preclinical and clinical testing.

Research and development expenses were $74.9 million in 2013, compared with $68.5 million in 2012 and $68.1 million in 2011. The increase of $6.4 million in 2013, compared to 2012, was primarily due to higher external manufacturing activity, internal proprietary project costs, and salaries and related personnel costs, partially offset by decreases in FDC clinical trial costs, and internal facility costs as a result of the 2012 streamlining of operations. Clinical trial costs increased in 2012, as compared to 2011, however, this increase was offset by decreases in salaries and related personnel costs.

Salaries and related personnel costs are a significant component of research and development expenses. We recorded $27.0 million in research and development salaries and employee-related expenses in 2013, compared with $25.9 million in 2012 and $34.3 million in 2011. Included in these expenses for 2013 were $21.7 million for salaries and benefits, $2.9 million for bonus expense and $2.4 million for stock-based compensation, which is a non-cash expense. The increase in 2013, as compared to 2012, was primarily due to an increase in salaries and benefits of $0.9 million resulting from increased headcount.

Included in these expenses for 2012 were $20.8 million for salaries and benefits, $2.7 million for bonus expense and $2.4 million for stock-based compensation, which is a non-cash expense. The decrease in 2012, as compared to 2011, was primarily due to a decrease in salaries and benefits of $6.9 million resulting from decreased headcount in manufacturing as result of the 2012 streamlining of operations, and a $1.3 million decrease in stock-based compensation.

Our research and development activities can be divided into earlier-stage programs and later-stage programs. Earlier-stage programs include molecular biology, process development, pilot-scale production and preclinical testing. Also included in earlier-stage programs are costs related to excess manufacturing capacity. We expect excess manufacturing capacity to continue to decrease in 2014 compared to 2013 due to our streamlining objective implemented in 2012 to utilize a contract manufacturing organization. Later-stage programs include clinical testing, regulatory affairs and manufacturing clinical supplies. The costs associated with these programs approximate the following (in thousands):

	Year ended December 31,		
	2013	2012	2011
Earlier stage programs[1]	$ 40,840	$ 33,170	$ 38,302
Later stage programs[1]	34,011	35,297	29,835
Total	$ 74,851	$ 68,467	$ 68,137

(1) Certain research and development segment reclassifications have been made to previously reported amounts to conform to the current year's presentation.

Our research and development activities also can be divided into those related to our internal projects and those projects related to collaborative and contract arrangements. The costs related to internal projects versus collaborative and contract arrangements approximate the following (in thousands):

	Year ended December 31,		
	2013	2012	2011
Internal projects[1]	$ 47,489	$ 30,531	$ 24,440
Collaborative and contract arrangements[1]	27,362	37,936	43,697
Total	$ 74,851	$ 68,467	$ 68,137

(1) Certain research and development segment reclassifications have been made to previously reported amounts to conform to the current year's presentation.

In 2013, the gevokizumab program, for which we incurred the largest amount of expense, accounted for more than 40% but less than 50% of our total research and development expenses. A second development program, XMet, accounted for more than 20% but less than 30% of our total research and development expenses and a third development program, NIAID, accounted for more than 10% but less than 20% of our total research and development expenses. In 2012, the gevokizumab program, for which we incurred the largest amount of expense, accounted for more than 40% but less than 50% of our total research and development expenses. NIAID, accounted for more than 20% but less than 30% of our total research and development expenses and XMet, accounted for more than 10% but less than 20% of our total research and development expenses. In 2011, each of the two programs upon which we incurred the largest amount of expense, gevokizumab and NIAID, accounted for more than 30% but less than 40% of our total research and development expenses. All remaining development programs accounted for less than 10% of our total research and development expense in 2013, 2012, and 2011.

We expect our research and development spending in 2014 will increase primarily due to our ongoing global Phase 3 clinical program for gevokizumab for the NIU indications, under our license and collaboration agreement with Servier, our ongoing gevokizumab Phase 2 proof-of-concept program, and the continued development of our XMet program.

Future research and development spending also may be impacted by potential new licensing or collaboration arrangements, as well as the termination of existing agreements. Beyond this, the scope and magnitude of future research and development expenses are difficult to predict at this time.

Selling, General and Administrative Expenses

Selling, general and administrative expenses include salaries and related personnel costs, facilities costs and professional fees. In 2013, selling, general and administrative expenses were $18.5 million compared with $16.9 million in 2012 and $24.0 million in 2011. The increase in selling, general and administrative expenses in 2013 as compared with 2012 primarily was due to increases in consulting services of $1.3 million, primarily reflecting investments in market research activities made during 2013, and salaries and related personnel costs of $0.5 million, partially offset by a decrease in profession service costs of $0.6 million.

The decrease in selling, general and administrative expenses in 2012 as compared with 2011 primarily was due to decreases in salaries and related personnel costs of $3.8 million in large part due to the one-time $1.3 million severance expense and a $0.7 million stock-based compensation charge incurred during the third quarter of 2011 in connection with the resignation of our former Chairman, Chief Executive Officer and President, and a decrease in other stock-based compensation of $1.5 million. Also contributing to these changes were decreases in legal costs and consulting fees of $1.8 million and $1.4 million, respectively.

We expect selling, general and administrative expenses in 2014 to be comparable to 2013 levels.

Streamlining and Restructuring Charges

In January 2012, we implemented a streamlining of operations, which resulted in a restructuring plan designed to sharpen our focus on value-creating opportunities led by gevokizumab and its unique antibody discovery and development capabilities. The restructuring plan included a reduction of XOMA's personnel by 84 positions, or 34%. These staff reductions resulted primarily from our decisions to utilize a contract manufacturing organization for Phase 3 and commercial antibody production, and to eliminate internal research functions that are non-differentiating or that can be obtained cost effectively by contract service providers.

In connection with the streamlining of operations, we incurred restructuring charges in 2012 of $2.0 million related to severance, other termination benefits and outplacement services, $2.2 million related to the impairment and accelerated depreciation of various assets and leasehold improvements, and $0.7 million related to moving and other facility costs. In 2013, we incurred $0.3 million in restructuring charges related to facility costs and we do not expect to incur additional significant restructuring charges during 2014 related to these streamlining activities.

Other Income (Expense)

Interest Expense

Interest expense and amortization of debt issuance costs and discounts are shown below for the years ended December 31, 2013, 2012, and 2011 (in thousands):

	Year ended December 31,			2012-2013 Increase (Decrease)	2011-2012 Increase (Decrease)
	2013	2012	2011		
Interest expense					
Servier loan	$ 2,152	$ 2,097	$ 2,087	$ 55	$ 10
GECC term loan	2,064	1,850	-	214	1,850
Novartis note	362	397	341	(35)	56
Other	53	43	34	10	9
Total interest expense	$ 4,631	$ 4,387	$ 2,462	$ 244	$ 1,925

The increased interest expense in 2013 as compared to 2012 was due primarily to an increase in the principal of the GECC term loan, which was amended in September 2012.

The increased interest expense in 2012 as compared to 2011 was due primarily to interest expense related to the loan with GECC, which was funded in December 2011 and amended in September 2012.

The increased interest expense in 2011 as compared to 2010 was due primarily to interest expense related to the loan with Servier, which was funded in January 2011.

Other Expense

Other expense primarily consisted of unrealized (losses) gains. The following table shows the activity in other expense for the years ended December 31, 2013, 2012, and 2011 (in thousands):

	Year ended December 31,			2012-2013 Increase (Decrease)	2011-2012 Increase (Decrease)
	2013	2012	2011		
Other expense					
Unrealized foreign exchange (loss) gain [1]	$ (442)	$ (329)	$ (457)	$ (113)	$ 128
Realized foreign exchange gain (loss) [2]	(90)	6	554	(96)	(548)
Unrealized loss on foreign exchange options	(127)	(714)	(298)	587	(416)
Other	462	81	24	381	57
Total other expense	$ (197)	$ (956)	$ (177)	$ 759	$ (779)

(1) Unrealized foreign exchange loss for the years ended December 31, 2013, 2012, and 2011 primarily relates to the re-measurement of the €15 million Servier loan.
(2) Realized foreign exchange gain for the year ended December 31, 2011 primarily relates to the conversion into U.S. dollars of the €15 million cash proceeds received from Servier in January of 2011.

Revaluation of Contingent Warrant Liabilities

In March 2012, in connection with an underwritten offering, we issued five-year warrants to purchase 14,834,577 shares of XOMA's common stock at an exercise price of $1.76 per share. These warrants contain provisions that are contingent on the occurrence of a change in control, which would conditionally obligate us to repurchase the warrants for cash in an amount equal to their fair value using the Black-Scholes Option Pricing Model (the "Black-Scholes Model") on the date of such change in control. Due to these provisions, we are required to account for the warrants issued in March 2012 as a liability at fair value. In addition, the estimated liability related to the warrants is required to be revalued at each reporting period until the earlier of the exercise of the warrants, at which time the liability will be reclassified to stockholders' equity, or expiration of the warrants. At December 31, 2012, the fair value of the warrant liability was estimated to be $15.0 million using the Black-Scholes Model. We revalued the warrant liability at December 31, 2013 using the Black-Scholes Model and recorded the $59.9 million increase in the fair value as a loss in the revaluation of contingent warrant liabilities line of our consolidated statements of comprehensive loss. We also reclassified $6.2 million from contingent warrant liabilities to equity on our consolidated balance sheets due to the exercise of warrants. As of December 31, 2013, 12,562,682 of these warrants were outstanding and had a fair value of $68.7 million. This increase in liability is due primarily to the increase in the market price of XOMA's common stock at December 31, 2013 compared to December 31, 2012.

In February 2010, in connection with an underwritten offering, we issued five-year warrants to purchase 1,260,000 shares of XOMA's common stock at an exercise price of $10.50 per share. In June 2009, we issued warrants to certain institutional investors as part of a registered direct offering. These warrants represent the right to acquire an aggregate of up to 347,826 shares of XOMA's common stock over a five year period beginning December 11, 2009 at an exercise price of $19.50 per share. These warrants contain provisions that are contingent on the occurrence of a change in control, which would conditionally obligate us to repurchase the warrants for cash in an amount equal to their fair value using the Black-Scholes Model on the date of such change in control. Due to these provisions, we are required to account for the warrants issued in February 2010 and June 2009 as liabilities at fair value. At December 31, 2012, the fair value of the warrant liability was estimated to be $0.1 million using the Black-Scholes Model. We revalued the warrant liability at December 31, 2013 using the Black-Scholes Model and recorded the $1.1 million increase in the fair value as a loss in the revaluation of contingent warrant liabilities line of our consolidated statements of comprehensive loss. As of December 31, 2013, all of these warrants were outstanding and had an aggregate fair value of approximately $1.2 million.

The following table provides a summary of the changes in fair value of contingent warrant liabilities for the years ended December 31, 2013, 2012, and 2011 (in thousands):

	Warrant Liabilities
Balance at December 31, 2010	$ 4,245
Net decrease in fair value of contingent warrant liabilities upon revaluation	(3,866)
Balance at December 31, 2011	379
Initial fair value of warrants issued in March 2012	6,390
Reclassification of contingent warrant liability to equity upon exercise of warrants	(940)
Net increase in fair value of contingent warrant liabilities upon revaluation	9,172
Balance at December 31, 2012	15,001
Reclassification of contingent warrant liability to equity upon exercise of warrants	(6,171)
Net increase in fair value of contingent warrant liabilities upon revaluation	61,039
Balance at December 31, 2013	$ 69,869

Income Taxes

There was no material income tax expense for the years ended December 31, 2013, 2012, and 2011. The income tax benefit in 2013 and 2012 primarily relates to federal refundable credit true-ups from prior years.

Accounting Standards Codification Topic 740, Income Taxes ("ASC 740") provides for the recognition of deferred tax assets if realization of such assets is more likely than not. Based upon the weight of available evidence, which includes our historical operating performance and carry-back potential, we have determined that total deferred tax assets should be fully offset by a valuation allowance.

We have recorded cumulative gross deferred tax assets of $160.1 million and $234.1 million at December 31, 2013 and 2012, respectively, principally attributable to the timing of the deduction of certain expenses associated with certain research and development expenses, net operating loss and other carry-forwards. We also recorded corresponding valuation allowances of $160.1 million and $234.1 million at December 31, 2013 and 2012, respectively, to offset these deferred tax assets, as management cannot predict with reasonable certainty that the deferred tax assets to which the valuation allowances relate will be realized.

As of December 31, 2013, we had federal net operating loss carry-forwards (“NOLs”) of approximately $205.0 million and state net operating loss carry-forwards of approximately $164.0 million to offset future taxable income. We also had federal research and development tax credit carry-forwards of approximately $0.4 million and state research and development tax credit carry-forwards of approximately $16.5 million.

Based on an analysis under Section 382 of the Internal Revenue Code (which subjects the amount of pre-change NOLs and certain other pre-change tax attributes that can be utilized to an annual limitation), we experienced ownership changes in 2009 and 2012 which substantially limit the future use of our pre-change NOLs and certain other pre-change tax attributes per year. We have excluded the NOLs and R&D credits that will expire as a result of the annual limitations in the deferred tax assets as of December 31, 2013. To the extent that we do not utilize our carry-forwards within the applicable statutory carry-forward periods, either because of Section 382 limitations or the lack of sufficient taxable income, the carry-forwards will expire unused.

We do not expect the unrecognized tax benefits to change significantly over the next twelve months. We will recognize interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense. As of December 31, 2013, we have not accrued interest or penalties related to uncertain tax positions.

Liquidity and Capital Resources

The following table summarizes our cash, cash equivalents and short-term investments, our working capital and our cash flow activities as of the end of, and for each of, the periods presented (in thousands):

	December 31, 2013	December 31, 2012	2012-2013 Change
Cash and cash equivalents	$ 101,659	$ 45,345	$ 56,314
Short-term investments	$ 19,990	$ 39,987	$ (19,997)
Working Capital	$ 97,415	$ 72,004	$ 25,411

	Year ended December 31, 2013	2012	2011	2012-2013 Change	2011-2012 Change
Net cash used in operating activities	$ (45,915)	$ (40,765)	$ (29,062)	$ (5,150)	$ (11,703)
Net cash provided by (used in) investing activities	18,840	(42,016)	(3,304)	60,856	(38,712)
Net cash provided by financing activities	83,389	79,782	43,979	3,607	35,803
Effect of exchange rate changes on cash	-	-	(573)	-	573
Net increase in cash and cash equivalents	$ 56,314	$ (2,999)	$ 11,040	$ 59,313	$ (14,039)

Working Capital

The increase in working capital in 2013 as compared to 2012 was primarily due to the completion of two equity offerings in 2013 contributing to a $36.3 million increase in cash, cash equivalents, and short-term investments, partially offset by a decrease in fourth quarter billable revenue under our collaboration with Servier and an increase in external manufacturing costs and spending on internal proprietary projects.

Cash Used in Operating Activities

The increase in net cash used in operating activities in 2013 as compared to 2012 was primarily due to an increase in research and development spending relating to external manufacturing costs and internal proprietary projects.

The increase in net cash used in operating activities in 2012 as compared to 2011 was primarily due to a $15.0 million license fee received in the first quarter of 2011 as consideration for the collaboration with Servier. This cash receipt in 2011 was partially offset by a $2.0 million increase in cash receipts in 2012 as a result of the timing under our collaboration agreement with Servier.

We expect net cash used in operating activities in 2014 to increase compared to 2013 levels due to increased spending on clinical trials.

Cash Used in Investing Activities

Cash provided by investing activities for the year ended December 31, 2013, consisted of $40.0 million in proceeds from maturities of short-term investments, partially offset by purchases of short-term investments of $20.0 million and fixed asset purchases of $1.2 million. Cash used in investing activities for the year ended December 31, 2012, consisted of purchases of short-term investments of $57.0 million and fixed asset purchases of $2.5 million, partially offset by $17.0 million in proceeds from maturities of short-term investments and $0.5 million in proceeds from the sale of fixed assets. Cash used in investing activities for the years ended December 31, 2011, primarily consisted of fixed asset purchases.

Cash Provided by Financing Activities

Net cash provided by financing activities for the year ended December 31, 2013, was primarily related to net proceeds received from the issuance of common stock of $29.4 million from the August 2013 public offering, $53.6 million from the December 2013 public offering, $2.2 million of net proceeds from the exercise of warrants, and $1.4 million of net proceeds received from employee stock purchases. These net proceeds were partially offset by $3.1 million of principal payments on our loan with GECC.

Net cash provided by financing activities for the year ended December 31, 2012, was primarily related to net proceeds received from the issuance of common stock of $77.5 million, including net proceeds of $36.2 million from the March 2012 underwritten public offering, net proceeds of $37.0 million from the October 2012 underwritten public offering, net proceeds of $3.2 million received from the issuance of common stock under the 2011 ATM Agreement, net proceeds of $1.0 million from the exercise of warrants issued as part of the March 2012 underwritten public offering, and net proceeds of $0.2 million from the exercise of outstanding options. Also contributing to net cash provided by financing activities was net loan proceeds of $4.4 million received from GECC, partially offset by $2.1 million principal payments on our loan with GECC.

Net cash provided by financing activities for the year ended December 31, 2011, was primarily related to loan proceeds of $20.1 million received from Servier, issuance of shares of our common stock for $15.1 million under the 2010 and 2011 ATM agreements, and loan proceeds of $10.0 million received from GECC. The loan proceeds from GECC were partially offset by debt issuance costs of $1.3 million.

Registered Direct Offerings

In June of 2009, we entered into a definitive agreement with certain institutional investors to sell 695,652 units, with each unit consisting of one share of our common stock and a warrant to purchase 0.50 of a share of our common stock, for gross proceeds of approximately $12.0 million, before deducting placement agent fees and estimated offering expenses of $0.8 million, in a second registered direct offering. The investor purchased the units at a price of $17.25 per unit. The warrants, which represent the right to acquire an aggregate of up to 347,826 shares of common stock, are exercisable at any time on or prior to December 10, 2014 at an exercise price of $19.50 per share. As of December 31, 2013 all of these warrants were outstanding.

ATM Agreements

In the third quarter of 2010, we entered into the 2010 ATM Agreement, with Wm Smith and MLV (the "Agents"), under which we could sell shares of our common stock from time to time through the Agents, as our agents for the offer and sale of the shares, in an aggregate amount not to exceed the amount that can be sold under our registration statement on Form S-3 (File No. 333-148342) filed with the Securities and Exchange Commission (the "SEC") on December 26, 2007, and declared effective by the SEC on May 29, 2008. The Agents could sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), including without limitation sales made directly on The NASDAQ Global Market, on any other existing trading market for our common stock or to or through a market maker. The Agents could also sell the shares in privately negotiated transactions, subject to our prior approval. From the inception of the 2010 ATM Agreement through May of 2011, we sold a total of 7,560,862 shares of our common stock under this agreement for aggregate gross proceeds of $34.0 million, including 821,386 shares sold in 2011 for aggregate gross proceeds of $4.4 million. Total offering expenses incurred related to sales under the 2010 ATM Agreement from inception to May of 2011 were $1.0 million, including $0.1 million incurred in 2011. In May of 2011, 2010 ATM Agreement expired by its terms, and there will be no further issuances under this facility.

On February 4, 2011, we entered into an At Market Issuance Sales Agreement (the "2011 ATM Agreement"), with McNicoll, Lewis & Vlak LLC (now known as MLV & Co. LLC, "MLV"), under which we may sell shares of our common stock from time to time through MLV, as our agent for the offer and sale of the shares, in an aggregate amount not to exceed the amount that can be sold under our registration statement on Form S-3 (File No. 333-172197) filed with the SEC on February 11, 2011, and amended on March 10, 2011, June 3, 2011, and January 3, 2012, which was most recently declared effective by the SEC on January 17, 2012. MLV may sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, including without limitation sales made directly on The NASDAQ Global Market, on any other existing trading market for our common stock or to or through a market maker. MLV also may sell the shares in privately negotiated transactions, subject to our prior approval. We will pay MLV a commission equal to 3% of the gross proceeds of the sales price of all shares sold through it as sales agent under the 2011 ATM Agreement. From the inception of the 2011 ATM Agreement through December 31, 2013, we sold a total of 7,572,327 shares of common stock under this agreement for aggregate gross proceeds of $14.6 million. No shares of common stock have been sold under this agreement since February 3, 2012. Total offering expenses incurred related to sales under the 2011 ATM Agreement from inception to December 31, 2013, were $0.5 million. The registration statement under which the 2011 ATM was entered expires in June of 2014.

Underwritten Offerings

In February 2010, we completed an underwritten offering of 2.8 million units, with each unit consisting of one shares of our common stock and a warrant to purchase 0.45 of a share of our common stock, for gross proceeds of approximately $21.0 million, before deducting underwriting discounts and commissions and estimated offering expenses of $1.7 million. The warrants, which represent the right to acquire an aggregate of up to 1.26 million shares of our common stock, are exercisable beginning six months and one day after issuance and have a five-year term and an exercise price of $10.50 per share. As of December 31, 2013, all of these warrants were outstanding.

On March 9, 2012, we completed an underwritten public offering of 29,669,154 shares of our common stock, and accompanying warrants to purchase one half of a share of common stock for each share purchased, at a public offering price of $1.32 per share. Total gross proceeds from the offering were approximately $39.2 million, before deducting underwriting discounts and commissions and offering expenses totaling approximately $3.0 million. The warrants, which represent the right to acquire an aggregate of up to 14,834,577 shares of common stock, are exercisable immediately and have a five-year term and an exercise price of $1.76 per share. As of December 31, 2013, 12,562,682 of these warrants were outstanding.

On October 29, 2012, we completed an underwritten public offering of 13,333,333 shares of our common stock, at a public offering price of $3.00 per share. Total gross proceeds from the offering were approximately $40.0 million, before deducting underwriting discounts and commissions and offering expenses totaling approximately $3.0 million.

On August 23, 2013, we completed an underwritten public offering of 8,736,187 shares of our common stock, including 1,139,502 shares of our common stock that were issued upon the exercise of the underwriters' 30-day over-allotment option, at a public offering price of $3.62 per share. Total gross proceeds from the offering were approximately $31.6 million, before deducting underwriting discounts and commissions and estimated offering expenses totaling approximately $2.2 million.

On December 18, 2013, we completed an underwritten public offering of 10,925,000 shares of our common stock, including 1,425,000 shares of our common stock that were issued upon the exercise of the underwriters' 30-day over-allotment option, at a public offering price of $5.25 per share. Total gross proceeds from the offering were approximately $57.4 million, before deducting underwriting discounts and commissions and estimated offering expenses totaling approximately $3.8 million.

Servier Loan

In December 2010, we entered into a loan agreement with Servier (the "Servier Loan Agreement"), which provided for an advance of up to €15.0 million. The loan was fully funded in January 2011, with the proceeds converting to approximately $19.5 million at the date of funding. The loan is secured by an interest in XOMA's intellectual property rights to all gevokizumab indications worldwide, excluding certain rights in the U.S. and Japan. Interest is calculated at a floating rate based on a Euro Inter-Bank Offered Rate ("EURIBOR") and is subject to a cap. The interest rate is reset semi-annually in January and July of each year. The interest rate for the initial interest period was 3.22% and was reset semi-annually ranging from 2.33% to 3.83%. Interest for the six-month period from January 2014 through July 2014 was reset to 2.39%. Interest is payable semi-annually; however, the Servier Loan Agreement provides for a deferral of interest payments over a period specified in the agreement. During the deferral period, accrued interest will be added to the outstanding principal amount for the purpose of interest calculation for the next six-month interest period. On the repayment commencement date, all unpaid and accrued interest shall be paid to Servier, and thereafter, all accrued and unpaid interest shall be due and payable at the end of each six-month period. In January 2014, the Company paid $1.9 million in accrued interest to Servier. The loan matures in 2016; however, after a specified period prior to final maturity, the loan is to be repaid (i) at Servier's option, by applying up to a significant percentage of any milestone or royalty payments owed by Servier under our collaboration agreement and (ii) using a significant percentage of any upfront, milestone or royalty payments we receive from any third-party collaboration or development partner for rights to gevokizumab in the U.S. and/or Japan. In addition, the loan becomes immediately due and payable upon certain customary events of default. At December 31, 2013, the outstanding principal balance under this loan was $20.6 million using the December 31, 2013 Euro to US Dollar exchange rate of 1.3766.

GECC Term Loan

In December 2011, we entered into a loan agreement (the "GECC Loan Agreement") with GECC, under which GECC agreed to make a term loan in an aggregate principal amount of $10 million (the "Term Loan") to us, and upon execution of the GECC Loan Agreement, GECC funded the Term Loan. As security for our obligations under the GECC Loan Agreement, we granted a security interest in substantially all of our existing and after-acquired assets, excluding our intellectual property assets (such as those relating to our gevokizumab and anti-botulism products). The Term Loan accrued interest at a fixed rate of 11.71% per annum and was to be repaid over a period of 42 consecutive equal monthly installments of principal and accrued interest and was due and payable in full on June 15, 2015. We incurred debt issuance costs of approximately $1.3 million in connection with the Term Loan and were required to pay a final payment fee equal to $500,000 on the maturity date, or such earlier date as the Term Loan is paid in full.

In connection with the GECC Loan Agreement, we issued to GECC unregistered warrants that entitle GECC to purchase up to an aggregate of 263,158 unregistered shares of XOMA common stock at an exercise price equal to $1.14 per share. These warrants are exercisable immediately and have a five-year term.

In September 2012, we entered into an amendment to the GECC Loan Agreement providing for an additional term loan in the amount of $4.6 million, increasing the term loan obligation to $12.5 million (the "Amended Term Loan") and providing for an interest-only monthly repayment period following the effective date of the amendment through March 1, 2013, at a stated interest rate of 10.9% per annum. Thereafter, we are obligated to make monthly principal payments of $347,222, plus accrued interest, over a 27-month period commencing on April 1, 2013, and through June 15, 2015, at which time the remaining outstanding principal amount of $3.1 million, plus accrued interest, is due. We incurred debt issuance costs of approximately $0.2 million and are required to make a final payment fee in the amount of $875,000 on the date upon which the outstanding principal amount is required to be repaid in full. This final payment fee replaced the original final payment fee of $500,000.

In connection with the amendment, on September 27, 2012, we issued to GECC unregistered stock purchase warrants, which entitle GECC to purchase up to an aggregate of 39,346 shares of XOMA common stock at an exercise price equal to $3.54 per share. These warrants are exercisable immediately and have a five-year term.

At December 31, 2013, the outstanding principal balance under the Amended Term Loan was $9.4 million.

Proceeds received during the years 2013, 2012, and 2011 are being used to continue development of our gevokizumab product candidate and for other working capital and general corporate purposes.

* * *

We have incurred significant operating losses and negative cash flows from operations since our inception. At December 31, 2013, we had cash, cash equivalents, and short-term investments of $121.6 million. During 2014, we expect to continue using our cash, cash equivalents and short-term investments to fund ongoing operations. Additional licensing, antibody discovery and development collaboration agreements, government funding and financing arrangements may positively impact our cash balances. Based on our cash reserves and anticipated spending levels, anticipated cash inflows from collaborations, biodefense contracts and licensing transactions, funding availability included under our loan agreements, the proceeds from our equity offerings and other sources of funding that we believe to be available, we estimate that we have sufficient cash resources to meet our anticipated net cash needs into 2015. Any significant revenue shortfalls, increases in planned spending on development programs or more rapid progress of development programs than anticipated, as well as the unavailability of anticipated sources of funding, could shorten this period. If adequate funds are not available, we will be required to delay, reduce the scope of, or eliminate one or more of our product development programs and further reduce personnel-related costs. Progress or setbacks by potentially competing products may also affect our ability to raise new funding on acceptable terms.

Commitments and Contingencies

Schedule of Contractual Obligations

Payments by period due under contractual obligations at December 31, 2013, are as follows (in thousands):

Contractual Obligations	Total	Less than 1 year	1 to 3 years	3 to 5 years	More than 5 years
Operating leases [1]	$ 34,613	$ 3,661	$ 7,389	$ 7,840	$ 15,723
Debt Obligations[2]					
Principal	44,818	5,917	38,901	-	-
Interest	5,380	3,037	2,343	-	-
Total	$ 84,811	$ 12,615	$ 48,633	$ 7,840	$ 15,723

(1) Operating leases are net of sublease income of $0.1 million. *See Note 11: Commitments and Contingencies to the accompanying consolidated financial statements for further discussion.*

(2) See *Item 7A: Quantitative and Qualitative Disclosures about Market Risk* and *Note 7: Long-Term Debt and Other Arrangements* to the accompanying consolidated financial statements for further discussion of our debt obligation.

In addition to the above, we have committed to make potential future "milestone" payments to third parties as part of licensing and development programs. Payments under these agreements become due and payable only upon the achievement of certain developmental, regulatory and/or commercial milestones. Because it is uncertain if and when these milestones will be achieved, such contingencies, aggregating up to $76.6 million (assuming one product per contract meets all milestones) have not been recorded on our consolidated balance sheet. We are also obligated to pay royalties, ranging generally from 1% to 5% of the selling price of the licensed component and up to 40% of any sublicense fees to various universities and other research institutions based on future sales or licensing of products that incorporate certain products and technologies developed by those institutions. We are unable to determine precisely when and if our payment obligations under the agreements will become due as these obligations are based on future events, the achievement of which is subject to a significant number of risks and uncertainties.

Although operations are influenced by general economic conditions, we do not believe that inflation had a material impact on financial results for the periods presented. We believe that we are not dependent on materials or other resources that would be significantly impacted by inflation or changing economic conditions in the foreseeable future.

Recent Accounting Pronouncements

In February 2013, Accounting Standards Codification Topic 220, *Comprehensive Income* was amended to require companies to report, in one place, information about reclassifications out of accumulated other comprehensive income. Accordingly, a company can present this information on the face of the financial statements, if certain requirements are met, or the information must be presented in the notes to the financial statements. We adopted this guidance as of January 1, 2013, on a retrospective basis and the items reclassified out of accumulated other comprehensive income are not material for all periods presented.

Off Balance Sheet Arrangements

We do not have any off balance sheet arrangements, as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated by the SEC.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk

Interest Rate Risk

Our exposure to market rate risk for changes in interest rates relates primarily to our investment portfolio and our loan facilities. By policy, we make our investments in high quality debt securities, limit the amount of credit exposure to any one non-U.S. Treasury issuer, and limit duration by restricting the term of the instrument. We generally hold investments to maturity, with a weighted average portfolio period of less than twelve months. However, if the need arose to liquidate such securities before maturity, we may experience losses on liquidation.

We hold interest-bearing instruments that are classified as cash, cash equivalents and short-term investments. Fluctuations in interest rates can affect the principal values and yields of fixed income investments. If interest rates in the general economy were to rise rapidly in a short period of time, our fixed income investments could lose value.

The following table presents the amounts and related weighted average interest rates of our cash, cash equivalents, and short-term investments at December 31, 2013 and 2012 (in thousands, except interest rate):

	Maturity	Carrying Amount (in thousands)	Fair Value (in thousands)	Weighted Average Interest Rate
December 31, 2013				
Cash, cash equivalents, and short-term investments	Daily to 90 days	$ 121,649	$ 121,649	0.08%
December 31, 2012				
Cash, cash equivalents, and short-term investments	Daily to 90 days	$ 85,332	$ 85,332	0.06%

As of December 31, 2013, we have an outstanding principal balance on our note with Novartis of $14.8 million, which is due in 2015. The interest rate on this note is charged at a rate of USD six-month LIBOR plus 2%, which was 2.35% at December 31, 2013. No further borrowing is available under this note.

As of December 31, 2013, we have an outstanding principal balance on our loan with Servier of €15.0 million, which converts to approximately $20.6 million at December 31, 2013. The interest rate on this loan is charged at a floating rate based on a Euro Inter-Bank Offered Rate (“EURIBOR”) and subject to a cap. The interest rate for the initial interest period was 3.22% and was reset semi-annually ranging from 2.33% to 3.83%. Interest for the six-month period from January 2014 through July 2014 was reset to 2.39%. No further borrowing is available under this loan.

As of December 31, 2013, we have an outstanding principal balance on our loan with GECC of $9.4 million, which is to be repaid with monthly principal payments of $347,222, plus accrued interest, over a 27-month period commencing on April 1, 2013, and through June 15, 2015, at which time the remaining outstanding principal amount of $3.1 million, plus accrued interest, is due. The loan accrues interest at a fixed rate of 10.90% per annum. No further borrowing is available under this loan.

The variable interest rate related to our long-term debt instruments is based on LIBOR for our Novartis note and EURIBOR for our Servier loan. We estimate that a hypothetical 100 basis point change in interest rates could increase or decrease our interest expense by approximately $0.4 million on an annualized basis. Our loan with GECC is not subject to interest rate risk as it accrues interest at a fixed rate.

Foreign Currency Risk

We hold debt, incur expenses, and may be owed milestones denominated in foreign currencies. The amount of debt owed, expenses incurred, or milestones owed to us will be impacted by fluctuations in these foreign currencies. When the U.S. Dollar weakens against foreign currencies, the U.S. Dollar value of the foreign-currency denominated debt, expense, and milestones increases, and when the U.S. Dollar strengthens against these currencies, the U.S. dollar value of the foreign-currency denominated debt, expense, and milestones decreases. Consequently, changes in exchange rates will affect the amount we are required to repay on our €15.0 million loan from Servier and may affect our results of operations. We estimate that a hypothetical 0.01 change the Euro to USD exchange rate could increase or decrease our unrealized gains or losses by approximately $0.2 million.

Our loan from Servier was fully funded in January 2011, with the proceeds converting to approximately $19.5 million using the January 13, 2011 Euro to U.S. dollar exchange rate of 1.3020. At December 31, 2013, the €15.0 million outstanding principal balance under the Servier Loan Agreement would have equaled approximately $20.6 million using the December 31, 2013 Euro to USD exchange rate of 1.3766. In May 2011, in order to manage our foreign currency exposure relating to our principal and interest payments on our loan from Servier, we entered into two foreign exchange option contracts to buy €1.5 million and €15.0 million in January 2014 and January 2016, respectively. Upfront premiums paid on these foreign exchange option contracts totaled $1.5 million and they had an aggregate fair value of $0.4 million at December 31, 2013. Our use of derivative financial instruments represents risk management; we do not enter into derivative financial contracts for trading purposes.

Item 8. Financial Statements and Supplementary Data

The following consolidated financial statements of the registrant, related notes and report of independent registered public accounting firm are set forth beginning on page F-1 of this report.

Report of Independent Registered Public Accounting Firm	F-2
Consolidated Balance Sheets	F-3
Consolidated Statements of Comprehensive Loss	F-4
Consolidated Statements of Stockholders' Equity	F-5
Consolidated Statements of Cash Flows	F-6
Notes to the Consolidated Financial Statements	F-7

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

Not applicable.

Item 9A. Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and our Vice President, Finance, Chief Financial Officer and Secretary, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934, as amended, as of the end of the period covered by this report. Our disclosure controls and procedures are intended to ensure that the information we are required to disclose in the reports that we file or submit under the Securities Exchange Act of 1934 is (i) recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and (ii) accumulated and communicated to our management, including the Chief Executive Officer and Vice President, Finance, Chief Financial Officer and Secretary, as the principal executive and financial officers, respectively, to allow timely decisions regarding required disclosures. Based on this evaluation, our Chief Executive Officer and our Vice President, Finance, Chief Financial Officer and Secretary concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

There were no changes in our internal controls over financial reporting during 2013 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial accounting.

Management's Report on Internal Control over Financial Reporting

Management, including our Chief Executive Officer and our Vice President, Finance, Chief Financial Officer and Secretary, is responsible for establishing and maintaining adequate internal control over financial reporting (as such term is defined in Exchange Act Rules 13a-159f). The Company's internal control system was designed to provide reasonable assurance to the Company's management and board of directors regarding the preparation and fair presentation of published financial statements in accordance with accounting principles generally accepted in the United States.

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2013. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control—Integrated Framework (1992 Framework)*. Based on our assessment we believe that, as of December 31, 2013, our internal control over financial reporting is effective based on those criteria.

The Company's internal control over financial reporting as of December 31, 2013, has been audited by Ernst & Young, LLP, the independent registered public accounting firm who also audited the Company's consolidated financial statements. Ernst & Young's attestation report on the Company's internal control over financial reporting follows.

Changes in Internal Control over Financial Reporting

Our management, including our Chief Executive Officer and our Vice President, Finance, Chief Financial Officer and Secretary, has evaluated any changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2013, and has concluded that there was no change during such quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of XOMA Corporation:

We have audited XOMA Corporation's internal control over financial reporting as of December 31, 2013, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (1992 Framework) (the COSO criteria). XOMA Corporation's management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, XOMA Corporation maintained, in all material respects, effective internal control over financial reporting as of December 31, 2013, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of XOMA Corporation as of December 31, 2013 and 2012 and the related consolidated statements of comprehensive loss, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2013, and our report dated March 12, 2014 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

San Francisco, California
March 12, 2014

Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers, Corporate Governance

Certain information regarding our executive officers required by this Item is set forth as a Supplementary Item at the end of Part I of this Form 10-K (pursuant to Instruction 3 to Item 401(b) of Regulation S-K). Other information required by this Item will be included in the Company's proxy statement for the 2014 Annual General Meeting of Stockholders ("2014 Proxy Statement"), under the sections labeled *"Item 1—Election of Directors"* and *"Compliance with Section 16(a) of the Securities Exchange Act of 1934"*, and is incorporated herein by reference. The 2014 Proxy Statement will be filed with the SEC within 120 days after the end of the fiscal year to which this report relates.

Code of Ethics

The Company's Code of Ethics applies to all employees, officers and directors including the Chief Executive Officer (principal executive officer) and the Vice President, Finance, Chief Financial Officer and Secretary (principal financial and principal accounting officer) and is posted on the Company's website at www.xoma.com. We intend to satisfy the applicable disclosure requirements regarding amendments to, or waivers from, provisions of our Code of Ethics by posting such information on our website.

Item 11. Executive Compensation

Information required by this Item will be included in the sections labeled *"Compensation of Executive Officers", "Summary Compensation Table", "Grants of Plan-Based Awards", "Outstanding Equity Awards as of December 31, 2013", "Option Exercises and Shares Vested", "Pension Benefits", "Non-Qualified Deferred Compensation"* and *"Compensation of Directors"* appearing in our 2014 Proxy Statement, and is incorporated herein by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

Information required by this Item will be included in the sections labeled *"Stock Ownership"* and *"Equity Compensation Plan Information"* appearing in our 2014 Proxy Statement, and is incorporated herein by reference.

Item 13. Certain Relationships and Related Transactions, and Director Independence

Information required by this Item will be included in the section labeled *"Transactions with Related Persons"* appearing in our 2014 Proxy Statement, and is incorporated herein by reference.

Item 14. Principal Accountant Fees and Services

Information required by this Item will be included in the section labeled *"Item 2—Appointment of Independent Registered Public Accounting Firm"* appearing in our 2014 Proxy Statement, and is incorporated herein by reference.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) The following documents are included as part of this Annual Report on Form 10-K:

(1) Financial Statements:

All financial statements of the registrant referred to in Item 8 of this Report on Form 10-K.

(2) Financial Statement Schedules:

All financial statements schedules have been omitted because the required information is included in the consolidated financial statements or the notes thereto or is not applicable or required.

(3) Exhibits:

The exhibits listed in the accompanying index to exhibits are filed or incorporated by reference as part of this Annual Report on Form 10-K.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on this 12th day of March 2014.

XOMA CORPORATION

By: /s/ JOHN VARIAN

John Varian
Chief Executive Officer and Director

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John Varian and Fred Kurland, and each of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, and any of them or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ John Varian **(John Varian)**	Chief Executive Officer (Principal Executive Officer) and Director	March 12, 2014
/s/ Fred Kurland **(Fred Kurland)**	Vice President, Finance, Chief Financial Officer and Secretary (Principal Financial and Principal Accounting Officer)	March 12, 2014
/s/ Patrick J. Scannon **(Patrick J. Scannon)**	Executive Vice President and Chief Scientific Officer and Director	March 12, 2014
/s/ W. Denman Van Ness **(W. Denman Van Ness)**	Chairman of the Board of Directors	March 12, 2014
/s/ William K. Bowes, Jr. **(William K. Bowes, Jr.)**	Director	March 12, 2014
/s/ Peter Barton Hutt **(Peter Barton Hutt)**	Director	March 12, 2014
/s/ Joseph M. Limber **(Joseph M. Limber)**	Director	March 12, 2014
/s/ Kelvin M. Neu **(Kelvin M. Neu)**	Director	March 12, 2014
/s/ Timothy P. Walbert **(Timothy P. Walbert)**	Director	March 12, 2014
/s/ Jack L. Wyszomierski **(Jack L. Wyszomierski)**	Director	March 12, 2014

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of XOMA Corporation:

We have audited the accompanying consolidated balance sheets of XOMA Corporation as of December 31, 2013 and 2012, and the related consolidated statements of comprehensive loss, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2013. These consolidated financial statements are the responsibility of XOMA Corporation's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of XOMA Corporation at December 31, 2013 and 2012, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2013, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), XOMA Corporation's internal control over financial reporting as of December 31, 2013, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (1992 Framework) and our report dated March 12, 2014 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

San Francisco, California
March 12, 2014

XOMA Corporation
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share amounts)

	December 31, 2013	December 31, 2012
ASSETS		
Current assets:		
Cash and cash equivalents	$ 101,659	$ 45,345
Short-term investments	19,990	39,987
Trade and other receivables, net	3,781	8,249
Prepaid expenses and other current assets	1,630	2,256
Total current assets	127,060	95,837
Property and equipment, net	6,456	8,143
Other assets	1,266	1,696
Total assets	$ 134,782	$ 105,676
LIABILITIES AND STOCKHOLDERS' (DEFICIT) EQUITY		
Current liabilities:		
Accounts payable	$ 9,616	$ 3,867
Accrued and other liabilities	9,934	13,045
Deferred revenue	2,218	3,409
Interest bearing obligation – current	5,835	3,391
Accrued interest on interest bearing obligation – current	2,042	121
Total current liabilities	29,645	23,833
Deferred revenue – long-term	4,105	6,315
Interest bearing obligations – long-term	35,150	37,653
Contingent warrant liabilities	69,869	15,001
Other liabilities - long-term	-	1,407
Total liabilities	138,769	84,209
Commitments and contingencies (Note 11)		
Stockholders' (deficit) equity:		
Common stock, $0.0075 par value, 138,666,666 shares authorized, 105,386,216 and 82,447,274 shares outstanding at December 31, 2013 and 2012, respectively	787	615
Additional paid-in capital	1,076,403	977,962
Accumulated comprehensive (loss) income	(1)	8
Accumulated deficit	(1,081,176)	(957,118)
Total stockholders' (deficit) equity	(3,987)	21,467
Total liabilities and stockholders' (deficit) equity	$ 134,782	$ 105,676

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

XOMA Corporation
CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(in thousands, except per share amounts)

	Year Ended December 31,		
	2013	**2012**	**2011**
Revenues:			
License and collaborative fees	$ 11,028	$ 5,727	$ 17,991
Contract and other	24,423	28,055	40,205
Total revenues	35,451	33,782	58,196
Operating expenses:			
Research and development	74,851	68,467	68,137
Selling, general and administrative	18,477	16,865	24,014
Restructuring	328	5,074	-
Total operating expenses	93,656	90,406	92,151
Loss from operations	(58,205)	(56,624)	(33,955)
Other (expense) income:			
Interest expense	(4,631)	(4,387)	(2,462)
Other expense	(197)	(956)	(177)
Revaluation of contingent warrant liabilities	(61,039)	(9,172)	3,866
Net loss before taxes	(124,072)	(71,139)	(32,728)
Provision for income tax benefit (expense)	14	74	(15)
Net loss	$ (124,058)	$ (71,065)	$ (32,743)
Basic and diluted net loss per share of common stock	$ (1.43)	$ (1.10)	$ (1.04)
Shares used in computing basic and diluted net loss per share of common stock	86,938	64,629	31,590
Other comprehensive loss:			
Net loss	$ (124,058)	$ (71,065)	$ (32,743)
Net unrealized (loss) gain on available-for-sale securities	(9)	8	-
Comprehensive loss	$ (124,067)	$ (71,057)	$ (32,743)

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

XOMA Corporation
CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(in thousands)

	Preferred Stock		Common Stock		Paid-In Capital	Accumulated Comprehensive Income	Accumulated Deficit	Total Stockholders' (Deficit) Equity
	Shares	Amount	Shares	Amount				
Balance, December 31, 2010	3	$ 1	28,491	$ 214	$ 876,686	$ -	$ (853,310)	$ 23,591
Exercise of stock options, contributions to 401(k) and incentive plans	—	—	253	2	1,099	—	—	1,101
Stock-based compensation expense	—	—	—	—	7,759	—	—	7,759
Sale of shares of common stock	—	—	6,108	45	15,043	—	—	15,088
Conversion of Series B convertible preferred stock	(3)	(1)	255	2	(1)	—	—	-
Issuance of warrants	—	—	—	—	215	—	—	215
Net loss	—	—	—	—	—	-	(32,743)	(32,743)
Balance, December 31, 2011	-	-	35,107	263	900,801	-	(886,053)	15,011
Exercise of stock options, contributions to 401(k) and incentive plans	—	—	1,089	8	1,323	—	—	1,331
Release of restricted stock units	—	—	397	—	—	—	—	—
Stock-based compensation expense	—	—	—	—	4,284	—	—	4,284
Sale of shares of common stock	—	—	45,288	340	75,960	—	—	76,300
Issuance of warrants	—	—	—	—	(6,335)	—	—	(6,335)
Exercise of warrants	—	—	566	4	1,929	—	—	1,933
Net loss	—	—	—	—	—	—	(71,065)	(71,065)
Other comprehensive income	—	—	—	—	—	8	—	8
Balance, December 31, 2012	-	-	82,447	615	977,962	8	(957,118)	21,467
Exercise of stock options, contributions to 401(k) and incentive plans	—	—	933	7	2,213	—	—	2,220
Release of restricted stock units	—	—	801	6	(6)	—	—	—
Stock-based compensation expense	—	—	—	—	5,099	—	—	5,099
Sale of shares of common stock	—	—	19,661	147	82,799	—	—	82,946
Exercise of warrants	—	—	1,544	12	8,336	—	—	8,348
Net loss	—	—	—	—	—	—	(124,058)	(124,058)
Other comprehensive loss	—	—	—	—	—	(9)	—	(9)
Balance, December 31, 2013	-	$ -	105,386	$ 787	$ 1,076,403	$ (1)	$ (1,081,176)	$ (3,987)

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

XOMA Corporation
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,		
	2013	**2012**	**2011**
Cash flows from operating activities:			
Net loss	$ (124,058)	$ (71,065)	$ (32,743)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation	2,575	4,124	5,357
Common stock contribution to 401(k)	828	1,134	1,046
Stock-based compensation expense	5,099	4,284	7,759
Accrued interest on interest bearing obligations	2,284	1,186	1,023
Revaluation of contingent warrant liabilities	61,039	9,172	(3,866)
Restructuring charge related to long-lived assets	-	2,460	-
Amortization of debt discount, final payment fee on debt, and debt issuance costs	2,470	1,958	1,360
Loss on sale and retirement of property & equipment	281	29	107
Unrealized loss on foreign currency exchange	662	295	513
Unrealized loss on foreign exchange options	127	714	298
Other non-cash adjustments	(20)	(11)	-
Changes in assets and liabilities:			
Trade and other receivables, net	4,486	4,064	8,532
Prepaid expenses and other assets	481	(158)	(2,469)
Accounts payable and accrued liabilities	2,901	4,485	(2,144)
Deferred revenue	(3,399)	(3,511)	(13,794)
Other liabilities	(1,671)	75	(41)
Net cash used in operating activities	(45,915)	(40,765)	(29,062)
Cash flows from investing activities:			
Purchase of investments	(19,991)	(56,970)	-
Proceeds from maturities of investments	40,000	17,000	-
Net purchase of property and equipment	(1,169)	(2,509)	(3,304)
Proceeds from sale of property and equipment	-	463	-
Net provided by (used in) investing activities	18,840	(42,016)	(3,304)
Cash flows from financing activities:			
Proceeds from issuance of common stock, net of issuance costs	84,338	76,498	15,143
Proceeds from exercise of warrants	2,176	993	-
Proceeds from issuance of long-term debt, net of issuance costs	-	4,434	28,836
Principal payments of debt	(3,125)	(2,143)	-
Net cash provided by financing activities	83,389	79,782	43,979
Effect of exchange rate changes on cash	-	-	(573)
Net increase in cash and cash equivalents	56,314	(2,999)	11,040
Cash and cash equivalents at the beginning of the year	45,345	48,344	37,304
Cash and cash equivalents at the end of the year	$ 101,659	$ 45,345	$ 48,344
Supplemental Cash Flow Information:			
Cash paid during the year for:			
Interest	$ 1,262	$ 1,035	$ -
Income taxes	$ -	$ -	$ 15
Non-cash investing and financing activities:			
Issuance of warrants	$ -	$ 6,390	$ -
Reclassification of contingent warrant liability to equity upon exercise of warrants	$ (6,171)	$ (940)	$ -
Interest added to principal balances on long-term debt	$ 935	$ 1,160	$ 669
Investment in Symplmed Pharmaceuticals, LLC	$ 171	$ -	$ -
Discount on long-term debt	$ -	$ (55)	$ (215)

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

XOMA Corporation
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Description of Business

XOMA Corporation ("XOMA" or the "Company"), a Delaware corporation combines a portfolio of late-stage clinical programs and research activities to develop innovative therapeutic antibodies for which it intends to commercialize. XOMA focuses its scientific research on allosteric modulation, which offers opportunities for new classes of therapeutic antibodies to treat a wide range of human diseases. XOMA is developing its lead product candidate gevokizumab (IL-1 beta modulating antibody) with Les Laboratoires Servier ("Servier") through a global Phase 3 clinical development program and ongoing proof-of-concept studies in other IL-1-mediated diseases. XOMA's scientific research also has produced the XMet platform, which consists of three classes of preclinical antibodies, including selective insulin receptor modulators that could offer new approaches in the treatment of diabetes. The Company's products are presently in various stages of development and most are subject to regulatory approval before they can be commercially launched.

2. Basis of Presentation and Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosures. On an on-going basis, management evaluates its estimates including, but not limited to, those related to contingent warrant liabilities, revenue recognition, research and development expense, long-lived assets, derivative instruments and stock-based compensation. The Company bases its estimates on historical experience and on various other market-specific and other relevant assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ significantly from these estimates, such as the Company's billing under government contracts. Under the Company's contracts with the National Institute of Allergy and Infectious Diseases ("NIAID"), a part of the National Institutes of Health ("NIH"), the Company bills using NIH provisional rates and thus are subject to future audits at the discretion of NIAID's contracting office. These audits can result in an adjustment to revenue previously reported.

Reclassifications

Certain reclassifications of prior period amounts have been made to the financial statements and accompanying notes to conform to the current period presentation. Prior period presentations of net product sales and royalty revenue have been reclassified into contract and other revenue because the net product sales and royalty revenue were not material for all periods presented. These reclassifications had no impact on the Company's previously reported net loss or cash flows.

Newly Adopted Accounting Pronouncements

In February 2013, Accounting Standards Codification Topic 220, *Comprehensive Income* was amended to require companies to report, in one place, information about reclassifications out of accumulated other comprehensive income. Accordingly, a company can present this information on the face of the financial statements, if certain requirements are met, or the information must be presented in the notes to the financial statements. The Company adopted this guidance as of January 1, 2013, on a retrospective basis and the items reclassified out of accumulated other comprehensive income are not material for all periods presented.

Revenue Recognition

Revenue is recognized when the four basic criteria of revenue recognition are met: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred or services have been rendered; (3) the fee is fixed or determinable; and (4) collectability is reasonably assured. The determination of criteria (2) is based on management's judgments regarding whether a continuing performance obligation exists. The determination of criteria (3) and (4) are based on management's judgments regarding the nature of the fee charged for products or services delivered and the collectability of those fees. Allowances are established for estimated uncollectible amounts, if any.

XOMA Corporation
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The Company recognizes revenue from its license and collaboration arrangements, contract services, product sales and royalties. Revenue arrangements with multiple elements are divided into separate units of accounting if certain criteria are met, including whether the delivered element has stand-alone value to the customer and whether there is objective and reliable evidence of the fair value of the undelivered items. The consideration received is allocated among the separate units based on their respective fair values and the applicable revenue recognition criteria are applied to each of the separate units. Advance payments received in excess of amounts earned are classified as deferred revenue until earned.

License and Collaborative Fees

Revenue from non-refundable license, technology access or other payments under license and collaborative agreements where the Company has a continuing obligation to perform is recognized as revenue over the expected period of the continuing performance obligation. The Company estimates the performance period at the inception of the arrangement and reevaluates it each reporting period. This reevaluation may shorten or lengthen the period over which the remaining revenue is recognized. Changes to these estimates are recorded on a prospective basis.

Milestone payments under collaborative and other arrangements are recognized as revenue upon completion of the milestone event, once confirmation is received from the third party and collectability is reasonably assured. This represents the culmination of the earnings process when the Company has no future performance obligations related to the payment. Milestone payments that are not substantive or that require a continuing performance obligation on the part of the Company are recognized over the expected period of the continuing performance obligation. Amounts received in advance are recorded as deferred revenue until the related milestone is completed.

Contract Revenue

Contract revenue for research and development involves the Company providing research and development and manufacturing services to collaborative partners, biodefense contractors or others. Revenue for certain contracts is accounted for by a proportional performance, or output-based, method where performance is based on estimated progress toward elements defined in the contract. The amount of contract revenue and related costs recognized in each accounting period are based on management's estimates of the proportional performance during the period. Adjustments to estimates based on actual performance are recognized on a prospective basis and do not result in reversal of revenue should the estimate to complete be extended.

Up-front fees are recognized in the same manner as the final deliverable, which is generally ratably over the period of the continuing performance obligation. Given the uncertainties of research and development collaborations, significant judgment is required to determine the duration of the arrangement.

Net Product Sales

Revenue from net product sales are recorded in the periods these product sales are earned, in advance of collection. The product sale revenue and receivables in these instances is based upon communication with the distribution customers. Product sales are recorded net of allowances and accruals for prompt pay discounts, volume rebates, and product returns.

Royalty Revenue

Royalty revenue and royalty receivables are recorded in the periods these royalties are earned, in advance of collection. The royalty revenue and receivables in these instances is based upon communication with collaborative partners or licensees, historical information and forecasted sales trends.

XOMA Corporation
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Research and Development Expenses

The Company expenses research and development costs as incurred. Research and development expenses consist of direct costs such as salaries and related personnel costs, and material and supply costs, and research-related allocated overhead costs, such as facilities costs. In addition, research and development expenses include costs related to clinical trials. Expenses resulting from clinical trials are recorded when incurred based, in part on estimates as to the status of the various trials. From time to time, research and development expenses may include up-front fees and milestones paid to collaborative partners for the purchase of rights to in-process research and development. Such amounts are expensed as incurred.

Cash and Cash Equivalents and Short-term Investments

The Company considers all highly liquid debt instruments with maturities of three months or less at the time the Company acquires them to be cash equivalents.

Short-term investments include debt securities classified as available-for-sale. Available-for-sale securities are stated at fair value, with unrealized gains and losses, net of tax, if any, reported in other comprehensive income (loss). The estimate of fair value is based on publicly available market information. Realized gains and losses and declines in value judged to be other-than-temporary on available-for-sale securities are also included in investment and other income. The Company reviews its instruments for other-than-temporary impairment whenever the value of the instrument is less than the amortized cost. The cost of investments sold is based on the specific identification method. Interest and dividends on securities classified as available-for-sale are included in investment and other income.

Property and Equipment and Long-Lived Assets

Property and equipment is stated at cost less depreciation. Equipment depreciation is calculated using the straight-line method over the estimated useful lives of the assets (three to seven years). Leasehold improvements, buildings and building improvements are depreciated using the straight-line method over the shorter of the lease terms or the useful lives (one to fifteen years).

The Company reviews the carrying values and depreciation lives of its long-lived assets whenever events or changes in circumstances indicate that the asset may not be recoverable. An impairment loss is recognized when the estimated future net cash flows expected to result from the use of an asset is less than its carrying amount. Long-lived assets include property and equipment and building and leasehold improvements. During 2012, the Company recorded accelerated depreciation of $1.3 million and an impairment loss of $0.8 million on long-lived assets in connection with the Company's 2012 streamlining plan. See *Note 5: Streamlining and Restructuring Charges* for additional disclosure on the 2012 streamlining plan.

Warrants

The Company has issued warrants to purchase shares of its common stock in connection with financing activities. The Company accounts for some of these warrants as a liability at fair value and others as equity at fair value. The fair value of the outstanding warrants is estimated using the Black-Scholes Model. The Black-Scholes Model requires inputs such as the expected term of the warrants, expected volatility and risk-free interest rate. These inputs are subjective and require significant analysis and judgment to develop. For the estimate of the expected term, the Company uses the full remaining contractual term of the warrant. In 2013, the Company changed its expected volatility assumption in the Black-Scholes Model from a volatility implied from warrants issued by XOMA in recent private placement transactions to a volatility based on historical stock price volatility observed on XOMA's underlying stock. A historical stock price volatility rate was determined to be a more precise indicator for the fair value calculation of the Company's warrants due to time elapsed since these warrants were granted. The assumptions associated with contingent warrant liabilities are reviewed each reporting period and changes in the estimated fair value of these contingent warrant liabilities are recognized in other income (expense).

Income Taxes

The Company accounts for uncertain tax positions in accordance with Accounting Standards Codification Topic 740, Income Taxes ("ASC 740"). The application of income tax law and regulations are inherently complex.

ASC 740 provides for the recognition of deferred tax assets if realization of such assets is more likely than not. Based upon the weight of available evidence, which includes the Company's historical operating performance and carry-back potential, the Company has determined that total deferred tax assets should be fully offset by a valuation allowance.

XOMA Corporation
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Net Loss per Share of Common Stock

Basic net loss per share of common stock is based on the weighted average number of shares of common stock outstanding during the period. Diluted net loss per share of common stock is based on the weighted average number of shares outstanding during the period, adjusted to include the assumed conversion of certain stock options, restricted stock units ("RSUs"), and warrants for common stock.

Potentially dilutive securities are excluded from the calculation of loss per share if their inclusion is anti-dilutive. The following table shows the total outstanding securities considered anti-dilutive and therefore excluded from the computation of diluted net loss per share (in thousands):

	December 31,		
	2013	**2012**	**2011**
Options for common stock	7,087	5,603	3,890
Convertible preferred stock	-	-	67
Warrants for common stock	15,839	13,840	1,609
Total	22,926	19,443	5,566

For the years ended December 31, 2013, 2012, and 2011, all outstanding common stock equivalents were considered anti-dilutive and therefore the calculations of basic and diluted net loss per share are the same.

3. Consolidated Financial Statement Detail

Cash and Cash Equivalents

At December 31, 2013, cash equivalents consisted of demand deposits of $18.9 million and money market funds of $82.8 million with maturities of less than 90 days at the date of purchase. At December 31, 2012, cash equivalents consisted of demand deposits of $7.8 million and money market funds of $37.5 million with maturities of less than 90 days at the date of purchase.

Short-term Investments

At December 31, 2013 and 2012, short-term investments consisted of U.S. treasury securities of $20.0 million and $40.0 million, respectively, with maturities of greater than 90 days and less than one year from the date of purchase.

Foreign Exchange Options

The Company holds debt and may incur revenue and expenses denominated in foreign currencies, which exposes it to market risk associated with foreign currency exchange rate fluctuations between the U.S. dollar and the Euro. The Company is required in the future to make principal and accrued interest payments in Euros on its €15.0 million loan from Servier (See *Note 7: Long-Term Debt and Other Arrangements).* In order to manage its foreign currency exposure related to these payments, in May 2011, the Company entered into two foreign exchange option contracts to buy €1.5 million and €15.0 million in January 2014 and January 2016, respectively. By having these option contracts in place, the Company's foreign exchange rate risk is reduced if the U.S. dollar weakens against the Euro. However, if the U.S. dollar strengthens against the Euro, the Company is not required to exercise these options, but will not receive any refund on premiums paid.

Upfront premiums paid on these foreign exchange option contracts totaled $1.5 million. The fair values of these option contracts are revalued at each reporting period and are estimated based on pricing models using readily observable inputs from actively quoted markets. The fair values of these option contracts are included in other assets on the consolidated balance sheet and changes in fair value on these contracts are included in other income (expense) on the consolidated statements of comprehensive loss.

XOMA Corporation
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The foreign exchange options were revalued at December 31, 2013 and 2012, and had aggregate fair values of $0.4 million and $0.5 million, respectively. The Company recognized losses of $0.1 million, $0.7 million and $0.3 million related to the revaluation for the years ended December 31, 2013, 2012, and 2011, respectively.

Receivables

Receivables consisted of the following at December 31, 2013 and 2012 (in thousands):

	December 31,	
	2013	**2012**
Trade receivables, net	$ 3,731	$ 7,477
Other receivables	50	772
Total	$ 3,781	$ 8,249

Property and Equipment

Property and equipment consisted of the following at December 31, 2013 and 2012 (in thousands):

	December 31,	
	2013	**2012**
Equipment and furniture	$ 28,365	$ 25,734
Buildings, leasehold and building improvements	9,316	21,656
Construction-in-progress	225	1,832
Land	310	310
	38,216	49,532
Less: Accumulated depreciation and amortization	(31,760)	(41,389)
Property and equipment, net	$ 6,456	$ 8,143

Depreciation and amortization expense was $2.9 million, $4.1 million and $5.4 million for the years ended December 31, 2013, 2012, and 2011, respectively.

Accrued Liabilities

Accrued liabilities consisted of the following at December 31, 2013 and 2012 (in thousands):

	December 31,	
	2013	**2012**
Accrued management incentive compensation	$ 4,386	$ 3,978
Accrued payroll and other benefits	3,009	2,461
Accrued clinical trial costs	878	4,702
Other	1,661	1,904
Total	$ 9,934	$ 13,045

Contingent Warrant Liabilities

In March 2012, in connection with an underwritten offering, the Company issued five-year warrants to purchase 14,834,577 shares of XOMA's common stock at an exercise price of $1.76 per share. These warrants contain provisions that are contingent on the occurrence of a change in control, which would conditionally obligate the Company to repurchase the warrants for cash in an amount equal to their fair value using the Black-Scholes Option Pricing Model (the "Black-Scholes Model") on the date of such change in control. Due to these provisions, the Company is required to account for the warrants issued in March 2012 as a liability at fair value. In addition, the estimated liability related to the warrants is required to be revalued at each reporting period until the earlier of the exercise of the warrants, at which time the liability will be reclassified to stockholders' equity, or expiration of the warrants. At December 31, 2012, the fair value of the warrant liability was estimated to be $15.0 million using the Black-Scholes Model. The Company revalued the warrant liability at December 31, 2013 using the Black-Scholes Model and recorded the $59.9 million increase in the fair value as a loss in the revaluation of contingent warrant liabilities line of its consolidated statements of comprehensive loss. The Company also reclassified $6.2 million from contingent warrant liabilities to equity on its consolidated balance sheets due to the exercise of warrants. As of December 31, 2013, 12,562,682 of these warrants were outstanding and had a fair value of $68.7 million. This increase in liability is due primarily to the increase in the market price of the Company's common stock at December 31, 2013 compared to December 31, 2012.

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In February 2010, in connection with an underwritten offering, the Company issued five-year warrants to purchase 1,260,000 shares of XOMA's common stock at an exercise price of $10.50 per share. In June 2009, the Company issued warrants to certain institutional investors as part of a registered direct offering. These warrants represent the right to acquire an aggregate of up to 347,826 shares of XOMA's common stock over a five year period beginning December 11, 2009 at an exercise price of $19.50 per share. These warrants contain provisions that are contingent on the occurrence of a change in control, which would conditionally obligate the Company to repurchase the warrants for cash in an amount equal to their fair value using the Black-Scholes Model on the date of such change in control. Due to these provisions, the Company is required to account for the warrants issued in February 2010 and June 2009 as liabilities at fair value. At December 31, 2012, the fair value of the warrant liability was estimated to be $0.1 million using the Black-Scholes Model. The Company revalued the warrant liability at December 31, 2013 using the Black-Scholes Model and recorded the $1.1 million increase in the fair value as a loss in the revaluation of contingent warrant liabilities line of its consolidated statements of comprehensive loss. As of December 31, 2013, all of these warrants were outstanding and had an aggregate fair value of approximately $1.2 million.

Deferred Revenue

In 2013, the Company deferred $1.5 million of revenue from contracts including Servier and NIH and recognized $4.9 million in revenue. In 2012, the Company deferred $5.9 million of revenue from contracts including Servier and NIH and recognized $9.4 million in revenue.

4. Collaborative, Licensing and Other Arrangements

Collaborative and Other Agreements

Servier

In December 2010, the Company entered into a license and collaboration agreement with Servier, to jointly develop and commercialize gevokizumab in multiple indications, which provided for a non-refundable upfront payment of $15.0 million that was received by the Company in January 2011. The upfront payment was recognized over the eight month period that the initial group of deliverables were provided to Servier. In addition, the Company received a loan of €15.0 million, which was fully funded in January 2011, with the proceeds converting to $19.5 million at the date of funding. See *Note 7: Long-Term Debt and Other Arrangements.* Under the terms of the agreement, Servier has worldwide rights to cardiovascular disease and diabetes indications and rights outside the United States and Japan to all other indications, including NIU, Behçet's uveitis and other inflammatory and oncology indications. XOMA retains development and commercialization rights in the United States and Japan for all indications other than cardiovascular disease and diabetes. XOMA has an option to reacquire rights to cardiovascular disease and diabetes indications from Servier in the United States and Japan (the "Cardiometabolic Indications Option"). If the Company exercises the Cardiometabolic Indications Option, we will be required to pay Servier an option fee and partially reimburse their incurred development expenses. Each party has the right in certain circumstances to pursue development in indications not specified in the agreement, and in such event, the other party will have the option to participate in such development in certain circumstances, including reimbursement of a portion of the developing party's expenses.

Under this agreement, Servier will fund all activities to advance the global clinical development and future commercialization of gevokizumab in cardiovascular-related diseases and diabetes. Also, Servier funded the first $50 million of gevokizumab global clinical development and CMC expenses and continues to fund 50% of further expenses related to the NIU and Behçet's uveitis indications. For the years ended December 31, 2013, 2012, and 2011, the Company recorded revenue of $13.6 million, $14.5 million, and $34.2 million, respectively, under this agreement, which included the revenue recognized in 2011 relating to the upfront payment.

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Under the agreement, the Company is eligible to receive a combination of Euro and USD-denominated, development and sales milestones for multiple indications aggregating to a potential maximum of approximately $488 million converted using the December 31, 2012 Euro to US Dollar ("USD") exchange rate (the "12/31/13 Exchange Rate of 1.3766") if XOMA reacquires cardiovascular and/or diabetes rights in the U.S. and Japan. If XOMA does not reacquire these rights, then the milestone payments aggregate to a potential maximum of approximately $827 million converted using the 12/31/13 Exchange Rate of 1.3766. Servier's obligation to pay development and commercialization milestones will continue for so long as Servier is developing or selling products under the agreement.

The Company is also eligible to receive royalties on gevokizumab sales, which are tiered based on sales levels and range from a mid-single digit to up to a mid-teens percentage rate. The Company's right to royalties with respect to a particular product and country will continue for so long as such product is sold in such country.

NIAID

In July 2006, the Company was awarded a $16.3 million contract to produce monoclonal antibodies for the treatment of botulism to protect United States citizens against the harmful effects of botulinum neurotoxins used in bioterrorism. The contract work was performed on a cost plus fixed fee basis. The original contract was for a three-year period, however the contract was extended into 2010. The Company recognizing revenue as the services are performed on a proportional performance basis. This work was complete in the third quarter of 2010. In 2011, the NIH conducted an audit of the Company's actual data for period from January 1, 2007 through December 31, 2009 and developed final billing rates for this period. As a result, the Company retroactively applied these NIH rates to the invoices from this period resulting in an increase in revenue of $2.0 million from the NIH. Final rates were settled in the first quarter of 2012 through negotiations with the NIH. Upon settlement, the Company recognized the $2.0 million in revenue in 2012.

In September 2008, the Company announced that it had been awarded a $64.8 million multiple-year contract funded with federal funds from NIAID, a part of the NIH (Contract No. HHSN272200800028C), to continue development of anti-botulinum antibody product candidates. The contract work is being performed on a cost plus fixed fee basis over a three-year period. The Company is recognizing revenue under the arrangement as the services are performed on a proportional performance basis. In 2011, the NIH conducted an audit of the Company's actual data for period from January 1, 2007 through December 31, 2009 and developed final billing rates for this period. As a result, the Company retroactively applied these NIH rates to the invoices from this period resulting in an increase in revenue of $1.1 million from the NIH, excluding $0.9 million billed to the NIH in 2010 resulting from the Company's performance of a comparison of 2009 calculated costs incurred and costs billed to the government under provisional rates. Final rates will be settled through negotiations with the NIH. This revenue has been deferred and will be recognized upon completion of negotiations with and approval by the NIH. In 2013, the Company recognized revenue of $4.4 million under this contract, compared with $6.6 million in 2012 and $18.6 million in 2011.

In October 2011, the Company announced that NIAID had awarded the Company a new contract under Contract No. HHSN272201100031C for up to $28.0 million over 5 years to develop broad-spectrum antitoxins for the treatment of human botulism poisoning. The contract work is being performed on a cost plus fixed fee basis over the life of the contract and the Company is recognizing revenue under the arrangement as the services are performed on a proportional performance basis. In 2013, the Company recognized revenue of $4.7 million under this contract, compared with $2.5 million in 2012 and $0.1 million in 2011.

Servier – U.S. Perindopril Franchise

On January 17, 2012, the Company announced it had acquired certain U.S. rights to a portfolio of antihypertensive products from Servier. The portfolio includes ACEON® (perindopril erbumine), a currently marketed angiotensin converting enzyme ("ACE") inhibitor, and three FDC product candidates where a form of proprietary perindopril (perindopril arginine) is combined with another active ingredient(s). The Company assumed commercialization activities for ACEON in January 2012. In November 2012, the Company announced that the 837-patient Phase 3 trial for the FDC of perindopril arginine and amlodipine besylate ("FDC1") met its primary endpoint. Partial funding for the trial was provided by Servier. The Company expects to pay the balance of study expenses, consisting primarily of costs generated by its contract research organization, from the profits generated by its ACEON sales.

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In connection with the original agreement, the Company paid a $1.5 million license fee to Servier in the third quarter of 2010. In July 2013, the Company transferred U.S. development and commercialization rights to the perindopril franchise to Symplmed Pharmaceuticals, LLC ("Symplmed"). Under the terms of the arrangement, XOMA received a minority equity position in Symplmed and up to double-digit royalties on sales of the first fixed-dose combination containing perindopril arginine and amlodipine besylate, if it is approved by the FDA. The Company recorded the minority equity position in the other assets line of its consolidated balance sheets. Symplmed, under a sublicense agreement, assumes U.S. marketing responsibilities for ACEON (perindopril erbumine), and XOMA continues to manage and be reimbursed for sales and distribution within its established commercial infrastructure until the ACEON New Drug Application ("NDA") is transferred to Symplmed. The ACEON NDA was to be transferred on March 1, 2014, but Symplmed has requested an extension. Terms of an extension agreement, if any, are being negotiated. XOMA will continue to record gross ACEON sales in the contracts and other revenue line of its consolidated statements of comprehensive loss until the ACEON NDA is transferred. Following the ACEON NDA transfer, Symplmed will pay XOMA single-digit royalties on sales of ACEON.

Takeda

In November 2006, the Company entered into a fully funded collaboration agreement with Takeda for therapeutic monoclonal antibody discovery and development. Under the agreement, Takeda will make up-front, annual maintenance and milestone payments to the Company, fund its research and development and manufacturing activities for preclinical and early clinical studies and pay royalties on sales of products resulting from the collaboration. Takeda will be responsible for clinical trials and commercialization of drugs after an Investigational New Drug Application ("IND") submission and is granted the right to manufacture once the product enters into Phase 2 clinical trials. During the collaboration, the Company will discover therapeutic antibodies against targets selected by Takeda. The Company will recognize revenue on the up-front and annual payments on a straight-line basis over the expected term of each target antibody discovery, on the research and development and manufacturing services as they are performed on a time and materials basis, on the milestones when they are achieved and on the royalties when the underlying sales occur. In 2013, the Company recognized revenue of $0.1 million under this agreement, compared with $1.2 million in 2012 and $2.0 million in 2011.

Under the terms of this agreement, the Company may receive milestone payments aggregating up to $19.0 million relating to one undisclosed product candidate and low single-digit royalties on future sales of all products subject to this license. In addition, in the event Takeda were to develop additional future qualifying product candidates under the terms of the agreement, the Company would be eligible for milestone payments aggregating up to $20.75 million for each such qualifying product candidate. The Company's right to milestone payments expires on the later of the receipt of payment from Takeda of the last amount to be paid under the agreement or the cessation of all research and development activities with respect to all program antibodies, collaboration targets and/or collaboration products. The Company's right to royalties expires on the later of 13.5 years from the first commercial sale of each royalty-bearing discovery product or the expiration of the last-to-expire licensed patent.

In February 2009, the Company expanded its existing collaboration agreement with Takeda to provide Takeda with access to multiple antibody technologies, including a suite of research and development technologies and integrated information and data management systems. The Company may receive milestones of up to $3.25 million per discovery product candidate and low single-digit royalties on future sales of all antibody products subject to this license. The Company's right to milestone payments expires on the later of the receipt of payment from Takeda of the last amount to be paid under the agreement or the cessation of all research and development activities with respect to all program antibodies, collaboration targets and/or collaboration products. The Company's right to royalties expires on the later of 10 years from the first commercial sale of such royalty-bearing discovery product, or the expiration of the last-to-expire licensed patent.

Novartis

In November 2008, the Company restructured its product development collaboration with Novartis entered into in 2004 for the development and commercialization of antibody products for the treatment of cancer. Under the restructured agreement, the Company received $6.2 million in cash and $7.5 million in the form of debt reduction on its existing loan facility with Novartis. In addition, the Company may, in the future, receive potential milestones of up to $14.0 million and royalty rates ranging from low-double digit to high-teen percentage rates for two ongoing product programs, HCD122 and LFA 102 and options to develop or receive royalties on additional programs. In exchange, Novartis received control over the HCD122 and LFA 102 programs, as well as the right to expand the development of these programs into additional indications outside of oncology. The Company's right to royalty-style payments expires on the later of the expiration of any licensed patent covering each product or 20 years from the launch of each product that is produced from a cell line provided to Novartis by XOMA. In 2013, the Company received a $7.0 million milestone relating to one currently active program. Pursuant to the obligations under the Agreement, in January 2014, the Company made a payment, equal to 25 percent of the milestone received, or $1.75 million, toward its outstanding debt obligation to Novartis.

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A loan facility of up to $50 million was available to the Company to fund up to 75% of its share of development expenses incurred beginning in 2005. See *Note 7: Long-Term Debt and Other Arrangements* for additional disclosure of the financing arrangement between the Company and Novartis.

Licensing Agreements

XOMA has granted more than 60 licenses to biotechnology and pharmaceutical companies to use the Company's patented and proprietary technologies relating to bacterial expression of recombinant pharmaceutical products. In exchange, the Company receives license and other fees as well as access to certain of these companies' antibody display libraries, intellectual property and/or services that complement the Company's existing development capabilities and support the Company's own antibody product development pipeline.

Certain of these agreements also provide releases of the licensee companies and their collaborators from claims under the XOMA patents arising from past activities using the companies' respective technologies to the extent they also used XOMA's antibody expression technology. Licensees are often also allowed to use XOMA's technology in combination with their own technology in future collaborations.

Pfizer

In August 2007, the Company entered into a license agreement with Pfizer Inc. ("Pfizer") for non-exclusive, worldwide rights for XOMA's patented bacterial cell expression technology for research, development and manufacturing of antibody products. Under the terms of the agreement, the Company received a license fee payment of $30 million in 2007.

From 2011 through 2013, the Company received milestone payments relating to ten undisclosed product candidates. The Company may also be eligible for additional milestone payments aggregating up to $15.2 million relating to twelve product candidates and low single-digit royalties on future sales of all products subject to this license. In addition, the Company may receive potential milestone payments aggregating up to $1.7 million for each additional qualifying product candidate. The Company's right to milestone payments expires on the later of the expiration of the last-to-expire licensed patent or the tenth anniversary of the effective date. The Company's right to royalties expires upon the expiration of the last-to-expire licensed patent. The Company will recognize revenue on milestones when they are achieved and on royalties when the underlying sales occur.

5. Streamlining and Restructuring Charges

In January 2012, the Company implemented a streamlining of operations, which resulted in a restructuring plan designed to sharpen its focus on value-creating opportunities led by gevokizumab and its unique antibody discovery and development capabilities. The restructuring plan included a reduction of XOMA's personnel by 84 positions, or 34%. These staff reductions resulted primarily from the Company's decisions to utilize a contract manufacturing organization for Phase 3 and commercial antibody production, and to eliminate internal research functions that are non-differentiating or that can be obtained cost effectively by contract service providers.

In connection with the streamlining of operations, the Company incurred restructuring charges in 2012 of $2.0 million related to severance, other termination benefits and outplacement services, $2.2 million related to the impairment and accelerated depreciation of various assets and leasehold improvements, and $0.7 million related to moving and other facility costs. In 2013, the Company incurred $0.3 million in restructuring charges related to facility costs and it does not expect to incur additional significant restructuring charges during 2014 related to these streamlining activities.

The current and long-term portions of the outstanding restructuring liabilities are included in accrued and other liabilities and other liabilities – long-term on the consolidated balance sheets and are based upon restructuring charges recognized as of December 31, 2013 and 2012 in connection with the Company's restructuring plans. As of December 31, 2013 and 2012, the components of these liabilities are shown below (in thousands):

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	Employee Severance and Other Benefits	Facility Charges [1]	Asset Impairment and Accelerated Depreciation [2]	Total
Balance at December 31, 2012	$ -	$ 75	$ -	$ 75
Restructuring charges	-	328	-	328
Cash payments	-	(434)	-	(434)
Adjustments	-	52	-	52
Balance at December 31, 2013	$ -	$ 21	$ -	$ 21

	Employee Severance and Other Benefits	Facility Charges [1]	Asset Impairment and Accelerated Depreciation [2]	Total
Balance at December 31, 2011	$ -	$ 162	$ -	$ 162
Restructuring charges	2,027	587	2,460	5,074
Cash payments	(2,027)	(689)	-	(2,716)
Proceeds from sale of assets	-	-	461	461
Adjustments	-	15	(2,921)	(2,906)
Balance at December 31, 2012	$ -	$ 75	$ -	$ 75

(1) Includes moving and relocation costs, and lease payments, net of sublease payments.
(2) Restructuring charges include non-cash impairments and accelerated depreciation of property and equipment and leasehold improvements; however, these amounts are excluded from the restructuring accrual.

6. Fair Value Measurements

Fair value is defined as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The Company applies ASC 820, which establishes a framework for measuring fair value and a fair value hierarchy that prioritizes the inputs used in valuation techniques. ASC 820 describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value which are the following:

Level 1 – Quoted prices in active markets for identical assets or liabilities.

Level 2 – Observable inputs other than quoted prices in active markets for similar assets or liabilities.

Level 3 – Unobservable inputs.

The following tables set forth the Company's fair value hierarchy for its financial assets and liabilities measured at fair value on a recurring basis as of December 31, 2013 and 2012 are classified as follows (in thousands):

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	Fair Value Measurements at December 31, 2013 Using			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Money market funds [1]	$ 82,759	$ -	$ -	$ 82,759
U.S. treasury securities	19,989	-	-	19,989
Foreign exchange options	-	361	-	361
Total	$ 102,748	$ 361	$ -	$ 103,109
Liabilities:				
Contingent warrant liabilities	$ -	$ -	$ 69,869	$ 69,869

	Fair Value Measurements at December 31, 2012 Using			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Money market funds [1]	$ 37,461	$ -	$ -	$ 37,461
U.S. treasury securities	39,987			39,987
Foreign exchange options	-	488	-	488
Total	$ 77,448	$ 488	$ -	$ 77,936
Liabilities:				
Contingent warrant liabilities	$ -	$ -	$ 15,001	$ 15,001

(1) Included in cash and cash equivalents

The fair value of the foreign exchange options at December 31, 2013 and 2012 was determined using readily observable market inputs from actively quoted markets obtained from various third-party data providers. These inputs, such as spot rate, forward rate and volatility have been derived from readily observable market data, meeting the criteria for Level 2 in the fair value hierarchy.

The fair value of the contingent warrant liabilities at December 31, 2013 and 2012 was determined using the Black-Scholes Model, which requires inputs such as the expected term of the warrants, volatility and risk-free interest rate. These inputs are subjective and generally require significant analysis and judgment to develop. In 2013, the Company changed its expected volatility assumption in the Black-Scholes Model from a volatility implied from warrants issued by XOMA in recent private placement transactions to a volatility based on historical stock price volatility observed on XOMA's underlying stock. A historical stock price volatility rate was determined to be a more precise indicator for the fair value calculation of the Company's warrants due to time elapsed since these warrants were granted.

The fair value of the contingent warrant liabilities was estimated using the following range of assumptions at December 31, 2013 and 2012:

	December 31, 2013	December 31, 2012
Expected volatility	66.1% - 86.6%	40%
Risk-free interest rate	0.1% - 0.8%	0.3% - 0.7%
Expected term	0.9 - 3.2 years	1.9 - 4.2 years

The following table provides a summary of changes in the fair value of the Company's Level 3 financial liabilities for the years ended December 31, 2013, 2012 and 2011 (in thousands):

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	Warrant Liabilities
Balance at December 31, 2010	$ 4,245
Net decrease in fair value of contingent warrant liabilities upon revaluation	(3,866)
Balance at December 31, 2011	379
Initial fair value of warrants issued in March 2012	6,390
Reclassification of contingent warrant liability to equity upon exercise of warrants	(940)
Net increase in fair value of contingent warrant liabilities upon revaluation	9,172
Balance at December 31, 2012	15,001
Reclassification of contingent warrant liability to equity upon exercise of warrants	(6,171)
Net increase in fair value of contingent warrant liabilities upon revaluation	61,039
Balance at December 31, 2013	$ 69,869

7. Long-Term Debt and Other Arrangements

Novartis Note

In May 2005, the Company executed a secured note agreement with Novartis (then Chiron Corporation), which is due and payable in full in June 2015. Under the note agreement, the Company borrowed semi-annually to fund up to 75% of the Company's research and development and commercialization costs under its collaboration arrangement with Novartis, not to exceed $50 million in aggregate principal amount. Interest on the principal amount of the loan accrues at six-month LIBOR plus 2%, which was equal to 2.35% at December 31, 2013, and is payable semi-annually in June and December of each year. Additionally, the interest rate resets in June and December of each year. At the Company's election, the semi-annual interest payments can be added to the outstanding principal amount, in lieu of a cash payment, as long as the aggregate principal amount does not exceed $50 million. The Company has made this election for all interest payments thus far. Loans under the note agreement are secured by the Company's interest in its collaboration with Novartis, including any payments owed to it thereunder.

At December 31, 2013 and 2012, the outstanding principal balance under this note agreement was $14.8 million and $14.4 million. Pursuant to the terms of the arrangement as restructured in November 2008, the Company will not make any additional borrowings under the Novartis note. Accrued interest of $0.4 million, $0.4 million and $0.3 million was added to the principal balance of the loan for the years ended December 31, 2013, 2012 and 2011, respectively.

Pursuant to the its obligations under the collaboration with Novartis, in January 2014, the Company made a payment, equal to 25 percent of a $7.0 million milestone received, or $1.75 million, toward its outstanding debt obligation to Novartis.

Servier Loan

In December 2010, in connection with the license and collaboration agreement entered into with Servier, the Company executed a loan agreement with Servier (the "Servier Loan Agreement"), which provided for an advance of up to €15.0 million. The loan was fully funded in January 2011, with the proceeds converting to approximately $19.5 million. The loan is secured by an interest in XOMA's intellectual property rights to all gevokizumab indications worldwide, excluding certain rights in the U.S. and Japan. Interest is calculated at a floating rate based on a Euro Inter-Bank Offered Rate ("EURIBOR") and subject to a cap. The interest rate is reset semi-annually in January and July of each year. The interest rate for the initial interest period was 3.22% and was reset semi-annually ranging from 2.33% to 3.83%. Interest for the six-month period from January 2014 through July 2014 was reset to 2.39%. Interest is payable semi-annually; however, the Servier Loan Agreement provides for a deferral of interest payments over a period specified in the agreement. During the deferral period, accrued interest will be added to the outstanding principal amount for the purpose of interest calculation for the next six-month interest period. On the repayment commencement date, all unpaid and accrued interest shall be paid to Servier and thereafter, all accrued and unpaid interest shall be due and payable at the end of each six-month period. In January 2014, the Company paid $1.9 million in accrued interest to Servier.

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The loan matures in 2016; however, after a specified period prior to final maturity, the loan is to be repaid (i) at Servier's option, by applying up to a significant percentage of any milestone or royalty payments owed by Servier under the Company's collaboration agreement and (ii) using a significant percentage of any upfront, milestone or royalty payments the Company receives from any third party collaboration or development partner for rights to gevokizumab in the U.S. and/or Japan. In addition, the loan becomes immediately due and payable upon certain customary events of default. At December 31, 2013, the outstanding principal balance under this loan was $20.6 million using the 12/31/13 Exchange Rate of 1.3766. For the years ended December 31, 2013 and 2012, the Company recorded unrealized foreign exchange losses of $0.8 million and $0.4 million, respectively, and for the year ended December 31, 2011, the Company recorded an unrealized foreign exchange gain of $0.1 million, related to the re-measurement of the loan.

The loan has a stated interest rate lower than the market rate based on comparable loans held by similar companies, which represents additional value to the Company. The Company recorded this additional value as a discount to the face value of the loan amount, at its fair value of $8.9 million. The fair value of this discount, which was determined using a discounted cash flow model, represents the differential between the stated terms and rates of the loan, and market rates. Based on the association of the loan with the collaboration arrangement, the Company recorded the offset to this discount as deferred revenue.

The loan discount is amortized under the effective interest method over the expected five-year life of the loan. For the years ended December 31, 2013, 2012, and 2011, the Company recorded non-cash interest expense of $1.6 million, $1.4 million, and $1.4 million, respectively, resulting from the amortization of the loan discount. At December 31, 2013 and 2012, the net carrying value of the loan was $16.5 million and $14.2 million, respectively. For the years ended December 31, 2013 and 2012, the Company recorded unrealized foreign exchange gains of $0.2 million and $0.1 million, respectively, and for the year ended December 31, 2011, the Company recorded an unrealized foreign exchange loss of $0.6 million, related to the re-measurement of the loan discount.

The Company believes that realization of the benefit and the associated deferred revenue is contingent on the loan remaining outstanding over the five-year contractual term of the loan. If the Company were to stop providing service under the collaboration arrangement and the arrangement is terminated, the maturity date of the loan would be accelerated and a portion of measured benefit would not be realized. As the realization of the benefit is contingent, in part, on the provision of future services, the Company is recognizing the deferred revenue over the expected five-year life of the loan. The deferred revenue is amortized under the effective interest method, and for the years ended December 31, 2013, 2012, and 2011, the Company recorded $1.6 million, $1.4 million, and $1.4 million, respectively, of related non-cash revenue.

General Electric Capital Corporation Term Loan

In December 2011, the Company entered into a loan agreement (the "GECC Loan Agreement") with General Electric Capital Corporation ("GECC"), under which GECC agreed to make a term loan in an aggregate principal amount of $10 million (the "Term Loan") to the Company, and upon execution of the GECC Loan Agreement, GECC funded the Term Loan. As security for its obligations under the GECC Loan Agreement, the Company granted a security interest in substantially all of its existing and after-acquired assets, excluding its intellectual property assets (such as those relating to its gevokizumab and anti-botulism products). The Term Loan accrued interest at a fixed rate of 11.71% per annum and was to be repaid over a period of 42 consecutive equal monthly installments of principal and accrued interest and was due and payable in full on June 15, 2015. The Company incurred debt issuance costs of approximately $1.3 million in connection with the Term Loan and was required to pay a final payment fee equal to $500,000 on the maturity date, or such earlier date as the Term Loan is paid in full. The debt issuance costs and final payment fee were being amortized and accreted, respectively, to interest expense over the term of the Term Loan using the effective interest method.

In connection with the GECC Loan Agreement, the Company issued to GECC unregistered warrants that entitle GECC to purchase up to an aggregate of 263,158 unregistered shares of XOMA common stock at an exercise price equal to $1.14 per share. These warrants are exercisable immediately and have a five-year term. The Company allocated the aggregate proceeds of the GECC Term Loan between the warrants and the debt obligation based on their relative fair values. The fair value of the warrants issued to GECC was determined using the Black-Scholes Model. The warrants' fair value of $0.2 million was recorded as a discount to the debt obligation and was being amortized over the term of the loan using the effective interest method.

In September 2012, The Company entered into an amendment to the GECC Loan Agreement providing for an additional term loan in the amount of $4.6 million, increasing the term loan obligation to $12.5 million (the "Amended Term Loan") and providing for an interest-only monthly repayment period following the effective date of the amendment through March 1, 2013, at a stated interest rate of 10.9% per annum. Thereafter, the Company is obligated to make monthly principal payments of $347,222, plus accrued interest, over a 27-month period commencing on April 1, 2013, and through June 15, 2015, at which time the remaining outstanding principal amount of $3.1 million, plus accrued interest, is due. The Company incurred debt issuance costs of approximately $0.2 million and are required to make a final payment fee in the amount of $875,000 on the date upon which the outstanding principal amount is required to be repaid in full. This final payment fee replaced the original final payment fee of $500,000. The debt issuance costs and final payment fee are being amortized and accreted, respectively, to interest expense over the term of the Amended Term Loan using the effective interest method.

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In connection with the amendment, on September 27, 2012 the Company issued to GECC unregistered stock purchase warrants, which entitle GECC to purchase up to an aggregate of 39,346 shares of XOMA common stock at an exercise price equal to $3.54 per share. These warrants are exercisable immediately and have a five-year term. The warrants' fair value of $0.1 million was recorded as a discount to the debt obligation and is being amortized over the term of the loan using the effective interest method. The warrants are classified in permanent equity on the consolidated balance sheets.

The Amended Term Loan does not change the remaining terms of the GECC Loan Agreement. The GECC Loan Agreement contains customary representations and warranties and customary affirmative and negative covenants, including restrictions on the ability to incur indebtedness, grant liens, make investments, dispose of assets, enter into transactions with affiliates and amend existing material agreements, in each case subject to various exceptions. In addition, the GECC Loan Agreement contains customary events of default that entitle GECC to cause any or all of the indebtedness under the GECC Loan Agreement to become immediately due and payable. The events of default include any event of default under a material agreement or certain other indebtedness.

The Company may prepay the Amended Term Loan voluntarily in full, but not in part, and any voluntary and certain mandatory prepayments are subject to a prepayment premium of 3% in the first year after the effective date of the loan amendment, 2% in the second year and 1% thereafter, with certain exceptions. The Company will also be required to pay the $875,000 final payment fee in connection with any voluntary or mandatory prepayment. On the effective date of the loan amendment, the Company paid an accrued final payment fee in the amount of $0.2 million relating to the original final payment fee of $500,000.

At December 31, 2013 and 2012, the outstanding principal balance under the Amended Term Loan was $9.4 million and $12.5 million, respectively.

Aggregate future principal and final fee payments of the Company's total interest bearing obligations - long-term as of December 31, 2013 are as follows (in thousands):

Year Ending December 31,	Total
2014	$ 5,917
2015	19,127
2016	20,649
	45,693
Less current portion	(5,917)
Total	$ 39,776

Interest Expense

Interest expense and amortization of debt issuance costs and discounts, recorded as other expense in the consolidated statements of comprehensive loss for the year ended December 31, 2013, 2012 and 2011 are shown below (in thousands):

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	Year ended December 31,		
	2013	2012	2011
Interest expense			
Servier loan	$ 2,152	$ 2,097	$ 2,087
GECC term loan	2,064	1,850	-
Novartis note	362	397	341
Other	53	43	34
Total interest expense	$ 4,631	$ 4,387	$ 2,462

8. Income Taxes

The total (benefit) provision for income taxes consists of the following (in thousands):

	Year ended December 31,		
	2013	2012	2011
Federal income tax (benefit) provision	$ (14)	$ (74)	$ 15
Total	$ (14)	$ (74)	$ 15

The Company has significant losses in 2013, 2012 and 2011 and as such there was no material income tax expense for the years ended December 31, 2013, 2012 and 2011. The income tax benefits in 2013 primarily relates to federal refundable credit true-up from prior year.

The significant components of net deferred tax assets as of December 31, 2013 and 2012 were as follows (in millions):

	December 31,	
	2013	2012
Capitalized research and development expenses	$ 49.4	$ 51.5
Net operating loss carryforwards	78.4	150.8
Research and development and other credit carryforwards	8.8	8.5
Other	23.5	23.3
Total deferred tax assets	160.1	234.1
Valuation allowance	(160.1)	(234.1)
Net deferred tax assets	$ -	$ -

The net (decrease) increase in the valuation allowance was $(74.0) million, $(6.0) million and $25.8 million for the years ended December 31, 2013, 2012 and 2011, respectively.

As of December 31, 2013, the Company had federal net operating loss carry-forwards of approximately $205.0 million and state net operating loss carry-forwards of approximately $164.0 million to offset future taxable income. The net operating loss carry-forwards include $2.1 million which relates to stock option deductions that will be recognized through additional paid in capital when utilized. As such, these deductions are not reflected in the Company's deferred tax assets. No federal net operating loss carry-forward expired in 2013, 2012 and 2011. California net operating losses of $16.8 million, $10.4 million and $9.5 million expired in the years 2013, 2012 and 2011, respectively.

ASC 740 provides for the recognition of deferred tax assets if realization of such assets is more likely than not. Based upon the weight of available evidence, which includes the Company's historical operating performance and carry-back potential, the Company has determined that total deferred tax assets should be fully offset by a valuation allowance.

Based on an analysis under Section 382 of the Internal Revenue Code (which subjects the amount of pre-change NOLs and certain other pre-change tax attributes that can be utilized to an annual limitation), the Company experienced ownership changes in 2009 and 2012 which substantially limit the future use of its pre-change NOLs and certain other pre-change tax attributes per year. The Company has excluded the NOLs and R&D credits that will expire as a result of the annual limitations in the deferred tax assets as of December 31, 2013. To the extent that the Company does not utilize its carry-forwards within the applicable statutory carry-forward periods, either because of Section 382 limitations or the lack of sufficient taxable income, the carry-forwards will expire unused.

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The Company files income tax returns in the U.S. federal jurisdiction, State of California, and Ireland. The Internal Revenue Service has completed an audit of the Company's 2009 and 2010 federal income tax returns which resulted in no change. The Company's federal income tax returns for tax years 2011 and beyond remain subject to examination by the Internal Revenue Service. The Company's California and Irish income tax returns for tax years 2009 and beyond remain subject to examination by the Franchise Tax Board and Irish Revenue Commissioner. In addition, all of the net operating losses and research and development credit carry-forwards that may be used in future years are still subject to adjustment.

The following table summarizes the Company's activity related to its unrecognized tax benefits (in thousands):

	December 31, 2013
Balance at January 1, 2013	$ 4,104
Increase related to current year tax position	164
Increase related to prior year tax position	6
Balance at December 31, 2013	$ 4,274

A total of $3.0 million of the unrecognized tax benefits would affect the Company's effective tax rate. The Company currently has a full valuation allowance against its U.S. net deferred tax assets which would impact the timing of the effective tax rate benefit should any of these uncertain tax positions be favorably settled in the future.

The Company does not expect the unrecognized tax benefits to change significantly over the next twelve months. The Company will recognize interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense. As of December 31, 2013, the Company has not accrued interest or penalties related to uncertain tax positions.

9. Compensation and Other Benefit Plans

The Company grants qualified and non-qualified stock options, restricted stock units ("RSUs"), common stock and other stock-based awards under various plans to directors, officers, employees and other individuals. Stock options are granted at exercise prices of not less than the fair market value of the Company's common stock on the date of grant. Generally, stock options granted to employees fully vest four years from the grant date and expire ten years from the date of the grant or three months from the date of termination of employment (longer in case of death or certain retirements). However, certain options granted to employees vest monthly or immediately, certain options granted to directors vest monthly over one year or three years and certain options may fully vest upon a change of control of the Company or may accelerate based on performance-driven measures. Additionally, the Company has an Amended and Restated Employee Stock Purchase Plan ("ESPP") that allows employees to purchase Company shares at a purchase price equal to 95% of the closing price on the exercise date.

Employee Stock Purchase Plan

Under the ESPP plan approved by the Company's stockholders, the Company is authorized to issue up to 233,333 shares of common stock to employees through payroll deductions at a purchase price per share equal to 95% of the closing price of XOMA shares on the exercise date. An employee may elect to have payroll deductions made under the ESPP for the purchase of shares in an amount not to exceed 15% of the employee's compensation.

In 2013, 2012, and 2011, employees purchased 15,262, 17,054, and 30,044 shares of common stock, respectively, under the ESPP. Net payroll deductions under the ESPP totaled $60,000, $46,000 and $54,000 for 2013, 2012, and 2011, respectively.

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Deferred Savings Plan

Under section 401(k) of the Internal Revenue Code of 1986, the Board of Directors adopted, effective June 1, 1987, a tax-qualified deferred compensation plan for employees of the Company. Participants may make contributions which defer up to 50% of their eligible compensation per payroll period, up to a maximum for 2013 of $17,500 (or $23,000 for employees over 50 years of age). The Company may, at its sole discretion, make contributions each plan year, in cash or in shares of the Company's common stock, in amounts which match up to 50% of the salary deferred by the participants. The expense related to these contributions was $0.9 million, $0.8 million and $1.1 million for the years ended December 31, 2013, 2012, and 2011, respectively, and 100% was paid in common stock in each year.

Stock Option Plans

Historically, option grants intended as long-term incentive compensation have been made pursuant to the Company's 1981 Share Option Plan (the "Option Plan") and Restricted Share Plan (the "Restricted Plan"). In May of 2010, the Compensation Committee and the full Board adopted, and in July of 2010 the Company's stockholders approved, a new equity-based compensation plan, the 2010 Long Term Incentive and Share Award Plan, which has since been amended and restated as the Amended and Restated 2010 Long Term Incentive and Stock Award Plan (the "Long Term Incentive Plan"). The Long Term Incentive Plan is intended to consolidate the Company's long-term incentive compensation under a single plan, by replacing the Option Plan, the Restricted Plan and the 1992 Directors Share Option Plan (the "Directors Plan") going forward, and to provide a more current set of terms pursuant to which to provide this type of compensation.

The Long Term Incentive Plan grants stock options, RSUs, and other stock-based awards to eligible employees, consultants and directors. No further grants or awards will be made under the Option Plan, the Restricted Share Plan or the Directors Plan. Shares underlying options previously issued under the Option Plan, the Restricted Share Plan or the Directors Plan that are currently outstanding will, upon forfeiture, cancellation, surrender or other termination, become available under the Long Term Incentive Plan. Stock-based awards granted under the Long Term Incentive Plan may be exercised when vested and generally expire ten years from the date of the grant or three to six months from the date of termination of employment (longer in case of death or certain retirements). Vesting periods vary based on awards granted, however, certain stock-based awards may vest immediately or may accelerate based on performance-driven measures.

Up to 15,753,331 shares are authorized for issuance under the stock option plans. As of December 31, 2013, options and RSUs covering 9,184,913 shares of common stock were outstanding under the stock option plans.

Stock Options

In 2013, the Board of Directors of the Company approved grants under the Company's Amended and Restated 2010 Long Term Incentive Plan for an aggregate of 1,168,203 stock options to certain employees and the directors of the Company. The stock options vest monthly over four years for employees and one year for directors.

In 2012, the Board of Directors of the Company approved grants under the Company's Amended and Restated 2010 Long Term Incentive Plan for an aggregate of 2,351,445 stock options to certain employees and the directors of the Company. The stock options vest monthly over four years for employees and one year for directors.

In October 2011, the Board of Directors of the Company approved a grant under the Amended and Restated 2010 Long Term Incentive Plan for an aggregate of 1,097,926 stock options to certain employees of the Company. These stock options include immediate vesting in an amount equal to each employee's percentage of outstanding options that are exercisable immediately prior to this grant. The remaining portion will vest monthly over two years.

On August 31, 2011, the Company announced that Steven B. Engle resigned as Chairman of the Board, Chief Executive Officer and President of the Company. In the third quarter of 2011, the Company incurred a stock-based compensation charge of approximately $0.7 million, due to a modification to Mr. Engle's stock options as a result of his resignation.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Stock Option Plans Summary

A summary of the status of the Company's stock option plans as of December 31, 2013, 2012, and 2011, and changes during the years ended on those dates is presented below:

	2013		2012		2011	
Options:	**Shares**	**Price***	**Shares**	**Price***	**Shares**	**Price***
Outstanding at beginning of year	6,788,383	$ 8.99	5,053,435	$ 12.55	2,331,450	$ 25.36
Granted	1,168,203	$ 3.13	2,351,445	$ 2.59	2,920,166	$ 2.81
Exercised	(589,355)	$ 2.26	(90,252)	$ 1.68	-	$ -
Forfeited, expired or cancelled	(151,190)	$ 17.46	(526,245)	$ 15.84	(198,181)	$ 35.56
Outstanding at end of year	7,216,041	$ 8.42	6,788,383	$ 8.99	5,053,435	$ 12.55
Exercisable at end of year	4,814,926	$ 11.14	4,276,834	$ 12.42	3,366,807	$ 16.33

* Weighted-average exercise price

At December 31, 2013, there were 6,972,744 stock options vested and expected to vest with a weighted-average exercise price per share of $8.61. The weighted average remaining contractual term of outstanding stock options at December 31, 2013 was 6.5 years and there was an aggregate intrinsic value of $18.2 million. The weighted average remaining contractual term of exercisable stock options at December 31, 2013 was 5.6 years and there was an aggregate intrinsic value of $9.2 million.

Restricted Stock Units

In 2013, the Board of Directors of the Company approved grants under the Amended and Restated 2010 Long Term Incentive Plan for an aggregate of 958,385 RSUs to certain employees and directors of the Company. The RSUs vest annually over three years in equal increments.

In 2012, the Board of Directors of the Company approved grants under the Amended and Restated 2010 Long Term Incentive Plan for an aggregate of 1,292,923 RSUs to certain employees and directors of the Company. The RSUs vest annually over three years in equal increments.

In October 2011, the Board of Directors of the Company approved a company-wide grant under the Amended and Restated 2010 Long Term Incentive Plan for an aggregate of 1,177,082 RSUs. The RSUs vest annually over three years in equal increments.

RSUs held by employees who qualify for retirement age (defined as employees that are a minimum of 55 years of age and the sum of their age plus years of full-time employment with the Company exceeds 70 years) vest immediately.

Unvested RSU activity for the year ended December 31, 2013 is summarized below:

	Number of Shares	Weighted-Average Grant-Date Fair Value
Unvested balance at December 31, 2012	1,459,853	$ 2.75
Granted	958,385	$ 2.96
Vested	(637,034)	$ 2.57
Forfeited	(43,167)	$ 2.08
Unvested balance at December 31, 2013	1,738,037	$ 2.73

The total grant-date fair value of RSUs that vested during the year ended December 31, 2013 was $1.6 million.

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Stock-based Compensation Expense

The Company recognizes compensation expense for all stock-based payment awards made to the Company's employees, consultants and directors based on estimated fair values. The valuation of stock option awards is determined at the date of grant using the Black-Scholes option pricing model. This model requires inputs such as the expected term of the option, expected volatility and risk-free interest rate. To establish an estimate of expected term, the Company considers the vesting period and contractual period of the award and its historical experience of stock option exercises, post-vesting cancellations and volatility. The estimate of expected volatility is based on the Company's historical volatility. The risk-free rate is based on the yield available on United States Treasury zero-coupon issues. To establish an estimate of forfeiture rate, the Company considers its historical experience of option forfeitures and terminations.

The fair value of stock option awards was estimated using the Black-Scholes model with the following weighted average assumptions for the years ended December 31, 2013, 2012, and 2011:

	Year Ended December 31,		
	2013	2012	2011
Dividend yield	0%	0%	0%
Expected volatility	92%	92%	88%
Risk-free interest rate	0.89%	0.82%	1.48%
Expected term	5.6 years	5.6 years	5.4 years

The valuation of RSUs is determined at the date of grant using the closing stock price. The forfeiture rate impacts the amount of aggregate compensation for both stock options and RSUs. To establish an estimate of forfeiture rate, the Company used an independent third party to consider the Company's historical experience of option forfeitures and terminations.

The following table shows total stock-based compensation expense included in the consolidated statements of comprehensive loss for the years ended December 31, 2013, 2012, and 2011 (in thousands):

	Year Ended December 31,		
	2013	2012	2011
Research and development	$ 2,358	$ 2,391	$ 3,672
Selling, general and administrative	2,741	1,893	4,087
Total stock-based compensation expense	$ 5,099	$ 4,284	$ 7,759

There was no capitalized stock-based compensation cost as of December 31, 2013 or 2012, and there were no recognized tax benefits related to the Company's stock-based compensation expense during the years ended December 31, 2013 or 2012.

10. Capital Stock

Series B Preference Shares

In December 2003, the Company issued 2,959 Series B preference shares to Genentech, Inc. in repayment of $29.6 million of the outstanding balance under a convertible subordinated debt agreement. Pursuant to the rights of the Series B preference shares, the holder of Series B preference shares was not entitled to receive any dividends on the Series B preference shares. The Series B preference shares ranked senior with respect to rights on liquidation, winding-up and dissolution of the Company to all classes of common stock. Upon any voluntary or involuntary liquidation, dissolution or winding-up of the Company, the holder of Series B preference shares would have been entitled to receive $10,000 per Series B preference share (or $29.6 million in the aggregate) before any distribution was made on the common stock. The holder of the Series B preference shares had no voting rights, except as required under Bermuda law.

The holder of Series B preference shares had the right to convert Series B preference shares into shares of common stock at a conversion price equal to $116.25 per share, subject to adjustment in certain circumstances.

In April of 2011, the 2,959 Series B convertible preference shares were converted by Genentech into 254,560 shares of common stock. The $29.6 million liquidation preference associated with the Series B preference shares was eliminated as a result of this conversion.

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Registered Direct Offerings

In June of 2009, the Company entered into a definitive agreement with certain institutional investors to sell 695,652 units, with each unit consisting of one share of the Company's common stock and a warrant to purchase 0.50 of a share of common stock, for gross proceeds of approximately $12.0 million, before deducting placement agent fees and estimated offering expenses of $0.8 million, in a second registered direct offering. The investor purchased the units at a price of $17.25 per unit. The warrants, which represent the right to acquire an aggregate of up to 347,826 shares of common stock, are exercisable at any time on or prior to December 10, 2014 at an exercise price of $19.50 per share. As of December 31, 2013 all of these warrants were outstanding.

ATM Agreements

In the third quarter of 2010, the Company entered into an At Market Issuance Sales Agreement (the "2010 ATM Agreement"), with Wm Smith and McNicoll, Lewis & Vlak LLC (the "Agents"), under which the Company could sell shares of its common stock from time to time through the Agents, as the agents for the offer and sale of the shares, in an aggregate amount not to exceed the amount that can be sold under the Company's registration statement on Form S-3 (File No. 333-148342) filed with the SEC on December 26, 2007 and declared effective by the SEC on May 29, 2008. The Agents could sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act of 1933, as amended (the "Securities Act"), including without limitation sales made directly on The NASDAQ Global Market, on any other existing trading market for the Company's common stock or to or through a market maker. The Agents could also sell the shares in privately negotiated transactions, subject to the Company's prior approval. From the inception of the 2010 ATM Agreement through May of 2011, the Company sold a total of 7,560,862 shares of its common stock under this agreement for aggregate gross proceeds of $34.0 million, including 821,386 shares sold in 2011 for aggregate gross proceeds of $4.4 million. Total offering expenses incurred related to sales under the 2010 ATM Agreement from inception to May of 2011 were $1.0 million, including $0.1 million incurred in 2011. In May of 2011, 2010 ATM Agreement expired by its terms, and there will be no further issuances under this facility.

On February 4, 2011, the Company entered into an At Market Issuance Sales Agreement (the "2011 ATM Agreement"), with McNicoll, Lewis & Vlak LLC (now known as MLV & Co. LLC, "MLV"), under which it may sell shares of its common stock from time to time through the MLV, as the agent for the offer and sale of the shares, in an aggregate amount not to exceed the amount that can be sold under the Company's registration statement on Form S-3 (File No. 333-172197) filed with the SEC on February 11, 2011 and amended on March 10, 2011, June 3, 2011 and January 3, 2012, which was most recently declared effective by the SEC on January 17, 2012. MLV may sell the shares by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 of the Securities Act, including without limitation sales made directly on The NASDAQ Global Market, on any other existing trading market for the Company's common stock or to or through a market maker. MLV also may sell the shares in privately negotiated transactions, subject to our prior approval. The Company will pay MLV a commission equal to 3% of the gross proceeds of the sales price of all shares sold through it as sales agent under the 2011 ATM Agreement. From the inception of the 2011 ATM Agreement through December 31, 2013, the Company sold a total of 7,572,327 shares of common stock under this agreement for aggregate gross proceeds of $14.6 million. No shares of common stock have been sold under this agreement since February 3, 2012. Total offering expenses incurred related to sales under the 2011 ATM Agreement from inception to December 31, 2013, were $0.5 million. The registration statement under which the 2011 ATM was entered expires in June of 2014.

Underwritten Offering

In February of 2010, the Company completed an underwritten offering of 2.8 million units, with each unit consisting of one share of the Company's common stock and a warrant to purchase 0.45 of a share of common stock, for gross proceeds of approximately $21 million. As of December 31, 2013 all of these warrants were outstanding.

On March 9, 2012, the Company completed an underwritten public offering of 29,669,154 shares of its common stock, and accompanying warrants to purchase one half of a share of common stock for each share purchased, at a public offering price of $1.32 per share. Total gross proceeds from the offering were approximately $39.2 million, before deducting underwriting discounts and commissions and offering expenses totaling approximately $3.0 million. The warrants, which represent the right to acquire an aggregate of up to 14,834,577 shares of common stock, are immediately exercisable and have a five-year term and an exercise price of $1.76 per share. As of December 31, 2013, 12,562,682 of these warrants were outstanding.

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On October 29, 2012, the Company completed an underwritten public offering of 13,333,333 shares of its common stock, at a public offering price of $3.00 per share. Total gross proceeds from the offering were approximately $40.0 million, before deducting underwriting discounts and commissions and offering expenses totaling approximately $3.0 million.

On August 23, 2013, the Company completed an underwritten public offering of 8,736,187 shares of its common stock, including 1,139,502 shares of its common stock that were issued upon the exercise of the underwriters' 30-day over-allotment option, at a public offering price of $3.62 per share. Total gross proceeds from the offering were approximately $31.6 million, before deducting underwriting discounts and commissions and estimated offering expenses totaling approximately $2.2 million.

On December 18, 2013, the Company completed an underwritten public offering of 10,925,000 shares of its common stock, including 1,425,000 shares of its common stock that were issued upon the exercise of the underwriters' 30-day over-allotment option, at a public offering price of $5.25 per share. Total gross proceeds from the offering were approximately $57.4 million, before deducting underwriting discounts and commissions and estimated offering expenses totaling approximately $3.8 million.

11. Commitments and Contingencies

Collaborative Agreements, Royalties and Milestone Payments

The Company is obligated to pay royalties, ranging from 1% to 5% of the selling price of the licensed component and up to 40% of any sublicense fees to various universities and other research institutions based on future sales or licensing of products that incorporate certain products and technologies developed by those institutions.

In addition, the Company has committed to make potential future "milestone" payments to third parties as part of licensing and development programs. Payments under these agreements become due and payable only upon the achievement of certain developmental, regulatory and/or commercial milestones. Because it is uncertain if and when these milestones will be achieved, such contingencies, aggregating up to $76.6 million (assuming one product per contract meets all milestones events) have not been recorded on the consolidated balance sheet. The Company is unable to determine precisely when and if payment obligations under the agreements will become due as these obligations are based on milestone events, the achievement of which is subject to a significant number of risks and uncertainties.

Leases

As of December 31, 2013, the Company leased administrative, research facilities, and office equipment under operating leases expiring on various dates through April 2023. These leases require the Company to pay taxes, insurance, maintenance and minimum lease payments.

The Company estimates future minimum lease payments as of December 31, 2013 to be (in thousands):

	Operating Leases [(a)]
2014	$ 3,661
2015	3,640
2016	3,749
2017	3,862
2018	3,978
Thereafter	15,723
Minimum lease payments	$ 34,613

(a) Operating leases are net of future sublease income of $0.1 million.

Total rental expense, including other costs required under the Company's leases, was approximately $3.5 million, $4.5 million and $5.1 million for the years ended December 31, 2013, 2012, and 2011, respectively. Rental expense based on leases allowing for escalated rent payments are recognized on a straight-line basis. The Company is required to restore certain of its leased property to certain conditions in place at the time of lease. The Company believes these costs will not be material to its operations.

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In 2012, the Company vacated and subleased two of its leased facilities, which housed its large scale manufacturing operations and associated quality functions. The Company incurred $0.3 million in restructuring charges during 2013 in connection with a portion of lease payments not offset by sublease income for these buildings. The Company does not expect to incur any significant restructuring charges during 2014 in connection with these lease payments.

As a result of the restructuring in the second quarter of 2009, the Company vacated one of its leased buildings. Effective December 2010, the Company entered into a sublease agreement for this building through May of 2014. For the year ended December 31, 2013, the Company recognized $0.1 million in sublease income under this agreement. The Company will receive future sublease income of $0.1 million under this agreement.

Legal Proceedings

None.

12. Concentration of Risk, Segment and Geographic Information

Concentration of Risk

Cash equivalents, short-term investments, and receivables are financial instruments, which potentially subject the Company to concentrations of credit risk, as well as liquidity risk for certain cash equivalents such as money market funds. The Company has not encountered such issues during 2012.

The Company has not experienced any significant credit losses and does not generally require collateral on receivables. For the year ended December 31, 2013, three customers represented 43%, 26%, and 20% of total revenue and as of December 31, 2013, and two customers represented 73% and 13% of the accounts receivable balance.

For the year ended December 31, 2012, two customers represented 47% and 33% of total revenue and as of December 31, 2012, these two customers represented 58% and 35% of the accounts receivable balance. For the year ended December 31, 2011, two customers represented 61% and 32% of total revenue.

Segment Information

The Company has determined that it operates in one segment as it only reports operating results on an aggregate basis to the chief operating decision maker of the Company. The Company's property and equipment is held primarily in the United States.

Geographic Information

Revenue attributed to the following geographic regions for each of the three years ended December 31, 2013, 2012 and 2011 was as follows (in thousands):

	Year ended December 31,		
	2013	2012	2011
United States	$ 19,955	$ 14,134	$ 20,447
Europe	15,396	18,454	35,718
Asia Pacific	100	1,194	2,031
Total	$ 35,451	$ 33,782	$ 58,196

XOMA Corporation
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

13. Quarterly Financial Information (unaudited)

The following is a summary of the quarterly results of operations for the years ended December 31, 2013 and 2012:

	Consolidated Statements of Operations			
	Quarter Ended			
	March 31	June 30	September 30	December 31
	(In thousands, except per share amounts)			
2013				
Total revenues	$ 9,453	$ 7,151	$ 6,312	$ 12,535
Total operating costs and expenses	(20,777)	(21,230)	(23,535)	(28,114)
Other (expense) income, net [1]	(13,563)	(3,169)	(12,416)	(36,719)
Income tax benefit	-	-	15	(1)
Net (loss) income	$ (24,887)	$ (17,248)	$ (29,624)	$ (52,299)
Basic and diluted net (loss) income per share of common stock	$ (0.30)	$ (0.21)	$ (0.34)	$ (0.55)
2012				
Total revenues	$ 9,865	$ 9,275	$ 7,251	$ 7,391
Total operating costs and expenses	(24,227)	(22,765)	(23,404)	(20,010)
Other income (expense), net [1]	(16,063)	(2,665)	(10,772)	14,985
Income tax expense	-	-	74	-
Net loss	$ (30,425)	$ (16,155)	$ (26,851)	$ 2,366
Basic and diluted net loss per share of common stock	$ (0.69)	$ (0.24)	$ (0.39)	$ 0.03

(1) Fluctuations in 2013 and 2012 primarily relate to (losses) gains on the revaluation of the contingent warrant liabilities.

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
3.1	Certificate of Incorporation of XOMA Corporation	8-K	000-14710	3.1	01/03/2012
3.2	Certificate of Amendment of Certificate of Incorporation of XOMA Corporation	8-K	000-14710	3.1	05/31/2012
3.3	By-laws of XOMA Corporation	8-K	000-14710	3.2	01/03/2012
4.1	Reference is made to Exhibits 3.1, 3.2 and 3.3				
4.2	Specimen of Common Stock Certificate	8-K	000-14710	4.1	01/03/2012
4.3	Form of Certificate of Designations of Series A Preferred Stock	8-K	000-14710	3.1	01/03/2012
4.4	Form of Amended and Restated Warrant (June 2009 Warrants)	8-K	000-14710	10.6	02/02/2010
4.5	Form of Warrant (February 2010 Warrants)	8-K	000-14710	10.2	02/02/2010
4.6	Form of Warrant (December 2011 Warrants)	10-K	000-14710	4.9	03/14/2012
4.7	Form of Warrant (March 2012 Warrants)	8-K	000-14710	4.1	03/07/2012
4.8	Form of Warrant (September 2012 Warrants)	8-K	000-14710	4.10	10/03/2012
10.1*	1981 Share Option Plan as amended and restated	S-8	333-171429	10.1	12/27/2010
10.2*	Form of Share Option Agreement for 1981 Share Option Plan	10-K	000-14710	10.1A	03/11/2008
10.3*	Restricted Share Plan as amended and restated	S-8	333-171429	10.1	12/27/2010
10.4*	Form of Share Option Agreement for Restricted Share Plan	10-K	000-14710	10.2A	03/11/2008
10.5*	2007 CEO Share Option Plan	8-K	000-14710	10.7	08/07/2007
10.6*	1992 Directors Share Option Plan as amended and restated	S-8	333-171429	10.1	12/27/2010
10.7*	Form of Share Option Agreement for 1992 Directors Share Option Plan (initial grants)	10-K	000-14710	10.3A	03/11/2008
10.8*	Form of Share Option Agreement for 1992 Directors Share Option Plan (subsequent grants)	10-K	000-14710	10.3B	03/11/2008

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.9*	2002 Director Share Option Plan	S-8	333-151416	10.10	06/04/2008
10.10*	Amended and Restated 2010 Long Term Incentive and Stock Award Plan	S-8	000-14710	10.1	06/01/2012
10.11*	Form of Stock Option Agreement for Amended and Restated 2010 Long Term Incentive and Stock Award Plan	10-K	000-14710	10.6A	03/14/2012
10.12*	Form of Restricted Stock Unit Agreement for Amended and Restated 2010 Long Term Incentive and Stock Award Plan	10-K	000-14710	10.6B	03/14/2012
10.13*	Management Incentive Compensation Plan as amended and restated	8-K	000-14710	10.3	11/06/2007
10.14*	CEO Incentive Compensation Plan	10-K	000-14710	10.4A	03/11/2008
10.15*	Amendment No. 1 to CEO Incentive Compensation Plan	10-K	000-14710	10.7B	03/14/2012
10.16*	Bonus Compensation Plan	10-K	000-14710	10.4B	03/11/2008
10.17*	Amended and Restated 1998 Employee Stock Purchase Plan	POS AM	333-174730	10.2	01/03/2012
10.18	Form of Amended and Restated Indemnification Agreement for Officers	10-K	000-14710	10.6	03/08/2007
10.19	Form of Amended and Restated Indemnification Agreement for Employee Directors	10-K	000-14710	10.7	03/08/2007
10.20	Form of Amended and Restated Indemnification Agreement for Non-employee Directors	10-K	000-14710	10.8	03/08/2007
10.21*	Employment Agreement entered into between XOMA (US) LLC and Fred Kurland, dated as of December 29, 2008	10-K/A	000-14710	10.7B	12/27/2010
10.22*	Amended and Restated Employment Agreement entered into between XOMA (US) LLC and Charles C. Wells, dated as of December 30, 2008	10-K/A	000-14710	10.7D	12/27/2010
10.23+	Officer Employment Agreement dated March 19, 2013 between XOMA Corporation and Paul Rubin				
10.24*	Employment Agreement effective as of January 4, 2012 between XOMA (US) LLC and John Varian	10-K	000-14710	10.10G	03/14/2012
10.25+	Officer Employment Agreement dated March 10, 2014 between XOMA Corporation and Pat Scannon				
10.26*	Form of Change of Control Severance Agreement entered into between XOMA Ltd. and certain of its executives	10-K	000-14710	10.12	03/10/2011

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.27*	Change of Control Agreement entered into between XOMA Ltd. and John Varian, dated January 4, 2012	10-K	000-14710	10.12A	03/14/2012
10.28+	Retention Benefit Agreement entered into between XOMA Corporation and John Varian, dated March 11, 2014				
10.29+	Lease of premises at 804 Heinz Street, Berkeley, California dated February 13, 2013				
10.30+	Lease of premises at 2910 Seventh Street, Berkeley, California dated February 13, 2013				
10.31+	First amendment to lease of premises at 2910 Seventh Street, Berkeley, California dated February 22, 2013				
10.32+	Lease of premises at 5860 and 5864 Hollis Street, Emeryville, California dated February 13, 2013				
10.33	Lease of premises at 2850 Seventh Street, Second Floor, Berkeley, California dated as of December 28, 2001 (with addendum and guaranty)	10-K	000-14710	10.20	04/01/2002
10.34†	Second Amended and Restated Collaboration Agreement dated January 12, 2005, by and between XOMA (US) LLC and Genentech, Inc.	10-K	000-14710	10.26C	03/15/2005
10.35†	Agreement related to LUCENTIS® License Agreement and RAPTIVA® Collaboration Agreement dated September 9, 2009, by and between XOMA (Bermuda) Ltd., XOMA (US) LLC and Genentech, Inc.	10-Q	000-14710	10.18A	11/09/2009
10.36†	License Agreement by and between XOMA Ireland Limited and MorphoSys AG, dated as of February 1, 2002	10-K	000-14710	10.43	02/01/2002
10.37†	License Agreement, dated as of December 29, 2003, by and between Diversa Corporation and XOMA Ireland Limited	8-K/A	000-14710	2	03/19/2004
10.38†	GSSM License Agreement, effective as of May 2, 2008, by and between Verenium Corporation and XOMA Ireland Limited	10-K	000-14710	10.25A	03/10/2011
10.39†	Secured Note Agreement, dated as of May 26, 2005, by and between Chiron Corporation and XOMA (US) LLC	10-Q	000-14710	10.3	08/08/2005
10.40†	Amended and Restated Research, Development and Commercialization Agreement, executed November 7, 2008, by and between Novartis Vaccines and Diagnostics, Inc. (formerly Chiron Corporation) and XOMA (US) LLC	10-K	000-14710	10.24C	03/11/2009
10.41†	Amendment No. 1 to Amended and Restated Research, Development and Commercialization Agreement, effective as of April 30, 2010, by and between Novartis Vaccines and Diagnostics, Inc. and XOMA (US) LLC	10-K	000-14710	10.25B	03/14/2012
10.42	Manufacturing and Technology Transfer Agreement, executed December 16, 2008, by and between Novartis Vaccines and Diagnostics, Inc. (formerly Chiron Corporation) and XOMA (US) LLC	10-K	000-14710	10.24D	03/11/2009

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.43	Agreement dated March 8, 2005, between XOMA (US) LLC and the National Institute of Allergy and Infectious Diseases	10-K	000-14710	10.53	03/15/2005
10.44	Agreement dated July 28, 2006, between XOMA (US) LLC and the National Institute of Allergy and Infectious Diseases	10-K	000-14710	10.60	08/09/2006
10.45†	Agreement dated September 15, 2008, between XOMA (US) LLC and the National Institute of Allergy and Infectious Diseases	10-Q	000-14710	10.39	11/10/2008
10.46	Second Amendment to Agreement dated September 15, 2008, between XOMA (US) LLC and the National Institute of Allergy and Infectious Diseases	10-Q	000-14710	10.24C	11/04/2010
10.47	Agreement dated September 30, 2011, between XOMA (US) LLC and the National Institute of Allergy and Infectious Diseases	S-4	000-14710	10.28D	10/04/2011
10.48†	Collaboration Agreement, dated as of November 1, 2006, between Takeda Pharmaceutical Company Limited and XOMA (US) LLC	10-K	000-14710	10.46	03/08/2007
10.49	First Amendment to Collaboration Agreement, effective as of February 28, 2007, between Takeda Pharmaceutical Company Limited and XOMA (US) LLC	10-Q/A	000-14710	10.48	03/05/2010
10.50	Second Amendment to Collaboration Agreement, effective as of February 9, 2009, among Takeda Pharmaceutical Company Limited and XOMA (US) LLC	10-K	000-14710	10.31B	03/11/2009
10.51†	License Agreement, effective as of August 27, 2007, by and between Pfizer Inc. and XOMA Ireland Limited	8-K	000-14710	2	09/13/2007
10.52	Common Share Purchase Agreement, dated as of July 23, 2010, by and between XOMA Ltd. and Azimuth Opportunity Ltd.	8-K	000-14710	10.1	07/23/2010
10.53	Securities Purchase Agreement dated June 5, 2009, between XOMA Ltd. and the investors named therein	8-K	000-14710	10.1	06/10/2009
10.54	Engagement Letter dated June 4, 2009	8-K	000-14710	10.3	06/10/2009
10.55†	Discovery Collaboration Agreement dated September 9, 2009, by and between XOMA Development Corporation and Arana Therapeutics Limited	10-Q/A	000-14710	10.35	03/05/2010
10.56	Amendment to At Market Issuance Sales Agreement dated December 31, 2011, between XOMA Corporation and McNicoll, Lewis & Vlak LLC	POS AM	333-172197	1.2	01/03/2012

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
10.57	Form of Warrant Amendment Agreement dated February 2, 2010 (June 2009 Warrants)	8-K	000-14710	10.3	02/02/2010
10.58†	Royalty Purchase Agreement, dated as of August 12, 2010, by and among XOMA CDRA LLC, XOMA (US) LLC, XOMA Ltd. and the buyer named therein	10-Q/A	000-14710	10.38	04/13/2011
10.59†	Collaboration and License Agreement dated as of December 30, 2010, by and between XOMA Ireland Limited, Les Laboratoires Servier and Institut de Recherches Servier	10-K	000-14710	10.42	03/10/2011
10.60†	Amended and Restated Collaboration and License Agreement dated as of February 14, 2012, by and between XOMA Ireland Limited, Les Laboratoires Servier and Institut de Recherches Servier	10-K	000-14710	10.41A	03/14/2012
10.61†	Loan Agreement dated as of December 30, 2010, by and between XOMA Ireland Limited and Les Laboratoires Servier	10-K/A	000-14710	10.42A	05/26/2011
10.62	Foreign Exchange and Options Master Agreement (FEOMA) dated as of May 16, 2011, between Royal Bank of Canada and XOMA Ltd., with letter agreement dated May 17, 2011	10-Q	000-14710	10.1	08/04/2011
10.63†	Loan Agreement dated as of December 30, 2011, among XOMA (US) LLC, as Borrower, XOMA Ltd., as Parent, each other loan party from time to time party thereto, General Electric Capital Corporation, as Agent, and each other lender from time to time party thereto	10-K	000-14710	10.43	03/14/2012
10.64†	Guaranty, Pledge and Security Agreement dated as of December 30, 2011, among XOMA (US) LLC, each other guarantor from time to time party thereto and General Electric Capital Corporation, as Agent	10-K	000-14710	10.43A	03/14/2012
10.65†	Amended and Restated License and Commercialization Agreement effective as of January 11, 2012, by and between Les Laboratoires Servier and XOMA Ireland Limited	10-K	000-14710	10.44	03/14/2012
10.66†	Amended and Restated Trademark License Agreement entered into as of January 11, 2012, between Biofarma and XOMA Ireland Limited	10-K	000-14710	10.44A	03/14/2012
10.67†	Master Services Agreement dated as of November 9, 2009, between Medpace, Inc. and XOMA (US) LLC	10-K	000-14710	10.45	03/14/2012
10.68†	Amendment No. 1 to Master Services Agreement dated as of October 4, 2011, between Medpace, Inc. and XOMA (US) LLC	10-K	000-14710	10.45A	03/14/2012
10.69	First Amendment to Loan Agreement, by and between General Electric Capital Corporation, the Company as guarantor, XOMA (US) LLC as borrower, and certain other wholly-owned subsidiaries of the Company, dated September 27, 2012	8-K	000-14710	10.46	10/03/2012

Exhibit Number	Exhibit Description	Incorporation By Reference			
		Form	SEC File No.	Exhibit	Filing Date
21.1±	Subsidiaries of the Company				
23.1±	Consent of Independent Registered Public Accounting Firm				
24.1+	Power of Attorney (included on the signature pages hereto)				
31.1±	Certification of Chief Executive Officer, as required by Rule 13a-14(a) or Rule 15d-14(a)				
31.2±	Certification of Chief Financial Officer, as required by Rule 13a-14(a) or Rule 15d-14(a)				
32.1±	Certification of Chief Executive Officer and Chief Financial Officer, as required by Rule 13a-14(b) or Rule 15d-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350)(1)				
101.INS+	XBRL Instance Document				
101.SCH+	XBRL Taxonomy Extension Schema Document				
101.CAL+	XBRL Taxonomy Extension Calculation Linkbase Document				
101.DEF+	XBRL Taxonomy Extension Definition Linkbase Document				
101.LAB+	XBRL Taxonomy Extension Labels Linkbase Document				
101.PRE+	XBRL Taxonomy Extension Presentation Linkbase Document				

† Confidential treatment has been granted with respect to certain portions of this exhibit. This exhibit omits the information subject to this confidentiality request. Omitted portions have been filed separately with the SEC.

* Indicates a management contract or compensation plan or arrangement.

+ Filed herewith

(1) This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Registrant under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.

EXHIBIT 10.23

OFFICER EMPLOYMENT AGREEMENT

This Officer Employment Agreement ("Agreement"), dated this 19th day of March, 2013, by and between XOMA Corporation ("XOMA" or the "Company"), a Delaware corporation with its principal office at 2910 Seventh Street, Berkeley, California, and Paul D. Rubin, M.D. ("Employee"), an individual residing at 555 Mission Rock Street, #54, San Francisco, California 94158.

WHEREAS, the Company wishes to enter into this Agreement to retain or assure the Company of the continued services of Employee; and

WHEREAS, Employee is willing to enter into this Agreement and to serve or to continue to serve in the employ of the Company upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto hereby agree as follows:

1. Employment. The Company agrees to employ or to continue to employ Employee, and Employee agrees to be or continue to be employed by the Company, for the period referred to in Section 3 hereof and upon the other terms and conditions herein provided.

2. Position and Responsibilities. Employee shall devote his reasonable best efforts and substantially all of his time and attention to his employment by the Company. He shall perform the duties of Senior Vice President, Research and Development, and Chief Medical Officer and/or such other reasonable duties as may be determined from time to time by the Chief Executive Officer of the Company ("CEO"). During his employment with the Company, Employee may not accept part time consulting or other business or non-profit opportunities without first obtaining written approval from the CEO.

3. Term of Employment. This Agreement shall become effective and the term of employment pursuant to this Agreement shall commence on April 24, 2012 and continue until April 23, 2013. This Agreement will be automatically extended (without further action by the parties) for an additional one–year term thereafter and again on each subsequent one-year anniversary thereof unless it is terminated by either the Employee or the Company at any time with thirty (30) days prior written notice, unless Employee is otherwise terminated by the Company or he/she resigns from the Company pursuant to Section 6 hereof.

4. Compensation and Reimbursement of Expenses.

(a) Compensation. For all services rendered by Employee as Senior Vice President, Research and Development, and Chief Medical Officer during his employment under this Agreement, the Company shall pay Employee as compensation a base salary at a rate of not less than $380,000.00 per annum. In addition, Employee shall be a participant in the Company's Management Incentive Compensation Plan ('MICP"). All taxes and governmentally required withholding shall be deducted in conformity with applicable laws.

(b) Share Options. Employee will be granted share options and/or other share or share-based awards from time to time as per the Company's standard practices and subject to approval by the Company's Board of Directors.

(c) Reimbursement of Expenses. The Company shall pay or reimburse Employee for all reasonable travel and other expenses incurred by Employee in performing his obligations under this Agreement in a manner consistent with past Company practice. The Company further agrees to furnish Employee with such assistance and accommodations as shall be suitable to the character of Employee's position with the Company, adequate for the performance of his duties and consistent with past Company practice.

5. Participation in Benefit Plans. The payments provided in Section 4 hereof are in addition to benefits Employee is entitled to under any group hospitalization, health, dental care, disability insurance, surety bond, death benefit plan, travel and/or accident insurance, other allowance and/or executive compensation plan, including, without limitation, any senior staff incentive plan, capital accumulation programs, restricted or non-restricted share purchase plan, share option plan, retirement income or pension plan or other present or future group employee benefit plan or program of the Company for which key executives are or shall become eligible, and Employee shall be eligible to receive during the period of his employment under this Agreement, all benefits and emoluments for which key executives are eligible under every such plan or program to the extent permissible under the general terms and provisions of such plans or programs and in accordance with the provisions thereof.

6. Termination of Employment.

(a) Termination by Employee. As provided in Section 3, Employee has the right to terminate his employment with the Company at any time and for any reason. Employee will not be entitled to any severance pay or other benefits from the Company if he/she terminates his employment with the Company, except if such termination is for Good Reason in accordance with the terms hereof. In case of termination of this Agreement for Good Reason by Employee, Employee shall be entitled to the severance pay and other benefits set forth in Section 7 hereof. "Good Reason" shall mean, unless remedied by the Company within sixty (60) days after the receipt of written notice from the Employee as provided below or consented to in writing by the Employee, (i) the material diminution of any material duties or responsibilities of the Employee; or (ii) a material reduction in the Employee's base salary; provided, however, that the Employee must have given written notice to the Company of the existence of any such condition within ninety (90) days after the initial existence thereof (and the failure to provide such timely notice will constitute a waiver of the Employee's ability to terminate employment for Good Reason as a result of such condition), and the Company will have a period of sixty (60) days from receipt of such written notice during which it may remedy the condition; provided further, however, that any termination of employment by the Employee for Good Reason must occur not later than one hundred eighty (180) days following the initial existence of the condition giving rise to such Good Reason in order to qualify for the severance pay and other benefits set forth in Section 7 hereof.

(b) Termination by the Company Without Cause. Employee may be terminated by the Company without Cause (as defined below), but in such case, Employee shall be entitled to the severance pay and other benefits set forth in Section 7 hereof.

(c) Termination Upon Death or Permanent Disability. Except as required by law and as provided in Section 7 hereof, all benefits and other rights of Employee hereunder shall be terminated by the death or permanent disability of the Employee. For the purposes of this Agreement, permanent disability is defined as Employee being incapable of performing his duties to the Company by reason of any medically determined physical or mental impairment that can be expected to last for a period of more than six consecutive months from the first date of the Employee's absence due to the disability. The Company will give Employee at least four weeks written notice of termination due to such disability.

(d) Termination by the Company for Cause. The Company may terminate Employee's employment for cause, in which case, Employee will not be entitled to any severance pay. For the purposes of this Agreement, the Company will have Cause to terminate Employee's employment as the result of:

(i) willful material fraud or material dishonesty in connection with Employee's performance hereunder;

(ii) failure by Employee to materially perform the material duties of his job as Senior Vice President, Research and Development, and Chief Medical Officer, as documented pursuant to the Company's performance management process and procedures;

(iii) material breach of this Agreement or the Company's policies set forth on the Company's Intranet Portal under "Policy Manual";

(iv) misappropriation of a material business opportunity of the Company;

(v) misappropriation of any Company funds or property; or

(vi) conviction of, or the entering of, a plea of guilty, or no contest, with respect to a felony or the equivalent thereof.

(e) Notice and Opportunity to Cure. Notwithstanding the foregoing, it shall be a condition precedent to the Company's right to terminate the Employee's employment for the reasons set forth in Sections 6(d)(ii) or (iii) of this Agreement that (i) the Company shall first have given the Employee written notice stating with specificity the reason for the termination ("breach") and (ii) if such breach is capable of cure or remedy, Employee will have a period of thirty (30) days after the notice is given to remedy the breach, unless such breach cannot be cured or remedied within thirty (30) days, in which case the period for remedy or cure shall be extended for a reasonable time (not to exceed an additional thirty (30) days), provided the Employee has made and continues to make a diligent effort to effect such remedy or cure.

(f) Resignation from the Board of Directors of the Company ("Board"). If Employee is a member of the Board at the time of termination of his employment with the Company (regardless of the reason(s) therefor), Employee shall be deemed to have resigned from the Board effective as of the date of such termination of employment, unless Employee and the Company agree otherwise in writing.

(g) Return of Company Property. Upon termination of employment for any reason, Employee shall immediately return to the Company all documents, telephones, computers, pagers, keys, credit cards, other property and records of the Company, and all copies thereof, within Employee's possession, custody or control.

7. Severance Pay and Other Benefits. The following provisions of this Section 7 shall apply upon the occurrence of an event of termination as provided in Section 6(a) for Good Reason, Section 6(b) or Section 6(c).

(a) Cash Severance Pay. The Company shall pay Employee, or in the event of his subsequent death or permanent disability, his beneficiary or beneficiaries of his estate, as the case may be, as severance pay or liquidated damages, or both, (i) a severance payment in an amount equal to 0.75 times Employee's annual base salary as in effect immediately prior to the termination, and (ii) a severance payment equal to a prorated portion of the Employee's annual target bonus in effect for the fiscal year in which the termination occurs calculated by multiplying the annual target bonus by a fraction, the numerator of which shall be the number of calendar months (including a portion of any such month) during which the Employee was employed by the Company prior to the occurrence of the termination during such fiscal year, and the denominator of which shall be 12; provided that if Employee has been an officer of the Company for less than one year at the time of such termination, Employee's severance pay shall be limited to an amount equal to .5 times Employee's annual base salary as in effect immediately prior to the termination ; and provided further, if Employee is terminated other than for Cause under Section 6(d) above, after December 31 of any year in which he/she was a participant in the MICP, Employee shall be entitled to receive his bonus payment for the year just ended consistent with his performance against his MICP objectives. Such severance payments shall be in lieu of any other severance payment to which the Employee shall be entitled as a result of such termination pursuant to this Agreement, any other employment agreement with or offer letter from the Company or any of its affiliates or the Company's or any of its affiliate's then existing severance plans and policies, except in those circumstances where the provisions of the Change of Control Severance Agreement, effective as of April 24, 2012, between Employee and XOMA Corporation, by such agreement's express terms, apply, in which case the provisions of such agreement providing for severance payment(s) to Employee as a result of such termination shall apply in lieu of the provisions of this Agreement relating thereto. The severance payment described in Section 7(a)(i) above, shall be paid in monthly installments over nine (9) months (the "Severance Payment Period"), with the first two (2) of such monthly installments being paid after expiration of any revocation period therefore and sixty (60) days after the date of termination and the remaining monthly installments being paid monthly thereafter until fully paid. The severance payments described in Section 7(a)(ii) above, shall be paid in a lump sum sixty (60) days after the date of termination; provided, however, that all of such severance payments shall be subject to the requirements of Section 7(c) and Section 7(e) below.

(b) Group Health Coverage and Certain Other Benefits. In addition, during a period of nine (9) months following an event of termination under Section 6(a), for Good Reason only, or Section 6(b), (i) the Company shall pay for the full cost of the coverage of the Employee and Employee's spouse and eligible dependents under any group health plans of the Company on the date of such termination of employment at the same level of health (i.e., medical, vision and dental) coverage and benefits as in effect for the Employee or such covered dependents on the date immediately preceding the date of the Employee's termination; provided, however, that (A) Employee and Employee's spouse and eligible dependents each constitutes a qualified beneficiary, as defined in Section 4980B(g)(1) of the Internal Revenue Code of 1986, as amended (the "Code"); and (B) Employee elects continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), within the time period prescribed pursuant to COBRA; and (ii) if Employee is, at the time of such termination, an eligible participant in the Company's mortgage differential program, the Company shall continue to make mortgage assistance payments to Employee pursuant to such program as in effect at the time of such termination. Notwithstanding the foregoing, the payments by the Company for such group health coverage and/or mortgage assistance, as applicable, shall cease prior to the expiration of the nine (9) month period in this Section 7(b) upon the employment of the Employee by another employer. Furthermore, if, at the time of the termination of Employee's employment under paragraph 6(a), Employee is the obligor of a "forgivable" loan (i.e., a loan which by its terms is to be considered forgiven by the Company and paid by the obligor in circumstances other than actual repayment) from the Company, then, notwithstanding any provisions of such loan to the contrary, the outstanding balance of such loan shall be immediately due and payable, together with any accrued and unpaid interest thereon.

(c) Section 409A of the Code. Notwithstanding any provision to the contrary in this Agreement, if the Employee is deemed on the date of his "separation from service" (within the meaning of Treas. Reg. Section 1.409A-1(h)) with the Company to be a "specified employee" (within the meaning of Treas. Reg. Section 1.409A-1(i)), then with regard to any payment or benefit (including, without limitation, any mortgage assistance payment or loan forgiveness referred to above) that is considered deferred compensation under Section 409A of the code payable on account of a "separation from service" that is required to be delayed pursuant to Section 409A(a)(2)(B) of the Code (after taking into account any applicable exceptions to such requirement), such payment or benefit shall be made or provided on the date that is the earlier of (i) the expiration of the six (6)-month period measured from the date of the Employee's "separation from service," or (ii) the date of the Employee's death (the "Delay Period"). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this Section 7(c) (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to the Employee in a lump sum and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein. Notwithstanding any provision of this Agreement to the contrary, for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment, references to the Employee's "termination of employment" (and corollary terms) with the Company shall be construed to refer to Employee's "separation from service" (within the meaning of Treas. Reg. Section 1.409A-1(h)) with the Company.

(d) Outplacement Program. Upon the occurrence of an event of termination under Section 6(a) for Good Reason or Section 6(b), Employee will immediately become entitled to participate in a six (6) month executive outplacement program provided by an executive outplacement service selected by the Company, at the Company's expense not to exceed eight thousand dollars ($8,000) paid directly to the outplacement service.

(e) Release of Claims. As a condition of entering into this Agreement and receiving the severance benefits under this Section 7, Employee agrees to execute, on or before the date that is fifty (50) days following the date of termination, and not revoke a release of claims agreement substantially in the form attached hereto as Exhibit A upon the termination of the Employee's employment with the Company. Such release shall not, however, apply to the rights and claims of the Employee under this Agreement, any indemnification agreement between the Employee and XOMA Corporation (or its successor or acquirer), the by-laws of XOMA Corporation (or its successor or acquirer), the share award agreements between the Employee and XOMA Corporation (or its successor or acquirer), or any employee benefit plan of which the Employee is a participant and under which all benefits due under such plan have not yet been paid or provided.

8. Post-Termination Obligations. All payments and benefits provided to Employee under this Agreement shall be subject to Employee's compliance with the following provisions during the term of his employment and for the Severance Payment Period:

(a) Confidential Information and Competitive Conduct. Employee shall not, to the detriment of the Company, or any of its affiliates, disclose or reveal to any unauthorized person any trade secret or other confidential information relating to the Company or its affiliates or to any businesses operated by them, and Employee confirms that such information constitutes the exclusive property of the Company. Employee shall not otherwise act or conduct herself/himself to the material detriment of the Company or its affiliates, or in a manner which is inimical or contrary to the interests thereof, and, for a period of nine (9) months following an event of termination under Sections 6(a) or (b), shall not, directly or indirectly, engage in or render any service (whether to a person, firm or business) in direct competition with the Company; provided, however, that Employee's ownership of less than five percent (5%) of the outstanding stock of a corporation shall not itself be deemed to constitute such competition. Employee recognizes that the possible restrictions on his activities which may occur as a result of his performance of his obligations under this Section 8 are required for the reasonable protection of the Company and its investments. For purposes hereof, "in direct competition" means engaged in the research, development and/or marketing and sale of biological materials intended for use as therapeutic products in one or more of the same indications, and that utilize one or more of the same scientific bases (e.g., in the case of a therapeutic antibody, targets the same signal initiating pathway), as a product or product candidate the research, development and/or marketing and sale of which is an active part of the Company's business plan at the time of Employee's termination.

(b) Agreement Not to Solicit Employees. Employee agrees that during the term of his employment with the Company or any entity owned by or affiliated with the Company (whether pursuant to this Agreement or otherwise), and for one (1) year following the termination thereof for any reason whatsoever, he/she will not, either directly or indirectly, on his own behalf or in the service or on behalf of others, solicit or divert, attempt to solicit or divert or induce or attempt to induce to discontinue employment with the Company, or any subsidiary or affiliate thereof, any person employed by the Company, or any subsidiary or affiliate thereof, whether or not such employee is a full time employee or a temporary employee of the Company, or any subsidiary or affiliate thereof, and whether or not such employment is for a determined period or is at-will.

(c) Non-Disparagement. The Employee and the Company agree to refrain from (i) any defamation, libel or slander or any communication of any facts or opinions that might tend to disparage, degrade or harm the reputation of the other and its respective officers, directors, employees, representatives, investors, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations and assigns or (ii) tortious interference with the contracts and relationships of the other and its respective officers, directors, employees, representatives, investors, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations and assigns.

(d) Failure of Employee to Comply. If, for any reason other than death or disability, Employee shall, without written consent of the Company, fail to comply with the provisions of Sections 8(a), (b) or (c) above, (i) his rights to any future payments or other benefits hereunder shall terminate immediately; (ii) the Company's obligations to make such payments and provide such benefits shall cease immediately; and (iii) Employee shall refund to the Company all termination payments received by Employee pursuant to this Agreement.

(e) Understanding of Covenants. The Employee represents that the Employee (i) is familiar with the foregoing covenants not to compete, not to solicit and not to disparage, and (ii) is fully aware of the Employee's obligations hereunder, including, without limitation, the reasonableness of the length of time, scope and geographic coverage of the covenant not to compete.

(f) Remedies. Employee agrees that monetary damages would not be adequate compensation for any loss incurred by the Company by reason of a breach of the provisions of this Section 8 and hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

9. General Provisions.

(a) Binding Agreement. This Agreement shall be binding upon, and inure to the benefit of, Employee and the Company and their respective permitted successors and assigns.

(b) Compliance with Section 409A of the Code.

(i) It is intended that this Agreement will comply with Section 409A of the Code and any regulations and guidelines promulgated thereunder (collectively, "Section 409A"), to the extent the Agreement is subject thereto, and the Agreement shall be interpreted on a basis consistent with such intent. If an amendment of the Agreement is necessary in order for it to comply with Section 409A, the parties hereto will negotiate in good faith to amend the Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible. No action or failure to act pursuant to this Section 9(b) shall subject the Company to any claim, liability, or expense, and the Company shall not have any obligation to indemnify or otherwise protect the Employee from the obligation to pay any taxes, interest or penalties pursuant to Section 409A.

(ii) With respect to any reimbursement or in-kind benefit arrangements of the Company and its subsidiaries that constitute deferred compensation for purposes of Section 409A, except as otherwise permitted by Section 409A, the following conditions shall be applicable: (A) the amount eligible for reimbursement, or in-kind benefits provided, under any such arrangement in one calendar year may not affect the amount eligible for reimbursement, or in-kind benefits to be provided, under such arrangement in any other calendar year (except that the health and dental plans may impose a limit on the amount that may be reimbursed or paid), (B) any reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and (C) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit. Whenever a payment under this Agreement specifies a payment period with reference to a number of days (e.g., "payment shall be made within thirty (30) days after termination of employment"), the actual date of payment within the specified period shall be within the sole discretion of the Company. Whenever payments under this Agreement are to be made in installments, each such installment shall be deemed to be a separate payment for purposes of Section 409A.

(c) Notices. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. In the case of the Employee, mailed notices shall be addressed to the Employee at the home address that the Employee most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

10. Successors and Assigns.

(a) Company's Successors. Any successor to the Company (whether direct or indirect and whether by purchase, lease, merger, amalgamation, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets shall assume the Company's obligations under this Agreement and agree expressly to perform the Company's obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term "Company" shall include any successor to the Company's business and/or assets which executes and delivers the assumption agreement described in this subsection (a) or which becomes bound by the terms of this Agreement by operation of law.

(b) Employee's Successors. Without the written consent of the Company, the Employee shall not assign or transfer this Agreement or any right or obligation under this Agreement to any other person or entity. Notwithstanding the foregoing, the terms of this Agreement and all rights of the Employee hereunder shall inure to the benefit of, and be enforceable by, the Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

11. Miscellaneous Provisions.

(a) Amendment of Agreement. This Agreement may not be modified or amended except by an instrument in writing signed by the parties hereto.

(b) Waiver. No term or condition of this Agreement shall be deemed to have been waived except by written instrument of the party charged with such waiver. No such written waiver shall be deemed a continuing waiver unless specifically stated therein, and each such waiver shall operate only as to the specific term or condition waived.

12. Severability. In the event any provision of this Agreement or any part hereof is held invalid, such invalidity shall not affect any remaining part of such provision or any other provision. If any court construes any provision of this Agreement to be illegal, void or unenforceable because of the duration or the area or matter covered thereby, such court shall reduce the duration, area or matter of such provision, and, in its reduced form, such provision shall then be enforceable and shall be enforced.

13. Governing Law. This Agreement has been executed and delivered in the State of California, and its validity interpretation, performance, and enforcement shall be governed by the laws of said State. The parties agree that any legal disputes concerning this Agreement, or Employee's next employment, will be filed in Alameda County, California.

14. Legal Fees. If any action or proceeding in arbitration or law is commenced to enforce any of the provisions or rights under this Agreement or Exhibit A hereto, the unsuccessful party to such action or proceeding, as determined by arbitration or by the court in a final judgment or decree, will pay the successful party all costs, expenses, and reasonable attorney's fees incurred therein by such party (including, without limitation, such costs, expenses and fees on any appeal), and if such successful party will recover judgment in any such action or proceedings, such costs, expenses and attorneys' fees will be included as part of such judgment.

15. Arbitration. All claims or controversies between Employee and the Company relating in any manner whatsoever to Employee's employment with the Company or the termination of that employment shall be resolved by arbitration in front of one neutral arbitrator in accordance with the then applicable Employment Dispute Resolution rules of the American Arbitration Association ("the AAA Rules"). Claims subject to arbitration shall include contract claims, tort claims and claims relating to compensation and stock options, as well as claims based on any federal, state, or local law, statute, or regulation, including but not limited to any claims arising under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the California Fair Employment and Housing Act ("Arbitrable Claims"). However, claims for unemployment insurance, claims under applicable workers' compensation laws, and claims under the National Labor Relations Act shall not be subject to arbitration. The arbitrator shall apply the same substantive law, with the same statutes of limitations and same remedies that would apply if the claims were brought in a court of law. The arbitrator shall have the authority to consider and decide pre-hearing motions, including dispositive motions.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument

17. Effect of Prior Agreements. This Agreement contains the entire understanding between the parties hereto and, effective as of November 1, 2012, shall replace and supersede all prior employment agreements between the Company and Employee, but shall not replace or supersede the Change of Control Severance Agreement referred to above, any indemnification agreement between the Employee and XOMA Corporation (or its successor or acquirer), the share award agreements between the Employee and XOMA Corporation (or its successor or acquirer), or any employee benefit plan in which the Employee is a participant and under which all benefits due under such plan have not yet been paid or provided.

IN WITNESS WHEREOF, each of the parties hereto has signed this Agreement, and it shall be effective as of April 24, 2012.

XOMA CORPORATION

John Varian
Chief Executive Officer

Paul D. Rubin, M.D.

EXHIBIT A

FORM RELEASE OF CLAIMS AGREEMENT

This Release of Claims Agreement (this "Agreement") is made and entered into by and between XOMA Corporation (the "Company") and Paul D. Rubin, M.D. (the "Employee").

WHEREAS, the Employee was employed by the Company; and

WHEREAS, the Company and the Employee have entered into an Officer Employment Agreement effective as of April 24, 2012 (the "Employment Agreement").

NOW THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Employee (collectively referred to as the "Parties") desiring to be legally bound do hereby agree as follows:

1. Termination. The Employee's employment with the Company terminated on _____, 20__.

2. Consideration. Subject to and in consideration of the Employee's full and complete release of claims as provided herein, the Company has agreed to pay the Employee certain benefits and the Employee has agreed to provide certain benefits to the Company, both as set forth in the Employment Agreement.

3. Release of Claims. The Employee agrees that the foregoing consideration represents settlement in full of all currently outstanding obligations owed to the Employee by the Company. The Employee, on the Employee's own behalf and the Employee's respective heirs, family members, executors and assigns, hereby fully and forever releases the Company and its past, present and future officers, agents, directors, employees, investors, shareholders, administrators, affiliates, divisions, subsidiaries, parents, predecessor and successor corporations, and assigns, from, and agrees not to sue or otherwise institute or cause to be instituted any legal or administrative proceedings concerning any claim, duty, obligation or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that the Employee may possess arising from any omissions, acts or facts that have occurred up until and including the Effective Date (as defined below) of this Agreement including, without limitation:

(a) any and all claims relating to or arising from the Employee's employment relationship with the Company and the termination of that relationship;

(b) any and all claims relating to, or arising from, the Employee's right to purchase, or actual purchase of shares of stock of the Company, including, without limitation, any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty under applicable state corporate law and securities fraud under any state or federal law;

(c) any and all claims based on contract, tort or statute including, but not limited to, claims for wrongful discharge of employment, termination in violation of public policy, discrimination, breach of contract (both express and implied), breach of a covenant of good faith and fair dealing (both express and implied), promissory estoppel, negligent or intentional infliction of emotional distress, negligent or intentional misrepresentation, negligent or intentional interference with contract or prospective economic advantage, unfair business practices, defamation, libel, slander, negligence, personal injury, assault, battery, invasion of privacy, false imprisonment and conversion;

(d) any and all claims for violation of any federal, state or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1974, The Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act, and/or the California Labor Code and all amendments to each such Act/statute as well as the regulations issued thereunder;

(e) any and all claims for violation of the federal or any state constitution;

(f) any and all claims arising out of any other laws and regulations relating to employment or employment discrimination; and

(g) any and all claims for attorneys' fees and costs.

The Employee agrees that the release set forth in this Section 3 shall be and remain in effect in all respects as a complete general release as to the matters released. Notwithstanding the foregoing, this release does not extend to any obligations now or subsequently incurred under this Agreement, the post-termination obligations set forth in Section 8 of the Employment Agreement, the Indemnification Agreement between the Employee and the Company (or its successor or acquirer), the outstanding stock award agreements between the Employee and the Company (or its successor or acquirer), or any employee benefit plan of which the Employee is a participant and under which all benefits due under such plan have not yet been paid or provided.

4. Acknowledgment of Waiver of Claims under ADEA. The Employee acknowledges that the Employee is waiving and releasing any rights the Employee may have under the Age Discrimination in Employment Act of 1967 ("ADEA") and that this waiver and release is knowing and voluntary. The Employee and the Company agree that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Agreement. The Employee acknowledges that the consideration given for this waiver and release agreement is in addition to anything of value to which the Employee was already entitled. The Employee further acknowledges that the Employee has been advised by this writing that (a) the Employee should consult with an attorney prior to executing this Agreement; (b) the Employee has at least twenty-one (21) days within which to consider this Agreement; (c) the Employee has seven (7) days following the execution of this Agreement by the Parties to revoke the Agreement; and (d) this Agreement shall not be effective until the revocation period has expired. Any revocation should be in writing and delivered to the Legal Department at the Company by the close of business on the seventh (7^{th}) day from the date that the Employee signs this Agreement.

5. Civil Code Section 1542. The Employee represents that the Employee is not aware of any claims against the Company other than the claims that are released by this Agreement. The Employee acknowledges that the Employee has been advised by legal counsel and is familiar with the provisions of California Civil Code Section 1542, which provides as follows:

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

The Employee, being aware of said code section, agrees to expressly waive any rights the Employee may have thereunder, as well as under any other statute or common law principles of similar effect.

6. No Pending or Future Lawsuits. The Employee represents that the Employee has no injuries that have not yet been reported to the Company's workers' compensation carrier and no lawsuits, claims or actions pending in the Employee's name, or on behalf of any other person or entity, against the Company or any other person or entity referred to herein. The Employee also represents that the Employee does not intend to bring any claims on the Employee's own behalf or on behalf of any other person or entity against the Company or any other person or entity referred to herein except, if necessary, with respect to the agreements listed in the last sentence of Section 4 of this Agreement.

7. Confidentiality. The Employee agrees to use the Employee's best efforts to maintain in confidence the existence of this Agreement, the contents and terms of this Agreement, and the consideration for this Agreement (hereinafter collectively referred to as "Release Information"). The Employee agrees to take every reasonable precaution to prevent disclosure of any Release Information to third parties and agrees that there will be no publicity, directly or indirectly, concerning any Release Information. The Employee agrees to take every precaution to disclose Release Information only to those attorneys, accountants, governmental entities and family members who have a reasonable need to know of such Release Information.

8. No Adverse Cooperation. The Employee agrees the Employee will not act in any manner that might damage the business of the Company. The Employee agrees that the Employee will not counsel or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges or complaints by any third party against the Company and/or any officer, director, employee, agent, representative, shareholder or attorney of the Company, unless compelled under a subpoena or other court order to do so.

9. Costs. The Parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with this Agreement.

10. Authority. The Company represents and warrants that the undersigned has the authority to act on behalf of the Company and to bind the Company and all who may claim through it to the terms and conditions of this Agreement. The Employee represents and warrants that the Employee has the capacity to act on the Employee's own behalf and on behalf of all who might claim through the Employee to bind them to the terms and conditions of this Agreement.

11. No Representations. The Employee represents that the Employee has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.

12. Severability. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.

13. Entire Agreement. This Agreement and the Employment Agreement and the agreements and plans referenced therein represent the entire agreement and understanding between the Company and the Employee concerning the Employee's separation from the Company, and supersede and replace any and all prior agreements and understandings concerning the Employee's relationship with the Company and the Employee's compensation by the Company. This Agreement may only be amended in writing signed by the Employee and an executive officer of the Company.

14. Governing Law. This Agreement shall be governed by the internal substantive laws, but not the choice of law rules, of the State of California.

15. Effective Date. This Agreement is effective eight (8) days after it has been signed by the Parties (the "Effective Date") unless it is revoked by the Employee within seven (7) days of the execution of this Agreement by the Employee.

16. Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

17. Voluntary Execution of Agreement. This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing all claims. The Parties acknowledge that:

(a) they have read this Agreement;

(b) they have been represented in the preparation, negotiation and execution of this Agreement by legal counsel of their own choice or that they have voluntarily declined to seek such counsel;

(c) they understand the terms and consequences of this Agreement and of the releases it contains; and

(d) they are fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

XOMA CORPORATION

By: _____

Title: _____

Date: _____

EMPLOYEE

_____

Paul D. Rubin, M.D.

Date: _____

EXHIBIT 10.25

OFFICER EMPLOYMENT AGREEMENT

This Officer Employment Agreement ("Agreement"), dated this 10th day of March, 2014, by and between XOMA Corporation ("XOMA" or the "Company"), a Delaware limited liability company with its principal office at 2910 Seventh Street, Berkeley, California, and Patrick J. Scannon, M.D., Ph.D. ("Employee"), an individual residing at 176 Edgewood Drive, San Francisco, California.

WHEREAS, the Company wishes to enter into this Agreement to retain or assure the Company of the continued services of Employee; and

WHEREAS, Employee is willing to enter into this Agreement and to serve or to continue to serve in the employ of the Company upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto hereby agree as follows:

1. Employment. The Company agrees to employ or to continue to employ Employee, and Employee agrees to be or continue to be employed by the Company, for the period referred to in Section 3 hereof and upon the other terms and conditions herein provided.

2. Position and Responsibilities. Employee shall devote his reasonable best efforts and at least 50% of his time and attention to his employment by the Company. He shall perform the duties of Director, Executive Vice President and Chief Scientific Officer and/or such other reasonable duties as may be determined from time to time by the Chief Executive Officer of the Company ("CEO"). During his employment with the Company, Employee may not accept part time consulting or other business or non-profit opportunities without first obtaining written approval from the CEO.

3. Term of Employment. This Agreement shall become effective and the term of employment pursuant to this Agreement shall commence on January 1, 2014 and continue until December 31, 2014. This Agreement will be automatically extended (without further action by the parties) for an additional one–year term thereafter and again on each subsequent one-year anniversary thereof unless it is terminated by either the Employee or the Company at any time with thirty (30) days prior written notice, unless Employee is otherwise terminated by the Company or he resigns from the Company pursuant to Section 6 hereof.

4. Compensation and Reimbursement of Expenses.

(a) Compensation. For all services rendered by Employee as Director, Executive Vice President and Chief Scientific Officer during his employment under this Agreement, the Company shall pay Employee as compensation a base salary at a rate of not less than $250,000.00 per annum. In addition, Employee shall be a participant in the Company's Management Incentive Compensation Plan ("MICP"). All taxes and governmentally required withholding shall be deducted in conformity with applicable laws.

(b) Share Options. Employee will be granted share options and/or other share or share-based awards from time to time as per the Company's standard practices and subject to approval by the Company's Board of Directors.

(c) Reimbursement of Expenses. The Company shall pay or reimburse Employee for all reasonable travel and other expenses incurred by Employee in performing his obligations under this Agreement in a manner consistent with past Company practice. The Company further agrees to furnish Employee with such assistance and accommodations as shall be suitable to the character of Employee's position with the Company, adequate for the performance of his duties and consistent with past Company practice.

5. Participation in Benefit Plans. The payments provided in Section 4 hereof are in addition to benefits Employee is entitled to under any group hospitalization, health, dental care, disability insurance, surety bond, death benefit plan, travel and/or accident insurance, other allowance and/or executive compensation plan, including, without limitation, any senior staff incentive plan, capital accumulation programs, restricted or non-restricted share purchase plan, share option plan, retirement income or pension plan or other present or future group employee benefit plan or program of the Company for which key executives are or shall become eligible, and Employee shall be eligible to receive during the period of his employment under this Agreement, all benefits and emoluments for which key executives are eligible under every such plan or program to the extent permissible under the general terms and provisions of such plans or programs and in accordance with the provisions thereof.

6. Termination of Employment.

(a) Termination by Employee. As provided in Section 3, Employee has the right to terminate his employment with the Company at any time and for any reason. Employee will not be entitled to any severance pay or other benefits from the Company if he terminates his employment with the Company, except if such termination is for Good Reason in accordance with the terms hereof. In case of termination of this Agreement for Good Reason by Employee, Employee shall be entitled to the severance pay and other benefits set forth in Section 7 hereof. "Good Reason" shall mean, unless remedied by the Company within sixty (60) days after the receipt of written notice from the Employee as provided below or consented to in writing by the Employee, (i) the material diminution of any material duties or responsibilities of the Employee; or (ii) a material reduction in the Employee's base salary; provided, however, that the Employee must have given written notice to the Company of the existence of any such condition within ninety (90) days after the initial existence thereof (and the failure to provide such timely notice will constitute a waiver of the Employee's ability to terminate employment for Good Reason as a result of such condition), and the Company will have a period of sixty (60) days from receipt of such written notice during which it may remedy the condition; provided further, however, that any termination of employment by the Employee for Good Reason must occur not later than one hundred eighty (180) days following the initial existence of the condition giving rise to such Good Reason in order to qualify for the severance pay and other benefits set forth in Section 7 hereof.

(b) Termination by the Company Without Cause. Employee may be terminated by the Company without Cause (as defined below), but in such case, Employee shall be entitled to the severance pay and other benefits set forth in Section 7 hereof.

(c) Termination Upon Death or Permanent Disability. Except as required by law and as provided in Section 7 hereof, all benefits and other rights of Employee hereunder shall be terminated by the death or permanent disability of the Employee. For the purposes of this Agreement, permanent disability is defined as Employee being incapable of performing his duties to the Company by reason of any medically determined physical or mental impairment that can be expected to last for a period of more than six consecutive months from the first date of the Employee's absence due to the disability. The Company will give Employee at least four weeks written notice of termination due to such disability.

(d) Termination by the Company for Cause. The Company may terminate Employee's employment for cause, in which case, Employee will not be entitled to any severance pay. For the purposes of this Agreement, the Company will have Cause to terminate Employee's employment as the result of:

(i) willful material fraud or material dishonesty in connection with Employee's performance hereunder;

(ii) failure by Employee to materially perform the material duties of his job as Director, Executive Vice President and Chief Scientific Officer, as documented pursuant to the Company's performance management process and procedures;

(iii) material breach of this Agreement or the Company's policies set forth on the Company's Intranet Portal under "Policy Manual";

(iv) misappropriation of a material business opportunity of the Company;

(v) misappropriation of any Company funds or property; or

(vi) conviction of, or the entering of, a plea of guilty, or no contest, with respect to a felony or the equivalent thereof.

(e) Notice and Opportunity to Cure. Notwithstanding the foregoing, it shall be a condition precedent to the Company's right to terminate the Employee's employment for the reasons set forth in Sections 6(d)(ii) or (iii) of this Agreement that (i) the Company shall first have given the Employee written notice stating with specificity the reason for the termination ("breach") and (ii) if such breach is capable of cure or remedy, Employee will have a period of thirty (30) days after the notice is given to remedy the breach, unless such breach cannot be cured or remedied within thirty (30) days, in which case the period for remedy or cure shall be extended for a reasonable time (not to exceed an additional thirty (30) days), provided the Employee has made and continues to make a diligent effort to effect such remedy or cure.

(f) Resignation from the Board of Directors of the Company ("Board"). If Employee is a member of the Board at the time of termination of his employment with the Company (regardless of the reason(s) therefor), Employee shall be deemed to have resigned from the Board effective as of the date of such termination of employment, unless Employee and the Company agree otherwise in writing.

(g) Return of Company Property. Upon termination of employment for any reason, Employee shall immediately return to the Company all documents, telephones, computers, pagers, keys, credit cards, other property and records of the Company, and all copies thereof, within Employee's possession, custody or control.

7. Severance Pay and Other Benefits. The following provisions of this Section 7 shall apply upon the occurrence of an event of termination as provided in Section 6(a) for Good Reason, Section 6(b) or Section 6(c).

(a) Cash Severance Pay. The Company shall pay Employee, or in the event of his subsequent death or permanent disability, his beneficiary or beneficiaries of his estate, as the case may be, as severance pay or liquidated damages, or both, (i) a severance payment in an amount equal to 0.75 times Employee's annual base salary as in effect immediately prior to the termination, and (ii) a severance payment equal to a prorated portion of the Employee's annual target bonus in effect for the fiscal year in which the termination occurs calculated by multiplying the annual target bonus by a fraction, the numerator of which shall be the number of calendar months (including a portion of any such month) during which the Employee was employed by the Company prior to the occurrence of the termination during such fiscal year, and the denominator of which shall be 12; provided that if Employee has been an officer of the Company for less than one year at the time of such termination, Employee's severance pay shall be limited to an amount equal to .5 times Employee's annual base salary as in effect immediately prior to the termination ; and provided further, if Employee is terminated other than for Cause under Section 6(d) above, after December 31 of any year in which he was a participant in the MICP, Employee shall be entitled to receive his bonus payment for the year just ended consistent with his performance against his MICP objectives. Such severance payments shall be in lieu of any other severance payment to which the Employee shall be entitled as a result of such termination pursuant to this Agreement, any other employment agreement with or offer letter from the Company or any of its affiliates or the Company's or any of its affiliate's then existing severance plans and policies, except in those circumstances where the provisions of the Change of Control Severance Agreement, effective as of January 1, 2014, between Employee and the Company, by such agreement's express terms, apply, in which case the provisions of such agreement providing for severance payment(s) to Employee as a result of such termination shall apply in lieu of the provisions of this Agreement relating thereto. The severance payment described in Section 7(a)(i) above, shall be paid in monthly installments over nine (9) months (the "Severance Payment Period"), with the first two (2) of such monthly installments being paid after expiration of any revocation period therefore and sixty (60) days after the date of termination and the remaining monthly installments being paid monthly thereafter until fully paid. The severance payments described in Section 7(a)(ii) above, shall be paid in a lump sum sixty (60) days after the date of termination; provided, however, that all of such severance payments shall be subject to the requirements of Section 7(c) and Section 7(e) below.

(b) Group Health Coverage and Certain Other Benefits. In addition, during a period of nine (9) months following an event of termination under Section 6(a), for Good Reason only, or Section 6(b), (i) the Company shall pay for the full cost of the coverage of the Employee and Employee's spouse and eligible dependents under any group health plans of the Company on the date of such termination of employment at the same level of health (i.e., medical, vision and dental) coverage and benefits as in effect for the Employee or such covered dependents on the date immediately preceding the date of the Employee's termination; provided, however, that (A) Employee and Employee's spouse and eligible dependents each constitutes a qualified beneficiary, as defined in Section 4980B(g)(1) of the Internal Revenue Code of 1986, as amended (the "Code"); and (B) Employee elects continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), within the time period prescribed pursuant to COBRA; and (ii) if Employee is, at the time of such termination, an eligible participant in the Company's mortgage differential program, the Company shall continue to make mortgage assistance payments to Employee pursuant to such program as in effect at the time of such termination. Notwithstanding the foregoing, the payments by the Company for such group health coverage and/or mortgage assistance, as applicable, shall cease prior to the expiration of the nine (9) month period in this Section 7(b) upon the employment of the Employee by another employer. Furthermore, if, at the time of the termination of Employee's employment under paragraph 6(a), Employee is the obligor of a "forgivable" loan (i.e., a loan which by its terms is to be considered forgiven by the Company and paid by the obligor in circumstances other than actual repayment) from the Company, then, notwithstanding any provisions of such loan to the contrary, the outstanding balance of such loan shall be immediately due and payable, together with any accrued and unpaid interest thereon.

(c) Section 409A of the Code. Notwithstanding any provision to the contrary in this Agreement, if the Employee is deemed on the date of his "separation from service" (within the meaning of Treas. Reg. Section 1.409A-1(h)) with the Company to be a "specified employee" (within the meaning of Treas. Reg. Section 1.409A-1(i)), then with regard to any payment or benefit (including, without limitation, any mortgage assistance payment or loan forgiveness referred to above) that is considered deferred compensation under Section 409A of the code payable on account of a "separation from service" that is required to be delayed pursuant to Section 409A(a)(2)(B) of the Code (after taking into account any applicable exceptions to such requirement), such payment or benefit shall be made or provided on the date that is the earlier of (i) the expiration of the six (6)-month period measured from the date of the Employee's "separation from service," or (ii) the date of the Employee's death (the "Delay Period"). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this Section 7(c) (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to the Employee in a lump sum and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein. Notwithstanding any provision of this Agreement to the contrary, for purposes of any provision of this Agreement providing for the payment of any amounts or benefits upon or following a termination of employment, references to the Employee's "termination of employment" (and corollary terms) with the Company shall be construed to refer to Employee's "separation from service" (within the meaning of Treas. Reg. Section 1.409A-1(h)) with the Company.

(d) Outplacement Program. Upon the occurrence of an event of termination under Section 6(a) for Good Reason or Section 6(b), Employee will immediately become entitled to participate in a six (6) month executive outplacement program provided by an executive outplacement service selected by the Company, at the Company's expense not to exceed eight thousand dollars ($8,000) paid directly to the outplacement service.

(e) Release of Claims. As a condition of entering into this Agreement and receiving the severance benefits under this Section 7, Employee agrees to execute, on or before the date that is fifty (50) days following the date of termination, and not revoke a release of claims agreement substantially in the form attached hereto as Exhibit A upon the termination of the Employee's employment with the Company. Such release shall not, however, apply to the rights and claims of the Employee under this Agreement, any indemnification agreement between the Employee and the Company (or its successor or acquirer), the bylaws of the Company (or its successor or acquirer), the share award agreements between the Employee and the Company (or its successor or acquirer), or any employee benefit plan of which the Employee is a participant and under which all benefits due under such plan have not yet been paid or provided.

8. Post-Termination Obligations. All payments and benefits provided to Employee under this Agreement shall be subject to Employee's compliance with the following provisions during the term of his employment and for the Severance Payment Period:

(a) Confidential Information and Competitive Conduct. Employee shall not, to the detriment of the Company, or any of its affiliates, disclose or reveal to any unauthorized person any trade secret or other confidential information relating to the Company or its affiliates or to any businesses operated by them, and Employee confirms that such information constitutes the exclusive property of the Company. Employee shall not otherwise act or conduct himself to the material detriment of the Company or its affiliates, or in a manner which is inimical or contrary to the interests thereof, and, for a period of nine (9) months following an event of termination under Sections 6(a) or (b), shall not, directly or indirectly, engage in or render any service (whether to a person, firm or business) in direct competition with the Company; provided, however, that Employee's ownership of less than five percent (5%) of the outstanding stock of a corporation shall not itself be deemed to constitute such competition. Employee recognizes that the possible restrictions on his activities which may occur as a result of his performance of his obligations under this Section 8 are required for the reasonable protection of the Company and its investments. For purposes hereof, "in direct competition" means engaged in the research, development and/or marketing and sale of biological materials intended for use as therapeutic products in one or more of the same indications, and that utilize one or more of the same scientific bases (e.g., in the case of a therapeutic antibody, targets the same signal initiating pathway), as a product or product candidate the research, development and/or marketing and sale of which is an active part of the Company's business plan at the time of Employee's termination.

(b) Agreement Not to Solicit Employees. Employee agrees that during the term of his employment with the Company or any entity owned by or affiliated with the Company (whether pursuant to this Agreement or otherwise), and for one (1) year following the termination thereof for any reason whatsoever, he will not, either directly or indirectly, on his own behalf or in the service or on behalf of others, solicit or divert, attempt to solicit or divert or induce or attempt to induce to discontinue employment with the Company, or any subsidiary or affiliate thereof, any person employed by the Company, or any subsidiary or affiliate thereof, whether or not such employee is a full time employee or a temporary employee of the Company, or any subsidiary or affiliate thereof, and whether or not such employment is for a determined period or is at-will.

(c) Non-Disparagement. The Employee and the Company agree to refrain from (i) any defamation, libel or slander or any communication of any facts or opinions that might tend to disparage, degrade or harm the reputation of the other and its respective officers, directors, employees, representatives, investors, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations and assigns or (ii) tortious interference with the contracts and relationships of the other and its respective officers, directors, employees, representatives, investors, shareholders, administrators, affiliates, divisions, subsidiaries, predecessor and successor corporations and assigns.

(d) Failure of Employee to Comply. If, for any reason other than death or disability, Employee shall, without written consent of the Company, fail to comply with the provisions of Sections 8(a), (b) or (c) above, (i) his rights to any future payments or other benefits hereunder shall terminate immediately; (ii) the Company's obligations to make such payments and provide such benefits shall cease immediately; and (iii) Employee shall refund to the Company all termination payments received by Employee pursuant to this Agreement.

(e) Understanding of Covenants. The Employee represents that the Employee (i) is familiar with the foregoing covenants not to compete, not to solicit and not to disparage, and (ii) is fully aware of the Employee's obligations hereunder, including, without limitation, the reasonableness of the length of time, scope and geographic coverage of the covenant not to compete.

(f) Remedies. Employee agrees that monetary damages would not be adequate compensation for any loss incurred by the Company by reason of a breach of the provisions of this Section 8 and hereby agrees to waive the defense in any action for specific performance that a remedy at law would be adequate.

9. General Provisions.

(a) Binding Agreement. This Agreement shall be binding upon, and inure to the benefit of, Employee and the Company and their respective permitted successors and assigns.

(b) Compliance with Section 409A of the Code.

(i) It is intended that this Agreement will comply with Section 409A of the Code and any regulations and guidelines promulgated thereunder (collectively, "Section 409A"), to the extent the Agreement is subject thereto, and the Agreement shall be interpreted on a basis consistent with such intent. If an amendment of the Agreement is necessary in order for it to comply with Section 409A, the parties hereto will negotiate in good faith to amend the Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible. No action or failure to act pursuant to this Section 9(b) shall subject the Company to any claim, liability, or expense, and the Company shall not have any obligation to indemnify or otherwise protect the Employee from the obligation to pay any taxes, interest or penalties pursuant to Section 409A.

(ii) With respect to any reimbursement or in-kind benefit arrangements of the Company and its subsidiaries that constitute deferred compensation for purposes of Section 409A, except as otherwise permitted by Section 409A, the following conditions shall be applicable: (A) the amount eligible for reimbursement, or in-kind benefits provided, under any such arrangement in one calendar year may not affect the amount eligible for reimbursement, or in-kind benefits to be provided, under such arrangement in any other calendar year (except that the health and dental plans may impose a limit on the amount that may be reimbursed or paid), (B) any reimbursement must be made on or before the last day of the calendar year following the calendar year in which the expense was incurred, and (C) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit. Whenever a payment under this Agreement specifies a payment period with reference to a number of days (e.g., "payment shall be made within thirty (30) days after termination of employment"), the actual date of payment within the specified period shall be within the sole discretion of the Company. Whenever payments under this Agreement are to be made in installments, each such installment shall be deemed to be a separate payment for purposes of Section 409A.

(c) Notices. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. In the case of the Employee, mailed notices shall be addressed to the Employee at the home address that the Employee most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

10. Successors.

(a) Company's Successors. Any successor to the Company (whether direct or indirect and whether by purchase, lease, merger, amalgamation, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets shall assume the Company's obligations under this Agreement and agree expressly to perform the Company's obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term "Company" shall include any successor to the Company's business and/or assets which executes and delivers the assumption agreement described in this subsection (a) or which becomes bound by the terms of this Agreement by operation of law.

(b) Employee's Successors. Without the written consent of the Company, the Employee shall not assign or transfer this Agreement or any right or obligation under this Agreement to any other person or entity. Notwithstanding the foregoing, the terms of this Agreement and all rights of the Employee hereunder shall inure to the benefit of, and be enforceable by, the Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

11. Miscellaneous Provisions.

(a) Amendment of Agreement. This Agreement may not be modified or amended except by an instrument in writing signed by the parties hereto.

(b) Waiver. No term or condition of this Agreement shall be deemed to have been waived except by written instrument of the party charged with such waiver. No such written waiver shall be deemed a continuing waiver unless specifically stated therein, and each such waiver shall operate only as to the specific term or condition waived.

12. Severability. In the event any provision of this Agreement or any part hereof is held invalid, such invalidity shall not affect any remaining part of such provision or any other provision. If any court construes any provision of this Agreement to be illegal, void or unenforceable because of the duration or the area or matter covered thereby, such court shall reduce the duration, area or matter of such provision, and, in its reduced form, such provision shall then be enforceable and shall be enforced.

13. Governing Law. This Agreement has been executed and delivered in the State of California, and its validity interpretation, performance, and enforcement shall be governed by the laws of said State. The parties agree that any legal disputes concerning this Agreement, or Employee's next employment, will be filed in Alameda County, California.

14. Legal Fees. If any action or proceeding in arbitration or law is commenced to enforce any of the provisions or rights under this Agreement or Exhibit A hereto, the unsuccessful party to such action or proceeding, as determined by arbitration or by the court in a final judgment or decree, will pay the successful party all costs, expenses, and reasonable attorney's fees incurred therein by such party (including, without limitation, such costs, expenses and fees on any appeal), and if such successful party will recover judgment in any such action or proceedings, such costs, expenses and attorneys' fees will be included as part of such judgment.

15. Arbitration. All claims or controversies between Employee and the Company relating in any manner whatsoever to Employee's employment with the Company or the termination of that employment shall be resolved by arbitration in front of one neutral arbitrator in accordance with the then applicable Employment Dispute Resolution rules of the American Arbitration Association ("the AAA Rules"). Claims subject to arbitration shall include contract claims, tort claims and claims relating to compensation and stock options, as well as claims based on any federal, state, or local law, statute, or regulation, including but not limited to any claims arising under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the California Fair Employment and Housing Act ("Arbitrable Claims"). However, claims for unemployment insurance, claims under applicable workers' compensation laws, and claims under the National Labor Relations Act shall not be subject to arbitration. The arbitrator shall apply the same substantive law, with the same statutes of limitations and same remedies that would apply if the claims were brought in a court of law. The arbitrator shall have the authority to consider and decide pre-hearing motions, including dispositive motions.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument

17. Effect of Prior Agreements. This Agreement contains the entire understanding between the parties hereto and, effective as of January 1, 2014, shall replace and supersede all prior employment agreements between the Company and Employee, but shall not replace or supersede the Change of Control Severance Agreement referred to above, any indemnification agreement between the Employee and the Company (or its successor or acquirer), the share award agreements between the Employee and the Company (or its successor or acquirer), or any employee benefit plan in which the Employee is a participant and under which all benefits due under such plan have not yet been paid or provided.

IN WITNESS WHEREOF, each of the parties hereto has signed this Agreement, and it shall be effective as of January 1, 2014.

XOMA Corporation

By: John Varian
Chief Executive Officer

Patrick J. Scannon, M.D., Ph.D.

EXHIBIT A

FORM RELEASE OF CLAIMS AGREEMENT

This Release of Claims Agreement (this "Agreement") is made and entered into by and between XOMA Corporation (the "Company") and Patrick J. Scannon, M.D., Ph.D. (the "Employee").

WHEREAS, the Employee was employed by the Company; and

WHEREAS, the Company and the Employee have entered into an Officer Employment Agreement effective as of January 1, 2014 (the "Employment Agreement").

NOW THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Employee (collectively referred to as the "Parties") desiring to be legally bound do hereby agree as follows:

1. Termination. The Employee's employment with the Company terminated on _____, 20__.

2. Consideration. Subject to and in consideration of the Employee's full and complete release of claims as provided herein, the Company has agreed to pay the Employee certain benefits and the Employee has agreed to provide certain benefits to the Company, both as set forth in the Employment Agreement.

3. Release of Claims. The Employee agrees that the foregoing consideration represents settlement in full of all currently outstanding obligations owed to the Employee by the Company. The Employee, on the Employee's own behalf and the Employee's respective heirs, family members, executors and assigns, hereby fully and forever releases the Company and its past, present and future officers, agents, directors, employees, investors, shareholders, administrators, affiliates, divisions, subsidiaries, parents, predecessor and successor corporations, and assigns, from, and agrees not to sue or otherwise institute or cause to be instituted any legal or administrative proceedings concerning any claim, duty, obligation or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that the Employee may possess arising from any omissions, acts or facts that have occurred up until and including the Effective Date (as defined below) of this Agreement including, without limitation:

(a) any and all claims relating to or arising from the Employee's employment relationship with the Company and the termination of that relationship;

(b) any and all claims relating to, or arising from, the Employee's right to purchase, or actual purchase of shares of stock of the Company, including, without limitation, any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty under applicable state corporate law and securities fraud under any state or federal law;

(c) any and all claims based on contract, tort or statute including, but not limited to, claims for wrongful discharge of employment, termination in violation of public policy, discrimination, breach of contract (both express and implied), breach of a covenant of good faith and fair dealing (both express and implied), promissory estoppel, negligent or intentional infliction of emotional distress, negligent or intentional misrepresentation, negligent or intentional interference with contract or prospective economic advantage, unfair business practices, defamation, libel, slander, negligence, personal injury, assault, battery, invasion of privacy, false imprisonment and conversion;

(d) any and all claims for violation of any federal, state or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1974, The Worker Adjustment and Retraining Notification Act, the California Fair Employment and Housing Act, and/or the California Labor Code and all amendments to each such Act/statute as well as the regulations issued thereunder;

(e) any and all claims for violation of the federal or any state constitution;

(f) any and all claims arising out of any other laws and regulations relating to employment or employment discrimination; and

(g) any and all claims for attorneys' fees and costs.

The Employee agrees that the release set forth in this Section 3 shall be and remain in effect in all respects as a complete general release as to the matters released. Notwithstanding the foregoing, this release does not extend to any obligations now or subsequently incurred under this Agreement, the post-termination obligations set forth in Section 8 of the Employment Agreement, the Indemnification Agreement between the Employee and the Company (or its successor or acquirer), the outstanding stock award agreements between the Employee and the Company (or its successor or acquirer), or any employee benefit plan of which the Employee is a participant and under which all benefits due under such plan have not yet been paid or provided.

4. Acknowledgment of Waiver of Claims under ADEA. The Employee acknowledges that the Employee is waiving and releasing any rights the Employee may have under the Age Discrimination in Employment Act of 1967 ("ADEA") and that this waiver and release is knowing and voluntary. The Employee and the Company agree that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Agreement. The Employee acknowledges that the consideration given for this waiver and release agreement is in addition to anything of value to which the Employee was already entitled. The Employee further acknowledges that the Employee has been advised by this writing that (a) the Employee should consult with an attorney prior to executing this Agreement; (b) the Employee has at least twenty-one (21) days within which to consider this Agreement; (c) the Employee has seven (7) days following the execution of this Agreement by the Parties to revoke the Agreement; and (d) this Agreement shall not be effective until the revocation period has expired. Any revocation should be in writing and delivered to the Legal Department at the Company by the close of business on the seventh (7^{th}) day from the date that the Employee signs this Agreement.

5. Civil Code Section 1542. The Employee represents that the Employee is not aware of any claims against the Company other than the claims that are released by this Agreement. The Employee acknowledges that the Employee has been advised by legal counsel and is familiar with the provisions of California Civil Code Section 1542, which provides as follows:

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

The Employee, being aware of said code section, agrees to expressly waive any rights the Employee may have thereunder, as well as under any other statute or common law principles of similar effect.

6. No Pending or Future Lawsuits. The Employee represents that the Employee has no injuries that have not yet been reported to the Company's workers' compensation carrier and no lawsuits, claims or actions pending in the Employee's name, or on behalf of any other person or entity, against the Company or any other person or entity referred to herein. The Employee also represents that the Employee does not intend to bring any claims on the Employee's own behalf or on behalf of any other person or entity against the Company or any other person or entity referred to herein except, if necessary, with respect to the agreements listed in the last sentence of Section 4 of this Agreement.

7. Confidentiality. The Employee agrees to use the Employee's best efforts to maintain in confidence the existence of this Agreement, the contents and terms of this Agreement, and the consideration for this Agreement (hereinafter collectively referred to as "Release Information"). The Employee agrees to take every reasonable precaution to prevent disclosure of any Release Information to third parties and agrees that there will be no publicity, directly or indirectly, concerning any Release Information. The Employee agrees to take every precaution to disclose Release Information only to those attorneys, accountants, governmental entities and family members who have a reasonable need to know of such Release Information.

8. No Adverse Cooperation. The Employee agrees the Employee will not act in any manner that might damage the business of the Company. The Employee agrees that the Employee will not counsel or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges or complaints by any third party against the Company and/or any officer, director, employee, agent, representative, shareholder or attorney of the Company, unless compelled under a subpoena or other court order to do so.

9. Costs. The Parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with this Agreement.

10. Authority. The Company represents and warrants that the undersigned has the authority to act on behalf of the Company and to bind the Company and all who may claim through it to the terms and conditions of this Agreement. The Employee represents and warrants that the Employee has the capacity to act on the Employee's own behalf and on behalf of all who might claim through the Employee to bind them to the terms and conditions of this Agreement.

11. No Representations. The Employee represents that the Employee has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement. Neither party has relied upon any representations or statements made by the other party hereto which are not specifically set forth in this Agreement.

12. Severability. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.

13. Entire Agreement. This Agreement and the Employment Agreement and the agreements and plans referenced therein represent the entire agreement and understanding between the Company and the Employee concerning the Employee's separation from the Company, and supersede and replace any and all prior agreements and understandings concerning the Employee's relationship with the Company and the Employee's compensation by the Company. This Agreement may only be amended in writing signed by the Employee and an executive officer of the Company.

14. Governing Law. This Agreement shall be governed by the internal substantive laws, but not the choice of law rules, of the State of California.

15. Effective Date. This Agreement is effective eight (8) days after it has been signed by the Parties (the "Effective Date") unless it is revoked by the Employee within seven (7) days of the execution of this Agreement by the Employee.

16. Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

17. Voluntary Execution of Agreement. This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing all claims. The Parties acknowledge that:

(a) they have read this Agreement;

(b) they have been represented in the preparation, negotiation and execution of this Agreement by legal counsel of their own choice or that they have voluntarily declined to seek such counsel;

(c) they understand the terms and consequences of this Agreement and of the releases it contains; and

(d) they are fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

XOMA CORPORATION

By: _____
Title: _____
Date: _____

EMPLOYEE

_____
Name: _____
Date: _____

March 11, 2014

John Varian
930 Noe Street
San Francisco, California 94114

Re: Retention Benefit Agreement

Dear John:

As you are well aware, the Board pressed you to jump into XOMA at a time when the Company was vulnerable but showing very encouraging early signs in many of its programs. That was at the same time that you were attempting to reduce your overall workload. You were persuaded to take on the challenge and have been successful thus far, and the Board could not be more appreciative of your efforts to create value for the Company and of the sacrifices that you have made to help make that a reality. We again want to implore you to continue to help create additional value, build out the team and help position the Company for this next important phase of its growth.

In recognition of the significant contributions that we expect you to make during the next several years, and in order to encourage you to continue to work full time as CEO of the Company, we are entering into this Retention Bonus Agreement (the "Agreement") with you.

In the event that you remain an employee or director of the Company through the earlier to occur of (1) the annual meeting of stockholders held in 2017, (2) an agreement by the Company's Board of Directors to treat your departure as a retirement under the terms of our equity awards program, or (3) a Change in Control of the Company as defined in that certain Change in Control Agreement, dated January 4 2012 (the "Bonus Date"), the Company will extend to you the "Retention Benefit" described below. The Retention Benefit would be that each of the options and restricted stock units held by you as of the Bonus Date would become fully vested as of the Bonus Date and, with respect to options, even if the options were not fully exercisable prior to the Bonus Date, each option would remain vested and exercisable for the full term of such option until the expiration date of the option set forth in the applicable stock option agreement as if you had not incurred a termination of service (as defined in the award agreements), but in no event later than ten years following the grant date of the option. On the expiration date of your options set forth in the applicable stock option agreements, your options would terminate and cease to be exercisable. Except as otherwise provided in this letter agreement, your options and restricted stock units will remain subject to the terms of the applicable award agreements.

This Agreement contains our entire agreement concerning the Retention Benefit. Nothing in this Agreement will alter the "at will" nature of your employment relationship with the Company or otherwise change your compensation, benefits, bonus arrangements or the Change in Control Agreement.

Sincerely,

XOMA Corporation

W. Denman Van Ness
Chairman of the Board of Directors

I agree to and accept the terms and conditions of this Retention Benefit Agreement.

Dated:

John Varian

Exhibit 10.29

LEASE

BETWEEN

7TH STREET PROPERTIES II, A CALIFORNIA LIMITED PARTNERSHIP (LANDLORD)

AND

XOMA CORPORATION, a Delaware corporation (TENANT)

804 Heinz Avenue Berkeley, California

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ARTICLE 1
BASIC LEASE PROVISIONS

1.1 BASIC LEASE PROVISIONS

In the event of any conflict between these Basic Lease Provisions and any other Lease provision, such other Lease provision shall control.

(1) BUILDING AND ADDRESS:

804 Heinz Avenue
Berkeley, California 94710-2737

(2) LANDLORD AND ADDRESS:

7th Street Properties II,
a California Limited Partnership
1120 Nye Street, Suite 400
San Rafael, California 94901

Notices to Landlord shall be addressed:

7th Street Properties II,
a California Limited Partnership
c/o Wareham Property Group
1120 Nye Street, Suite 400
San Rafael, California 94901

With a copy to:

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

(3) TENANT AND ADDRESS:

(a) Name: XOMA CORPORATION

(b) State of formation: Delaware

Notices to Tenant shall be addressed:

XOMA(US) LLC
2910 Seventh Street
Berkeley, CA 94710
Attn: Legal Department

with copies to:

XOMA(US) LLC
2910 Seventh Street
Berkeley, CA 94710
Attn: CFO

(4) DATE OF THIS LEASE: February 13, 2013

(5) LEASE TERM: Ten (10) years, subject to any option(s) set forth in Section 2.5 below.

(6) COMMENCEMENT DATE: May 1, 2013

(7) EXPIRATION DATE: April 30, 2023

(8) MONTHLY BASE RENT:

PERIOD FROM/TO	MONTHLY BASE RENT
May 1, 2013 - April 30, 2014	$112,270.00
May 1, 2014 - April 30, 2015	$115,638.10
May 1, 2015 - April 30, 2016	$119,107.24
May 1, 2016 - April 30, 2017	$122,680.46
May 1, 2017 - April 30, 2018	$126,360.87
May 1, 2018 - April 30, 2019	$130,151.70
May 1, 2019 - April 30, 2020	$134,056.25
May 1, 2020 - April 30, 2021	$138,077.94
May 1, 2021 - April 30, 2022	$142,220.28
May 1, 2022 - April 30, 2023	$146,486.89

(9) RENTABLE AREA OF THE PREMISES: 35,000 square feet

(10) SECURITY DEPOSIT: $146,486.89

(11) TENANT'S USE OF PREMISES: General office, research and development use, including laboratory use.

(12) PARKING: Up to 54 unreserved parking spaces on surface lots

(13) TENANT'S BROKER: Cushman & Wakefield

1.2 ENUMERATION OF EXHIBITS AND RIDER

The Exhibits and Rider set forth below and attached to this Lease are incorporated in this Lease by this reference:

EXHIBIT A Plan of Premises
EXHIBIT B-l Laboratory Rules and Regulations
EXHIBIT B-2 Rules and Regulations
EXHIBIT C Parking Area
EXHIBIT D Systems Improvements

1.3 DEFINITIONS

For purposes hereof, the following terms shall have the following meanings:

AFFILIATE: Any corporation or other business entity that is currently owned or controlled by, owns or controls, or is under common ownership or control with Tenant or Landlord, as the case may be.

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

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

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

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

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

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

FORCE MAJEURE: Any accident, casualty, act of God, war or civil commotion, strike or labor troubles, or any cause whatsoever beyond the reasonable control of a party, including water shortages, energy shortages or governmental preemption in connection with an act of God, a national emergency, or by reason of Law, or by reason of the conditions of supply and demand which have been or are affected by act of God, war or other emergency.

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

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

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

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

MONTHLY BASE RENT: The monthly rent specified in Section 1.1(8).

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

OPERATING EXPENSES: All costs, expenses and disbursements of every kind and nature which Landlord shall pay or become obligated to pay in connection with the ownership, management, operation, maintenance, replacement and repair of the Building and the Property, (as well as the reasonable allocation by Landlord of any expenses incurred and related to facilities located on other property owned or managed by Landlord or affiliates of Landlord, if the Property is managed as part of a portfolio involving more than one building and/or property) including, without limitation, (1) property management fees (not to exceed 3.5% of the Project's gross receipts); (2) costs of a commercially reasonable property management office and office operation; (3) insurance costs relating to the Project; (4) costs and expenses of any capital expenditure or improvement, amortized over the useful life of the applicable capital expenditure or improvement, in accordance with generally accepted accounting principles, together with interest thereon on the unamortized costs at the lower of the rate incurred by Landlord to finance such capital expenditure or improvement or the Default Rate, which capital expenditure or improvement (a) is made to the Property after the Commencement Date in order to comply with Laws enacted after the Commencement Date, or (b) is installed for the purpose of reducing or controlling Operating Expenses; and (5) if the Property is part of a multi-building portfolio, the Building's allocated share (as reasonably and equitably determined by Landlord according to sound real estate accounting and management principles, consistently applied) of those expenses incurred on a portfolio-wide basis benefiting the Building and/or Property which may include, without limitation, costs such as (a) landscaping, (b) utility and road repairs, and (c) security. Operating Expenses shall not include, (i) costs of alterations of the premises of tenants of the Project, (ii) costs of capital improvements to the Project (except as permitted in clause (4) above in the definition of "Operating Expenses"), (iii) depreciation charges, (iv) interest and principal payments on loans (except for loans for capital improvements which Landlord is allowed to include in Operating Expenses as provided above), (v) ground rental payments, (vi) real estate brokerage and leasing commissions or any fee in lieu of commission, (vii) advertising and marketing expenses, (viii) costs of Landlord reimbursed by insurance proceeds, condemnation awards, a tenant of the Project (outside of such tenant's Operating Expense payments) or otherwise to the extent so reimbursed, (ix) expenses incurred in negotiating leases of tenants in the Project or enforcing lease obligations of tenants in the Project, (x) Landlord's general corporate overhead, (xi) costs incurred by Landlord due to the violation by Landlord or any other tenant of the terms and conditions of any lease of space in the Project or any law, code, regulation, ordinance or the like, (xii) any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord, (xiii); bad debt expenses and interest, principal, points and fees on debts (except in connection with the financing of items which may be included in Operating Expenses); (xiv) marketing costs, attorneys' fees in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases and/or assignments, space planning costs, and other costs and expenses incurred in connection with lease, sublease and/or assignment negotiations and transactions with present or prospective tenants or other occupants of the Project, including attorneys' fees and other costs and expenditures incurred in connection with disputes with present or prospective tenants or other occupants of the Project; (xv) costs, including permit, license and inspection costs, incurred with respect to the installation of other tenants' or occupants' improvements made for tenants or other occupants in the Project or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants in the Project; (xvi) any costs expressly excluded from Operating Expenses elsewhere in this Lease; (xvii) expenses in connection with services or other benefits which are not offered to Tenant or for which Tenant is charged for directly but which are provided to another tenant or occupant of the Project, without charge; (xviii) costs (including in connection therewith all attorneys' fees and costs of settlement, judgments and/or payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation or arbitrations pertaining to Landlord and/or the Project; (xix) costs associated with the operation of the business of the partnership which constitutes Landlord as the same are distinguished from the costs of operation of the Project; (xx) costs incurred to remove, remedy, contain, or treat any Hazardous Material; provided, however, that (A) the costs of routine monitoring of and testing for Hazardous Material in, on, or about the Property, and (B) costs incurred in the cleanup or remediation of *de minimis* amounts of Hazardous Material customarily used in commercial buildings or used to operate motor vehicles and customarily found in parking facilities shall be included as Operating Expenses; (xxi) costs of utilities provided to any other tenant's space in the Project. If any Operating Expense, though paid in one year, relates to more than one calendar year, at the option of Landlord such expense may be proportionately allocated among such related calendar years.

PREMISES: The space located in the Building as depicted on Exhibit A attached hereto.

PRIOR LEASE: That certain lease agreement for the Premises between Landlord and Tenant's predecessor, dated as of March 21, 1987 and as subsequently amended on June 26, 1987, April 21, 1988, December 31, 1997 and April 30, 2008.

PROJECT or PROPERTY: The Project consists of the building located at the street address specified in Section 1.1(1) in Berkeley, California, associated parking as designated by Landlord from time to time, landscaping and improvements, together with the Land, any associated interests in real property and the building thereon, and the personal property, fixtures, machinery, equipment, systems and apparatus located in or used in conjunction with any of the foregoing that is owned by Landlord. The Project may also be referred to as the Property.

REAL PROPERTY: The Property excluding any personal property.

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

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

RENT ADJUSTMENT DEPOSIT: An amount equal to Landlord's estimate of the Rent Adjustment attributable to each month of the applicable calendar year (or partial calendar year) during the Term. On or before the Commencement Date and with each Landlord's Statement (defined in Article 4), Landlord may reasonably estimate and notify Tenant in writing of its estimate of the Operating Expenses and of Taxes for such calendar year (or partial calendar year). Prior to the first determination by Landlord of the amount of Operating Expenses and of Taxes for the first calendar year (or partial calendar year), Landlord may reasonably estimate such amounts in the foregoing calculation. The last estimate by Landlord shall remain in effect as the applicable Rent Adjustment Deposit unless and until Landlord notifies Tenant in writing of a change, which notice may be given by Landlord from time to time during each year throughout the Term.

RENTABLE AREA OF THE PREMISES: The amount of square footage set forth in Section 1.1(9) provided, however, that any statement of rentable are set forth in this Lease is an approximation which Landlord and Tenant agree is reasonable and the Monthly Base Rent shall not be subject to revision whether or not the actual square footage is more or less.

SECURITY DEPOSIT: The funds specified in Section 1.1(10), if any, deposited by Tenant with Landlord as security for Tenant's performance of its obligations under this Lease.

TAXES: All federal, state and local governmental taxes, assessments and charges of every kind or nature, whether general, special, ordinary or extraordinary, which Landlord shall pay or become obligated to pay because of or in connection with the ownership, leasing, management, control, sale, transfer, or operation of the Property or any of its components (including any personal property used in connection therewith), which may also include any rental or similar taxes levied in lieu of or in addition to general real and/or personal property taxes. For purposes hereof, Taxes for any year shall be Taxes which are assessed for any period of such year, whether or not such Taxes are billed and payable in a subsequent calendar year. There shall be included in Taxes for any year the amount of all fees, costs and expenses (including reasonable attorneys' fees) paid by Landlord during such year in seeking or obtaining any refund or reduction of Taxes, but such fees, costs and expenses shall not exceed the greater of (a) Landlord's good faith estimation of the amount of refund or reduction of Taxes or (b) the actual amount of refund or reduction of Taxes. Taxes for any year shall be reduced by the net amount of any tax refund received by Landlord attributable to such year. If a special assessment payable in installments is levied against any part of the Property, Taxes for any year shall include only the installment of such assessment and any interest payable or paid during such year. Taxes shall not include (i) any items included in Operating Expenses, (ii) any items paid by Tenant under Section 4.4 below and (iii) any federal or state inheritance, general income, excess profit, franchise, capital stock, gift, estate taxes and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents or receipts attributable to operations at the Property) ("Prohibited Taxes"), except that if a change occurs in the method of taxation resulting in whole or in part in the substitution of any such taxes, or any other assessment, for any Taxes as above defined, such substituted taxes or assessments shall be included in the Taxes.

TENANT ALTERATIONS: Any alterations, improvements, additions, installations or construction in or to the Premises or any Building systems serving the Premises.

TENANT'S SHARE AS TO THE BUILDING: 100%.

TERM: The period specified in Section 1.1(5).

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

ARTICLE 2
PREMISES, TERM, CONDITION OF PREMISES, PARKING AND RENEWAL

2.1 LEASE OF PREMISES

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

2.2 TERM

The Term shall be for the period of years specified in Section 1.1(5) and the Commencement Date shall be May 1, 2013.

2.3 CONDITION OF PREMISES

Tenant acknowledges that prior to the Commencement Date it will have been, and continue to be, in possession of the Premises pursuant to the Prior Lease. Accordingly, Tenant is, and will be, familiar with the condition of the Premises and shall continue to occupy the Premises in its "as is, where is" condition, with all faults, without any representation, warranty or improvement by Landlord of any kind whatsoever, except as expressly set forth herein.

2.4 PARKING

For the entire duration of the Term, including any renewal or extension thereof, Tenant may use the number of spaces specified in Section 1.1(12). Tenant's parking rights shall be free of additional charge with unrestricted hours of usage (24 hours a day, 7 days a week, 365 days a year). The location of such parking spaces shall be located within the parking area shown on Exhibit C hereto. Subject to the foregoing, the locations and type of parking shall be designated by Landlord or Landlord's parking operator from time to time. Tenant acknowledges and agrees that the parking spaces serving the Project may include tandem parking and a mixture of spaces for compact vehicles as well as full-size passenger automobiles, and that Tenant shall not use parking spaces for vehicles larger than the striped size of the parking spaces. All vehicles utilizing Tenant's parking privileges shall prominently display identification stickers or other markers, and/or have passes or keycards for ingress and egress, as may be reasonably required and provided by Landlord or its parking operator from time to time. Tenant shall comply with any and all parking rules and regulations from time to time reasonably established by Landlord or Landlord's parking operator, including a requirement that Tenant pay to Landlord or Landlord's parking operator a reasonable charge (not to exceed $25.00 per incident) for loss and replacement of passes, keycards, identification stickers or markers, and for any and all loss or other damage caused by persons or vehicles related to use of Tenant's parking privileges. Tenant shall not allow any vehicles using Tenant's parking privileges to be parked, loaded or unloaded except in accordance with this Section, including in the areas and in the manner designated by Landlord or its parking operator for such activities. If any vehicle is using the parking or loading areas contrary to any provision of this Section, Landlord or its parking operator shall have the right, in addition to all other rights and remedies of Landlord under this Lease, to remove or tow away the vehicle without prior notice to Tenant, and the cost thereof shall be paid to Landlord within thirty (30) days after notice from Landlord.

2.5 RENEWAL OPTION

(a) Tenant shall have two successive options to renew this Lease (each a "Renewal Option") with respect to the entirety of the Premises for the term of five (5) years each (each a "Renewal Term"), commencing upon expiration of the initial Term, or if the first Renewal Option is exercised, upon the expiration of the first Renewal Term. Each Renewal Option must be exercised, if at all, by written notice given by Tenant to Landlord not earlier than twelve (12) months nor later than nine (9) months prior to expiration of the initial Term (or the first Renewal Term, as applicable). If Tenant properly exercises a Renewal Option, then references in the Lease to the Term shall be deemed to include the Renewal Term. The Renewal Option shall be null and void and Tenant shall have no right to renew this Lease if on the date Tenant exercises the Renewal Option or on the date immediately preceding the commencement date of the Renewal Term (i) a Default beyond the applicable cure period shall have occurred and be continuing hereunder, or (ii) Tenant (A) is then subletting more than fifty percent (50%) of the rentable square footage of the Premises other than in connection with a Permitted Transfer (as defined in Section 10.1(e) below) or (B) has assigned this Lease other than in connection with a Permitted Transfer.

(b) If Tenant properly exercises the Renewal Option, then during the Renewal Term all of the terms and conditions set forth in this Lease as applicable to the Premises during the initial Term shall apply during the Renewal Term, including without limitation the obligation to pay Rent Adjustments, except that (i) Tenant shall accept the Premises in their then "as-is" state and condition and Landlord shall have no obligation to make or pay for any improvements to the Premises (except as determined as part of the Fair Market Rent), and (ii) during the Renewal Term the Monthly Base Rent payable by Tenant shall be ninety-five percent (95%) of the Fair Market Rent during the Renewal Term as hereinafter set forth, except that in no event shall Monthly Base Rent during the Renewal Term be less than ninety-five percent (95%) of the Monthly Base Rent in effect during the last month of the initial Term, or first Renewal Term, as applicable, and shall increase by an annually compounded three percent (3%) during each year of the Renewal Term.

(c) For purposes of this Section, the term "Fair Market Rent" shall mean the rental rate, additional rent adjustment and other charges and increases, if any, for space comparable in size, location and quality of the Premises under primary lease (and not sublease) to new or renewing tenants, for a comparable term with a tenant improvement allowance, if applicable and taking into consideration any concessions and such amenities as existing improvements, parking ratio, view, floor on which the Premises are situated and the like, situated in comparable buildings in Berkeley and Emeryville. The Fair Market Rent shall not take into account any Tenant Alterations or other improvements paid for by Tenant.

(d) If Tenant properly exercises a Renewal Option, Landlord, by notice to Tenant not more than thirty (30) days after Tenant's exercise of such Renewal Option, shall indicate Landlord's determination of the Fair Market Rent. Tenant, within fifteen (15) days after the date on which Landlord provides such notice of the Fair Market Rent shall either (i) give Landlord final binding written notice ("Binding Notice") of Tenant's acceptance of Landlord's determination of the Fair Market Rent, or (ii) if Tenant disagrees with Landlords' determination, provide Landlord with written notice of Tenant's election to submit the Fair Market Rent to binding arbitration (the "Arbitration Notice"). If Tenant fails to provide Landlord with either a Binding Notice or Arbitration Notice within such fifteen (15) day period, Tenant shall have been deemed to have given the Binding Notice. If Tenant provides or is deemed to have provided Landlord with a Binding Notice, Landlord and Tenant shall enter into the Renewal Amendment (as defined below) upon the terms and conditions set forth herein.

(e) If the parties are unable to agree upon the Fair Market Rent for the Premises within fifteen (15) days after Landlord's receipt of the Arbitration Notice, Fair Market Rent as of commencement of the Renewal Term shall be determined as follows:

(1) Within fifteen (15) days after the date Tenant delivers the Arbitration Notice, Tenant, at its sole expense, shall obtain and deliver in writing to Landlord a determination of the Fair Market Rent for the Premises for a term equal to the Renewal Term from a broker ("Tenant's broker") licensed in the State of California and engaged in the office and lab markets in Berkeley and Emeryville, California, for at least the immediately preceding five (5) years. If Landlord accepts such determination, Landlord shall provide written notice thereof within fifteen (15) days after Landlord's receipt of such determination and the Base Rent for the Renewal Term shall be adjusted to an amount equal to the Fair Market Rent determined by Tenant's broker. Landlord shall be deemed to have rejected Tenant's determination if Landlord fails to respond within the fifteen (15) day period.

(2) If Landlord provides notice that it rejects, or is deemed to have rejected, such determination, within twenty (20) days after receipt of the determination of Tenant's broker, Landlord shall designate a broker ("Landlord's broker") licensed in the State of California and possessing the qualifications set forth in (1) above. Landlord's broker and Tenant's broker shall name a third broker, similarly qualified and who is not then or has not previously acted for either party, within five (5) days after the appointment of Landlord's broker ("Neutral Broker").

(3) The Neutral Broker shall determine the Fair Market Rent for the Premises as of the commencement of the Renewal Term within fifteen (15) days after the appointment of such Neutral Broker by choosing the determination of the Landlord's broker or the Tenant's broker which is closest to its own determination of Fair Market Rent. The decision of the Neutral Broker shall be binding on Landlord and Tenant.

(f) Landlord shall pay the costs and fees of Landlord's broker in connection with any determination hereunder, and Tenant shall pay the costs and fees of Tenant's broker in connection with such determination. The costs and fees of the Neutral Broker shall be paid one-half by Landlord and one-half by Tenant.

(g) If the amount of the Fair Market Rent has not been determined pursuant to this Section 2.5 as of the commencement of the Renewal Term, then Tenant shall continue to pay the Base Rent in effect during the last month of the initial Term (or the first Renewal Term, as applicable) until the amount of the Fair Market Rent is determined. When such determination is made, Tenant shall pay any deficiency to Landlord upon demand.

(h) If Tenant is entitled to and properly exercises its Renewal Option, upon determination of Fair Market Rent pursuant to this Section 2.5, Landlord shall prepare an amendment (the "Renewal Amendment") to reflect changes in the Base Rent, Term, Expiration Date and other appropriate terms consistent with this Section 2.5. The Renewal Amendment shall be sent to Tenant within fifteen (15) days after determination of Fair Market Rent and, provided the same is accurate, Tenant shall execute and return the Renewal Amendment to Landlord within ten (10) business days after Tenant's receipt of same, but an otherwise valid exercise of the Renewal Option shall be fully effective whether or not the Renewal Amendment is executed.

ARTICLE 3
RENT

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

ARTICLE 4
RENT ADJUSTMENTS AND PAYMENTS

4.1 RENT ADJUSTMENTS

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

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

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

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

4.2 STATEMENT OF LANDLORD

Landlord shall use commercially reasonably efforts to furnish to Tenant, within 120 days following the expiration of each calendar year (but in any event as soon as feasible after the expiration of each calendar year), a statement ("Landlord's Statement") showing the following:

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

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

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

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

4.3 BOOKS AND RECORDS

Landlord shall maintain books and records showing Operating Expenses and Taxes in accordance with sound accounting and management practices, consistently applied. Tenant or its representative (which representative shall be a certified public accountant licensed to do business in the state in which the Property is located and whose primary business is certified public accounting and who shall not be paid on a contingency basis) shall have the right, for a period of two hundred seventy (270) days following the date upon which Landlord's Statement is delivered to Tenant, to examine the Landlord's books and records with respect to the items in the foregoing statement of Operating Expenses and Taxes during normal business hours, upon written notice, delivered at least three (3) business days in advance. If Tenant does not object in writing to Landlord's Statement within two hundred seventy (270) days of Tenant's receipt thereof, specifying the nature of the item in dispute and the reasons therefor, then Landlord's Statement shall be considered final and accepted by Tenant and Tenant shall be deemed to have waived its right to dispute Landlord's Statement. If Tenant does dispute any Landlord's Statement, Tenant shall deliver a copy of any such audit to Landlord at the time of notification of the dispute. If Tenant does not provide such notice of dispute and a copy of such audit to Landlord within such two hundred seventy (270) day period, it shall be deemed to have waived such right to dispute Landlord's Statement. Any amount due to the Landlord as shown on Landlord's Statement, whether or not disputed by Tenant as provided herein shall be paid by Tenant when due as provided above, without prejudice to any such written exception. In no event shall Tenant be permitted to examine Landlord's records or to dispute any statement of Operating Expenses and Taxes unless Tenant has paid and continues to pay all Rent when due. If Landlord disagrees with the results of Tenant's review of Landlord's Statement, a certification as to the proper amount shall be made in accordance with generally accepted accounting practices by an independent certified public accountant selected by Landlord and who is a member of a nationally or regionally recognized accounting firm ("Landlord's Accountant"). Landlord's Accountant shall complete its review and certify such result to Landlord and Tenant within ninety (90) days following the date Tenant disputed the items in Landlord's Statement. Upon resolution of any dispute with respect to Operating Expenses and Taxes pursuant to this Section 4.3, Tenant shall either pay Landlord any shortfall or Landlord shall credit Tenant with respect to any overages paid by Tenant against Tenant's next Rent Adjustments coming due. In the event it is determined pursuant to this Section 4.3 that Landlord's Statement overstated the amount of Operating Expenses and Taxes by eight percent (8%) or more, then Landlord shall reimburse Tenant for its actual and reasonable out-of-pocket audit expenses, not to exceed eight thousand five hundred dollars ($8,500.00) and Landlord shall be responsible for the costs of Landlord's Accountant. The records obtained by Tenant shall be treated as confidential and neither Tenant nor any of its representatives or agents shall disclose or discuss the information set forth in the audit to or with any other person or entity ("Confidentiality Requirement") except (a) to Tenant's attorneys, accountants and consultants as reasonably necessary or (b) to the extent required by applicable laws or court order. Tenant shall indemnify and hold Landlord harmless for any losses or damages arising out of the breach of the Confidentiality Requirement.

4.4 TENANT OR LEASE SPECIFIC TAXES

In addition to Monthly Base Rent, Rent Adjustments, Rent Adjustment Deposits and other charges to be paid by Tenant, Tenant shall pay to Landlord, upon demand, any and all taxes payable by Landlord (other than the Prohibited Taxes) whether or not now customary or within the contemplation of the parties hereto: (a) upon, allocable to, or measured by the Rent payable hereunder, including any gross receipts tax or excise tax levied by any governmental or taxing body with respect to the receipt of such rent; or (b) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (c) upon the measured value of Tenant's personal property located in or about the Premises or in any storeroom or any other place in or about the Premises, it being the intention of Landlord and Tenant that, to the extent possible, such personal property taxes shall be billed to and paid directly by Tenant; (d) resulting from any Tenant Alterations; or (e) upon this transaction. Taxes paid by Tenant pursuant to this Section 4.4 shall not be included in any computation of Taxes payable pursuant to Sections 4.1 and 4.2.

ARTICLE 5
SECURITY DEPOSIT

Landlord acknowledges that it currently holds a security deposit under the Prior Lease (the "Existing Deposit"), which the parties agree is currently One Hundred Twelve Thousand Two Hundred Sixty-Nine and 50/100 Dollars ($112,269.50). Concurrent with its execution of this Lease, Tenant shall deliver to Landlord, in immediately available funds, an amount equal to the difference between the Existing Deposit and the amount of the Security Deposit required by Section 1.1(10) above. Tenant acknowledges and agrees that the Existing Deposit shall be available to Landlord as part of the Security Deposit required under this Lease and that upon the expiration or earlier termination of the Prior Lease, the Existing Deposit shall be retained by Landlord in partial satisfaction of the Security Deposit required hereunder. The Security Deposit may be applied by Landlord to cure, in whole or part, any default of Tenant under this Lease, and upon notice by Landlord of such application, Tenant shall replenish the Security Deposit in full by paying to Landlord within ten (10) days of demand the amount so applied. Landlord's application of the Security Deposit shall not constitute a waiver of Tenant's default to the extent that the Security Deposit does not fully compensate Landlord for all losses, damages, costs and expenses incurred by Landlord in connection with such default and shall not prejudice any other rights or remedies available to Landlord under this Lease or by Law. Landlord shall not pay any interest on the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its general accounts. The Security Deposit shall not be deemed an advance payment of Rent or a measure of damages for any default by Tenant under this Lease, nor shall it be a bar or defense of any action that Landlord may at any time commence against Tenant. In the absence of evidence satisfactory to Landlord of an assignment of the right to receive the Security Deposit or the remaining balance thereof, Landlord may return the Security Deposit to the original Tenant, regardless of one or more assignments of this Lease. Upon the transfer of Landlord's interest under this Lease, Landlord's obligation to Tenant with respect to the Security Deposit shall terminate upon transfer to the transferee of the Security Deposit, or any balance thereof. If Tenant shall fully and faithfully comply with all the terms, provisions, covenants, and conditions of this Lease, the Security Deposit, or any balance thereof, shall be returned to Tenant within thirty (30) days after Landlord recovers possession of the Premises. Tenant hereby waives any and all rights of Tenant under the provisions of Section 1950.7 of the California Civil Code or other Law regarding security deposits.

ARTICLE 6
UTILITIES AND SIGNAGE

6.1 UTILITIES GENERALLY

Tenant will be responsible, at its sole cost and expense, for the furnishing of all services and utilities to the Project, including, but not limited to heating, ventilation and air conditioning, electricity, water, telephone, janitorial and interior Building security services.

(a) All utilities (including without limitation, electricity, gas, sewer and water) to the Building are separately metered and shall be paid directly by Tenant to the applicable utility provider.

(b) Landlord shall not provide janitorial services for the interior of the Building. Tenant shall be solely responsible for performing all janitorial services and other cleaning of the Premises, all in compliance with applicable Laws.

6.2 INTERRUPTION OF USE

Except as otherwise provided in this Lease, Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for any failure or interruption of utilities or services to the Project, or for any diminution in the quality or quantity thereof, for any reason whatsoever, including without limitation when occasioned, in whole or in part, by breakage, repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Building or Project, by any riot or other dangerous condition, emergency, accident or casualty whatsoever; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring. Notwithstanding the foregoing, if the Premises is made untenantable, inaccessible or unsuitable for the ordinary conduct of Tenant's business, due to an interruption in access to the Premises or any of the utilities or services provided by Landlord as a result of Landlord's negligence or willful misconduct, then (i) Landlord shall use commercially reasonable good faith efforts to restore the same as soon as is reasonably possible, (ii) if, despite such commercially reasonable good faith efforts by Landlord, such interruption persists for a period in excess of three (3) consecutive business days, then Tenant, as its sole remedy, shall be entitled to receive an abatement of Base Rent and Rent Adjustments payable hereunder during the period beginning on the fourth (4th) consecutive business day of such interruption and ending on the day the utility or service has been restored.

6.3 SIGNAGE

Tenant shall not place or permit to be placed in, upon, or about the Premises, the Building or the Project any exterior lights, decorations, balloons, flags, pennants, banners, advertisements or notices, or erect or install any signs, windows or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises without obtaining Landlord's prior written consent, which shall not be unreasonably withheld or delayed. Tenant shall remove any sign, advertisement or notice placed on the Premises, the Building or the Project by Tenant upon the expiration of the Term or sooner termination of this Lease, and Tenant shall repair any damage or injury to the Premises, the Building or the Project caused thereby, all at Tenant's expense. If any signs are not removed, or necessary repairs not made, Landlord shall have the right to remove the signs and repair any damage or injury to the Premises, the Building or the Project caused by such installation or removal at Tenant's sole cost and expense.

ARTICLE 7
POSSESSION, USE AND CONDITION OF PREMISES

7.1 POSSESSION AND USE OF PREMISES

(a) Tenant shall occupy and use the Premises only for the uses specified in Section 1.1(11) to conduct Tenant's business. Tenant shall not occupy or use the Premises (or permit the use or occupancy of the Premises) for any purpose or in any manner which: (1) is unlawful or in violation of any Law or Environmental Law; (2) may be dangerous to persons or property or which may increase the cost of, or invalidate, any policy of insurance carried on the Building or covering its operations; (3) is contrary to or prohibited by the terms and conditions of this Lease or the rules of the Building set forth in Article 18; or (4) would tend to create or continue a nuisance.

(b) Landlord and Tenant acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises, the Building and the Project depending on, among other things: (1) whether Tenant's business is deemed a "public accommodation" or "commercial facility", (2) whether such requirements are "readily achievable", and (3) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that: (a) Landlord shall be responsible , as part of Operating Expenses (to the extent permitted to be included in Operating Expenses pursuant to the definition of Operating Expenses in Section 1.03 above), for ADA Title III compliance in the Common Areas, except as provided below, (b) Tenant shall be responsible for ADA Title III compliance in the Premises, including any leasehold improvements or other work to be performed in the Premises under or in connection with this Lease, (c) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III "path of travel" requirements triggered by Tenant Alterations in the Premises, and (d) Landlord may perform, or require Tenant to perform, and Tenant shall be responsible for the cost of, ADA Title III compliance in the Common Areas necessitated by the Building being deemed to be a "public accommodation" instead of a "commercial facility" as a result of Tenant's specific use of the Premises. Tenant shall be solely responsible for requirements under Title I of the ADA relating to Tenant's employees.

(c) Hazardous Materials.

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

(i) **"Biohazardous Materials"** means any and all substances and materials defined or referred to as "medical waste," "biological waste," "biohazardous waste," "biohazardous material" or any other term of similar import under any Hazardous Materials Laws, including (but not limited to) California Health & Safety Code Sections 25100 et seq., and any regulations promulgated thereunder, as amended from time to time.

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

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

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

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

(vi) **"Hazardous Materials Laws"** means, collectively, (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601-9657, (B) the Hazardous Materials Transportation Act of 1975, 49 U.S.C. Sections 5101-5128 (formerly 1801-1812), (C) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901-6987 (together with any amendments thereto, any regulations thereunder and any amendments to any such regulations as in effect from time to time, **"RCRA")**, (D) the California Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health & Safety Code Sections 25300 et seq., (E) the Hazardous Materials Release Response Plans and Inventory Act, California Health & Safety Code Sections 25500 et seq., (F) the California Hazardous Waste Control Law, California Health & Safety Code Sections 25100 et seq. (together with any amendments thereto, any regulations thereunder and any amendments to any such regulations as in effect from time to time, the **"CHWCL")**, (G) California Health & Safety Code Sections 25015 et seq., (H) any amendments to or successor statutes to any of the foregoing, as adopted or enacted from time to time, (I) any regulations or amendments thereto promulgated pursuant to any of the foregoing from time to time, (J) any Laws relating to Biohazardous Materials, including (but not limited to) any regulations or requirements with respect to the shipping, use, decontamination and disposal thereof, and (K) any other Law now or at any time hereafter in effect regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials, including (but not limited to) any requirements or conditions imposed pursuant to the terms of any orders, permits, licenses, registrations or operating plans issued or approved by any governmental or quasi-governmental authority from time to time either on a Project-wide basis or in connection with any Handling of Hazardous Materials in, on or about the Premises or the Project.

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

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

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

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

(xi) **"Landlord's Contamination"** means any Hazardous Materials (A) which exist in, on, under or in the vicinity of the Project as of the date of this Lease not caused by Tenant, (B) which migrate onto or beneath the Project after termination of the Lease, or (C) introduced by Landlord or its agents, employees, contractors, vendors or suppliers. Tenant shall not be required to pay any costs with respect to the remediation or abatement of Landlord's Contamination.

(2) Handling of Hazardous Materials. The parties acknowledge that Tenant wishes and intends to use all or a portion of the Premises as a bio-pharmaceutical research, development preparation and dispensing facility and otherwise for the conduct by Tenant of its business in accordance with the use specified in Section 1.1(11), that such use, as conducted or proposed to be conducted by Tenant, would customarily include the Handling of Hazardous Materials, and that Tenant shall therefore be permitted to engage in the Handling in the Premises of necessary and reasonable quantities of Hazardous Materials customarily used in or incidental to the operation of a bio pharmaceutical research, development, preparation and dispensing facility and the other business operations of Tenant in the manner conducted or proposed to be conducted by Tenant hereunder **("Permitted Hazardous Materials")**, provided that the Handling of such Permitted Hazardous Materials by all Tenant Parties shall at all times comply with and be subject to all provisions of this Lease and all Laws, including all Hazardous Materials Laws. Without limiting the generality of the foregoing, Tenant shall comply at all times with all Hazardous Materials Laws applicable to any aspect of Tenant's use of the Premises and the Project and of Tenant's operations and activities in, on and about the Premises and the Project, and shall ensure at all times that Tenant's Handling of Hazardous Materials in, on and about the Premises does not violate (x) the terms of any governmental licenses or permits applicable to the Building (including, but not limited to, the Building Discharge Permit as defined below) or Premises or to Tenant's Handling of any Hazardous Materials therein, or (y) any applicable requirements or restrictions relating to the occupancy classification of the Building and the Premises.

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

(4) Information Regarding Hazardous Materials. Tenant shall provide the following information and/or documentation to Landlord in writing prior to the Commencement Date, and thereafter shall update and deliver to Landlord such information and/or documentation (x) annually, by no later than the date required by law, (y) upon any material change in Tenant's Hazardous Materials inventory or in Tenant's business operations involving Hazardous Materials, and (z) at such other times as Landlord may reasonably request in writing from time to time, which updates shall reflect any material changes in such information and/or documentation:

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

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

(iii) All Material Safety Data Sheets (**"MSDSs**"), if any, required to be completed with respect to operations of Tenant at the Premises from time to time in accordance with Title 26, California Code of Regulations Section 8-5194 or 42 U.S.C. Section 11021, or any amendments thereto, and any Hazardous Materials Inventory Sheets that detail the MSDSs. As of the Date of this Lease, all Tenant's current MSDSs are on file at 2910 Seventh Street, Berkeley, California 94710, and are available for review and copy by Landlord upon request.

(iv) All hazardous waste manifests (as defined in Title 26, California Code of Regulations Section 22-66481), if any, that Tenant is required to complete from time to time in connection with its operations at the Premises. As of the Date of this Lease, all Tenant's current hazardous waste manifests are on file at 2910 Seventh Street, Berkeley, California 94710, and are available for review and copy by Landlord upon request.

(v) A copy of any **"Hazardous Materials Business Plan"** required from time to time with respect to Tenant's operations at the Premises pursuant to California Health & Safety Code Sections 25500 et seq., and any regulations promulgated thereunder, as amended from time to time, or in connection with Tenant's application for a business license from the City of Berkeley. If applicable law does not require Tenant to prepare a Hazardous Materials Business Plan, Tenant shall furnish to Landlord at the times and in the manner set forth above the information that would customarily be contained in a Hazardous Materials Business Plan, including (but not limited to) information regarding Tenant's Hazardous Materials inventories. The parties acknowledge that a Hazardous Materials Business Plan would ordinarily include an emergency response plan, and that regardless of whether applicable Law requires Tenant or other tenants in the Building to prepare Hazardous Materials Business Plans, Landlord in its discretion may elect to prepare a coordinated emergency response plan for the entire Building and/or for multiple Buildings on or about the Project.

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

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

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

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

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

(5) Indemnification; Notice of Release. Tenant shall be responsible for and shall indemnify, defend and hold Landlord harmless from and against all Environmental Damages to the extent arising out of or otherwise relating to, (i) any Handling of Hazardous Materials by any Tenant Party in, on or about the Premises or the Project in violation of this Section, (ii) any breach of Tenant's obligations under this Section or of any Hazardous Materials Laws by any Tenant Party, or (iii) the existence of any Tenant Contamination in, on or about the Premises or the Project to the extent caused by any Tenant Party, including without limitation any removal, cleanup or restoration work and materials necessary to return the Project or any improvements of whatever nature located on the Project to the condition existing prior to the Handling of Hazardous Materials in, on or about the Premises or the Project by any Tenant Party. In the event of any Tenant Contamination in, on or about the Premises or any other portion of the Project or any adjacent lands, Tenant shall promptly remedy the problem in accordance with all applicable Hazardous Materials Laws and Laws, shall give Landlord oral notice of any such non-standard or non-customary Release promptly after Tenant becomes aware of such Release, followed by written notice to Landlord within five (5) days after Tenant becomes aware of such Release, and shall furnish Landlord with concurrent copies of any and all notices, reports and other written materials filed by any Tenant Party with any governmental authority in connection with such Release. Landlord shall be responsible for and shall indemnify and hold Tenant harmless from and against all costs of any Environmental Damages which arise during the Term, as a result of the presence of, any Release of or the Handling of any Hazardous Material in, on, about or under the Building or Property, except to the extent provided for in this Section 7.1(d); provided that Tenant shall have the burden of reasonably demonstrating that such Hazardous Materials were not of the type used by Tenant in the Building or at the Project. Tenant shall be conclusively presumed to have met its burden to the extent that any Hazardous Materials are identified as being present in any environmental report or other data prior to Tenant's original occupancy of the Premises and are not used by Tenant. In the event of any dispute between Landlord and Tenant as to liability for any Hazardous Materials or Environmental Damages, Landlord shall make available to Tenant copies of any environmental reports in the possession or control of Landlord that relate to the Building and that existed as of the Commencement Date. Tenant shall have no obligation to remedy any Hazardous Materials contamination which was not caused or released by a Tenant Party.

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

(7) Inspection by Landlord. In addition to, and not in limitation of, Landlord's rights under this Lease, upon reasonable prior request by Landlord, Tenant shall grant Landlord and its consultants, as well as any governmental authorities having jurisdiction over the Premises or over any aspect of Tenant's use thereof, reasonable access to the Premises at reasonable times following reasonable prior notice (with Tenant having the opportunity to accompany any such individuals while in the Premises) to inspect Tenant's Handling of Hazardous Materials in, on and about the Premises, and Landlord shall not thereby incur any liability to Tenant or be deemed guilty of any disturbance of Tenant's use or possession of the Premises by reason of such entry; provided, however, that Landlord shall use reasonable efforts to minimize interference with Tenant's use of the Premises caused by such entry. Landlord shall comply with any security precaution reasonably imposed by Tenant during any entry onto the Premises and shall minimize to the extent reasonably possible any interference with Tenant's use of the Premises caused by such entry. Notwithstanding Landlord's rights of inspection and review of documents, materials and physical conditions under this Section with respect to Tenant's Handling of Hazardous Materials, Landlord shall have no duty or obligation to perform any such inspection or review or to monitor in any way any documents, materials, physical conditions or compliance with Laws in connection with Tenant's Handling of Hazardous Materials, and no third Party shall be entitled to rely on Landlord to conduct any such inspection, review or monitoring by reason of the provisions of this Section.

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

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

(10) Post-Occupancy Study. If Tenant or any Tenant Party Handles any Hazardous Materials in, on or about the Premises or the Project during the Term, then no later than fifteen (15) days following the Termination Date, Tenant at its sole cost and expense, shall obtain and deliver to Landlord an environmental study, performed by an expert reasonably satisfactory to Landlord, evaluating, the presence or absence of any Tenant Contamination in, on and about the Premises and the Project. Such study shall be based on a reasonable and prudent level of tests and investigations of the Premises and surrounding portions of the Project (if appropriate) which tests shall be conducted no earlier than fifteen (15) days prior to the Termination Date. Liability for any remedial actions required or recommended on the basis of such study shall be allocated in accordance with the applicable provisions of this Lease. To the extent any such remedial actions are the responsibility of Tenant, Tenant at its sole expense shall promptly commence and diligently pursue to completion the required remedial actions.

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

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

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

(i) If Tenant Handles any Radioactive Materials in or about the Premises or the Project during the Term, then for so long as any license or permit relating to such Radioactive Materials remains open or valid following the Termination Date, and another entity handling Radioactive Materials which is a prospective tenant of Landlord is legally prohibited from occupying a portion of the Premises for a use similar to Tenant's use due to such license or permit remaining open or valid, then Tenant shall be deemed to be occupying that portion of the Premises on a holdover basis without Landlord's consent (notwithstanding such otherwise applicable termination or expiration of the Term) and shall be required to continue to pay Rent and other charges in accordance with Article 13 solely for that portion of the Premises effected by the radioactive materials license, until such time as the earlier of (a) all such Radioactive Materials licenses and permits have been fully closed out in accordance with the requirements of this Lease and with all applicable Hazardous Materials Laws and other Laws or (b) the date another tenant is no longer legally prohibited from occupying a portion of the Premises for a use similar to Tenant's use due to such license or permit remaining open or valid.

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

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

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

7.2 LANDLORD ACCESS TO PREMISES; APPROVALS

(a) Tenant shall permit Landlord to erect, use and maintain pipes, ducts, wiring and conduits in and through the Premises, so long as Tenant's use, layout or design of the Premises is not materially affected or altered. Upon at least forty-eight (48) hours prior notice (except in an emergency), Landlord or Landlord's agents shall have the right to enter upon the Premises in the event of an emergency, or to inspect the Premises, to perform services required of Landlord under this Lease, to conduct safety and other testing in the Premises and to make such repairs, alterations, improvements or additions to the Premises or the Building or other parts of the Property as Landlord may deem reasonably necessary or desirable. Notwithstanding the foregoing sentence, in the event Tenant is then conducting sensitive testing or performing sensitive operations in the Premises for which forty-eight (48) hours prior notice of Landlord's non-emergency entry would, in Tenant's reasonable option, be disruptive to such testing or operations, then Tenant shall have the right to notify Landlord, within twenty-four (24) hours following receipt of Landlord's initial notice of non-emergency entry, that Tenant has elected to postpone Landlord's non-emergency entry until such testing or operations are complete, not to be later than five (5) business days following Landlord's initial notice of non-emergency entry. Any entry or work by Landlord may be during normal business hours and Landlord shall use reasonable efforts to ensure that any entry or work shall not materially interfere with Tenant's occupancy of the Premises. In connection with Landlord' right to enter the Premises as set forth in this Section 7.2(a), Tenant will have the opportunity to accompany Landlord's representatives while in the Premises.

(b) If Tenant shall not be personally present to permit an entry into the Premises when for any reason an entry therein shall be necessary or permissible, Landlord (or Landlord's agents), after attempting to notify Tenant at least forty-eight (48) hours in advance (unless Landlord believes an emergency situation exists), may enter the Premises without rendering Landlord or its agents liable therefor, and without relieving Tenant of any obligations under this Lease.

(c) Subject to the requirements set forth in Sections 7.1(c)(7) and 7.2 above, Landlord may enter the Premises for the purpose of conducting such inspections, tests and studies as Landlord may deem reasonably desirable or necessary to confirm Tenant's compliance with all Laws and Hazardous Materials Laws or for other purposes necessary in Landlord's reasonable judgment to ensure the sound condition of the Property and the systems serving the Property. Landlord's rights under this Section 7.2(c) are for Landlord's own protection only, and Landlord has not, and shall not be deemed to have assumed, any responsibility to Tenant or any other party as a result of the exercise or non-exercise of such rights, for compliance with Laws or Hazardous Materials Laws or for the accuracy or sufficiency of any item or the quality or suitability of any item for its intended use. Notwithstanding the generality of the foregoing, Tenant acknowledges that Landlord shall require access to the Premises for purposes of performing the work to upgrade the HVAC (heating, ventilating and air conditioning) systems and related Building Management System set forth on Exhibit D attached hereto (the "Systems Improvements") The Systems Improvements shall be performed at Landlord's sole cost and expense and shall not be included in Operating Expenses. Landlord shall obtain industry standard warranties and guaranties for the Systems Improvements (collectively, "Systems Improvements Warranties"). In connection therewith, Tenant agrees to reasonably cooperate with Landlord and take all actions reasonably required by Landlord to facilitate the completion of the Systems Improvements. Tenant understands and agrees that, in connection with any such access, Tenant may be required to move personal property located within portions of the Premises and/or to vacate portions of the Premises from time to time during construction of the Systems Improvements. Tenant and Landlord shall work together to agree to a mutually acceptable construction schedule in advance of commencement of construction, but in any event Landlord shall use commercially reasonable efforts to provide Tenant with advance notice of the need for such relocation in connection with Landlord's completion of the Systems Improvements, and to cause the Systems Improvements to be performed substantially in accordance with a mutually acceptable construction schedule. From and after the mutual execution and delivery of this Lease, Landlord and Landlord's employees, agents and contractors shall be granted reasonable access to the Premises for the purpose of planning and constructing the Systems Improvements in accordance with the construction schedule. Tenant acknowledges that during construction of the Systems Improvements that the areas of the Premises then being occupied by Tenant may not always be separated from the work being performed by Landlord and Landlord's contractors and that, as a result of Landlord's construction of the Systems Improvements, there will be construction noise, dust and related inconveniences to Tenant's use of the Premises. In connection with the foregoing and notwithstanding anything to the contrary contained within the Lease, Tenant hereby acknowledges and agrees that Landlord shall not be liable (x) under any circumstances for any inconvenience or annoyance to Tenant or Tenant's employees, agents, contractors or invitees, or for any direct or indirect injury to or interference with Tenant's business, including, without limitation, any such injury or damage arising as a result of any dust, fumes, noise or similar disruption, nuisance or annoyance created by Landlord or its agents, employees or contractors in connection with the Systems Improvements; or (y) any injury or damage to, or interference with, Tenant's business, including, but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring (irrespective of the negligence or willful misconduct of Landlord or Landlord's employees, agents or contractors.) Notwithstanding the foregoing, Landlord agrees to make all commercially reasonable efforts, including but not limited to, phasing and after hours work, as necessary, in order to minimize any disruption to Tenant's business operations. Landlord shall commence the construction of the Systems Improvements on or before June 1, 2013 and thereafter diligently prosecute the same to completion.

(d) Landlord may do any of the foregoing, or undertake any of the inspection or work described in the preceding paragraphs without such action constituting an actual or constructive eviction of Tenant, in whole or in part, or giving rise to an abatement of Rent by reason of loss or interruption of business of the Tenant, or otherwise.

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

7.3 QUIET ENJOYMENT

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

ARTICLE 8
MAINTENANCE

8.1 LANDLORD'S MAINTENANCE

Subject to the provisions of Articles 4 and 14, Landlord shall maintain and make necessary repairs to the Building structure (e.g. foundations, roof structure, load bearing walls), exterior walls (including windows, glazing, and curtain wall), roof membrane, and Project landscaping, sidewalks, utilities located outside of the Premises and parking areas, except that the cost of performing any of said maintenance or repairs whether to the Premises or to the Building caused by the negligence of Tenant, its employees, agents, servants, licensees, subtenants, contractors or invitees, shall be paid by Tenant, subject to the waivers set forth in Section 16.4. Landlord shall not be liable to Tenant for any expense, injury, loss or damage resulting from work done in or upon, or in connection with the use of, any adjacent or nearby building, land, street or alley outside of the Project. Landlord's obligations pursuant to this Section 8.1 shall be included in Operating Expenses to the extent permitted in the definition of Operating Expenses pursuant to Section 1.3 above.

Notwithstanding any provision set forth in the Lease to the contrary, if (i) Tenant provides prior written notice to Landlord of an event or circumstance which requires the action of Landlord with respect to its maintenance obligations under this Section 8.1, (ii) Landlord is, in fact, required to perform such repairs and/or maintenance, (iii) Landlord fails to commence such action within ten (10) business days after the receipt of such notice; provided, however, for purposes of this paragraph to "commence" shall include any steps taken by Landlord to design, consult, bid or seek permit or other governmental approval in connection with the necessary repairs or maintenance, and (iv) Landlord's failure to take such action materially and adversely affects Tenant's use and/or occupancy of the Premises, then Tenant may proceed to take the required action after delivery of an additional five (5) business days notice to Landlord specifying that the ten (10) business day period has expired, the specific action required and that Tenant intends to take or commence such required action. If such action is required under the terms of this Lease to be taken by Landlord and is not taken by Landlord within such ten (10) business day period, then Tenant shall be entitled to take such action (and only such action as specified in the ten (10) business day notice given to Landlord). In the event Tenant takes such action, and such work affects the Building structure, then Tenant shall use only those contractors approved by Landlord in the Building for work on such structure unless such contractors are unwilling or unable to perform, or timely perform, such work, in which event Tenant may utilize the services of any other qualified contractor which normally and regularly performs similar work in other first class office buildings in the greater San Francisco Bay Area. If such action properly taken by Tenant pursuant to this Section 8.1 was required under the terms of this Lease to be undertaken by Landlord, then Tenant shall be entitled to, within thirty (30) days following delivery of a reasonably particularized invoice, reimbursement by Landlord of Tenant's actual reasonable costs in taking such action; provided, however such costs may be included in Operating Expenses subject to the express limitations thereof. For the avoidance of doubt, any notice by Tenant pursuant to this Article 8 must be provided in accordance with the requirements of Article 24.

8.2 TENANT'S MAINTENANCE

Tenant shall periodically inspect the interior of the Building to identify any conditions that are dangerous or in need of maintenance, repair or replacement. Tenant shall promptly provide Landlord with notice of any such conditions. Tenant shall, at its sole cost and expense, perform all maintenance, repairs and replacements to the interior of the Building and associated improvements and systems that are not Landlord's express responsibility under this Lease, and shall keep the Building in good condition and repair. Tenant's repair and maintenance obligations include, without limitation, repairs to, or replacements of,: (a) the systems servicing the Premises, including the electrical, plumbing, heating, ventilating, air-conditioning, mechanical, communication, security and the fire and life safety systems of the Building, (b) corridors, washrooms, kitchens and lobbies, (c) floor covering; (d) interior partitions and other improvements; (e) interior doors and windows; (f) electronic, phone and data cabling and related equipment (collectively, "Cable"); and (g) Tenant Alterations; provided, however, during the period covered by any Systems Improvements Warranty, Landlord shall have the responsibility to repair and replace at Landlord's sole cost and expense, any portion of the heating, ventilating, and air-conditioning system covered by any Systems Improvements Warranty. Without limiting the generality of clause (a) above, in connection with Tenant's maintenance of the heating, ventilating, air-conditioning systems, Tenant shall obtain and keep in force a preventive maintenance contract providing for regular (at least quarterly) inspection and maintenance by a qualified service contractor(s) reasonably acceptable to Landlord. Within ten (10) business days following written request, Tenant shall deliver Landlord written confirmation from such service contractor(s) verifying that such a contract has been entered into and that the required service will be provided. Subject to Section 16.4 and to the extent Landlord is not reimbursed by insurance proceeds, Tenant shall reimburse Landlord for the cost of repairing damage to the Building caused by the acts of Tenant, Tenant Related Parties and their respective contractors and vendors. If Tenant fails to make any repairs to the Premises for more than fifteen (15) days after notice from Landlord (although notice shall not be required in an emergency), Landlord may make the repairs, and Tenant shall pay the reasonable cost of the repairs, together with an administrative charge in an amount equal to 10% of the cost of the repairs. Except as set forth in Section 8.1 above, Tenant hereby waives all right to make repairs at the expense of Landlord or in lieu thereof to vacate the Premises and its other similar rights as provided in California Civil Code Sections 1932(1), 1941 and 1942 or any other Laws (whether now or hereafter in effect). In addition to the foregoing, Tenant shall be responsible for all costs in connection with repairing all special tenant fixtures and improvements constructed by or on behalf of Tenant prior to or during the Lease Term, including without limitation, laboratory improvements, manufacturing infrastructure, plumbing, and appliances.

ARTICLE 9
ALTERATIONS AND IMPROVEMENTS

9.1 TENANT ALTERATIONS

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

(1) Tenant shall not, except as provided herein, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed, make or cause to be made any Tenant Alterations in or to the Premises or any Property systems serving the Premises. Prior to making any Tenant Alterations, Tenant shall give Landlord at least ten (10 days prior written notice (or such earlier notice as would be necessary pursuant to applicable Law) to permit Landlord sufficient time to post appropriate notices of non-responsibility. Subject to all other requirements of this Article 9, Tenant may undertake Decoration work without Landlord's prior written consent. Tenant shall furnish Landlord with the names and addresses of all contractors and subcontractors and copies of all contracts. All Tenant Alterations shall be completed at such time and in such manner as Landlord may from time to time reasonably approve, and only by contractors or mechanics approved by Landlord, which approval shall not be unreasonably withheld; provided, however, that Landlord may, in its sole discretion, specify the engineers and contractors to perform all work relating to the Building's systems (including the mechanical, heating, plumbing, security, ventilating, air-conditioning, electrical, communication and the fire and life safety systems in the Building) so long as such engineers and contractors are available and have competitive rates. The contractors, mechanics and engineers who may be used are further limited to those whose work will not cause or threaten to cause disharmony or interference with Landlord or other tenants in the Building and their respective agents and contractors performing work in or about the Building. Landlord may further condition its consent upon Tenant furnishing to Landlord and Landlord approving prior to the commencement of any work or delivery of materials to the Premises related to the Tenant Alterations such of the following as specified by Landlord: architectural plans and specifications, opinions from Landlord's engineers stating that the Tenant Alterations will not in any way adversely affect the Building's systems, necessary permits and licenses, certificates of insurance, and such other documents in such form reasonably requested by Landlord. In connection with Tenant Alterations which are reasonably anticipated to cost in excess of $500,000.00, Landlord may, in the exercise of commercially reasonable good-faith judgment, require that Tenant provide Landlord with appropriate evidence of Tenant's ability to complete and pay for the completion of the Tenant Alterations such as a performance bond or letter of credit. Upon completion of the Tenant Alterations, Tenant shall deliver to Landlord an as-built mylar and digitized (if available) set of plans and specifications for the Tenant Alterations.

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

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

(b) All Tenant Alterations shall without compensation or credit to Tenant, become part of the Premises and the property of Landlord at the time of their installation and shall remain in the Premises, unless pursuant to Article 12, Tenant may remove them or is required to remove them at Landlord's request.

(c) Tenant shall be solely responsible for all Tenant Alterations that Tenant desires to prepare the Premises for Tenant's use and occupancy thereof, which shall be performed in strict accordance with the foregoing terms and provisions of this Section 9.1. Subject to the terms and provisions hereof, Landlord agrees to contribute an amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00) (the "Tenant Improvement Allowance") toward the cost of the replacement of the Project's fire alarm panel, with any remainder being available for any other Tenant Alterations to the Premises. If the cost of any such work exceeds the Tenant Improvement Allowance, then such excess amount shall be borne solely by Tenant. Landlord shall pay the Tenant Improvement Allowance to Tenant within thirty (30) days following the later to occur of (i) Landlord's receipt of documentary evidence reasonably satisfactory to Landlord of all of Tenant's expenditures for work performed and materials used in completing such work; and (ii) Landlord's receipt of final, unconditional lien releases in form and content satisfactory to Landlord from all persons or entities providing labor and/or materials in connection with such work; provided, however, in no event shall Landlord be obligated to pay any portion of the Tenant Improvement Allowance to Tenant prior to the Commencement Date. If Landlord fails to timely fund the Tenant Improvement Allowance within the time period set forth above in this Section 9.1(c), then Tenant shall be entitled to deliver written notice (a "Payment Notice") thereof to Landlord. If Landlord still fails to fulfill any such obligation within ten (10) business days after Landlord's receipt of the Payment Notice from Tenant and if Landlord fails to deliver written notice to Tenant within such ten (10) business day period explaining Landlord's reasons that the amounts described in Tenant's Payment Notice are not due and payable by Landlord ("Refusal Notice"), then Tenant shall be entitled to offset such amount(s), together with interest at the Default Rate from the date of the Payment Notice until the date of offset, against Tenant's obligation to pay monthly Base Rent. However, Tenant shall not be entitled to any such offset if Tenant is in default under the Lease at the time that such offset would otherwise be applicable. If Landlord delivers a Refusal Notice, and if Landlord and Tenant are not able to agree on the amounts to be so paid by Landlord, if any, within ten (10) business days after Tenant's receipt of a Refusal Notice, then either Landlord or Tenant may elect to have such dispute resolved by binding arbitration before a retired judge of the Superior Court of the State of California under the auspices of JAMS/ENDISPUTE (or any successor to such organization) in Alameda County, California, according to the then rules of commercial arbitration of such organization. If Tenant prevails in any such arbitration, Tenant shall be entitled to offset the amount determined to be payable by Landlord in such proceeding together with interest at the Default Rate from the date of the Payment Notice against Tenant's next obligations to pay monthly Base Rent (but Tenant shall not be entitled to any such offset if Tenant is in default under the Lease.

9.2 LIENS

Tenant shall not permit any lien or claim for lien of any mechanic, laborer or supplier or any other lien to be filed against the Building, the Land, the Premises, or any other part of the Property arising out of work performed, or alleged to have been performed by, or at the direction of, or on behalf of Tenant. If any such lien or claim for lien is filed, Tenant shall within ten (10) business days of receiving notice of such lien or claim (a) have such lien or claim for lien released of record or (b) deliver to Landlord a bond in form, content, amount, and issued by surety, satisfactory to Landlord, indemnifying, protecting, defending and holding harmless the Indemnitees against all costs and liabilities resulting from such lien or claim for lien and the foreclosure or attempted foreclosure thereof. If Tenant fails to take any of the above actions, Landlord, in addition to its rights and remedies under Article 11, without investigating the validity of such lien or claim for lien, may pay or discharge the same and Tenant shall, as payment of additional Rent hereunder, reimburse Landlord upon demand for the amount so paid by Landlord, including Landlord's expenses and reasonable attorneys' fees.

ARTICLE 10
ASSIGNMENT AND SUBLETTING

10.1 ASSIGNMENT AND SUBLETTING

(a) Subject to Landlord's recapture right set forth in Section 10.2, without the prior written consent of Landlord, which consent of Landlord shall not be unreasonably withheld, conditioned or delayed, Tenant may not sublease, assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Lease or the encumbering of Tenant's interest therein in whole or in part, by operation of Law or otherwise or permit the use or occupancy of the Premises, or any part thereof, by anyone other than Tenant. Tenant agrees that the provisions governing sublease and assignment set forth in this Article 10 shall be deemed to be reasonable. If Tenant desires to enter into any sublease of the Premises or assignment of this Lease, Tenant shall deliver written notice thereof to Landlord ("Tenant's Notice"), together with the identity of the proposed subtenant or assignee and the proposed principal terms thereof and financial and other information sufficient for Landlord to make an informed judgment with respect to such proposed subtenant or assignee at least fifteen (15) days prior to the commencement date of the term of the proposed sublease or assignment. If Tenant proposes to sublease less than all of the Rentable Area of the Premises, the space proposed to be sublet and the space retained by Tenant must each be a marketable unit as reasonably determined by Landlord and otherwise in compliance with all Laws. Landlord shall notify Tenant in writing of its approval or disapproval of the proposed sublease or assignment or its decision to exercise its rights under Section 10.2 within fifteen (15) business days after receipt of Tenant's Notice (and all required information). In the event Landlord fails to respond to the Tenant's Notice within said fifteen (15) business day period, then Tenant may resubmit the same to Landlord (any all other parties entitled to receive notices to Landlord) with a cover letter stating "Landlord's failure to respond shall result in the deemed approval of a proposed sublease or assignment" in all capital letters and in bold face type. In the event Landlord fails to respond to the second Tenant's Notice within fifteen (15) business days following such second submittal, then such second failure by Landlord shall be deemed consent to such proposed sublease or assignment by Landlord. In no event may Tenant sublease any portion of the Premises or assign the Lease to any other tenant of the Project. For the avoidance of doubt, any notice or submittal by Tenant pursuant to this Article 10 must be provided in accordance with the requirements of Article 24.

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

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

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

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

(iv) the proposed sublessee or assignee is a current occupant of the Project or a bona fide prospective tenant of Landlord in the Project as demonstrated by a written proposal dated within ninety (90) days prior to the date of Tenant's request; or

(v) the proposed sublessee or assignee would materially increase the estimated pedestrian and vehicular traffic to and from the Premises and the Project.

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

(d) For purposes of this Article 10 and except as provided in Section 10.1(e) below, an assignment shall be deemed to include a change in the majority control of Tenant, resulting from any transfer, sale or assignment of shares of stock of Tenant occurring by operation of Law or otherwise if Tenant is a corporation whose shares of stock are not traded publicly. If Tenant is a partnership, any change in the partners of Tenant shall be deemed to be an assignment.

(e) Notwithstanding the generality of the foregoing, so long as Tenant is not entering into a transaction described herein for the purpose of avoiding or otherwise circumventing the remaining terms of this Article, Tenant may, subject to the remaining terms of this Section 10 (except 10.2 and 10.3, which shall not apply), assign its entire interest under this Lease or sublease all or a portion of the Premises, without the consent of Landlord, to (i) an Affiliate, or (ii) a successor to Tenant by purchase or other acquisition of Tenant's capital stock or substantially all of Tenant's assets, merger, consolidation or reorganization, provided that all of the following conditions are satisfied: (1) Tenant is not then in Default under this Lease beyond applicable notice and cure periods; (2) Tenant shall give Landlord written notice at least fifteen (15) days prior to the effective date of the proposed transfer (or if prior disclosure is limited or restricted by applicable law or contractual confidentiality obligations, then as soon as permissible, but in not event later than the date which is one day following the effective date of the proposed transfer) together with the information required hereunder and such entity shall expressly assume Tenant's obligations hereunder; (3) with respect to an assignment to an Affiliate, Tenant continues to have a net worth that is not materially less than Tenant's net worth as of the date immediately prior to such transfer; and (4) with respect to a purchase, merger, consolidation or reorganization which results in Tenant ceasing to exist as a separate legal entity, Tenant's successor shall have a net worth equal to Tenant's net worth as of the date immediately prior to such transfer, each such transfer being referred to as a "Permitted Transfer".

10.2 RECAPTURE

Excluding any assignment or sublease contemplated in Section 10.1(e), in connection with any sublease or assignment for all or substantially all of the remaining term, Landlord shall have the option to exclude from the Premises covered by this Lease ("recapture") the space proposed to be sublet or subject to the assignment, effective as of the proposed commencement date of such sublease or assignment. If Landlord elects to recapture, Tenant shall surrender possession of the space proposed to be subleased or subject to the assignment to Landlord on the effective date of recapture of such space from the Premises, such date being the Termination Date for such space and Landlord shall be responsible for the costs to demise the subject space in the case of a sublease. Effective as of the date of recapture of any portion of the Premises pursuant to this section, the Monthly Base Rent, Rentable Area of the Premises and Tenant's Share shall be adjusted on an equitable and reasonable basis.

10.3 EXCESS RENT

Excluding any assignment or sublease contemplated in Section 10.1(e), Tenant shall pay Landlord on the first day of each month during the term of the sublease or assignment, fifty percent (50%) of the amount by which the sum of all rent and other consideration (direct or indirect, but excluding any consideration paid at fair market value for Tenant's assets, fixtures, inventory, equipment or furniture transferred by Tenant to the transferee in connection with such assignment or sublease) due from the subtenant or assignee for such month exceeds: (i) that portion of the Monthly Base Rent and Rent Adjustments due under this Lease for said month which is allocable to the space sublet or assigned; and (ii) the following costs and expenses for the subletting or assignment of such space: (1) reasonable and customary brokerage commissions, marketing expenses and attorneys' fees and expenses, (2) the actual costs paid in making any improvements or substitutions in the Premises required by any sublease or assignment; and (3) "free rent" periods, costs of any inducements or concessions given to subtenant or assignee, moving costs, and other amounts in respect of such subtenant's or assignee's other leases or occupancy arrangements. All such costs and expenses shall be amortized over the term of the sublease or assignment pursuant to sound accounting principles.

10.4 TENANT LIABILITY

In the event of any sublease or assignment, whether or not with Landlord's consent, Tenant shall not be released or discharged from any liability, whether past, present or future, under this Lease, including any liability arising from the exercise of any renewal or expansion option, to the extent such exercise is expressly permitted by this Lease as may be subsequently amended. Tenant's liability shall remain primary, and in the event of default by any subtenant, assignee or successor of Tenant in performance or observance of any of the covenants or conditions of this Lease, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against said subtenant, assignee or successor. After any assignment, Landlord may consent to subsequent assignments or subletting of this Lease, or amendments or modifications of this Lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto, and such action shall not relieve Tenant or any successor of Tenant of liability under this Lease. If Landlord grants consent to such sublease or assignment, Tenant shall pay all reasonable attorneys' fees and expenses incurred by Landlord with respect to such assignment or sublease. In addition, if Tenant has any options to extend the Term or to add other space to the Premises, such options shall not be available to any subtenant or assignee, directly or indirectly without Landlord's express written consent, which may be withheld in Landlord's sole discretion; provided, however, any assignee of Tenant's entire interest under this Lease in connection with an assignment in accordance with Section 10.1(e) above, shall continue to have the right to exercise any options to extend the Term.

10.5 ASSUMPTION AND ATTORNMENT

If Tenant shall assign this Lease as permitted herein, the assignee shall expressly assume all of the obligations of Tenant hereunder in a written instrument satisfactory to Landlord and furnished to Landlord prior to the effective date of the assignment. If Tenant shall sublease the Premises as permitted herein, Tenant shall, at Landlord's option, within fifteen (15) days following any request by Landlord, obtain and furnish to Landlord the written agreement of such subtenant to the effect that the subtenant will attorn to Landlord and will pay all subrent directly to Landlord.

10.6 PROCESSING EXPENSES.

Tenant shall pay to Landlord, as Landlord's cost of processing each proposed assignment or subletting (whether or not the same is ultimately approved by Landlord or consummated by Tenant), an amount equal to the sum of (i) Landlord's reasonable attorneys' and other professional fees, not to exceed $2,500.00 unless Tenant or its transferee requests changes to this Lease or Landlord's form of consent, in which case such monetary limitation shall not apply, plus (ii) the sum of $500.00 for the cost of Landlord's administrative, accounting and clerical time (collectively, "Processing Costs"). Notwithstanding anything to the contrary herein, Landlord shall not be required to process any request for Landlord's consent to an assignment or subletting until Tenant has paid to Landlord the amount of Landlord's good faith estimate of the Processing Costs. When the actual amount of the Processing Costs is determined, it shall be reconciled with Landlord's estimate, and any payments or refunds required as a result thereof shall promptly thereafter be made by the parties.

ARTICLE 11
DEFAULT AND REMEDIES

11.1 EVENTS OF DEFAULT

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

(i) Tenant fails to pay any installment or other payment of Rent including Rent Adjustment Deposits or Rent Adjustments within five (5) business days after notice of delinquency;

(ii) Tenant fails to observe or perform any of the other covenants, conditions or provisions of this Lease and fails to cure such default within thirty (30) days after written notice thereof to Tenant; provided, however, that if the nature of Tenant's failure is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion;

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

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

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

(vi) a receiver is appointed for Tenant or its property, which appointment is not discharged within sixty (60) days;

(vii) any action taken by or against Tenant to reorganize or modify such party's capital structure in a materially adverse way which in the case of an involuntary action is not discharged within sixty (60) days; or

(viii) upon the dissolution of Tenant.

11.2 LANDLORD'S REMEDIES

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

(b) With respect to a Default, at any time Landlord may terminate Tenant's right to possession by written notice to Tenant stating such election. Any written notice required pursuant to Section 11.1 shall constitute notice of unlawful detainer pursuant to California Code of Civil Procedure Section 1161 if, at Landlord's sole discretion, it states Landlord's election that Tenant's right to possession is terminated after expiration of any period required by Law or any longer period required by Section 11.1. Upon the expiration of the period stated in Landlord's written notice of termination (and unless such notice provides an option to cure within such period and Tenant cures the Default within such period), Tenant's right to possession shall terminate and this Lease shall terminate, and Tenant shall remain liable as hereinafter provided. Upon such termination in writing of Tenant's right to possession, Landlord shall have the right, subject to applicable Law, to re-enter the Premises and dispossess Tenant and the legal representatives of Tenant and all other occupants of the Premises by unlawful detainer or other summary proceedings, or as otherwise permitted by Law, regain possession of the Premises and remove their property (including their trade fixtures, personal property and Required Removables pursuant to Article 12), but Landlord shall not be obligated to effect such removal, and such property may, at Landlord's option, be stored elsewhere, sold or otherwise dealt with as permitted by Law, at the risk of, expense of and for the account of Tenant, and the proceeds of any sale shall be applied pursuant to Law. Landlord shall in no event be responsible for the value, preservation or safekeeping of any such property. Tenant hereby waives all claims for damages that may be caused by Landlord's removing or storing Tenant's personal property pursuant to this Section or Section 12.1, and Tenant hereby indemnifies, and agrees to defend, protect and hold harmless, the Indemnitees from any and all loss, claims, demands, actions, expenses, liability and cost (including attorneys' fees and expenses) arising out of or in any way related to such removal or storage unless caused by the negligence or willful misconduct of the Indemnitees. Upon such written termination of Tenant's right to possession and this Lease, Landlord shall have the right to recover damages for Tenant's Default as provided herein or by Law, including the following damages provided by California Civil Code Section 1951.2:

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

(2) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant proves could reasonably have been avoided;

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

(4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, Landlord's unamortized costs of tenant improvements, leasing commissions and reasonable legal fees incurred in connection with entering into this Lease. The word "rent" as used in this Section 11.2 shall have the same meaning as the defined term Rent in this Lease. The "worth at the time of award" of the amount referred to in clauses (1) and (2) above is computed by allowing interest at the Default Rate. The worth at the time of award of the amount referred to in clause (3) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). For the purpose of determining unpaid Rent under clause (3) above, the monthly Rent reserved in this Lease shall be deemed to be the sum of the Monthly Base Rent, and the amounts last payable by Tenant as Rent Adjustments for the calendar year in which Landlord terminated this Lease as provided hereinabove.

(c) Even if Tenant is in Default and/or has abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession by written notice as provided in Section 11.2(b) above, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due under this Lease. In such event, Landlord shall have all of the rights and remedies of a landlord under California Civil Code Section 1951.4 (lessor may continue Lease in effect after Tenant's Default and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations), or any successor statute. During such time as Tenant is in Default, if Landlord has not terminated this Lease by written notice and if Tenant requests Landlord's consent to an assignment of this Lease or a sublease of the Premises, subject to Landlord's option to recapture pursuant to Section 10.2, Landlord shall not unreasonably withhold its consent to such assignment or sublease. Tenant acknowledges and agrees that the provisions of Article 10 shall be deemed to constitute reasonable limitations of Tenant's right to assign or sublet. Tenant acknowledges and agrees that in the absence of written notice pursuant to Section 11.2(b) above terminating Tenant's right to possession, no other act of Landlord shall constitute a termination of Tenant's right to possession or an acceptance of Tenant's surrender of the Premises, including acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease or the withholding of consent to a subletting or assignment, or terminating a subletting or assignment, if in accordance with other provisions of this Lease.

(d) Tenant hereby waives any and all rights to relief from forfeiture, redemption or reinstatement granted by Law (including California Civil Code of Procedure Sections 1174 and 1179) in the event of Tenant being evicted or dispossessed for any cause or in the event of Landlord obtaining possession of the Premises by reason of Tenant's Default or otherwise;

(e) Notwithstanding any other provision of this Lease, a notice to Tenant given under this Article and Article 24 of this Lease or given pursuant to California Code of Civil Procedure Section 1161, and any notice served by mail, shall be deemed served, and the requisite waiting period deemed to begin under said Code of Civil Procedure Section upon mailing (except as may be required under Code of Civil Procedure Section 1161 et seq.), without any additional waiting requirement under Code of Civil Procedure Section 1011 et seq. or by other Law. For purposes of Code of Civil Procedure Section 1162, Tenant's "place of residence", "usual place of business", "the property" and "the place where the property is situated" shall mean and be the Premises, whether or not Tenant has vacated same at the time of service.

(f) The voluntary or other surrender or termination of this Lease, or a mutual termination or cancellation thereof, shall not work a merger and shall terminate all or any existing assignments, subleases, subtenancies or occupancies permitted by Tenant, except if and as otherwise specified in writing by Landlord.

(g) No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant, and no exercise by Landlord of its rights pursuant to Section 25.15 to perform any duty which Tenant fails timely to perform, shall impair any right or remedy or be construed as a waiver. No provision of this Lease shall be deemed waived by Landlord unless such waiver is in writing signed by Landlord. The waiver by Landlord of any breach of any provision of this Lease shall not be deemed a waiver of any subsequent breach of the same or any other provision of this Lease.

11.3 ATTORNEY'S FEES

In the event any party brings any suit or other proceeding with respect to the subject matter or enforcement of this Lease, the prevailing party (as determined by the court, agency or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover reasonable attorneys' fees, expenses and costs of investigation as actually incurred, including court costs, expert witness fees, costs and expenses of investigation, and all reasonable attorneys' fees, costs and expenses in any such suit or proceeding (including in any action or participation in or in connection with any case or proceeding under the Bankruptcy Code, 11 United States Code Sections 101 et seq., or any successor statutes, in establishing or enforcing the right to indemnification, in appellate proceedings, or in connection with the enforcement or collection of any judgment obtained in any such suit or proceeding).

11.4 BANKRUPTCY

The following provisions shall apply in the event of the bankruptcy or insolvency of Tenant:

(a) In connection with any proceeding under Chapter 7 of the Bankruptcy Code where the trustee of Tenant elects to assume this Lease for the purposes of assigning it, such election or assignment, may only be made upon compliance with the provisions of (b) and (c) below, which conditions Landlord and Tenant acknowledge to be commercially reasonable. In the event the trustee elects to reject this Lease then Landlord shall immediately be entitled to possession of the Premises without further obligation to Tenant or the trustee.

(b) Any election to assume this Lease under Chapter 11 or 13 of the Bankruptcy Code by Tenant as debtor-in-possession or by Tenant's trustee (the "Electing Party") must provide for:

The Electing Party to cure or provide to Landlord adequate assurance that it will cure all monetary defaults under this Lease within fifteen (15) days from the date of assumption and it will cure all nonmonetary defaults under this Lease within thirty (30) days from the date of assumption. Landlord and Tenant acknowledge such condition to be commercially reasonable.

(c) If the Electing Party has assumed this Lease or elects to assign Tenant's interest under this Lease to any other person, such interest may be assigned only if the intended assignee has provided adequate assurance of future performance (as herein defined), of all of the obligations imposed on Tenant under this Lease.

For the purposes hereof, "adequate assurance of future performance" means that Landlord has ascertained that each of the following conditions has been satisfied:

(i) The assignee has submitted a current financial statement, certified by its chief financial officer, which shows a net worth and working capital in amounts sufficient to assure the future performance by the assignee of Tenant's obligations under this Lease; and

(ii) Landlord has obtained consents or waivers from any third parties that may be required under a lease, mortgage, financing arrangement, or other agreement by which Landlord is bound, to enable Landlord to permit such assignment.

(d) Landlord's acceptance of rent or any other payment from any trustee, receiver, assignee, person, or other entity will not be deemed to have waived, or waive, the requirement of Landlord's consent, Landlord's right to terminate this Lease for any transfer of Tenant's interest under this Lease without such consent, or Landlord's claim for any amount of Rent due from Tenant.

11.5 LANDLORD'S DEFAULT

Landlord shall be in default hereunder in the event Landlord has not commenced and pursued with reasonable diligence the cure of any failure of Landlord to meet its obligations hereunder within thirty (30) days after the receipt by Landlord of written notice from Tenant of the alleged failure to perform. Failure to provide the requisite notice and cure period by Tenant under this paragraph shall be an absolute defense by Landlord against any claims for failure to perform any of its obligations. In no event shall Tenant have the right to terminate or rescind this Lease as a result of Landlord's default as to any covenant or agreement contained in this Lease. Tenant hereby waives such remedies of termination and rescission and hereby agrees that Tenant's remedies for default hereunder and for breach of any promise or inducement shall be limited to a suit for damages and/or injunction. In addition, Tenant hereby covenants that, prior to the exercise of any such remedies, it will give the Mortgagee notice and a reasonable time to cure any default by Landlord.

ARTICLE 12
SURRENDER OF PREMISES

12.1 IN GENERAL

Upon the Termination Date, Tenant shall surrender and vacate the Premises immediately and deliver possession thereof to Landlord in a clean, good and tenantable condition as existed on the Commencement Date, ordinary wear and tear, and damage caused by Landlord, casualty and condemnation excepted. Tenant shall deliver to Landlord all keys to the Premises. All improvements in and to the Premises, including any Tenant Alterations (collectively, "Leasehold Improvements") shall remain upon the Premises at the end of the Term without compensation to Tenant. Landlord, however, by written notice to Tenant at least 30 days prior to the Termination Date, may require Tenant, at its expense, to remove any Tenant Alterations (as so identified, a "Required Removable"); provided, however if requested by Tenant at the time it requests approval for a proposed Tenant Alteration, Landlord shall advise Tenant at the time of granting such consent whether the proposed Tenant Alteration or any portion of the proposed Tenant Alteration is a Required Removable. In no event shall any improvements existing in the Premises as of the Date of this Lease be a Required Removable. The designated Required Removables shall be removed by Tenant before the Termination Date. Tenant shall repair damage caused by the installation or removal of Required Removables. If Tenant fails to perform its obligations in a timely manner, Landlord may perform such work at Tenant's reasonable expense. In the event possession of the Premises is not delivered to Landlord when required hereunder, or if Tenant shall fail to remove those items described above, Landlord may (but shall not be obligated to), at Tenant's expense, remove any of such property and store, sell or otherwise deal with such property, and undertake, at Tenant's reasonable expense, such restoration work as Landlord deems reasonably necessary or advisable.

12.2 LANDLORD'S RIGHTS

All property which may be removed from the Premises by Landlord in accordance with Section 12.1 above shall be conclusively presumed to have been abandoned by Tenant and Landlord may deal with such property as provided in Section 11.2(b), including the waiver and indemnity obligations provided in that Section. Tenant shall also reimburse Landlord for all costs and expenses incurred by Landlord in removing any Tenant Alterations and in restoring the Premises to the condition required by this Lease.

ARTICLE 13
HOLDING OVER

In the event that Tenant holds over in possession of the Premises after the Termination Date, for each month or partial month Tenant holds over possession of the Premises. Tenant shall pay Landlord 150% of the monthly Rent payable for the month immediately preceding the holding over (including increases for Rent Adjustments which Landlord may reasonably estimate. If Landlord provides Tenant with at least thirty (30) days prior written notice that Landlord has a signed proposal or lease from a succeeding tenant to lease the Premises, and if Tenant fails to surrender the Premises upon the later of (i) the date of expiration of such thirty (30) day period, or (ii) the date of expiration or earlier termination of this Lease, then Tenant shall also pay all consequential damages sustained by Landlord by reason of such holding over. The provisions of this Article shall not constitute a waiver by Landlord of any re-entry rights of Landlord and Tenant's continued occupancy of the Premises shall be as a tenancy in sufferance.

ARTICLE 14
DAMAGE BY FIRE OR OTHER CASUALTY

14.1 SUBSTANTIAL UNTENANTABILITY

(a) If any fire or other casualty (whether insured or uninsured) renders all or a substantial portion of the Premises or the Building untenantable, Landlord shall, with reasonable promptness after the occurrence of such damage, estimate the length of time that will be required to substantially complete the repair and restoration and shall, by notice advise Tenant of such estimate ("Landlord's Notice"). If Landlord estimates that the amount of time required to substantially complete such repair and restoration will exceed one hundred eighty (180) days from the date such damage occurred, then Landlord, or Tenant if all or a substantial portion of the Premises is rendered untenantable, shall have the right to terminate this Lease as of the date of such damage by delivering written notice to the other at any time within twenty (20) days after delivery of Landlord's Notice, provided that if Landlord so chooses, Landlord's Notice may also constitute such notice of termination.

(b) Unless this Lease is terminated as provided in the preceding subparagraph, Landlord shall proceed with reasonable promptness to repair and restore the Premises, subject to reasonable delays for insurance adjustments and Force Majeure delays, and also subject to zoning Laws and building codes then in effect. Landlord shall have no liability to Tenant, and Tenant shall not be entitled to terminate this Lease if such repairs and restoration are not in fact completed within the time period estimated by Landlord so long as Landlord shall proceed with reasonable diligence to complete such repairs and restoration. However, if the repairs are not substantially completed such that the Premises are reasonably tenantable by the date which is three hundred sixty-five (365) days from the date such damage occurred, then Tenant, at any time thereafter until such rebuilding is completed, may terminate this Lease by delivering written notice to Landlord of such termination, in which event this Lease shall terminate as of the date of the giving of such notice.

(c) Tenant acknowledges that Landlord shall be entitled to the full proceeds of any insurance coverage if Landlord will rebuild the Premises pursuant to this Lease, whether carried by Landlord or Tenant, for damages to the Premises, except for those proceeds of Tenant's insurance of its own personal property and equipment which would be removable by Tenant at the Termination Date.

(d) Notwithstanding anything to the contrary herein set forth: (i) Landlord shall have no duty pursuant to this Section to repair or restore any portion of any Tenant Alterations or non-Building standard equipment or to expend for any repair or restoration of the Premises or Building in amounts in excess of insurance proceeds paid to Landlord and available for repair or restoration; and (ii) Tenant shall not have the right to terminate this Lease pursuant to this Section if any damage or destruction was caused by the negligence or willful misconduct of Tenant, its agent or employees. Whether or not the Lease is terminated pursuant to this Article 14, in no event shall Tenant be entitled to any compensation or damages for loss of the use of the whole or any part of the Premises or for any inconvenience or annoyance occasioned by any such damage, destruction, rebuilding or restoration of the Premises or the Building or access thereto.

(e) Any repair or restoration of the Premises performed by Tenant shall be in accordance with the provisions of Article 9 hereof.

14.2 INSUBSTANTIAL UNTENANTABILITY

If the Premises or the Building is damaged by a casualty but neither is rendered substantially untenantable and Landlord estimates that the time to substantially complete the repair or restoration will not exceed one hundred eighty (180) days from the date such damage occurred, then Landlord shall proceed to repair and restore the Building or the Premises other than Tenant Alterations and non-Building standard equipment, with reasonable promptness, unless such damage is to the Premises and occurs during the last six (6) months of the Term, in which event either Tenant or Landlord shall have the right to terminate this Lease as of the date of such casualty by giving written notice thereof to the other within twenty (20) days after the date of such casualty. Notwithstanding the aforesaid, Landlord's obligation to repair shall be limited in accordance with the provisions of Section 14.1 above.

14.3 RENT ABATEMENT

Except for the gross negligence or willful act of Tenant or its agents, employees, contractors or invitees, if all or any part of the Premises are rendered untenantable by fire or other casualty, Monthly Base Rent and Rent Adjustments shall abate for that part of the Premises which is untenantable on a per diem basis from the date of the casualty until Landlord has Substantially Completed the repair and restoration work in the Premises which it is required to perform or the date the Lease is terminated (as applicable), provided, that as a result of such casualty, Tenant does not occupy the portion of the Premises which is untenantable during such period.

14.4 WAIVER OF STATUTORY REMEDIES

The provisions of this Lease, including this Article 14, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, the Premises or the Property or any part of either, and any Law, including Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code, with respect to any rights or obligations concerning damage or destruction shall have no application to this Lease or to any damage to or destruction of all or any part of the Premises or the Property or any part of either, and are hereby waived.

ARTICLE 15
EMINENT DOMAIN

15.1 TAKING OF WHOLE OR SUBSTANTIAL PART

In the event the whole or any substantial part of the Building or of the Premises is taken or condemned by any competent authority for any public use or purpose (including a deed given in lieu of condemnation) and is thereby rendered untenantable, this Lease shall terminate as of the date title vests in such authority, and Monthly Base Rent and Rent Adjustments shall be apportioned as of the Termination Date. Notwithstanding anything to the contrary herein set forth, in the event the taking is for a period that is less than the remaining Term of the Lease, then Landlord may elect either (i) to terminate this Lease (provided such temporary taking exceeds ninety (90) days), or (ii) permit Tenant to receive the entire award attributable to the Premises in which case Tenant shall continue to pay Rent and this Lease shall not terminate.

15.2 TAKING OF PART

In the event a part of the Building or the Premises is taken or condemned by any competent authority (or a deed is delivered in lieu of condemnation) and this Lease is not terminated, the Lease shall be amended to adjust the Monthly Base Rent and Tenant's Share to reflect the Rentable Area of the Premises or Building, as the case may be, remaining after any such taking or condemnation. Landlord, upon receipt and to the extent of the award in condemnation (or proceeds of sale) shall make necessary repairs and restorations to the Premises (exclusive of Tenant Alterations and non-Building standard equipment) and to the Building to the extent necessary to constitute the portion of the Building not so taken or condemned as a complete architectural and economically efficient unit. Notwithstanding the foregoing, if as a result of any taking, or a governmental order that the grade of any street or alley adjacent to the Building is to be changed and such taking or change of grade makes it necessary or desirable to substantially remodel or restore the Building or prevents the economical operation of the Building, Landlord shall have the right to terminate this Lease upon ninety (90) days prior written notice to Tenant.

15.3 COMPENSATION

Landlord shall be entitled to receive the entire award (or sale proceeds) from any such taking, condemnation or sale without any payment to Tenant, and Tenant hereby assigns to Landlord, Tenant's interest, if any, in such award; provided, however, Tenant shall have the right separately to pursue against the condemning authority a separate award in respect of the loss, if any, to Tenant Alterations paid for by Tenant without any credit or allowance from Landlord, moving expenses and loss of goodwill so long as there is no diminution of Landlord's award as a result.

ARTICLE 16
INSURANCE

16.1 TENANT'S INSURANCE

Tenant, at Tenant's expense, agrees to maintain in force, with a company or companies having a rating of not less than A-:VIII in Best's Insurance Guide, during the Term: (a) Commercial General Liability Insurance on a primary basis and without any right of contribution from any insurance carried by Landlord covering the Premises on an occurrence basis against all claims for personal injury, bodily injury, death and property damage, including contractual liability covering the indemnification provisions in this Lease, with a limit that is not less than a combined single limit of Five Million and No/100 Dollars ($5,000,000.00) (which limits may be satisfied by a blanket or umbrella policy); (b) Workers' Compensation and Employers' Liability Insurance to the extent required by and in accordance with the Laws of the State of California; (c) "All Risks" property insurance in an amount adequate to cover the full replacement cost of all Tenant Alterations, equipment, installations, fixtures and contents of the Premises in the event of loss; and (d) in the event a motor vehicle is to be used by Tenant in connection with its business operation from the Premises, Comprehensive Automobile Liability Insurance coverage with limits of not less than One Million and No/100 Dollars ($1,000,000.00) combined single limit coverage against bodily injury liability and property damage liability arising out of the use by or on behalf of Tenant, its agents and employees in connection with this Lease, of any owned, non-owned or hired motor vehicles. Landlord may from time to time require reasonable increases in any such limits or other insurance or coverages if Landlord reasonably believes that such additional coverage is generally consistent with coverage amounts then being requested by institutional landlords of comparable buildings with comparable use in the Emeryville/Berkeley market.

16.2 FORM OF POLICIES

Each policy referred to in Section 16.1 shall satisfy the following requirements. Each policy shall (i) name Landlord and the Indemnitees as additional insureds on the Commercial General Liability Insurance, (ii) be issued by one or more responsible insurance companies licensed to do business in the State of California having a rating of not less than A-: VIII in Best's Insurance Guide, (iii) where applicable, provide for commercially reasonable deductible amounts and not permit co-insurance, and (iv) each policy of "All-Risks" property insurance shall provide that the policy shall not be invalidated should the insured waive in writing prior to a loss, any or all rights of recovery against any other party for losses covered by such policies. Tenant shall deliver to Landlord, certificates of insurance and at Landlord's request, copies of all policies and renewals thereof to be maintained by Tenant hereunder, not less than ten (10) days prior to the Commencement Date and prior to any cancellation or expiration of each policy. If Tenant fails to carry the insurance required under this Article 16 or fails to provide certificates of renewal as and when required hereunder, Landlord may, but shall not be obligated to acquire such insurance on Tenant's behalf or Tenant's sole cost and expense.

16.3 LANDLORD'S INSURANCE

Landlord agrees to purchase and keep in full force and effect during the Term hereof, including any extensions or renewals thereof, insurance under policies issued by insurers of recognized responsibility, qualified to do business in the State of California on the Building in amounts not less than the greater of eighty (80%) percent of the then full replacement cost (without depreciation) of the Building (above foundations and excluding Tenant Alterations), against fire and such other risks as may be included in standard forms of all risk coverage insurance reasonably available from time to time. Landlord agrees to maintain in force during the Term, Commercial General Liability Insurance covering the Building on an occurrence basis against all claims for personal injury, bodily injury, death, and property damage. Such insurance shall be for a combined single limit of not less than Five Million and No/100 Dollars ($5,000,000.00). Neither Landlord's obligation to carry such insurance nor the carrying of such insurance shall be deemed to be an indemnity by Landlord with respect to any claim, liability, loss, cost or expense due, in whole or in part, to Tenant's negligent acts or omissions or willful misconduct. Without obligation to do so, Landlord may, in its sole discretion from time to time, carry insurance in amounts greater and/or for coverage additional to the coverage and amounts set forth above.

16.4 WAIVER OF SUBROGATION

(a) Landlord agrees that, so long as the same is permitted under the laws of the State of California, it will include in its "All Risks" policies appropriate clauses pursuant to which the insurance companies (i) waive all right of subrogation against Tenant with respect to losses payable under such policies and/or (ii) agree that such policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policies.

(b) Tenant agrees to include, so long as the same is permitted under the laws of the State of California, in its "All Risks" insurance policy or policies on Tenant Alterations, whether or not removable, and on Tenant's furniture, furnishings, fixtures and other property removable by Tenant under the provisions of this Lease appropriate clauses pursuant to which the insurance company or companies (i) waive the right of subrogation against Landlord and/or any tenant of space in the Building with respect to losses payable under such policy or policies and/or (ii) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies.

(c) Provided that Landlord's right of full recovery under its policy or policies aforesaid is not adversely affected or prejudiced thereby, Landlord hereby waives any and all right of recovery which it might otherwise have against Tenant, its servants, agents and employees, for loss or damage occurring to the Real Property and the fixtures, appurtenances and equipment therein, to the extent the same is covered by Landlord's insurance, notwithstanding that such loss or damage may result from the negligence or fault of Tenant, its servants, agents or employees. Provided that Tenant's right of full recovery under its aforesaid policy or policies is not adversely affected or prejudiced thereby, Tenant hereby waives any and all right of recovery which it might otherwise have against Landlord, its servants, and employees and against every other tenant of the Real Property who shall have executed a similar waiver as set forth in this Section 16.4 (c) for loss or damage to Tenant Alterations, whether or not removable, and to Tenant's furniture, furnishings, fixtures and other property removable by Tenant under the provisions hereof to the extent the same is coverable by Tenant's insurance required under this Lease, notwithstanding that such loss or damage may result from the negligence or fault of Landlord, its servants, agents or employees, or such other tenant and the servants, agents or employees thereof.

(d) Landlord and Tenant hereby agree to advise the other promptly if the clauses to be included in their respective insurance policies pursuant to subparagraphs (a) and (b) above cannot be obtained on the terms hereinbefore provided and thereafter to furnish the other with a certificate of insurance or copy of such policies showing the naming of the other as an additional insured, as aforesaid. Landlord and Tenant hereby also agree to notify the other promptly of any cancellation or change of the terms of any such policy that would affect such clauses or naming. All such policies which name both Landlord and Tenant as additional insureds shall, to the extent obtainable, contain agreements by the insurers to the effect that no act or omission of any additional insured will invalidate the policy as to the other additional insureds.

16.5 NOTICE OF CASUALTY

Tenant shall give Landlord notice in case of a fire or accident in the Premises promptly after Tenant is aware of such event.

ARTICLE 17
WAIVER OF CLAIMS AND INDEMNITY

17.1 WAIVER OF CLAIMS

To the extent permitted by Law, Tenant hereby releases the Indemnitees from, and waives all claims for, damage to person or property sustained by the Tenant or any occupant of the Premises or the Property resulting directly or indirectly from any existing or future condition, defect, matter or thing in and about the Premises or the Property or any part of either or any equipment or appurtenance therein, or resulting from any accident in or about the Premises or the Property, or resulting directly or indirectly from any act or neglect of any tenant or occupant of the Property or of any other person, including Landlord's agents and servants, except to the extent caused by the gross negligence or willful and wrongful act of any of the Indemnitees. To the extent permitted by Law, Tenant hereby waives any consequential damages, compensation or claims for inconvenience or loss of business, rents, or profits as a result of such injury or damage, whether or not caused by the gross negligence or willful and wrongful act of any of the Indemnitees. Subject to Section 16.4 above, if any such damage, whether to the Premises or the Property or any part of either, or whether to Landlord or to other tenants in the Property, results from any negligence or willful misconduct of Tenant, its employees, servants, agents, contractors, invitees or customers, Tenant shall be liable therefor and Landlord may, at Landlord's option, repair such damage and Tenant shall, upon demand by Landlord, as payment of additional Rent hereunder, reimburse Landlord within ten (10) days of demand for the total reasonable cost of such repairs, in excess of amounts, if any, paid to Landlord under insurance covering such damages. Tenant shall not be liable for any such damage caused by its acts or neglect if Landlord or a tenant has recovered the full amount of the damage from proceeds of insurance policies and the insurance company has waived its right of subrogation against Tenant.

17.2 INDEMNITY BY TENANT

To the extent permitted by Law, Tenant hereby indemnifies, and agrees to protect, defend and hold the Indemnitees harmless, against any and all actions, claims, demands, liability, costs and expenses, including attorneys' fees and expenses for the defense thereof, arising from Tenant's occupancy of the Premises, from the undertaking of any Tenant Alterations or repairs to the Premises, from the conduct of Tenant's business on the Premises, or from any willful act or negligence of Tenant, its agents, contractors, servants, employees, customers or invitees, in or about the Premises or the Property or any part of either. In case of any action or proceeding brought against the Indemnitees by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel chosen by Landlord, in Landlord's sole discretion. Landlord reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity. The foregoing indemnity shall not operate to relieve Indemnitees of liability to the extent such liability is caused by the willful and wrongful act of Indemnitees. Further, the foregoing indemnity is subject to and shall not diminish any waivers in effect in accordance with Section 16.4 by Landlord or its insurers to the extent of amounts, if any, paid to Landlord under its "All-Risks" property insurance. However, notwithstanding the foregoing, Tenant shall not be required to indemnify and/or hold the Indemnitees harmless from any loss, cost, liability, damage or expense, including, but not limited to, penalties, fines, attorneys' fees or costs (collectively, "Claims"), to any person, property or entity to the extent resulting from the negligence or willful misconduct of Landlord or its agents, contractors, or employees (except for damage to the Tenant Alterations and Tenant's personal property, fixtures, furniture and equipment in the Premises in which case Tenant shall be responsible to the extent Tenant is required to obtain the requisite insurance coverage pursuant to this Lease). Tenant's agreement to indemnify Landlord pursuant to this Article 17 is not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to this Lease, to the extent such policies cover the matters subject to such indemnification obligations. Further, the foregoing indemnity is subject to and shall not diminish any waivers in effect in accordance with Section 16.4 by Landlord or its insurers to the extent of amounts, if any, paid to Landlord under its "All-Risks" property insurance. This Article 17 shall survive the expiration or earlier termination of this Lease.

17.3 INDEMNITY BY LANDLORD

To the extent permitted by Law, Landlord hereby indemnifies, and agrees to protect, defend and hold Tenant and its directors, officers and employees (the "Tenant Indemnitees") harmless, against any and all actions, claims, demands, liability, costs and expenses, including reasonable attorneys' fees and expenses for the defense thereof, to the extent arising from any gross negligence or willful misconduct of Landlord or its agents, in or about the Premises or the Property or any part of either. In case of any action or proceeding brought against the Tenant Indemnitees by reason of any such claim, upon notice from Tenant, Landlord covenants to defend such action or proceeding by counsel chosen by Landlord. The foregoing indemnity shall not operate to relieve Tenant Indemnitees of liability to the extent such liability is caused by the willful and wrongful act of Tenant Indemnitees. Further, the foregoing indemnity is subject to and shall not diminish any waivers in effect in accordance with Section 16.4 by Tenant or its insurers to the extent of amounts, if any, paid to Tenant under its "All-Risks" property insurance.

ARTICLE 18
RULES AND REGULATIONS

18.1 RULES

Tenant agrees for itself and for its subtenants, employees, agents, and invitees to comply with the rules and regulations listed on Exhibit B-2 attached hereto and with all reasonable modifications and additions thereto which Landlord may make from time to time.

18.2 ENFORCEMENT

Nothing in this Lease shall be construed to impose upon the Landlord any duty or obligation to enforce the rules and regulations as set forth on Exhibit B-2 or as hereafter adopted, or the terms, covenants or conditions of any other lease as against any other tenant, and the Landlord shall not be liable to the Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees. Landlord shall use reasonable efforts to enforce the rules and regulations of the Project in a uniform and non-discriminatory manner.

ARTICLE 19
LANDLORD'S RESERVED RIGHTS

Landlord shall have the following rights exercisable without notice to Tenant and without liability to Tenant for damage or injury to persons, property or business and without being deemed an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for offset or abatement of Rent (except as otherwise set forth in this Lease): (1) to change the Building's name or street address upon thirty (30) days' prior written notice to Tenant; (2) to install, affix and maintain all signs on the exterior and/or interior of the Building; (3) to designate and/or approve prior to installation, all types of signs, window shades, blinds, drapes, awnings or other similar items, and all internal lighting that may be visible from the exterior of the Premises; (4) upon at least twenty-four (24) hours prior notice to Tenant, to display the Premises to prospective purchasers and lenders at reasonable hours at any time during the Term and to prospective tenants at reasonable hours during the last twelve (12) months of the Term (with Tenant having the opportunity to accompany any such individuals while in the Premises); (5) to have access for Landlord and other tenants of the Building to any mail chutes and boxes located in or on the Premises as required by any applicable rules of the United States Post Office; and (6) to close the Building after normal business hours, except that Tenant and its employees and invitees shall be entitled to admission at all times, under such reasonable regulations as Landlord prescribes for security purposes.

ARTICLE 20
ESTOPPEL CERTIFICATE

20.1 IN GENERAL

Within ten (10) business days after request therefor by Landlord, Mortgagee or any prospective mortgagee or owner, Tenant agrees as directed in such request to execute an Estoppel Certificate in recordable form, binding upon Tenant, certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Lease as modified is in full force and effect); (ii) the dates to which Rent has been paid; (iii) that Tenant is in the possession of the Premises if that is the case; (iv) that Landlord is not in default under this Lease (or if Tenant believes there exists any default by Landlord, a full and complete explanation thereof); (v) that Tenant has no offsets or defenses to the performance of its obligations under this Lease (or if Tenant believes there are any offsets or defenses, a full and complete explanation thereof); (vi) that Tenant has accepted the Premises and the condition thereof and of all improvements thereto and has no claims against Landlord or any other party with respect thereto (or if Tenant believes it has a claim against Landlord or any other party, a full and complete explanation thereof); (vii) that if an assignment of rents or leases has been served upon the Tenant by a Mortgagee, Tenant will acknowledge receipt thereof and agree to be bound by the provisions thereof; (viii) that Tenant will give to the Mortgagee copies of all notices required or permitted to be given by Tenant to Landlord; and (ix) to any other information reasonably requested.

20.2 ENFORCEMENT

In the event that Tenant fails to timely deliver an Estoppel Certificate within the ten (10) business day period following written request, and if such failure continues for an additional five (5) business days following written notice from Landlord, then such failure shall be a Default for which there shall be no cure or grace period. In addition to any other remedy available to Landlord, Landlord may impose a charge equal to $385.00 for each day that Tenant fails to deliver an Estoppel Certificate.

ARTICLE 21
INTENTIONALLY OMITTED

ARTICLE 22
REAL ESTATE BROKERS

Tenant represents that, except for the broker listed in Section 1.1(14), Tenant has not dealt with any real estate broker, sales person, or finder in connection with this Lease, and no such person initiated or participated in the negotiation of this Lease, or showed the Premises to Tenant. Tenant hereby agrees to indemnify, protect, defend and hold Landlord and the Indemnitees, harmless from and against any and all liabilities and claims for commissions and fees arising out of a breach of the foregoing representation. Landlord has not dealt with any real estate broker, sales person, or finder in connection with this Lease. Landlord agrees to pay any commission to which the broker listed in Section 1.1(14) is entitled in connection with its representation of Tenant under this Lease pursuant to Landlord's written agreement with such broker. Landlord hereby agrees to indemnify, protect, defend and hold Tenant harmless from and against any and all liabilities and claims for commissions and fees arising out of any real estate broker, sales person or finder that claims to have represented Landlord in connection with this Lease.

ARTICLE 23
MORTGAGEE PROTECTION

23.1 SUBORDINATION AND ATTORNMENT

This Lease is and shall be expressly subject and subordinate at all times to (i) any ground or underlying lease of the Real Property, now or hereafter existing, and all amendments, extensions, renewals and modifications to any such lease, and (ii) the lien of any mortgage or trust deed now or hereafter encumbering fee title to the Real Property and/or the leasehold estate under any such lease, and all amendments, extensions, renewals, replacements and modifications of such mortgage or trust deed and/or the obligation secured thereby, unless such ground lease or ground lessor, or mortgage, trust deed or Mortgagee, expressly provides or elects that the Lease shall be superior to such lease or mortgage or trust deed. If any such mortgage or trust deed is foreclosed (including any sale of the Real Property pursuant to a power of sale), or if any such ground or underlying lease is terminated, upon request of the Mortgagee or ground lessor, as the case may be, Tenant shall attorn to the purchaser at the foreclosure sale or to the ground lessor under such lease, as the case may be, provided, however, that such purchaser or ground lessor shall not be (i) bound by any payment of Rent for more than one month in advance except payments in the nature of security for the performance by Tenant of its obligations under this Lease; (ii) subject to any offset, defense or damages arising out of a default of any obligations of any preceding Landlord except to the extent of defaults continuing after the date of such attornment; or (iii) bound by any amendment or modification of this Lease made without the written consent of the Mortgagee or ground lessor; or (iv) liable for any security deposits not actually received by such purchaser or ground lessor. The foregoing subordination as to any future deed of trust or ground lease is conditioned upon the Mortgagee or ground lessor providing Tenant with its standard subordination, non-disturbance and attornment agreement. Additionally, Tenant agrees to execute promptly any reasonable certificate or instrument that Landlord, Mortgagee or ground lessor may request in connection with any such subordination. Upon request by such successor in interest, Tenant shall execute and deliver reasonable instruments confirming the attornment provided for herein. The terms of this paragraph shall survive any termination of this Lease by reason of foreclosure.

Landlord has informed Tenant that the Project is currently encumbered by a deed of trust (the "Security Instrument"). At Tenant's sole cost and expense, Landlord shall request the Mortgagee of the existing Security Instrument to issue its standard subordination, non-disturbance and attornment agreement ("SNDA"), pursuant to which the beneficiary of such Security Instrument agrees to recognize this Lease in the event of default under such Security Instrument or sale under such Security Instrument, so long as Tenant is not in default hereunder beyond any applicable notice and cure period. Landlord's sole obligation under this section is to use commercially reasonable efforts to cause Mortgagee to issue such SNDA. Tenant is responsible for paying all costs and expenses for such SNDA, including, without limitation, the lender attorneys' fees and disbursements. Obtaining the SNDA is not a condition precedent or subsequent to the Lease. The failure of such lender to issue its SNDA shall not relieve Tenant of any of its obligations under the Lease or constitute a breach or default by Landlord.

23.2 MORTGAGEE PROTECTION

Tenant agrees to give any Mortgagee or ground lessor, by registered or certified mail, a copy of any notice of default served upon the Landlord by Tenant, provided that prior to such notice Tenant has received notice (by way of service on Tenant of a copy of an assignment of rents and leases, or otherwise) of the address of such Mortgagee or ground lessor. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the Mortgagee or ground lessor shall have an additional thirty (30) days after receipt of notice thereof within which to cure such default or if such default cannot be cured within that time, then such additional notice time as may be necessary, if, within such thirty (30) days, any Mortgagee or ground lessor has commenced and is diligently pursuing the remedies necessary to cure such default (including commencement of foreclosure proceedings or other proceedings to acquire possession of the Real Property, if necessary to effect such cure). Such period of time shall be extended by any period within which such Mortgagee or ground lessor is prevented from commencing or pursuing such foreclosure proceedings or other proceedings to acquire possession of the Real Property by reason of Landlord's bankruptcy. Until the time allowed as aforesaid for Mortgagee or ground lessor to cure such defaults has expired without cure, Tenant shall have no right to, and shall not, terminate this Lease on account of default. This Lease may not be modified or amended so as to reduce the Rent or shorten the Term, or so as to adversely affect in any other respect to any material extent the rights of the Landlord, nor shall this Lease be canceled or surrendered, without the prior written consent, in each instance, of the ground lessor or the Mortgagee.

ARTICLE 24
NOTICES

(a) All notices, demands or requests provided for or permitted to be given pursuant to this Lease must be in writing and shall be personally delivered, sent by Federal Express or other reputable overnight courier service, or mailed by first class, registered or certified United States mail, return receipt requested, postage prepaid.

(b) All notices, demands or requests to be sent pursuant to this Lease shall be deemed to have been properly given or served by delivering or sending the same in accordance with this Section, addressed to the parties hereto at their respective addresses listed in Section 1.1.

(c) Notices, demands or requests sent by mail or overnight courier service as described above shall be effective upon deposit in the mail or with such courier service. However, except with respect to a notice given under Code of Civil Procedure Section 1161 et seq., the time period in which a response to any such notice, demand or request must be given shall commence to run from (i) in the case of delivery by mail, the date of receipt on the return receipt of the notice, demand or request by the addressee thereof, or (ii) in the case of delivery by Federal Express or other overnight courier service, the date of acceptance of delivery by Landlord or Tenant. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given, as indicated by advice from Federal Express or other overnight courier service or by mail return receipt, shall be deemed to be receipt of notice, demand or request sent. Notices may also be served by personal service upon Landlord or Tenant, and shall be effective upon such service.

(d) By giving to the other party at least five (5) business days written notice thereof, either party shall have the right from time to time during the term of this Lease to change their respective addresses for notices, statements, demands and requests, provided such new address shall be within the United States of America.

ARTICLE 25
MISCELLANEOUS

25.1 LATE CHARGES

(a) All payments required hereunder (other than the Monthly Base Rent, Rent Adjustments, and Rent Adjustment Deposits, which shall be due as hereinbefore provided) to Landlord shall be paid within ten (10) days after Landlord's demand therefor. All such amounts (including Monthly Base Rent, Rent Adjustments, and Rent Adjustment Deposits) not paid within five (5) days after due shall bear interest from the date due until the date paid at the Default Rate in effect on the date such payment was due.

(b) In the event Tenant is more than five (5) days late in paying any installment of Rent due under this Lease, Tenant shall pay Landlord a late charge equal to five percent (5%) of the delinquent installment of Rent. The parties agree that (i) such delinquency will cause Landlord to incur costs and expenses not contemplated herein, the exact amount of which will be difficult to calculate, including the cost and expense that will be incurred by Landlord in processing each delinquent payment of rent by Tenant, (b) the amount of such late charge represents a reasonable estimate of such costs and expenses and that such late charge shall be paid to Landlord for each delinquent payment in addition to all Rent otherwise due hereunder. The parties further agree that the payment of late charges and the payment of interest provided for in subparagraph (a) above are distinct and separate from one another in that the payment of interest is to compensate Landlord for its inability to use the money improperly withheld by Tenant, while the payment of late charges is to compensate Landlord for its additional administrative expenses in handling and processing delinquent payments.

(c) Notwithstanding the foregoing, Tenant shall be entitled to notice and the expiration of a five (5) day cure period prior to a imposition of any late charge or interest charge under this Section 25.1 one (1) time per calendar year; after such written notice has been provided to Tenant in a calendar year, Tenant shall not be entitled to any further notice prior to imposition of a late charge or interest under this Section 25.1 in such calendar year.

(d) Payment of interest at the Default Rate and/or of late charges shall not excuse or cure any default by Tenant under this Lease, nor shall the foregoing provisions of this Article or any such payments prevent Landlord from exercising any right or remedy available to Landlord upon Tenant's failure to pay Rent when due, including the right to terminate this Lease.

25.2 NO JURY TRIAL; VENUE; JURISDICTION

To the fullest extent permitted by law, including laws enacted after the Commencement Date, each party hereto (which includes any assignee, successor, heir or personal representative of a party) shall not seek a jury trial, hereby waives trial by jury, and hereby further waives any objection to venue in the County in which the Project is located, and agrees and consents to personal jurisdiction of the courts of the State of California, in any action or proceeding or counterclaim brought by any party hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any statute, emergency or otherwise, whether any of the foregoing is based on this Lease or on tort law. No party will seek to consolidate any such action in which a jury has been waived with any other action in which a jury trial cannot or has not been waived. It is the intention of the parties that these provisions shall be subject to no exceptions. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

25.3 DISCRIMINATION

Tenant agrees for Tenant and Tenant's heirs, executors, administrators, successors and assigns and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry (whether in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises or otherwise) nor shall Tenant or any person claiming under or through Tenant establish or permit any such practice or practices of discrimination or segregation with reference to the use or occupancy of the Premises by Tenant or any person claiming through or under Tenant.

25.4 FINANCIAL STATEMENTS

Within ten (10) business days after written request from Landlord from time to time during the Term, Tenant shall provide Landlord with current financial statements setting forth Tenant's financial condition and net worth for the most recent quarter, including balance sheets and statements of profits and losses. Such statements shall be reviewed by an independent accountant and certified by Tenant's president, chief executive officer or chief financial officer. Landlord shall only request such financial information in connection with a sale or financing or a proposed sale or refinancing of the Property, or any portion thereof, or during any period in which Tenant is in default, and Landlord shall treat any such financial information as confidential information and shall only disclose the same to the extent reasonably necessary in connection with the foregoing purposes or as may be required by Law. Notwithstanding the foregoing, Tenant shall have no obligation to deliver any financial statements if Tenant is a publicly traded entity or an entity that is otherwise required to file financial statements with any governmental entity that are publicly available and Tenant is in compliance with such public reporting requirement.

25.5 OPTION

This Lease shall not become effective as a lease or otherwise until executed and delivered by both Landlord and Tenant. The submission of the Lease to Tenant does not constitute a reservation of or option for the Premises, but when executed by Tenant and delivered to Landlord, the Lease shall constitute an irrevocable offer by Tenant in effect for fifteen (15) days to lease the Premises on the terms and conditions herein contained.

25.6 TENANT AUTHORITY

Tenant represents and warrants to Landlord that it has full authority and power to enter into and perform its obligations under this Lease, that the person executing this Lease is fully empowered to do so, and that no consent or authorization is necessary from any third party. Landlord may request that Tenant provide Landlord reasonable evidence of Tenant's authority. Landlord represents and warrants to Tenant that it has full authority and power to enter into and perform its obligations under this Lease.

25.7 ENTIRE AGREEMENT

This Lease, the Exhibits, and Riders attached hereto contain the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements, either oral or written, and no other representations or statements, either oral or written, on which Tenant or Landlord has relied. This Lease shall not be modified except by a writing executed by Landlord and Tenant.

25.8 MODIFICATION OF LEASE FOR BENEFIT OF MORTGAGEE

If Mortgagee of Landlord requires a modification of this Lease which shall not result in any increased cost or expense to Tenant or in any other material and adverse change in the rights and obligations of Tenant hereunder, then Tenant agrees that the Lease may be so modified.

25.9 EXCULPATION

Tenant agrees, on its behalf and on behalf of its successors and assigns, that any liability or obligation under this Lease shall only be enforced against Landlord's equity interest in the Property up to a maximum of Five Million Dollars ($5,000,000.00) and in no event against any other assets of the Landlord, or Landlord's officers or directors or partners, and that any liability of Landlord with respect to this Lease shall be so limited and Tenant shall not be entitled to any judgment in excess of such amount. Notwithstanding anything to the contrary contained herein, in no event shall Landlord be liable to Tenant for consequential, punitive or special damages with respect to this Lease.

25.10 ACCORD AND SATISFACTION

No payment by Tenant or receipt by Landlord of a lesser amount than any installment or payment of Rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or payment of Rent or pursue any other remedies available to Landlord. No receipt of money by Landlord from Tenant after the termination of this Lease or Tenant's right of possession of the Premises shall reinstate, continue or extend the Term. Receipt or acceptance of payment from anyone other than Tenant, including an assignee of Tenant, is not a waiver of any breach of Article 10, and Landlord may accept such payment on account of the amount due without prejudice to Landlord's right to pursue any remedies available to Landlord.

25.11 LANDLORD'S OBLIGATIONS ON SALE OF BUILDING

In the event of any sale or other transfer of the Building, Landlord shall be entirely freed and relieved of all agreements and obligations of Landlord hereunder accruing or to be performed after the date of such sale or transfer, and any remaining liability of Landlord with respect to this Lease shall be limited to the dollar amount specified in Section 25.9 and Tenant shall not be entitled to any judgment in excess of such amount. Landlord shall have the right to assign this Lease to an entity comprised of the principals of Landlord or any Landlord Affiliate. Upon such assignment and assumption of the obligations of Landlord hereunder, Landlord shall be entirely freed and relieved of all obligations hereunder.

25.12 BINDING EFFECT

Subject to the provisions of Article 10, this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and permitted assigns.

25.13 CAPTIONS

The Article and Section captions in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such Articles and Sections.

25.14 TIME; APPLICABLE LAW; CONSTRUCTION

Time is of the essence of this Lease and each and all of its provisions. This Lease shall be construed in accordance with the Laws of the State of California. If more than one person signs this Lease as Tenant, the obligations hereunder imposed shall be joint and several. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each item, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by Law. Wherever the term "including" or "includes" is used in this Lease, it shall have the same meaning as if followed by the phrase "but not limited to". The language in all parts of this Lease shall be construed according to its normal and usual meaning and not strictly for or against either Landlord or Tenant.

25.15 ABANDONMENT

In the event Tenant vacates or abandons the Premises but is otherwise in compliance with all the terms, covenants and conditions of this Lease, Landlord shall (i) have the right to enter into the Premises in order to show the space to prospective tenants, (ii) have the right to reduce the services provided to Tenant pursuant to the terms of this Lease to such levels as Landlord reasonably determines to be adequate services for an unoccupied premises, and (iii) during the last six (6) months of the Term, have the right to prepare the Premises for occupancy by another tenant upon the end of the Term. Tenant expressly acknowledges that in the absence of written notice pursuant to Section 11.2(b) or pursuant to California Civil Code Section 1951.3 terminating Tenant's right to possession, none of the foregoing acts of Landlord or any other act of Landlord shall constitute a termination of Tenant's right to possession or an acceptance of Tenant's surrender of the Premises, and the Lease shall continue in effect.

25.16 LANDLORD'S RIGHT TO PERFORM TENANT'S DUTIES

If Tenant is in Default for the failure to timely to perform any of its duties under this Lease, then Landlord shall have the right (but not the obligation), to cure such Default on behalf and at the expense of Tenant following no fewer than three (3) business days prior notice to Tenant, and all sums reasonably expended or expenses reasonably incurred by Landlord in performing such duty shall be deemed to be additional Rent under this Lease and shall be due and payable upon demand by Landlord.

25.17 SECURITY SYSTEM

Landlord shall not be obligated to provide or maintain any security patrol or security system. Landlord shall not be responsible for the quality of any such patrol or system which may be provided hereunder or for damage or injury to Tenant, its employees, invitees or others due to the failure, action or inaction of such patrol or system.

25.18 NO LIGHT, AIR OR VIEW EASEMENTS

Any diminution or shutting off of light, air or view by any structure which may be erected on lands of or adjacent to the Project shall in no way affect this Lease or impose any liability on Landlord.

25.19 RECORDATION

Neither this Lease, nor any notice nor memorandum regarding the terms hereof, shall be recorded by Tenant. Any such unauthorized recording shall be a Default for which there shall be no cure or grace period. Tenant agrees to execute and acknowledge, at the request of Landlord, a commercially reasonable memorandum of this Lease, in recordable form.

25.20 SURVIVAL

The waivers of the right of jury trial, the other waivers of claims or rights, the releases and the obligations of a party under this Lease to indemnify, protect, defend and hold harmless the other party shall survive the expiration or termination of this Lease, and so shall all other obligations or agreements which by their terms survive expiration or termination of the Lease.

25.21 OFAC REPRESENTATION, WARRANTY AND COVENANT

Tenant represents, warrants and covenants that:

(1) Tenant and its principals are not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control;

(2) Tenant and its principals are not engaged, and will not engage, in this transaction, directly or indirectly, on behalf of, or instigating or facilitating, and will not instigate or facilitate, this transaction, directly or indirectly, on behalf of, any such person, group, entity, or nation; and

(3) Tenant acknowledges that the breach of this representation, warranty and covenant by Tenant shall be an immediate Default under this Lease.

25.22 COUNTERPARTS

This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Telecopied signatures or signatures transmitted by electronic mail in so-called "pdf" format may be used in place of original signatures on this Lease. Landlord and Tenant intend to be bound by the signatures on the telecopied or e-mailed document, are aware that the other party will rely on the telecopied or e-mailed signatures, and hereby waive any defenses to the enforcement of the terms of this Lease based on such telecopied or e-mailed signatures. Promptly following request by either party, the other party shall provide the requesting party with original signatures on this Lease.

25.23 BACKUP GENERATOR

Tenant to maintain in good operating condition and repair (including any required replacements), at Tenant's sole cost and expense, the backup generator currently located at the Project as well as the associated equipment and infrastructure (collectively, the "Generator"). All such maintenance and Tenant's use of the Generator shall be subject to all applicable Laws, and any terms and conditions as may be reasonably imposed by Landlord; provided, however, that Landlord shall not charge Tenant any separate charge in connection with the same. Without limiting the generality of the foregoing, Tenant shall, at Tenant's sole cost and expense, obtain and maintain all necessary federal, state, and municipal permits, licenses and approvals, including without limitation any such permits, licenses and approvals from the Bay Area Air Quality Management District, and Tenant shall deliver copies thereof to Landlord. The Generator may be used by Tenant only during (a) testing and regular maintenance, and (b) any period of electrical power outage in the Project. Tenant shall be entitled to operate the Generator for testing and regular maintenance only upon notice to Landlord and at times reasonably approved by Landlord. Tenant shall ensure that the backup generator does not result in any Hazardous Materials being introduced to the Project. Further, Tenant shall be responsible for ensuring that the Generator does not interfere with the use of the Project by other tenants or tenants or occupants of surrounding buildings. Any repairs and maintenance of such Generator shall be the sole responsibility of Tenant and Landlord makes no representation or warranty with respect to such Generator. Tenant shall protect, defend, indemnify and hold harmless the Indemnitees from and against claims, damages, liabilities, costs and expenses of every kind and nature, including attorneys' fees, incurred by or asserted against Landlord arising out of Tenant's installation, maintenance, replacement, use or removal of the Generator. On or prior to the Termination Date, Tenant shall either (i) surrender the Generator in good operating condition without compensation to Tenant, or (ii) remove the Generator (including all the associated equipment and infrastructure) from the Project and repair and restore the Project and the Building to the condition which existed prior to the installation of the Generator (including, new electrical panels for the Building and restoring and restriping the affected parking areas), all at the sole cost and expense of Tenant and otherwise in accordance with this Lease, without further notice from Landlord.

25.24 ROOFTOP EQUIPMENT

If Tenant desires to use the roof of the Building to install communication equipment to be used from the Premises, Tenant may so notify Landlord in writing ("Communication Equipment Notice"), which Communication Equipment Notice shall generally describe the specifications for the equipment desired by Tenant. If at the time of Landlord's receipt of the Communication Equipment Notice, Landlord reasonably determines that space is available on the roof of the Building for such equipment, then Tenant, at its sole cost and expense, shall have the nonexclusive right (it being understood that Landlord may grant, extend or renew similar rights to others) to install, maintain, and from time to time replace a satellite dish or antenna and related infrastructure and equipment ("Communication Equipment") on the roof of the Building, provided that prior to commencing any installation or maintenance, Tenant shall (i) obtain Landlord's prior written approval of the proposed size, weight and location of the Communication Equipment, the method for fastening the Communication Equipment to the roof, and any architectural screening as may be appropriate, which approval(s) may be granted or withheld in Landlord's sole but good faith determination, (ii) such installation and/or replacement shall comply strictly with all applicable governmental laws, rules and regulations and the conditions of any bond or warranty maintained by Landlord on the roof, (iii) use the Communication Equipment solely for its personal internal use, (iv) not grant any right to use of the Communication Equipment to any other party, and (v) obtain, at Tenant's sole cost and expense, any necessary federal, state, and municipal permits, licenses and approvals, and deliver copies thereof to Landlord. Landlord may supervise or perform any roof penetration related to the installation of any Communication Equipment, and Landlord may charge the cost thereof to Tenant. Tenant agrees that all installation, construction and maintenance shall be performed in a neat, responsible, and workmanlike manner, using generally acceptable construction standards, consistent with such reasonable requirements as shall be imposed by Landlord. Tenant shall, at its sole cost and expense, repair any damage to the Building caused by Tenant's installation, maintenance, replacement, use or removal of the Communication Equipment. The Communication Equipment shall remain the property of Tenant, and Tenant may remove the Communication Equipment at its sole cost and expense at any time during the Term. Tenant shall remove the Communication Equipment at Tenant's sole cost and expense on or prior to the Termination Date. Tenant agrees that the Communication Equipment, and any wires, cables or connections relating thereto, and the installation, maintenance and operation thereof shall in no way interfere with the use and enjoyment of the Building, or the operation of communications (including, without limitation, other satellite antenna) or computer devices by Landlord or by other tenants or occupants of the Project or surrounding buildings. If such interference shall occur, Landlord shall give Tenant written notice thereof and Tenant shall correct the same within two (2) business days of receipt of such notice. Landlord makes no warranty or representation that the Building or any portions thereof are suitable for the use of a Communication Equipment, it being assumed that Tenant has satisfied itself thereof. Tenant shall protect, defend, indemnify and hold harmless the Indemnitees from and against claims, damages, liabilities, costs and expenses of every kind and nature, including attorneys' fees, incurred by or asserted against Landlord arising out of Tenant's installation, maintenance, replacement, use or removal of the Communication Equipment.

25.25 EQUIPMENT FINANCING

Tenant shall have the right from time to time to pledge, encumber or grant a security interest in its equipment, inventory, merchandise, trade fixtures and personal property, but not any equipment, fixtures or leasehold improvements or alterations which belong to, inure to the benefit of, or will belong to Landlord after the expiration or earlier termination of the Lease including any Tenant Alterations (collectively, the "Collateral") in connection with financing or refinancing thereon by Tenant. Landlord will promptly execute following written request a waiver or release of lien rights and consent instrument in form and content reasonably acceptable to Landlord; provided, however, that any such instrument shall describe the Collateral with particularity and provide that (a) any entry into the Premises by such secured party may only be accomplished by prior written notice to Landlord and Landlord's property manager and must occur during the Term of this Lease, (b) any secured property which remains in the Premises after the expiration or earlier termination of this Lease may be disposed of by Landlord in accordance with California law, (c) the secured party may not conduct an auction or other sale at the Premises, (d) prior to entering the Premises, such secured party must provide Landlord with evidence of insurance reasonably required by Landlord, must agree to act in a manner so as to minimize interference with other tenants and to comply with Landlord's Rules and Regulations for the Project.

25.26 RIDERS

All Riders attached hereto and executed both by Landlord and Tenant shall be deemed to be a part hereof and hereby incorporated herein.

[Signatures on Following Page]

IN WITNESS WHEREOF, this Lease has been executed as of the date set forth inSection 1.1(4) hereof.

TENANT:

XOMA Corporation,
a Delaware corporation

By: 
Print Name: FRED KURLAND
Its: Vice President, Finance and Chief Financial Officer

LANDLORD:

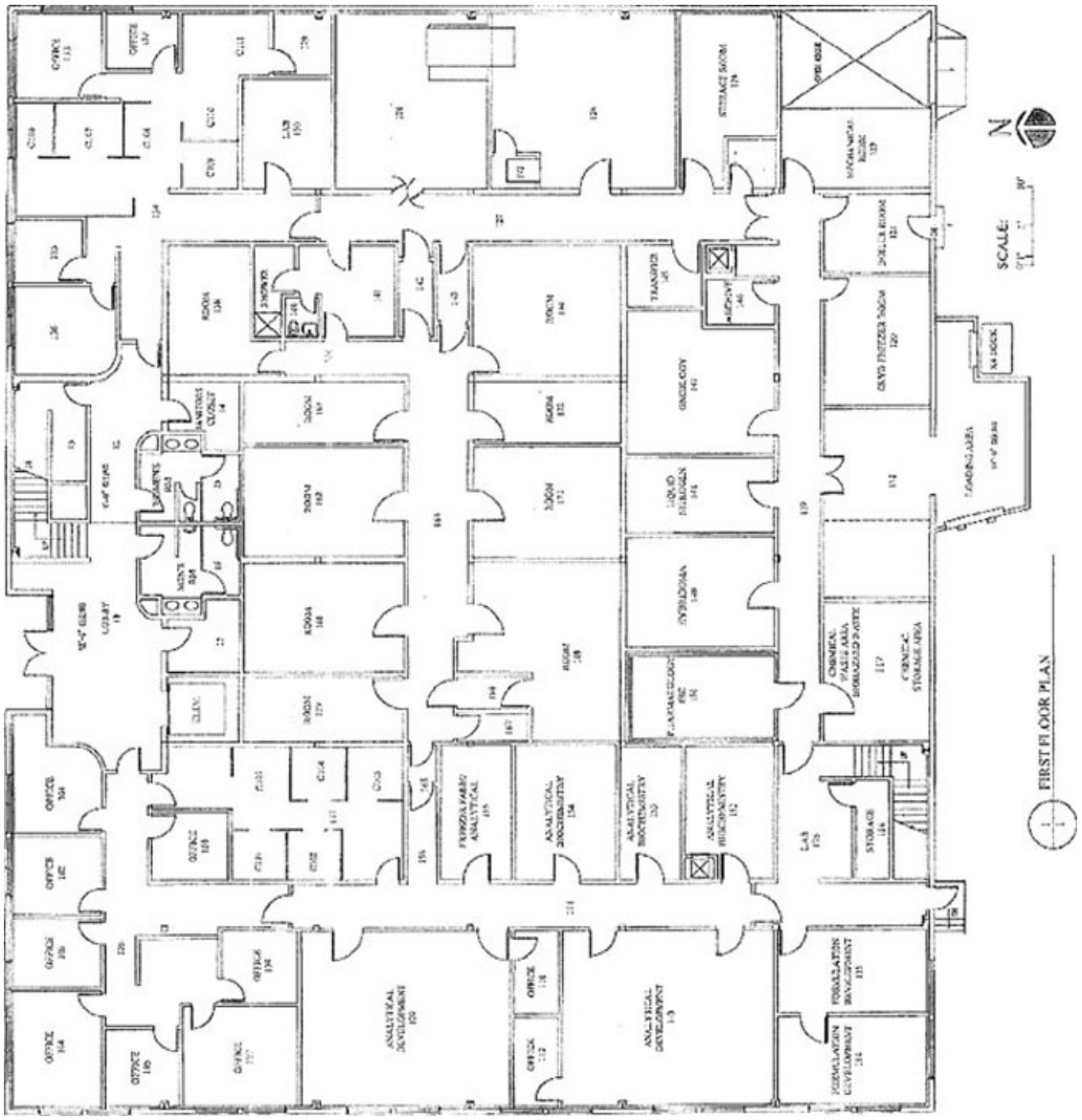
7th Street Properties II, a California
Limited Partnership

By: Seventh II Corporation, a
Delaware corporation
Its: Managing General Partner

By: _____
Richard K. Robbins
Its President

EXHIBIT A

PLAN OF PREMISES



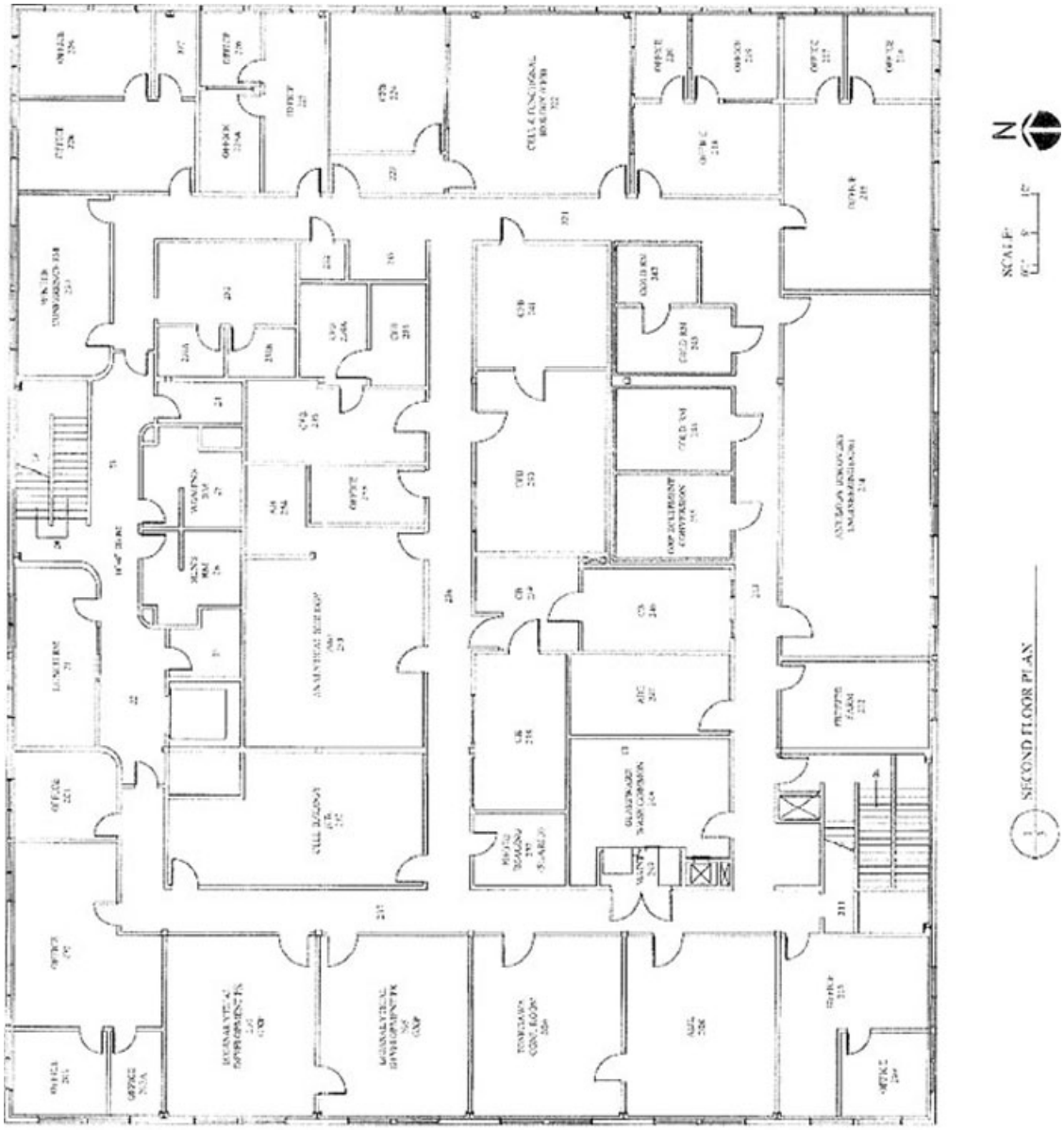

N
SCALE
SECOND FLOOR PLAN

EXHIBIT B-l

LABORATORY RULES AND REGULATIONS

1. Any laboratory equipment (glass and cage washers, sterilizers, centrifuges, etc.) being used during normal business hours must be properly insulated for noise to prevent interruption of other tenants' business. Landlord reserves the right to request all equipment be insulated prior to occupancy. Should other tenants complain of noise, lab tenant will be responsible for abating any noise issues, at Tenant's sole cost.

2. Any damages to property due to leaks from lab equipment will be the sole responsibilityof the Tenant. Should damage occur in other Tenant spaces, any and all damages and clean up will be the responsibility of equipment owner (lab tenant).

3. Animal activities are a recognized and necessary process in the biotech industry. It can only be conducted by lab tenants pursuant to all the requirements of their respective lease (including any "Use" clause) and requires specific, written approval by Landlord in advance. Any animal operations shall be conducted pursuant to all regulations, standards and best industry practices relating to them.

4. To reduce the potential interaction with office tenants and their employees and visitors with any biotech animal operations; animal testing performed; deliveries of animals and any equipment, foods, cleaners, etc. associated with animal activities must be coordinated through the Loading Dock after hours and with the cooperation of the building management and security personnel. Tenant should make every effort to handle any deliveries relating to animal activities outside of Building Standard Hours. The freight elevator must be used at all times, and delivery trucks should not be visible to the other tenants in the campus area. No cartons, containers or cardboard boxes bearing the nature of contents may be stored or left in common area spaces, to include any garage/freightareas. Feed bags, animal carriers, and any and all containers must be disposed of properly and with discretion.

5. All exterior signage relating to laboratory operations (i.e. visible to common areas including corridors) must be kept to the minimum required by law. All signs must have Landlord's approval prior to installation.

EXHIBIT B-2

RULES AND REGULATIONS

1. No sidewalks, entrance, passages, courts, elevators, vestibules, stairways, corridors or halls shall be obstructed or encumbered by Tenant or used for any purpose other than ingress and egress to and from the Premises and if the Premises are situated on the ground floor of the Project, Tenant shall further, at Tenant's own expense, keep the sidewalks and curb directly in front of the Premises clean and free from rubbish.

2. No awning or other projection shall be attached to the outside walls or windows of the Project without the prior written consent of Landlord. No curtains, blinds, shades, drapes or screens shall be attached to or hung in, or used in connection with any window or door of the Premises, without the prior written consent of Landlord. Such awnings, projections, curtains, blinds, shades, drapes, screens and other fixtures must be of a quality, type, design, color, material and general appearance approved by Landlord, and shall be attached in the manner approved by Landlord. All lighting fixtures hung in offices or spaces along the perimeter of the Premises visible from the exterior of the Building must be of a quality, type, design, bulb color, size and general appearance approved by Landlord.

3. Except as otherwise permitted in the Lease, no sign, advertisement, notice, lettering, decoration or other thing shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside or inside of the Premises or of the Project, without the prior written consent of Landlord. In the event of the violation of the foregoing by Tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to Tenant.

4. The sashes, sash doors, skylights, windows and doors that reflect or admit light or air into the halls, passageways or other public places in the Project shall not be covered or obstructed by Tenant, nor shall any bottles, parcels or other articles be placed on the window sills or in the public portions of the Project.

5. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Project, nor placed in public portions thereof without the prior written consent of Landlord.

6. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by Tenant to the extent that Tenant or Tenant's agents, servants, employees, contractors, visitors or licensees shall have caused the same.

7. Tenant shall not mark, paint, drill into or in any way deface any part of the Premises or the Project. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct.

8. No domesticated pets of any kind shall be brought into or kept in or about the Premises or the Project, except seeing-eye dogs or other seeing-eye animals.

9. Prior to leaving the Premises for the day, Tenant shall draw or lower window coverings and extinguish all lights.

10. Tenant shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with neighboring buildings, or those having business with them. Tenant shall not throw anything out of the doors, windows or skylights or down the passageways.

11. Intentionally Omitted.

12. No additional locks, bolts or mail slots of any kind shall be placed upon any of thedoors or windows by Tenant, nor shall any change be made in existing locks or the mechanism thereof. Tenant must, upon the termination of the tenancy, restore to Landlord all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by Tenant, and in the event of the loss of any keys so furnished, Tenant shall pay to Landlord the cost thereof.

13. Tenant shall not overload the floor(s) of the Building. Landlord reserves the right to prescribe the weight and position of all extraordinarily heavy items, which must be engineered to appropriately distribute the weight. The moving of extraordinarily heavy items must, be made upon previous notice to the Building Manager and in a manner and at times prescribed by him. Landlord reserves the right to inspect all extraordinarily heavy items to be brought into the Project and to exclude from the Project all extraordinarily heavy items which violate any of these Rules and Regulations or the Lease of which these Rules and Regulations are a part.

14. Tenant shall not purchase spring water, towels, janitorial or maintenance or other like service from any company or persons not approved by Landlord. Landlord shall approve a sufficient number of sources of such services to provide Tenant with a reasonable selection, but only in such instances and to such extent as Landlord in its judgment shall consider consistent with security and proper operation of the Project.

15. Landlord shall have the right to prohibit any advertising or business conducted by Tenant referring to the Project which, in Landlord's opinion, tends to impair the reputation of the Project or its desirability as a first class building for offices, research and development (including, without limitation, laboratory use) and/or commercial services and upon notice from Landlord, Tenant shall refrain from or discontinue such advertising.

16. Intentionally Omitted.

17. Tenant's contractors shall, while in the Premises or elsewhere in the Project, be subject to and under the control and direction of the Building Manager (but not as agent or servant of said Building Manager or of Landlord).

18. If the Premises is or becomes infested with vermin as a result of the use or anymisuse or neglect of the Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith at Tenant's expense cause the same to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord.

19. The requirements of Tenant will be attended to only upon application at the office of the Project. Project personnel shall not perform any work or do anything outside of their regular duties unless under special instructions from the office of the Landlord.

20. Canvassing, soliciting and peddling in the Project are prohibited and Tenant shall cooperate to prevent the same.

21. No water cooler, air conditioning unit or system or other apparatus shall be installed or used by Tenant without the written consent of Landlord.

22. Intentionally Omitted

23. Tenant, Tenant's agents, servants, employees, contractors, licensees, or visitors shall not park any vehicles in any driveways, service entrances, or areas posted "No Parking" and shall comply with any other parking restrictions imposed by Landlord from time to time.

24. Tenant shall install and maintain, at Tenant's sole cost and expense, an adequate visibly marked (at all times properly operational) fire extinguisher next to any duplicating or photocopying machine or similar heat producing equipment, which may or may not contain combustible material, in the Premises.

25. Tenant shall keep its window coverings closed during any period of the day when the sun is shining directly on the windows of the Premises.

26. Tenant shall not use the name of the Project for any purpose other than as the address of the business to be conducted by Tenant in the Premises, nor shall Tenant use any picture of the Project in its advertising, stationery or in any other manner without the prior written permission of Landlord. Landlord expressly reserves the right at any time to change said name without in any manner being liable to Tenant therefor.

27. Tenant shall not prepare any food nor do any cooking, operate or conduct any restaurant, luncheonette or cafeteria for the sale or service of food or beverages to its employees or to others, except that food and beverage preparation by Tenant's employees using microwave ovens or coffee makers shall be permitted provided no odors of cooking or other processes emanate from the Building. Tenant shall not install or permit the installation or use of any vending machine unless approved in advance in writing by Landlord.

28. The Premises shall not be used as an employment agency, a public stenographer or typist, a labor union office, a physician's or dentist's office, a dance or music studio, a school, a beauty salon, or barber shop, the business of photographic, multilith or multigraph reproductions or offset printing (not precluding using any part of the Premises for photographic, multilith or multigraph reproductions solely in connection with Tenant's own business and/or activities), a restaurant or bar, an establishment for the sale of confectionery, soda, beverages, sandwiches, ice cream or baked goods, an establishment for preparing, dispensing or consumption of food or beverages of any kind in any manner whatsoever, or news or cigar stand, or a radio, television or recording studio, theatre or exhibition hall, or manufacturing, or the storage or sale of merchandise, goods, services or property of any kind at wholesale, retail or auction, or for lodging, sleeping or for any immoral purposes.

29. Business machines and mechanical equipment shall be placed and maintained by Tenant at Tenant's expense in settings sufficient in Landlord's judgment to absorb and prevent vibration, noise and annoyance. Tenant shall not install any machine or equipment which causes noise, heat, cold or vibration to be transmitted to the structure of the building in which the Premises are located without Landlord's prior written consent, which consent may be conditioned on such terms as Landlord may require. Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot that such floor was designed to carry and which is allowed by Law.

30. Intentionally Omitted.

31. Tenant shall not store any vehicle within the parking area. Tenant's parking rights are limited to the use of parking spaces for short-term parking, of up to twenty-four (24) hours, of vehicles utilized in the normal and regular daily travel to and from the Project. Tenants who wish to park a vehicle for longer than a 24-hour period shall notify the Building Manager for the Project and consent to such long-term parking may be granted for periods up to two (2) weeks. Any motor vehicles parked without the prior written consent of the Building Manager for the Project for longer than a 24-hour period shall be deemed stored in violation of this rule and regulation and shall be towed away and stored at the owner's expense or disposed of as provided by Law.

32. Smoking is prohibited in the Premises, the Building and all enclosed CommonAreas of the Project, including all lobbies, all hallways, all elevators and all lavatories.

EXHIBIT C

PARKING AREA

Tenant will park in the area designated Parking Area No 1.

Tenant may only park within the Parking Structure located at 725 PotterStreet with Landlord's separate written approval.

3.0 ENERGY EFFICIENCY MEASURE DESCRIPTION

Wareham Development has requested that Enovity identify different approaches for optimizing their building; for which seven energy measures were identified. It will be necessary to install a building automation system (BAS), in order to implement the controls related EEMs. The estimated cost of theBAS has been added to the summary table (Table 1.1). A breakdown of the BAS cost estimate is provided in Table 3.1.

Table 3.1: Estimated Building Automation System Cost Breakdown

Cost Estimate - 804 Heinz BAS Installation (37,500 Sq.Ft.)				
Item	**Description**	**Unit Price**	**Qty**	**Total**
1	Demo and repalce existing VAV box pneumatic controls with new DDC components (VAV Valves, Reheat Coil Actuators Box level)	$3,750	28	$105,000
2	AHU DDC	$10,000	8	$80,000
3	Server and Global Controllers	$72,000	1	$72,000
4	Chiller Plant DDC	$15,000	1	$15,000
5	General Laboratory Exhaust Fan DDC	$10,000	2	$20,000
6	Commissioning & Contingency	$58,000	1	$58,000
				$350,000

3.1 EEM 1 – SUPPLY AIR TEMPERATURE RESET ON LAB AHS

Currently the laboratory air handlers (AH-2 & AH-4) at 804 Heinz operate without advanced supply air temperature (SAT) control. Enovity recommends reducing the mechanical cooling and heating energy consumption by dynamically resetting the SAT based on the actual cooling load in the building at any given time. Electric savings result from reduced chiller load.

3.2 EEM 2 – REBALANCE LAB AHS

The existing lab air handlers are 20 plus years old. Over the years, the air handlers and exhaust air flows have fallen out of calibration andmay no longer be applicable to what the space is used for now. Enovity suggests rebalance the lab air handlers to the current loads and fume hood or general exhaustrequirements of the office type spaces and laboratories.

3.3 EEM 3 – REPLACE OFFICE AC UNITS

Currently the office air conditioning units at 804 Heinz are approximately 30 years old. An opportunity exists to reduce the energy consumption by replacing the units with high efficiency units. Furthermore, the office air conditioning units can be scheduled on and off according to occupancy, and the deadband increased to save energy. The new schedule proposes enabling the units at 07:00 am to 06:00 pm on Monday through Friday.

3.4 EEM 4 – PLACE VFD ON CHILLED WATER PUMP

The existing cooling coils in the air handlers served by the chiller are equipped with three-way valves. Enovity recommends retrofitting to two-way valves and the adding a Variable Frequency Drive (VFD) to reduce the pump speed to reduce energy consumption when cooling demands in the building are lower.

3.5 EEM 5 – LIGHTING OCCUPANCY SENSOR IN NON LAB AREAS

Currently the lights in the building are controlled using wall switches. Enovity proposes to install on/off occupancy sensor controls in the offices, copy rooms, storages and hallways. The occupancy sensor controls save energy by activating the lights only when someone is present. Laboratories have been excluded but may be an option on a case by case basis depending on the type of activity in the lab.

3.6 EEM 6 – CHILLED WATER SUPPLY TEMPERATURE RESET

The existing chilled water supply temperature stays relativity constant. Enovity recommends resetting the chilled water based on outside air temperature. Allowing the chilled water supply temperature to reset will reduce chiller demand at cooler temperatures.

3.7 EEM 7 – LAB SUPPLY AND EXHAUST FAN VFD

Currently the two lab supply fans and fume exhaust fans have one or two speed control. Enovity suggests putting variable frequency drives on the fans to save fan energy when the laboratories are unoccupied. The lab fans will be place on a night setback schedule during unoccupied hours to reduce supply and general exhaust flows in labs, the fume hood exhaust flow will remain as is.

Exhibit 10.30

OFFICE LEASE

BETWEEN

7TH STREET PROPERTY GENERAL PARTNERSHIP,
a California general partnership (LANDLORD)

AND

XOMA CORPORATION,
a Delaware corporation (TENANT)

2910 Seventh Street
Berkeley, California

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LEASE

ARTICLE 1
BASIC LEASE PROVISIONS

1.1 BASIC LEASE PROVISIONS

In the event of any conflict between these Basic Lease Provisions and any other Lease provision, such other Lease provision shall control.

(1) BUILDING AND ADDRESS:

2910 Seventh Street
Berkeley, California 94710

(2) LANDLORD AND ADDRESS:

7th Street Property General Partnership
1120 Nye Street, Suite 400
San Rafael, California 94901

Notices to Landlord shall be addressed:

7th Street Property General Partnership
c/o Wareham Property Group
1120 Nye Street, Suite 400
San Rafael, California 94901

With a copy to:

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

(3) TENANT AND ADDRESS:

(a) Name: XOMA CORPORATION

(b) State of formation: Delaware

Notices to Tenant shall be addressed:

XOMA(US) LLC
2910 Seventh Street
Berkeley, CA 94710
Attn: Legal Department

with copies to:

XOMA(US) LLC
2910 Seventh Street
Berkeley, CA 94710
Attn: CFO

(4) DATE OF THIS LEASE: February 13, 2013

(5) LEASE TERM: Seven (7) years, subject to any option(s) set forth in Section 2.5.

(6) COMMENCEMENT DATE: June 1, 2013

(7) EXPIRATION DATE: May 31, 2020

(8) MONTHLY BASE RENT:

PERIOD FROM/TO	MONTHLY BASE RENT
June 1, 2013 - May 31, 2014	$62,137.78
June 1, 2014 - May 31, 2015	$64,001.91
June 1, 2015 - May 31, 2016	$65,921.97
June 1, 2016 - May 31, 2017	$67,899.63
June 1, 2017 - May 31, 2018	$69,936.62
June 1, 2018 - May 31, 2019	$72,034.72
June 1, 2019 - May 31, 2020	$74,195.76

(9) RENTABLE AREA OF THE PREMISES: 43,759 square feet

(10) SECURITY DEPOSIT: $74,195.76

(11) TENANT'S USE OF PREMISES: General office and administration.

(12) PARKING: Up to 88 unreserved parking spaces on surface lots

(13) TENANT'S BROKER: Cushman & Wakefield

1.2 ENUMERATION OF EXHIBITS AND RIDER

The Exhibits and Rider set forth below and attached to this Lease are incorporated in this Lease by this reference:

EXHIBIT A	Plan of Premises
EXHIBIT B	Rules and Regulations
EXHIBIT C	Parking Area

1.3 DEFINITIONS

For purposes hereof, the following terms shall have the following meanings:

AFFILIATE: Any corporation or other business entity that is currently owned or controlled by, owns or controls, or is under common ownership or control with Tenant or Landlord, as the case may be.

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

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

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

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

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

ENVIRONMENTAL LAWS: All Laws governing the use, storage, disposal or generation of any Hazardous Material, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and the Resource Conservation and Recovery Act of 1976, as amended.

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

FORCE MAJEURE: Any accident, casualty, act of God, war or civil commotion, strike or labor troubles, or any cause whatsoever beyond the reasonable control of a party, including water shortages, energy shortages or governmental preemption in connection with an act of God, a national emergency, or by reason of Law, or by reason of the conditions of supply and demand which have been or are affected by act of God, war or other emergency.

HAZARDOUS MATERIAL: Such substances, material and wastes which are or become regulated under any Environmental Law; or which are classified as hazardous or toxic under any Environmental Law; and explosives and firearms, radioactive material, asbestos, polychlorinated biphenyls, and petroleum products.

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

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

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

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

MONTHLY BASE RENT: The monthly rent specified in Section 1.1(8).

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

OPERATING EXPENSES: All costs, expenses and disbursements of every kind and nature which Landlord shall pay or become obligated to pay in connection with the ownership, management, operation, maintenance, replacement and repair of the Building and the Property, (as well as the reasonable allocation by Landlord of any expenses incurred and related to facilities located on other property owned or managed by Landlord or affiliates of Landlord, if the Property is managed as part of a portfolio involving more than one building and/or property) including, without limitation, (1) property management fees (not to exceed 3.5% of the Project's gross receipts); (2) costs of a commercially reasonable property management office and office operation; (3) insurance costs relating to the Project; (4) costs and expenses of any capital expenditure or improvement, amortized over the useful life of the applicable capital expenditure or improvement, in accordance with generally accepted accounting principles, together with interest thereon on the unamortized costs at the lower of the rate incurred by Landlord to finance such capital expenditure or improvement or the Default Rate, which capital expenditure or improvement (a) is made to the Property after the Commencement Date in order to comply with Laws enacted after the Commencement Date, or (b) is installed for the purpose of reducing or controlling Operating Expenses; and (5) if the Property is part of a multi-building portfolio, the Building's allocated share (as reasonably and equitably determined by Landlord according to sound real estate accounting and management principles, consistently applied) of those expenses incurred on a portfolio-wide basis benefiting the Building and/or Property which may include, without limitation, costs such as (a) landscaping, (b) utility and road repairs, and (c) security. Operating Expenses shall not include, (i) costs of alterations of the premises of tenants of the Project, (ii) costs of capital improvements to the Project (except as permitted in clause (4) above in the definition of "Operating Expenses"), (iii) depreciation charges, (iv) interest and principal payments on loans (except for loans for capital improvements which Landlord is allowed to include in Operating Expenses as provided above), (v) ground rental payments, (vi) real estate brokerage and leasing commissions or any fee in lieu of commission, (vii) advertising and marketing expenses, (viii) costs of Landlord reimbursed by insurance proceeds, condemnation awards, a tenant of the Project (outside of such tenant's Operating Expense payments) or otherwise to the extent so reimbursed, (ix) expenses incurred in negotiating leases of tenants in the Project or enforcing lease obligations of tenants in the Project, (x) Landlord's general corporate overhead, (xi) costs incurred by Landlord due to the violation by Landlord or any other tenant of the terms and conditions of any lease of space in the Project or any law, code, regulation, ordinance or the like, (xii) any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord, (xiii); bad debt expenses and interest, principal, points and fees on debts (except in connection with the financing of items which may be included in Operating Expenses); (xiv) marketing costs, attorneys' fees in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases and/or assignments, space planning costs, and other costs and expenses incurred in connection with lease, sublease and/or assignment negotiations and transactions with present or prospective tenants or other occupants of the Project, including attorneys' fees and other costs and expenditures incurred in connection with disputes with present or prospective tenants or other occupants of the Project; (xv) costs, including permit, license and inspection costs, incurred with respect to the installation of other tenants' or occupants' improvements made for tenants or other occupants in the Project or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants in the Project; (xvi) any costs expressly excluded from Operating Expenses elsewhere in this Lease; (xvii) expenses in connection with services or other benefits which are not offered to Tenant or for which Tenant is charged for directly but which are provided to another tenant or occupant of the Project, without charge; (xviii) costs (including in connection therewith all attorneys' fees and costs of settlement. judgments and/or payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation or arbitrations pertaining to Landlord and/or the Project; (xix) costs associated with the operation of the business of the partnership which constitutes Landlord as the same are distinguished from the costs of operation of the Project; (xx) costs incurred to remove, remedy, contain, or treat any Hazardous Material; provided, however, that (A) the costs of routine monitoring of and testing for Hazardous Material in, on, or about the Property, and (B) costs incurred in the cleanup or remediation of *de minimis* amounts of Hazardous Material customarily used in commercial buildings or used to operate motor vehicles and customarily found in parking facilities shall be included as Operating Expenses; (xxi) costs of utilities provided to any other tenant's space in the Project. If any Operating Expense, though paid in one year, relates to more than one calendar year, at the option of Landlord such expense may be proportionately allocated among such related calendar years.

PREMISES: The space located in the Building as depicted on Exhibit A attached hereto.

PRIOR LEASE: That certain lease agreement for the Premises between Landlord and Tenant's predecessor, dated as of March 25, 1992 and as subsequently amended on December 31, 1997, April 10, 2000, April 16, 2001, March 15, 2005 and June 1, 2006.

PROJECT or PROPERTY: The Project consists of the office building located at the street address specified in Section 1.1(1) in Berkeley, California, associated parking as designated by Landlord from time to time, landscaping and improvements, together with the Land, any associated interests in real property and the building thereon, and the personal property, fixtures, machinery, equipment, systems and apparatus located in or used in conjunction with any of the foregoing that is owned by Landlord. The Project may also be referred to as the Property.

REAL PROPERTY: The Property excluding any personal property.

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

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

RENT ADJUSTMENT DEPOSIT: An amount equal to Landlord's estimate of the Rent Adjustment attributable to each month of the applicable calendar year (or partial calendar year) during the Term. On or before the Commencement Date and with each Landlord's Statement (defined in Article 4), Landlord may reasonably estimate and notify Tenant in writing of its estimate of the Operating Expenses and of Taxes for such calendar year (or partial calendar year). Prior to the first determination by Landlord of the amount of Operating Expenses and of Taxes for the first calendar year (or partial calendar year), Landlord may reasonably estimate such amounts in the foregoing calculation. The last estimate by Landlord shall remain in effect as the applicable Rent Adjustment Deposit unless and until Landlord notifies Tenant in writing of a change, which notice may be given by Landlord from time to time during each year throughout the Term.

RENTABLE AREA OF THE PREMISES: The amount of square footage set forth in Section 1.1(9) provided, however, that any statement of rentable are set forth in this Lease is an approximation which Landlord and Tenant agree is reasonable and the Monthly Base Rent shall not be subject to revision whether or not the actual square footage is more or less.

SECURITY DEPOSIT: The funds specified in Section 1.1(10), if any, deposited by Tenant with Landlord as security for Tenant's performance of its obligations under this Lease.

TAXES: All federal, state and local governmental taxes, assessments and charges of every kind or nature, whether general, special, ordinary or extraordinary, which Landlord shall pay or become obligated to pay because of or in connection with the ownership, leasing, management, control, sale, transfer, or operation of the Property or any of its components (including any personal property used in connection therewith), which may also include any rental or similar taxes levied in lieu of or in addition to general real and/or personal property taxes. For purposes hereof, Taxes for any year shall be Taxes which are assessed for any period of such year, whether or not such Taxes are billed and payable in a subsequent calendar year. There shall be included in Taxes for any year the amount of all fees, costs and expenses (including reasonable attorneys' fees) paid by Landlord during such year in seeking or obtaining any refund or reduction of Taxes, but such fees, costs and expenses shall not exceed the greater of (a) Landlord's good faith estimation of the amount of refund or reduction of Taxes or (b) the actual amount of refund or reduction of Taxes. Taxes for any year shall be reduced by the net amount of any tax refund received by Landlord attributable to such year. If a special assessment payable in installments is levied against any part of the Property, Taxes for any year shall include only the installment of such assessment and any interest payable or paid during such year. Taxes shall not include (i) any items included in Operating Expenses, (ii) any items paid by Tenant under Section 4.4 below and (iii) any federal or state inheritance, general income, excess profit. franchise, capital stock, gift, estate taxes and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents or receipts attributable to operations at the Property) ("Prohibited Taxes"), except that if a change occurs in the method of taxation resulting in whole or in part in the substitution of any such taxes, or any other assessment, for any Taxes as above defined, such substituted taxes or assessments shall be included in the Taxes.

TENANT ALTERATIONS: Any alterations, improvements, additions, installations or construction in or to the Premises or any Building systems serving the Premises.

TENANT'S SHARE AS TO THE BUILDING: 100%.

TERM: The period specified in Section 1.1(5).

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

ARTICLE 2
PREMISES, TERM,.CONDITION OF PREMISES, PARKING, AND RENEWAL

2.1 LEASE OF PREMISES

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

2.2 TERM

The Term shall be for the period of years specified in Section 1.1(5) and the Commencement Date shall be June 1, 2013.

2.3 CONDITION OF PREMISES

Tenant acknowledges that prior to the Commencement Date it will have been, and continue to be, in possession of the Premises pursuant to the Prior Lease. Accordingly, Tenant is, and will be, familiar with the condition of the Premises and shall continue to occupy the Premises in its "as is, where is" condition, with all faults, without any representation, warranty or improvement by Landlord of any kind whatsoever, except as expressly set forth herein.

2.4 PARKING

For the entire duration of the Term, including any renewal or extension thereof, Tenant may use the number of spaces specified in Section 1.1(12). Tenant's parking rights shall be free of additional charge with unrestricted hours of usage (24 hours a day, 7 days a week, 365 days a year). The location of such parking spaces shall be located within the parking area shown on Exhibit C hereto. Subject to the foregoing, the locations and type of parking shall be designated by Landlord or Landlord's parking operator from time to time. Tenant acknowledges and agrees that the parking spaces serving the Project may include tandem parking and a mixture of spaces for compact vehicles as well as full-size passenger automobiles, and that Tenant shall not use parking spaces for vehicles larger than the striped size of the parking spaces. All vehicles utilizing Tenant's parking privileges shall prominently display identification stickers or other markers, and/or have passes or keycards for ingress and egress, as may be reasonably required and provided by Landlord or its parking operator from time to time. Tenant shall comply with any and all parking rules and regulations from time to time reasonably established by Landlord or Landlord's parking operator, including a requirement that Tenant pay to Landlord or Landlord's parking operator a reasonable charge (not to exceed $25.00 per incident) for loss and replacement of passes, keycards, identification stickers or markers, and for any and all loss or other damage caused by persons or vehicles related to use of Tenant's parking privileges. Tenant shall not allow any vehicles using Tenant's parking privileges to be parked, loaded or unloaded except in accordance with this Section, including in the areas and in the manner designated by Landlord or its parking operator for such activities. If any vehicle is using the parking or loading areas contrary to any provision of this Section, Landlord or its parking operator shall have the right, in addition to all other rights and remedies of Landlord under this Lease, to remove or tow away the vehicle without prior notice to Tenant, and the cost thereof shall be paid to Landlord within thirty (30) days after notice from Landlord. In the event Tenant requests parking rights in addition to those provided herein, Landlord shall use good faith efforts to accommodate Tenant's needs for such additional spaces at the Project or at other properties owned by Landlord or its affiliates in the general vicinity of the Project on an as-available basis and subject to such terms, conditions, rules and regulations as Landlord or the owner or operator of the such parking area may impose from time to time, which may include, without limitation, the imposition of a parking charge.

2.5 RENEWAL OPTION

(a) Tenant shall have two successive options to renew this Lease (each a "Renewal Option") with respect to the entirety of the Premises for the term of five (5) years each (each a "Renewal Term"), commencing upon expiration of the initial Term, or if the first Renewal Option is exercised, upon the expiration of the first Renewal Term. Each Renewal Option must be exercised, if at all, by written notice given by Tenant to Landlord not earlier than twelve (12) months nor later than nine (9) months prior to expiration of the initial Term (or the first Renewal Term, as applicable). If Tenant properly exercises a Renewal Option, then references in the Lease to the Term shall be deemed to include the Renewal Term. The Renewal Option shall be null and void and Tenant shall have no right to renew this Lease if on the date Tenant exercises the Renewal Option or on the date immediately preceding the commencement date of the Renewal Term (i) a Default beyond the applicable cure period shall have occurred and be continuing hereunder, or (ii) Tenant (A) is then subletting more than fifty percent (50%) of the rentable square footage of the Premises other than in connection with a Permitted Transfer (as defined in Section 10.1(e) below) or (B) has assigned this Lease other than in connection with a Permitted Transfer.

(b) If Tenant properly exercises the Renewal Option, then during the Renewal Term all of the terms and conditions set forth in this Lease as applicable to the Premises during the initial Term shall apply during the Renewal Term, including without limitation the obligation to pay Rent Adjustments, except that (i) Tenant shall accept the Premises in their then "as-is" state and condition and Landlord shall have no obligation to make or pay for any improvements to the Premises (except as determined as part of the Fair Market Rent), and (ii) during the Renewal Term the Monthly Base Rent payable by Tenant shall be ninety-five percent (95%) of the Fair Market Rent during the Renewal Term as hereinafter set forth, except that in no event shall Monthly Base Rent during the Renewal Term be less than ninety-five percent (95%) of the Monthly Base Rent in effect during the last month of the initial Term, or first Renewal Term, as applicable, and shall increase by an annually compounded three percent (3%) during each year of the Renewal Term.

(c) For purposes of this Section, the term "Fair Market Rent" shall mean the rental rate, additional rent adjustment and other charges and increases, if any, for space comparable in size, location and quality of the Premises under primary lease (and not sublease) to new or renewing tenants, for a comparable term with a tenant improvement allowance, if applicable and taking into consideration any concessions and such amenities as existing improvements, parking ratio, view, floor on which the Premises are situated and the like, situated in comparable buildings in Berkeley and Emeryville. The Fair Market Rent shall not take into account any Tenant Alterations or other improvements paid for by Tenant.

(d) If Tenant properly exercises a Renewal Option, Landlord, by notice to Tenant not more than thirty (30) days after Tenant's exercise of such Renewal Option, shall indicate Landlord's determination of the Fair Market Rent. Tenant, within fifteen (15) days after the date on which Landlord provides such notice of the Fair Market Rent shall either (i) give Landlord final binding written notice ("Binding Notice") of Tenant's acceptance of Landlord's determination of the Fair Market Rent, or (ii) if Tenant disagrees with Landlords' determination, provide Landlord with written notice of Tenant's election to submit the Fair Market Rent to binding arbitration (the "Arbitration Notice"). If Tenant fails to provide Landlord with either a Binding Notice or Arbitration Notice within such fifteen (15) day period, Tenant shall have been deemed to have given the Binding Notice. If Tenant provides or is deemed to have provided Landlord with a Binding Notice, Landlord and Tenant shall enter into the Renewal Amendment (as defined below) upon the terms and conditions set forth herein.

(e) If the parties are unable to agree upon the Fair Market Rent for the Premises within fifteen (15) days after Landlord's receipt of the Arbitration Notice, Fair Market Rent as of commencement of the Renewal Term shall be determined as follows:

(1) Within fifteen (15) days after the date Tenant delivers the Arbitration Notice, Tenant, at its sole expense, shall obtain and deliver in writing to Landlord a determination of the Fair Market Rent for the Premises for a term equal to the Renewal Term from a broker ("Tenant's broker") licensed in the State of California and engaged in the office and lab markets in Berkeley and Emeryville, California, for at least the immediately preceding five (5) years. If Landlord accepts such determination, Landlord shall provide written notice thereof within fifteen (15) days after Landlord's receipt of such determination and the Base Rent for the Renewal Term shall be adjusted to an amount equal to the Fair Market Rent determined by Tenant's broker. Landlord shall be deemed to have rejected Tenant's determination if Landlord fails to respond within the fifteen (15) day period.

(2) If Landlord provides notice that it rejects, or is deemed to have rejected, such determination, within twenty (20) days after receipt of the determination of Tenant's broker, Landlord shall designate a broker ("Landlord's broker") licensed in the State of California and possessing the qualifications set forth in (1) above. Landlord's broker and Tenant's broker shall name a third broker, similarly qualified and who is not then or has not previously acted for either party, within five (5) days after the appointment of Landlord's broker ("Neutral Broker").

(3) The Neutral Broker shall determine the Fair Market Rent for the Premises as of the commencement of the Renewal Term within fifteen (15) days after the appointment of such Neutral Broker by choosing the determination of the Landlord's broker or the Tenant's broker which is closest to its own determination of Fair Market Rent. The decision of the Neutral Broker shall be binding on Landlord and Tenant.

(f) Landlord shall pay the costs and fees of Landlord's broker in connection with any determination hereunder, and Tenant shall pay the costs and fees of Tenant's broker in connection with such determination. The costs and fees of the Neutral Broker shall be paid one-half by Landlord and one-half by Tenant.

(g) If the amount of the Fair Market Rent has not been determined pursuant to this Section 2.5 as of the commencement of the Renewal Term, then Tenant shall continue to pay the Base Rent in effect during the last month of the initial Term (or the first Renewal Term, as applicable) until the amount of the Fair Market Rent is determined. When such determination is made, Tenant shall pay any deficiency to Landlord upon demand.

(h) If Tenant is entitled to and properly exercises its Renewal Option, upon determination of Fair Market Rent pursuant to this Section 2.5, Landlord shall prepare an amendment (the "Renewal Amendment") to reflect changes in the Base Rent, Term, Expiration Date and other appropriate terms consistent with this Section 2.5. The Renewal Amendment shall be sent to Tenant within fifteen (15) days after determination of Fair Market Rent and, provided the same is accurate, Tenant shall execute and return the Renewal Amendment to Landlord within ten (10) business days after Tenant's receipt of same, but an otherwise valid exercise of the Renewal Option shall be fully effective whether or not the Renewal Amendment is executed.

ARTICLE 3
RENT

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

ARTICLE 4
RENT ADJUSTMENTS AND PAYMENTS

4.1 RENT ADJUSTMENTS

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

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

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

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

4.2 STATEMENT OF LANDLORD

Landlord shall use commercially reasonably efforts to furnish to Tenant, within 120 days following the expiration of each calendar year (but in any event as soon as feasible after the expiration of each calendar year), a statement ("Landlord's Statement") showing the following:

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

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

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

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

4.3 BOOKS AND RECORDS

Landlord shall maintain books and records showing Operating Expenses and Taxes in accordance with sound accounting and management practices, consistently applied. Tenant or its representative (which representative shall be a certified public accountant licensed to do business in the state in which the Property is located and whose primary business is certified public accounting and who shall not be paid on a contingency basis) shall have the right, for a period of two hundred seventy (270) days following the date upon which Landlord's Statement is delivered to Tenant, to examine the Landlord's books and records with respect to the items in the foregoing statement of Operating Expenses and Taxes during normal business hours, upon written notice, delivered at least three (3) business days in advance. If Tenant does not object in writing to Landlord's Statement within two hundred seventy (270) days of Tenant's receipt thereof, specifying the nature of the item in dispute and the reasons therefor, then Landlord's Statement shall be considered final and accepted by Tenant and Tenant shall be deemed to have waived its right to dispute Landlord's Statement. If Tenant does dispute any Landlord's Statement, Tenant shall deliver a copy of any such audit to Landlord at the time of notification of the dispute. If Tenant does not provide such notice of dispute and a copy of such audit to Landlord within such two hundred seventy (270) day period, it shall be deemed to have waived such right to dispute Landlord's Statement. Any amount due to the Landlord as shown on Landlord's Statement, whether or not disputed by Tenant as provided herein shall be paid by Tenant when due as provided above, without prejudice to any such written exception. In no event shall Tenant be permitted to examine Landlord's records or to dispute any statement of Operating Expenses and Taxes unless Tenant has paid and continues to pay all Rent when due. If Landlord disagrees with the results of Tenant's review of Landlord's Statement, a certification as to the proper amount shall be made in accordance with generally accepted accounting practices by an independent certified public accountant selected by Landlord and who is a member of a nationally or regionally recognized accounting firm ("Landlord's Accountant"). Landlord's Accountant shall complete its review and certify such result to Landlord and Tenant within ninety (90) days following the date Tenant disputed the items in Landlord's Statement. Upon resolution of any dispute with respect to Operating Expenses and Taxes pursuant to this Section 4.3, Tenant shall either pay Landlord any shortfall or Landlord shall credit Tenant with respect to any overages paid by Tenant against Tenant's next Rent Adjustments coming due. In the event it is determined pursuant to this Section 4.3 that Landlord's Statement overstated the amount of Operating Expenses and Taxes by eight percent (8%) or more, then Landlord shall reimburse Tenant for its actual and reasonable out-of-pocket audit expenses, not to exceed eight thousand five hundred dollars ($8,500.00) and Landlord shall be responsible for the costs of Landlord's Accountant. The records obtained by Tenant shall be treated as confidential and neither Tenant nor any of its representatives or agents shall disclose or discuss the information set forth in the audit to or with any other person or entity ("Confidentiality Requirement") except (a) to Tenant's attorneys, accountants and consultants as reasonably necessary or (b) to the extent required by applicable laws or court order. Tenant shall indemnify and hold Landlord harmless for any losses or damages arising out of the breach of the Confidentiality Requirement.

4.4 TENANT OR LEASE SPECIFIC TAXES

In addition to Monthly Base Rent, Rent Adjustments, Rent Adjustment Deposits and other charges to be paid by Tenant, Tenant shall pay to Landlord, upon demand, any and all taxes payable by Landlord (other than the Prohibited Taxes) whether or not now customary or within the contemplation of the parties hereto: (a) upon, allocable to, or measured by the Rent payable hereunder, including any gross receipts tax or excise tax levied by any governmental or taxing body with respect to the receipt of such rent; or (b) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (c) upon the measured value of Tenant's personal property located in or about the Premises or in any storeroom or any other place in or about the Premises, it being the intention of Landlord and Tenant that, to the extent possible, such personal property taxes shall be billed to and paid directly by Tenant; (d) resulting from any Tenant Alterations; or (e) upon this transaction. Taxes paid by Tenant pursuant to this Section 4.4 shall not be included in any computation of Taxes payable pursuant to Sections 4.1 and 4.2.

ARTICLE 5
SECURITY DEPOSIT

Landlord acknowledges that it currently holds a security deposit under the Prior Lease (the "Existing Deposit"), which the parties agree is currently Thirty-Five Thousand Dollars ($35,000.00). Concurrent with its execution of this Lease, Tenant shall deliver to Landlord. , in immediately available funds, an amount equal to the difference between the Existing Deposit and the amount of the Security Deposit required by Section 1.1(10) above. Tenant acknowledges and agrees that the Existing Deposit shall be available to Landlord as part of the Security Deposit required under this Lease and that upon the expiration or earlier termination of the Prior Lease, the Existing Deposit shall be retained by Landlord in partial satisfaction of the Security Deposit required hereunder. The Security Deposit may be applied by Landlord to cure, in whole or part, any default of Tenant under this Lease, and upon notice by Landlord of such application, Tenant shall replenish the Security Deposit in full by paying to Landlord within ten (10) days of demand the amount so applied. Landlord's application of the Security Deposit shall not constitute a waiver of Tenant's default to the extent that the Security Deposit does not fully compensate Landlord for all losses, damages, costs and expenses incurred by Landlord in connection with such default and shall not prejudice any other rights or remedies available to Landlord under this Lease or by Law. Landlord shall not pay any interest on the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its general accounts. The Security Deposit shall not be deemed an advance payment of Rent or a measure of damages for any default by Tenant under this Lease, nor shall it be a bar or defense of any action that Landlord may at any time commence against Tenant. In the absence of evidence satisfactory to Landlord of an assignment of the right to receive the Security Deposit or the remaining balance thereof, Landlord may return the Security Deposit to the original Tenant, regardless of one or more assignments of this Lease. Upon the transfer of Landlord's interest under this Lease, Landlord's obligation to Tenant with respect to the Security Deposit shall terminate upon transfer to the transferee of the Security Deposit, or any balance thereof. If Tenant shall fully and faithfully comply with all the terms, provisions, covenants, and conditions of this Lease, the Security Deposit, or any balance thereof, shall be returned to Tenant within thirty (30) days after Landlord recovers possession of the Premises. Tenant hereby waives any and all rights of Tenant under the provisions of Section 1950.7 of the California Civil Code or other Law regarding security deposits.

ARTICLE 6
UTILITIES AND SIGNAGE

6.1 UTILITIES GENERALLY

Tenant will be responsible, at its sole cost and expense, for the furnishing of all services and utilities to the Project, including, but not limited to heating, ventilation and air conditioning, electricity, water, telephone, janitorial and interior Building security services.

(a) All utilities (including without limitation, electricity, gas, sewer and water) to the Building are separately metered and shall be paid directly by Tenant to the applicable utility provider.

(b) Landlord shall not provide janitorial services for the interior of the Building. Tenant shall be solely responsible for performing all janitorial services and other cleaning of the Premises, all in compliance with applicable Laws.

6.2 INTERRUPTION OF USE

Except as otherwise provided in this Lease, Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for any failure or interruption of utilities or services to the Project, or for any diminution in the quality or quantity thereof, for any reason whatsoever, including without limitation when occasioned, in whole or in part, by breakage, repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Building or Project, by any riot or other dangerous condition, emergency, accident or casualty whatsoever; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring. Notwithstanding the foregoing, if the Premises is made untenantable, inaccessible or unsuitable for the ordinary conduct of Tenant's business, due to an interruption in access to the Premises or any of the utilities or services provided by Landlord as a result of Landlord's negligence or willful misconduct, then (i) Landlord shall use commercially reasonable good faith efforts to restore the same as soon as is reasonably possible, (ii) if, despite such commercially reasonable good faith efforts by Landlord, such interruption persists for a period in excess of three (3) consecutive business days, then Tenant, as its sole remedy, shall be entitled to receive an abatement of Base Rent and Rent Adjustments payable hereunder during the period beginning on the fourth (4th) consecutive business day of such interruption and ending on the day the utility or service has been restored.

6.3 SIGNAGE

(a) Provided Tenant is not in Default under this Lease, Tenant shall have the right, but not the obligation, at Tenant's sole cost and expense, to install either an eyebrow or a building top sign on the exterior of the Building ("Tenant's Signage"). Tenant's Signage shall be subject to Landlord's reasonable approval as to size, design, exact location, graphics, materials, colors and similar specifications and shall be consistent with the exterior design, materials and appearance of the Project and the Project's signage program (if any) and shall be further subject to all applicable local governmental laws, rules, regulations, codes and Tenant's receipt of all permits and other governmental approvals and any applicable covenants, conditions and restrictions. The cost to maintain and operate, if any, Tenant's Signage shall be paid for by Tenant. Upon the expiration of the Term, or other earlier termination of this Lease, Tenant shall be responsible for any and all costs associated with the removal of Tenant's Signage, including, but not limited to, the cost to repair and restore the area impacted by Tenant's Signage to its original condition, normal wear and tear excepted.

(b) Subject to the terms of Section 6.3(a) above, Tenant shall not place or permit to be placed in, upon, or about the Premises, the Building or the Project any exterior lights, decorations, balloons, flags, pennants, banners, advertisements or notices, or erect or install any signs, windows or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises without obtaining Landlord's prior written consent, which shall not be unreasonably withheld or delayed. Tenant shall remove any sign, advertisement or notice placed on the Premises, the Building or the Project by Tenant upon the expiration of the Term or sooner termination of this Lease, and Tenant shall repair any damage or injury to the Premises, the Building or the Project caused thereby, all at Tenant's expense. If any signs are not removed, or necessary repairs not made, Landlord shall have the right to remove the signs and repair any damage or injury to the Premises, the Building or the Project caused by such installation or removal at Tenant's sole cost and expense.

ARTICLE 7
POSSESSION, USE AND CONDITION OF PREMISES

7.1 POSSESSION AND USE OF PREMISES

(a) Tenant shall occupy and use the Premises only for the uses specified in Section 1.1(11) to conduct Tenant's business. Tenant shall not occupy or use the Premises (or permit the use or occupancy of the Premises) for any purpose or in any manner which: (1) is unlawful or in violation of any Law or Environmental Law; (2) may be dangerous to persons or property or which may increase the cost of, or invalidate, any policy of insurance carried on the Building or covering its operations; (3) is contrary to or prohibited by the terms and conditions of this Lease or the rules of the Building set forth in Article 18; or (4) would tend to create or continue a nuisance.

(b) Tenant shall comply with all Environmental Laws pertaining to Tenant's occupancy and use of the Premises and concerning the proper storage, handling and disposal of any Hazardous Material introduced to the Premises, the Building or the Property by Tenant or other occupants of the Premises, or their employees, servants, agents, contractors, customers or invitees. Landlord shall comply with all Environmental Laws applicable to the Property other than those to be complied with by Tenant pursuant to the preceding sentence. Tenant shall not generate, store, handle or dispose of any Hazardous Material in, on, or about the Property without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion, except that such consent shall not be required to the extent of Hazardous Material packaged and contained in office products for consumer use in general business offices in quantities for ordinary day-to-day use provided such use does not give rise to, or pose a risk of, exposure to or release of Hazardous Material. In the event that Tenant is notified of any investigation or violation of any Environmental Law arising from Tenant's activities at the Premises, Tenant shall immediately deliver to Landlord a copy of such notice. In such event or in the event Landlord reasonably believes that a violation of Environmental Law exists, Landlord may conduct such tests and studies relating to compliance by Tenant with Environmental Laws or the alleged presence of Hazardous Materials upon the Premises as Landlord deems desirable, all of which shall be completed at Tenant's expense. Landlord's inspection and testing rights are for Landlord's own protection only, and Landlord has not, and shall not be deemed to have assumed any responsibility to Tenant or any other party for compliance with Environmental Laws, as a result of the exercise, or non-exercise of such rights. Tenant hereby indemnifies, and agrees to defend, protect and hold harmless, the Indemnitees from any and all loss, claim, demand, action, expense, liability and cost (including attorneys' fees and expenses) arising out of or in any way related to the presence of any Hazardous Material introduced to the Premises during the Term by any Tenant Party. In case of any action or proceeding brought against the Indemnitees by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel chosen by Landlord, in Landlord's sole discretion. Landlord reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity. If any Hazardous Material is released, discharged or disposed of on or about the Property and such release, discharge or disposal is not caused by Tenant or other occupants of the Premises, or their employees, servants, agents, contractors customers or invitees, such release, discharge or disposal shall be deemed casualty damage under Article 14 to the extent that the Premises are affected thereby; in such case, Landlord and Tenant shall have the obligations and rights respecting such casualty damage provided under such Article.

(c) Landlord and Tenant acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises, the Building and the Project depending on, among other things: (1) whether Tenant's business is deemed a "public accommodation" or "commercial facility", (2) whether such requirements are "readily achievable", and (3) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that: (a) Landlord shall be responsible , as part of Operating Expenses (to the extent permitted to be included in Operating Expenses pursuant to the definition of Operating Expenses in Section 1.03 above), for ADA Title III compliance in the Common Areas, except as provided below, (b) Tenant shall be responsible for ADA Title III compliance in the Premises, including any leasehold improvements or other work to be performed in the Premises under or in connection with this Lease, (c) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III "path of travel" requirements triggered by Tenant Alterations in the Premises, and (d) Landlord may perform, or require Tenant to perform, and Tenant shall be responsible for the cost of, ADA Title III compliance in the Common Areas necessitated by the Building being deemed to be a "public accommodation" instead of a "commercial facility" as a result of Tenant's specific use of the Premises. Tenant shall be solely responsible for requirements under Title I of the ADA relating to Tenant's employees..

7.2 LANDLORD ACCESS TO PREMISES; APPROVALS

(a) Tenant shall permit Landlord to erect, use and maintain pipes, ducts, wiring and conduits in and through the Premises, so long as Tenant's use, layout or design of the Premises is not materially affected or altered. Upon at least forty-eight (48) hours prior notice (except in an emergency), Landlord or Landlord's agents shall have the right to enter upon the Premises in the event of an emergency, or to inspect the Premises, to perform services required of Landlord under this Lease, to conduct safety and other testing in the Premises and to make such repairs, alterations, improvements or additions to the Premises or the Building or other parts of the Property as Landlord may deem reasonably necessary or desirable. Any entry or work by Landlord may be during normal business hours and Landlord shall use reasonable efforts to ensure that any entry or work shall not materially interfere with Tenant's occupancy of the Premises. In connection with Landlord' right to enter the Premises as set forth in this Section 7.2(a), Tenant will have the opportunity to accompany Landlord's representatives while in the Premises.

(b) If Tenant shall not be personally present to permit an entry into the Premises when for any reason an entry therein shall be necessary or permissible, Landlord (or Landlord's agents), after attempting to notify Tenant at least forty-eight (48) hours in advance (unless Landlord believes an emergency situation exists), may enter the Premises without rendering Landlord or its agents liable therefor, and without relieving Tenant of any obligations under this Lease.

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

(d) Landlord may do any of the foregoing, or undertake any of the inspection or work described in the preceding paragraphs without such action constituting an actual or constructive eviction of Tenant, in whole or in part, or giving rise to an abatement of Rent by reason of loss or interruption of business of the Tenant, or otherwise.

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

7.3 QUIET ENJOYMENT

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

ARTICLE 8
MAINTENANCE

8.1 LANDLORD'S MAINTENANCE

Subject to the provisions of Articles 4 and 14, Landlord shall maintain and make necessary repairs to the Building systems, including the electrical, plumbing, heating, ventilating, air-conditioning, mechanical, communication, security and the fire and life safety systems ; the Building structure (e.g. foundations, roof structure, load bearing walls), exterior walls (including windows, glazing, and curtain wall); the roof membrane; and Project landscaping, sidewalks, utilities located outside of the Premises and parking areas, except that the cost of performing any of said maintenance or repairs whether to the Premises or to the Building caused by the negligence of Tenant, its employees, agents, servants, licensees, subtenants, contractors or invitees, shall be paid by Tenant, subject to the waivers set forth in Section 16.4. Landlord shall not be liable to Tenant for any expense, injury, loss or damage resulting from work done in or upon, or in connection with the use of, any adjacent or nearby building, land, street or alley outside of the Project. Landlord's obligations pursuant to this Section 8.1 shall be included in Operating Expenses to the extent permitted in the definition of Operating Expenses pursuant to Section 1.3 above.

Notwithstanding any provision set forth in the Lease to the contrary, if (i) Tenant provides prior written notice to Landlord of an event or circumstance which requires the action of Landlord with respect to its maintenance obligations under this Section 8.1, (ii) Landlord is, in fact, required to perform such repairs and/or maintenance, (iii) Landlord fails to commence such action within ten (10) business days after the receipt of such notice; provided, however, for purposes of this paragraph to "commence" shall include any steps taken by Landlord to design, consult, bid or seek permit or other governmental approval in connection with the necessary repairs or maintenance, and (iv) Landlord's failure to take such action materially and adversely affects Tenant's use and/or occupancy of the Premises, then Tenant may proceed to take the required action after delivery of an additional five (5) business days notice to Landlord specifying that the ten (10) business day period has expired, the specific action required and that Tenant intends to take or commence such required action. If such action is required under the terms of this Lease to be taken by Landlord and is not taken by Landlord within such ten (10) business day period, then Tenant shall be entitled to take such action (and only such action as specified in the ten (10) business day notice given to Landlord). In the event Tenant takes such action, and such work affects the Building systems or structure, then Tenant shall use only those contractors approved by Landlord in the Building for work on such systems or structure unless such contractors are unwilling or unable to perform, or timely perform, such work, in which event Tenant may utilize the services of any other qualified contractor which normally and regularly performs similar work in other first class office buildings in the greater San Francisco Bay Area. If such action properly taken by Tenant pursuant to this Section 8.1 was required under the terms of this Lease to be undertaken by Landlord, then Tenant shall be entitled to, within thirty (30) days following delivery of a reasonably particularized invoice, reimbursement by Landlord of Tenant's actual reasonable costs in taking such action; provided, however such costs may be included in Operating Expenses subject to the express limitations thereof. For the avoidance of doubt, any notice by Tenant pursuant to this Article 8 must be provided in accordance with the requirements of Article 24.

8.2 TENANT'S MAINTENANCE

Tenant shall periodically inspect the interior of the Building to identify any conditions that are dangerous or in need of maintenance, repair or replacement. Tenant shall promptly provide Landlord with notice of any such conditions. Tenant shall, at its sole cost and expense, perform all maintenance, repairs and replacements to the interior of the Building and associated improvements and systems that are not Landlord's express responsibility under this Lease, and shall keep the Building in good condition and repair. Tenant's repair and maintenance obligations include, without limitation, repairs to, or replacements of,: (a) corridors, washrooms, kitchens and lobbies, (b) floor covering; (c) interior partitions and other improvements; (d) interior doors and windows; (e) electronic, phone and data cabling and related equipment (collectively, "Cable"); and (f) Tenant Alterations. Without limiting the generality of clause (a) above, in connection with Tenant's maintenance of the heating, ventilating, air-conditioning systems, Tenant shall obtain and keep in force a preventive maintenance contract providing for regular (at least quarterly) inspection and maintenance by a qualified service contractor(s) reasonably acceptable to Landlord. Within ten (10) business days following written request, Tenant shall deliver Landlord written confirmation from such service contractor(s) verifying that such a contract has been entered into and that the required service will be provided. Subject to Section 16.4 and to the extent Landlord is not reimbursed by insurance proceeds, Tenant shall reimburse Landlord for the cost of repairing damage to the Building caused by the acts of Tenant, Tenant Related Parties and their respective contractors and vendors. If Tenant fails to make any repairs to the Premises for more than fifteen (15) days after notice from Landlord (although notice shall not be required in an emergency), Landlord may make the repairs, and Tenant shall pay the reasonable cost of the repairs, together with an administrative charge in an amount equal to 10% of the cost of the repairs. Except as set forth in Section 8.1 above, Tenant hereby waives all right to make repairs at the expense of Landlord or in lieu thereof to vacate the Premises and its other similar rights as provided in California Civil Code Sections 1932(1), 1941 and 1942 or any other Laws (whether now or hereafter in effect). In addition to the foregoing, Tenant shall be responsible for all costs in connection with repairing all special tenant fixtures and improvements constructed by or on behalf of Tenant prior to or during the Lease Term, including without limitation, garbage disposals, showers, plumbing, and appliances.

ARTICLE 9
ALTERATIONS AND IMPROVEMENTS

9.1 TENANT ALTERATIONS

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

(1) Tenant shall not, except as provided herein, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed, make or cause to be made any Tenant Alterations in or to the Premises or any Property systems serving the Premises. Prior to making any Tenant Alterations, Tenant shall give Landlord at least ten (10) days prior written notice (or such earlier notice as would be necessary pursuant to applicable Law) to permit Landlord sufficient time to post appropriate notices of non-responsibility. Subject to all other requirements of this Article 9, Tenant may undertake Decoration work without Landlord's prior written consent. Tenant shall furnish Landlord with the names and addresses of all contractors and subcontractors and copies of all contracts. All Tenant Alterations shall be completed at such time and in such manner as Landlord may from time to time reasonably approve, and only by contractors or mechanics approved by Landlord, which approval shall not be unreasonably withheld; provided, however, that Landlord may, in its sole discretion, specify the engineers and contractors to perform all work relating to the Building's systems (including the mechanical, heating, plumbing, security, ventilating, air-conditioning, electrical, communication and the fire and life safety systems in the Building) so long as such engineers and contractors are available and have competitive rates. The contractors, mechanics and engineers who may be used are further limited to those whose work will not cause or threaten to cause disharmony or interference with Landlord or other tenants in the Building and their respective agents and contractors performing work in or about the Building. Landlord may further condition its consent upon Tenant furnishing to Landlord and Landlord approving prior to the commencement of any work or delivery of materials to the Premises related to the Tenant Alterations such of the following as specified by Landlord: architectural plans and specifications, opinions from Landlord's engineers stating that the Tenant Alterations will not in any way adversely affect the Building's systems, necessary permits and licenses, certificates of insurance, and such other documents in such form reasonably requested by Landlord. In connection with Tenant Alterations which are reasonably anticipated to cost in excess of $500,000.00, Landlord may, in the exercise of commercially reasonable good-faith judgment, require that Tenant provide Landlord with appropriate evidence of Tenant's ability to complete and pay for the completion of the Tenant Alterations such as a performance bond or letter of credit. Upon completion of the Tenant Alterations, Tenant shall deliver to Landlord an as-built mylar and digitized (if available) set of plans and specifications for the Tenant Alterations.

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

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

(b) All Tenant Alterations shall without compensation or credit to Tenant, become part of the Premises and the property of Landlord at the time of their installation and shall remain in the Premises, unless pursuant to Article 12, Tenant may remove them or is required to remove them at Landlord's request.

(c) Tenant shall be solely responsible for all Tenant Alterations that Tenant desires to prepare the Premises for Tenant's use and occupancy thereof, which shall be performed in strict accordance with the foregoing terms and provisions of this Section 9.1. Subject to the terms and provisions hereof, Landlord agrees to contribute an amount not to exceed Four Hundred Thirty-Seven Thousand Five Hundred Ninety Dollars ($437,590.00) (the "New Lease Allowance") toward the cost of any Tenant Alterations to the Premises and/or any Alterations (as defined in the Prior Lease) performed by Tenant after the date of this Lease but prior to the Commencement Date which have been approved by Landlord and that otherwise are performed in strict accordance with the Prior Lease ("Prior Lease Alterations"). Additionally, Landlord acknowledges that Tenant has a remaining tenant improvement allowance from the Prior Lease in the amount of Sixty-Seven Thousand One Hundred Ninety Eight Dollars ($67,198.00) (the "Prior Allowance") that may be used for Tenant Alterations or Prior Lease Alterations. The New Lease Allowance and the Prior Allowance shall collectively be referred to herein as the "Tenant Improvement Allowance". If the cost of the Tenant Alterations and/or Prior Lease Alterations exceed the Tenant Improvement Allowance, then such excess amount shall be borne solely by Tenant. Landlord shall pay the Tenant Improvement Allowance to Tenant within thirty (30) days following the later to occur of (i) Landlord's receipt of a certificate from Tenant's licensed contractor certifying completion of the Tenant Alterations or Prior Lease Alterations, as applicable, for which reimbursement is sought in accordance with the construction plans and specifications therefor approved by Landlord; (ii) Landlord's receipt of documentary evidence reasonably satisfactory to Landlord of all of Tenant's expenditures for work performed and materials used in completing such Tenant Alterations or Prior Lease Alterations, as applicable; and (iii) Landlord's receipt of final, unconditional lien releases in form and content satisfactory to Landlord from all persons or entities providing labor and/or materials in connection with such Tenant Alterations or Prior Lease Alterations, as applicable; provided, however, in no event shall Landlord be obligated to pay any portion of the Tenant Improvement Allowance to Tenant prior to the Commencement Date. If Landlord fails to timely fund the Tenant Improvement Allowance within the time period set forth above in this Section 9.1(c), then Tenant shall be entitled to deliver written notice (a "Payment Notice") thereof to Landlord. If Landlord still fails to fulfill any such obligation within ten (10) business days after Landlord's receipt of the Payment Notice from Tenant and if Landlord fails to deliver written notice to Tenant within such ten (10) business day period explaining Landlord's reasons that the amounts described in Tenant's Payment Notice are not due and payable by Landlord ("Refusal Notice"), then Tenant shall be entitled to offset such amount(s), together with interest at the Default Rate from the date of the Payment Notice until the date of offset, against Tenant's obligation to pay monthly Base Rent. However, Tenant shall not be entitled to any such offset if Tenant is in default under the Lease at the time that such offset would otherwise be applicable. If Landlord delivers a Refusal Notice, and if Landlord and Tenant are not able to agree on the amounts to be so paid by Landlord, if any, within ten (10) business days after Tenant's receipt of a Refusal Notice, then either Landlord or Tenant may elect to have such dispute resolved by binding arbitration before a retired judge of the Superior Court of the State of California under the auspices of JAMS/ENDISPUTE (or any successor to such organization) in Alameda County, California, according to the then rules of commercial arbitration of such organization. If Tenant prevails in any such arbitration, Tenant shall be entitled to offset the amount determined to be payable by Landlord in such proceeding together with interest at the Default Rate from the date of the Payment Notice against Tenant's next obligations to pay monthly Base Rent (but Tenant shall not be entitled to any such offset if Tenant is in default under the Lease.

9.2 LIENS

Tenant shall not permit any lien or claim for lien of any mechanic, laborer or supplier or any other lien to be filed against the Building, the Land, the Premises, or any other part of the Property arising out of work performed, or alleged to have been performed by, or at the direction of, or on behalf of Tenant. If any such lien or claim for lien is filed, Tenant shall within ten (10) business days of receiving notice of such lien or claim (a) have such lien or claim for lien released of record or (b) deliver to Landlord a bond in form, content, amount, and issued by surety, satisfactory to Landlord, indemnifying, protecting, defending and holding harmless the Indemnitees against all costs and liabilities resulting from such lien or claim for lien and the foreclosure or attempted foreclosure thereof. If Tenant fails to take any of the above actions, Landlord, in addition to its rights and remedies under Article 11, without investigating the validity of such lien or claim for lien, may pay or discharge the same and Tenant shall, as payment of additional Rent hereunder, reimburse Landlord upon demand for the amount so paid by Landlord, including Landlord's expenses and reasonable attorneys' fees.

ARTICLE 10
ASSIGNMENT AND SUBLETTING

10.1 ASSIGNMENT AND SUBLETTING

(a) Subject to Landlord's recapture right set forth in Section 10.2, without the prior written consent of Landlord, which consent of Landlord shall not be unreasonably withheld, conditioned or delayed, Tenant may not sublease, assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Lease or the encumbering of Tenant's interest therein in whole or in part, by operation of Law or otherwise or permit the use or occupancy of the Premises, or any part thereof, by anyone other than Tenant. Tenant agrees that the provisions governing sublease and assignment set forth in this Article 10 shall be deemed to be reasonable. If Tenant desires to enter into any sublease of the Premises or assignment of this Lease, Tenant shall deliver written notice thereof to Landlord ("Tenant's Notice"), together with the identity of the proposed subtenant or assignee and the proposed principal terms thereof and financial and other information sufficient for Landlord to make an informed judgment with respect to such proposed subtenant or assignee at least fifteen (15) days prior to the commencement date of the term of the proposed sublease or assignment. If Tenant proposes to sublease less than all of the Rentable Area of the Premises, the space proposed to be sublet and the space retained by Tenant must each be a marketable unit as reasonably determined by Landlord and otherwise in compliance with all Laws. Landlord shall notify Tenant in writing of its approval or disapproval of the proposed sublease or assignment or its decision to exercise its rights under Section 10.2 within fifteen (15) business days after receipt of Tenant's Notice (and all required information). In the event Landlord fails to respond to the Tenant's Notice within said fifteen (15) business day period, then Tenant may resubmit the same to Landlord (any all other parties entitled to receive notices to Landlord) with a cover letter stating "Landlord's failure to respond shall result in the deemed approval of a proposed sublease or assignment' in all capital letters and in bold face type. In the event Landlord fails to respond to the second Tenant's Notice within fifteen (15) business days following such second submittal, then such second failure by Landlord shall be deemed consent to such proposed sublease or assignment by Landlord. In no event may Tenant sublease any portion of the Premises or assign the Lease to any other tenant of the Project. For the avoidance of doubt, any notice or submittal by Tenant pursuant to this Article 10 must be provided in accordance with the requirements of Article 24.

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

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

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

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

(iv) the proposed sublessee or assignee is a current occupant of the Project or a bona fide prospective tenant of Landlord in the Project as demonstrated by a written proposal dated within ninety (90) days prior to the date of Tenant's request; or

(v) the proposed sublessee or assignee would materially increase the estimated pedestrian and vehicular traffic to and from the Premises and the Project.

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

(d) For purposes of this Article 10 and except as provided in Section 10.1(e) below, an assignment shall be deemed to include a change in the majority control of Tenant, resulting from any transfer, sale or assignment of shares of stock of Tenant occurring by operation of Law or otherwise if Tenant is a corporation whose shares of stock are not traded publicly. If Tenant is a partnership, any change in the partners of Tenant shall be deemed to be an assignment.

(e) Notwithstanding the generality of the foregoing, so long as Tenant is not entering into a transaction described herein for the purpose of avoiding or otherwise circumventing the remaining terms of this Article, Tenant may, subject to the remaining terms of this Section 10 (except 10.2 and 10.3, which shall not apply), assign its entire interest under this Lease or sublease all or a portion of the Premises, without the consent of Landlord, to (i) an Affiliate, or (ii) a successor to Tenant by purchase or other acquisition of Tenant's capital stock or substantially all of Tenant's assets, merger, consolidation or reorganization, provided that all of the following conditions are satisfied: (1) Tenant is not then in Default under this Lease beyond applicable notice and cure periods; (2) Tenant shall give Landlord written notice at least fifteen (15) days prior to the effective date of the proposed transfer (or if prior disclosure is limited or restricted by applicable law or contractual confidentiality obligations, then as soon as permissible, but in not event later than the date which is one day following the effective date of the proposed transfer) together with the information required hereunder and such entity shall expressly assume Tenant's obligations hereunder; (3) with respect to an assignment to an Affiliate, Tenant continues to have a net worth that is not materially less than Tenant's net worth as of the date immediately prior to such transfer; and (4) with respect to a purchase, merger, consolidation or reorganization which results in Tenant ceasing to exist as a separate legal entity, Tenant's successor shall have a net worth equal to Tenant's net worth as of the date immediately prior to such transfer, each such transfer being referred to as a "Permitted Transfer".

10.2 RECAPTURE

Excluding any assignment or sublease contemplated in Section 10.1(e), in connection with any sublease or assignment for all or substantially all of the remaining term, Landlord shall have the option to exclude from the Premises covered by this Lease ("recapture") the space proposed to be sublet or subject to the assignment, effective as of the proposed commencement date of such sublease or assignment. If Landlord elects to recapture, Tenant shall surrender possession of the space proposed to be subleased or subject to the assignment to Landlord on the effective date of recapture of such space from the Premises, such date being the Termination Date for such space and Landlord shall be responsible for the costs to demise the subject space in the case of a sublease. Effective as of the date of recapture of any portion of the Premises pursuant to this section, the Monthly Base Rent, Rentable Area of the Premises and Tenant's Share shall be adjusted on an equitable and reasonable basis.

10.3 EXCESS RENT

Excluding any assignment or sublease contemplated in Section 10.1(e), Tenant shall pay Landlord on the first day of each month during the term of the sublease or assignment, fifty percent (50%) of the amount by which the sum of all rent and other consideration (direct or indirect, but excluding any consideration paid at fair market value for Tenant's assets, fixtures, inventory, equipment or furniture transferred by Tenant to the transferee in connection with such assignment or sublease) due from the subtenant or assignee for such month exceeds: (i) that portion of the Monthly Base Rent and Rent Adjustments due under this Lease for said month which is allocable to the space sublet or assigned; and (ii) the following costs and expenses for the subletting or assignment of such space: (1) reasonable and customary brokerage commissions, marketing expenses and attorneys' fees and expenses, (2) the actual costs paid in making any improvements or substitutions in the Premises required by any sublease or assignment; and (3) "free rent" periods, costs of any inducements or concessions given to subtenant or assignee, moving costs, and other amounts in respect of such subtenant's or assignee's other leases or occupancy arrangements. AH such costs and expenses shall be amortized over the term of the sublease or assignment pursuant to sound accounting principles.

10.4 TENANT LIABILITY

In the event of any sublease or assignment, whether or not with Landlord's consent, Tenant shall not be released or discharged from any liability, whether past, present or future, under this Lease, including any liability arising from the exercise of any renewal or expansion option, to the extent such exercise is expressly permitted by this Lease as may be subsequently amended. Tenant's liability shall remain primary, and in the event of default by any subtenant, assignee or successor of Tenant in performance or observance of any of the covenants or conditions of this Lease, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against said subtenant, assignee or successor. After any assignment, Landlord may consent to subsequent assignments or subletting of this Lease, or amendments or modifications of this Lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto, and such action shall not relieve Tenant or any successor of Tenant of liability under this Lease. If Landlord grants consent to such sublease or assignment, Tenant shall pay all reasonable attorneys' fees and expenses incurred by Landlord with respect to such assignment or sublease. In addition, if Tenant has any options to extend the Term or to add other space to the Premises, such options shall not be available to any subtenant or assignee, directly or indirectly without Landlord's express written consent, which may be withheld in Landlord's sole discretion; provided, however, any assignee of Tenant's entire interest under this Lease in connection with an assignment in accordance with Section 10.1(e) above, shall continue to have the right to exercise any options to extend the Term.

10.5 ASSUMPTION AND ATTORNMENT

If Tenant shall assign this Lease as permitted herein, the assignee shall expressly assume all of the obligations of Tenant hereunder in a written instrument satisfactory to Landlord and furnished to Landlord prior to the effective date of the assignment. If Tenant shall sublease the Premises as permitted herein, Tenant shall, at Landlord's option, within fifteen (15) days following any request by Landlord, obtain and furnish to Landlord the written agreement of such subtenant to the effect that the subtenant will attorn to Landlord and will pay all subrent directly to Landlord.

10.6 PROCESSING EXPENSES.

Tenant shall pay to Landlord, as Landlord's cost of processing each proposed assignment or subletting (whether or not the same is ultimately approved by Landlord or consummated by Tenant), an amount equal to the sum of (i) Landlord's reasonable attorneys' and other professional fees, not to exceed $2,500.00 unless Tenant or its transferee requests changes to this Lease or Landlord's form of consent, in which case such monetary limitation shall not apply, plus (ii) the sum of $500.00 for the cost of Landlord's administrative, accounting and clerical time (collectively, "Processing Costs"). Notwithstanding anything to the contrary herein, Landlord shall not be required to process any request for Landlord's consent to an assignment or subletting until Tenant has paid to Landlord the amount of Landlord's good faith estimate of the Processing Costs. When the actual amount of the Processing Costs is determined, it shall be reconciled with Landlord's estimate, and any payments or refunds required as a result thereof shall promptly thereafter be made by the parties.

ARTICLE 11
DEFAULT AND REMEDIES

11.1 EVENTS OF DEFAULT

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

(i) Tenant fails to pay any installment or other payment of Rent including Rent Adjustment Deposits or Rent Adjustments within five (5) business days after notice of delinquency;

(ii) Tenant fails to observe or perform any of the other covenants, conditions or provisions of this Lease and fails to cure such default within thirty (30) days after written notice thereof to Tenant; provided, however, that if the nature of Tenant's failure is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion;

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

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

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

(vi) a receiver is appointed for Tenant or its property, which appointment is not discharged within sixty (60) days;

(vii) any action taken by or against Tenant to reorganize or modify such party's capital structure in a materially adverse way which in the case of an involuntary action is not discharged within sixty (60) days; or

(viii) upon the dissolution of Tenant.

11.2 LANDLORD'S REMEDIES

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

(b) With respect to a Default, at any time Landlord may terminate Tenant's right to possession by written notice to Tenant stating such election. Any written notice required pursuant to Section 11.1 shall constitute notice of unlawful detainer pursuant to California Code of Civil Procedure Section 1161 if, at Landlord's sole discretion, it states Landlord's election that Tenant's right to possession is terminated after expiration of any period required by Law or any longer period required by Section 11.1. Upon the expiration of the period stated in Landlord's written notice of termination (and unless such notice provides an option to cure within such period and Tenant cures the Default within such period), Tenant's right to possession shall terminate and this Lease shall terminate, and Tenant shall remain liable as hereinafter provided. Upon such termination in writing of Tenant's right to possession, Landlord shall have the right, subject to applicable Law, to re-enter the Premises and dispossess Tenant and the legal representatives of Tenant and all other occupants of the Premises by unlawful detainer or other summary proceedings, or as otherwise permitted by Law, regain possession of the Premises and remove their property (including their trade fixtures, personal property and Required Removables pursuant to Article 12), but Landlord shall not be obligated to effect such removal, and such property may, at Landlord's option, be stored elsewhere, sold or otherwise dealt with as permitted by Law, at the risk of, expense of and for the account of Tenant, and the proceeds of any sale shall be applied pursuant to Law. Landlord shall in no event be responsible for the value, preservation or safekeeping of any such property. Tenant hereby waives all claims for damages that may be caused by Landlord's removing or storing Tenant's personal property pursuant to this Section or Section 12.1, and Tenant hereby indemnifies, and agrees to defend, protect and hold harmless, the Indemnitees from any and all loss, claims, demands, actions, expenses, liability and cost (including attorneys' fees and expenses) arising out of or in any way related to such removal or storage unless caused by the negligence or willful misconduct of the Indemnitees. Upon such written termination of Tenant's right to possession and this Lease, Landlord shall have the right to recover damages for Tenant's Default as provided herein or by Law, including the following damages provided by California Civil Code Section 1951.2:

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

(2) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant proves could reasonably have been avoided;

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

(4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, Landlord's unamortized costs of tenant improvements, leasing commissions and reasonable legal fees incurred in connection with entering into this Lease. The word "rent" as used in this Section 11.2 shall have the same meaning as the defined term Rent in this Lease. The "worth at the time of award" of the amount referred to in clauses (1) and (2) above is computed by allowing interest at the Default Rate. The worth at the time of award of the amount referred to in clause (3) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). For the purpose of determining unpaid Rent under clause (3) above, the monthly Rent reserved in this Lease shall be deemed to be the sum of the Monthly Base Rent, and the amounts last payable by Tenant as Rent Adjustments for the calendar year in which Landlord terminated this Lease as provided hereinabove.

(c) Even if Tenant is in Default and/or has abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession by written notice as provided in Section 11.2(b) above, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due under this Lease. In such event, Landlord shall have all of the rights and remedies of a landlord under California Civil Code Section 1951.4 (lessor may continue Lease in effect after Tenant's Default and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations), or any successor statute. During such time as Tenant is in Default, if Landlord has not terminated this Lease by written notice and if Tenant requests Landlord's consent to an assignment of this Lease or a sublease of the Premises, subject to Landlord's option to recapture pursuant to Section 10.2, Landlord shall not unreasonably withhold its consent to such assignment or sublease. Tenant acknowledges and agrees that the provisions of Article 10 shall be deemed to constitute reasonable limitations of Tenant's right to assign or sublet. Tenant acknowledges and agrees that in the absence of written notice pursuant to Section 11.2(b) above terminating Tenant's right to possession, no other act of Landlord shall constitute a termination of Tenant's right to possession or an acceptance of Tenant's surrender of the Premises, including acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease or the withholding of consent to a subletting or assignment, or terminating a subletting or assignment, if in accordance with other provisions of this Lease.

(d) Tenant hereby waives any and all rights to relief from forfeiture, redemption or reinstatement granted by Law (including California Civil Code of Procedure Sections 1174 and 1179) in the event of Tenant being evicted or dispossessed for any cause or in the event of Landlord obtaining possession of the Premises by reason of Tenant's Default or otherwise;

(e) Notwithstanding any other provision of this Lease, a notice to Tenant given under this Article and Article 24 of this Lease or given pursuant to California Code of Civil Procedure Section 1161, and any notice served by mail, shall be deemed served, and the requisite waiting period deemed to begin under said Code of Civil Procedure Section upon mailing (except as may be required under Code of Civil Procedure Section 1161 et seq.), without any additional waiting requirement under Code of Civil Procedure Section 1011 et seq. or by other Law. For purposes of Code of Civil Procedure Section 1162, Tenant's "place of residence", "usual place of business", "the property" and "the place where the property is situated" shall mean and be the Premises, whether or not Tenant has vacated same at the time of service.

(f) The voluntary or other surrender or termination of this Lease, or a mutual termination or cancellation thereof, shall not work a merger and shall terminate all or any existing assignments, subleases, subtenancies or occupancies permitted by Tenant, except if and as otherwise specified in writing by Landlord.

(g) No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant, and no exercise by Landlord of its rights pursuant to Section 25.15 to perform any duty which Tenant fails timely to perform, shall impair any right or remedy or be construed as a waiver. No provision of this Lease shall be deemed waived by Landlord unless such waiver is in writing signed by Landlord. The waiver by Landlord of any breach of any provision of this Lease shall not be deemed a waiver of any subsequent breach of the same or any other provision of this Lease.

11.3 ATTORNEY'S FEES

In the event any party brings any suit or other proceeding with respect to the subject matter or enforcement of this Lease, the prevailing party (as determined by the court, agency or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover reasonable attorneys' fees, expenses and costs of investigation as actually incurred, including court costs, expert witness fees, costs and expenses of investigation, and all reasonable attorneys' fees, costs and expenses in any such suit or proceeding (including in any action or participation in or in connection with any case or proceeding under the Bankruptcy Code, 11 United States Code Sections 101 et seq., or any successor statutes, in establishing or enforcing the right to indemnification, in appellate proceedings, or in connection with the enforcement or collection of any judgment obtained in any such suit or proceeding).

11.4 BANKRUPTCY

The following provisions shall apply in the event of the bankruptcy or insolvency of Tenant:

(a) In connection with any proceeding under Chapter 7 of the Bankruptcy Code where the trustee of Tenant elects to assume this Lease for the purposes of assigning it, such election or assignment, may only be made upon compliance with the provisions of (b) and (c) below, which conditions Landlord and Tenant acknowledge to be commercially reasonable. In the event the trustee elects to reject this Lease then Landlord shall immediately be entitled to possession of the Premises without further obligation to Tenant or the trustee.

(b) Any election to assume this Lease under Chapter 11 or 13 of the Bankruptcy Code by Tenant as debtor-in-possession or by Tenant's trustee (the "Electing Party") must provide for:

The Electing Party to cure or provide to Landlord adequate assurance that it will cure all monetary defaults under this Lease within fifteen (15) days from the date of assumption and it will cure all nonmonetary defaults under this Lease within thirty (30) days from the date of assumption. Landlord and Tenant acknowledge such condition to be commercially reasonable.

(c) If the Electing Party has assumed this Lease or elects to assign Tenant's interest under this Lease to any other person, such interest may be assigned only if the intended assignee has provided adequate assurance of future performance (as herein defined), of all of the obligations imposed on Tenant under this Lease.

For the purposes hereof, "adequate assurance of future performance" means that Landlord has ascertained that each of the following conditions has been satisfied:

(i) The assignee has submitted a current financial statement, certified by its chief financial officer, which shows a net worth and working capital in amounts sufficient to assure the future performance by the assignee of Tenant's obligations under this Lease; and

(ii) Landlord has obtained consents or waivers from any third parties that may be required under a lease, mortgage, financing arrangement, or other agreement by which Landlord is bound, to enable Landlord to permit such assignment.

(d) Landlord's acceptance of rent or any other payment from any trustee, receiver, assignee, person, or other entity will not be deemed to have waived, or waive, the requirement of Landlord's consent, Landlord's right to terminate this Lease for any transfer of Tenant's interest under this Lease without such consent, or Landlord's claim for any amount of Rent due from Tenant.

11.5 LANDLORD'S DEFAULT

Landlord shall be in default hereunder in the event Landlord has not commenced and pursued with reasonable diligence the cure of any failure of Landlord to meet its obligations hereunder within thirty (30) days after the receipt by Landlord of written notice from Tenant of the alleged failure to perform. Failure to provide the requisite notice and cure period by Tenant under this paragraph shall be an absolute defense by Landlord against any claims for failure to perform any of its obligations. In no event shall Tenant have the right to terminate or rescind this Lease as a result of Landlord's default as to any covenant or agreement contained in this Lease. Tenant hereby waives such remedies of termination and rescission and hereby agrees that Tenant's remedies for default hereunder and for breach of any promise or inducement shall be limited to a suit for damages and/or injunction. In addition, Tenant hereby covenants that, prior to the exercise of any such remedies, it will give the Mortgagee notice and a reasonable time to cure any default by Landlord.

ARTICLE 12
SURRENDER OF PREMISES

12.1 IN GENERAL

Upon the Termination Date, Tenant shall surrender and vacate the Premises immediately and deliver possession thereof to Landlord in a clean, good and tenantable condition as existed on the Commencement Date, ordinary wear and tear, and damage caused by Landlord, casualty and condemnation excepted. Tenant shall deliver to Landlord all keys to the Premises. All improvements in and to the Premises, including any Tenant Alterations (collectively, "Leasehold Improvements") shall remain upon the Premises at the end of the Term without compensation to Tenant. Landlord, however, by written notice to Tenant at least 30 days prior to the Termination Date, may require Tenant, at its expense, to remove any Tenant Alterations (as so identified, a "Required Removable"); provided, however if requested by Tenant at the time it requests approval for a proposed Tenant Alteration, Landlord shall advise Tenant at the time of granting such consent whether the proposed Tenant Alteration or any portion of the proposed Tenant Alteration is a Required Removable. In no event shall any improvements existing in the Premises as of the Date of this Lease be a Required Removable. The designated Required Removables shall be removed by Tenant before the Termination Date. Tenant shall repair damage caused by the installation or removal of Required Removables. If Tenant fails to perform its obligations in a timely manner, Landlord may perform such work at Tenant's reasonable expense. In the event possession of the Premises is not delivered to Landlord when required hereunder, or if Tenant shall fail to remove those items described above, Landlord may (but shall not be obligated to), at Tenant's expense, remove any of such property and store, sell or otherwise deal with such property, and undertake, at Tenant's reasonable expense, such restoration work as Landlord deems reasonably necessary or advisable.

12.2 LANDLORD'S RIGHTS

All property which may be removed from the Premises by Landlord in accordance with Section 12.1 above shall be conclusively presumed to have been abandoned by Tenant and Landlord may deal with such property as provided in Section 11.2(b), including the waiver and indemnity obligations provided in that Section. Tenant shall also reimburse Landlord for all costs and expenses incurred by Landlord in removing any Tenant Alterations and in restoring the Premises to the condition required by this Lease.

ARTICLE 13
HOLDING OVER

In the event that Tenant holds over in possession of the Premises after the Termination Date, for each month or partial month Tenant holds over possession of the Premises. Tenant shall pay Landlord 150% of the monthly Rent payable for the month immediately preceding the holding over (including increases for Rent Adjustments which Landlord may reasonably estimate. If Landlord provides Tenant with at least thirty (30) days prior written notice that Landlord has a signed proposal or lease from a succeeding tenant to lease the Premises, and if Tenant fails to surrender the Premises upon the later of (i) the date of expiration of such thirty (30) day period, or (ii) the date of expiration or earlier termination of this Lease, then Tenant shall also pay all consequential damages sustained by Landlord by reason of such holding over. The provisions of this Article shall not constitute a waiver by Landlord of any re-entry rights of Landlord and Tenant's continued occupancy of the Premises shall be as a tenancy in sufferance.

ARTICLE 14
DAMAGE BY FIRE OR OTHER CASUALTY

14.1 SUBSTANTIAL UNTENANTABILITY

(a) If any fire or other casualty (whether insured or uninsured) renders all or a substantial portion of the Premises or the Building untenantable, Landlord shall, with reasonable promptness after the occurrence of such damage, estimate the length of time that will be required to substantially complete the repair and restoration and shall, by notice advise Tenant of such estimate ("Landlord's Notice"). If Landlord estimates that the amount of time required to substantially complete such repair and restoration will exceed one hundred eighty (180) days from the date such damage occurred, then Landlord, or Tenant if all or a substantial portion of the Premises is rendered untenantable, shall have the right to terminate this Lease as of the date of such damage by delivering written notice to the other at any time within twenty (20) days after delivery of Landlord's Notice, provided that if Landlord so chooses, Landlord's Notice may also constitute such notice of termination.

(b) Unless this Lease is terminated as provided in the preceding subparagraph, Landlord shall proceed with reasonable promptness to repair and restore the Premises, subject to reasonable delays for insurance adjustments and Force Majeure delays, and also subject to zoning Laws and building codes then in effect. Landlord shall have no liability to Tenant, and Tenant shall not be entitled to terminate this Lease if such repairs and restoration are not in fact completed within the time period estimated by Landlord so long as Landlord shall proceed with reasonable diligence to complete such repairs and restoration. However, if the repairs are not substantially completed such that the Premises are reasonably tenantable by the date which is three hundred sixty-five (365) days from the date such damage occurred, then Tenant, at any time thereafter until such rebuilding is completed, may terminate this Lease by delivering written notice to Landlord of such termination, in which event this Lease shall terminate as of the date of the giving of such notice.

(c) Tenant acknowledges that Landlord shall be entitled to the full proceeds of any insurance coverage if Landlord will rebuild the Premises pursuant to this Lease, whether carried by Landlord or Tenant, for damages to the Premises, except for those proceeds of Tenant's insurance of its own personal property and equipment which would be removable by Tenant at the Termination Date.

(d) Notwithstanding anything to the contrary herein set forth: (i) Landlord shall have no duty pursuant to this Section to repair or restore any portion of any Tenant Alterations or non-Building standard equipment or to expend for any repair or restoration of the Premises or Building in amounts in excess of insurance proceeds paid to Landlord and available for repair or restoration; and (ii) Tenant shall not have the right to terminate this Lease pursuant to this Section if any damage or destruction was caused by the negligence or willful misconduct of Tenant, its agent or employees. Whether or not the Lease is terminated pursuant to this Article 14, in no event shall Tenant be entitled to any compensation or damages for loss of the use of the whole or any part of the Premises or for any inconvenience or annoyance occasioned by any such damage, destruction, rebuilding or restoration of the Premises or the Building or access thereto.

(e) Any repair or restoration of the Premises performed by Tenant shall be in accordance with the provisions of Article 9 hereof.

14.2 INSUBSTANTIAL UNTENANTABILITY

If the Premises or the Building is damaged by a casualty but neither is rendered substantially untenantable and Landlord estimates that the time to substantially complete the repair or restoration will not exceed one hundred eighty (180) days from the date such damage occurred, then Landlord shall proceed to repair and restore the Building or the Premises other than Tenant Alterations and non-Building standard equipment, with reasonable promptness, unless such damage is to the Premises and occurs during the last six (6) months of the Term, in which event either Tenant or Landlord shall have the right to terminate this Lease as of the date of such casualty by giving written notice thereof to the other within twenty (20) days after the date of such casualty. Notwithstanding the aforesaid, Landlord's obligation to repair shall be limited in accordance with the provisions of Section 14.1 above.

14.3 RENT ABATEMENT

Except for the gross negligence or willful act of Tenant or its agents, employees, contractors or invitees, if all or any part of the Premises are rendered untenantable by fire or other casualty, Monthly Base Rent and Rent Adjustments shall abate for that part of the Premises which is untenantable on a per diem basis from the date of the casualty until Landlord has Substantially Completed the repair and restoration work in the Premises which it is required to perform or the date the Lease is terminated (as applicable), provided, that as a result of such casualty, Tenant does not occupy the portion of the Premises which is untenantable during such period.

14.4 WAIVER OF STATUTORY REMEDIES

The provisions of this Lease, including this Article 14, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, the Premises or the Property or any part of either, and any Law, including Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code, with respect to any rights or obligations concerning damage or destruction shall have no application to this Lease or to any damage to or destruction of all or any part of the Premises or the Property or any part of either, and are hereby waived.

ARTICLE 15
EMINENT DOMAIN

15.1 TAKING OF WHOLE OR SUBSTANTIAL PART

In the event the whole or any substantial part of the Building or of the Premises is taken or condemned by any competent authority for any public use or purpose (including a deed given in lieu of condemnation) and is thereby rendered untenantable, this Lease shall terminate as of the date title vests in such authority, and Monthly Base Rent and Rent Adjustments shall be apportioned as of the Termination Date. Notwithstanding anything to the contrary herein set forth, in the event the taking is for a period that is less than the remaining Term of the Lease, then Landlord may elect either (i) to terminate this Lease (provided such temporary taking exceeds ninety (90) days), or (ii) permit Tenant to receive the entire award attributable to the Premises in which case Tenant shall continue to pay Rent and this Lease shall not terminate.

15.2 TAKING OF PART

In the event a part of the Building or the Premises is taken or condemned by any competent authority (or a deed is delivered in lieu of condemnation) and this Lease is not terminated, the Lease shall be amended to adjust the Monthly Base Rent and Tenant's Share to reflect the Rentable Area of the Premises or Building, as the case may be, remaining after any such taking or condemnation. Landlord, upon receipt and to the extent of the award in condemnation (or proceeds of sale) shall make necessary repairs and restorations to the Premises (exclusive of Tenant Alterations and non-Building standard equipment) and to the Building to the extent necessary to constitute the portion of the Building not so taken or condemned as a complete architectural and economically efficient unit. Notwithstanding the foregoing, if as a result of any taking, or a governmental order that the grade of any street or alley adjacent to the Building is to be changed and such taking or change of grade makes it necessary or desirable to substantially remodel or restore the Building or prevents the economical operation of the Building, Landlord shall have the right to terminate this Lease upon ninety (90) days prior written notice to Tenant.

15.3 COMPENSATION

Landlord shall be entitled to receive the entire award (or sale proceeds) from any such taking, condemnation or sale without any payment to Tenant, and Tenant hereby assigns to Landlord, Tenant's interest, if any, in such award; provided, however, Tenant shall have the right separately to pursue against the condemning authority a separate award in respect of the loss, if any, to Tenant Alterations paid for by Tenant without any credit or allowance from Landlord, moving expenses and loss of goodwill so long as there is no diminution of Landlord's award as a result.

ARTICLE 16
INSURANCE

16.1 TENANT'S INSURANCE

Tenant, at Tenant's expense, agrees to maintain in force, with a company or companies having a rating of not less than A-:VIII in Best's Insurance Guide, during the Term: (a) Commercial General Liability Insurance on a primary basis and without any right of contribution from any insurance carried by Landlord covering the Premises on an occurrence basis against all claims for personal injury, bodily injury, death and property damage, including contractual liability covering the indemnification provisions in this Lease, with a limit that is not less than a combined single limit of Five Million and No/100 Dollars ($5,000,000.00) (which limits may be satisfied by a blanket or umbrella policy); (b) Workers' Compensation and Employers' Liability Insurance to the extent required by and in accordance with the Laws of the State of California; (c) "All Risks" property insurance in an amount adequate to cover the full replacement cost of all Tenant Alterations, equipment, installations, fixtures and contents of the Premises in the event of loss; and (d) in the event a motor vehicle is to be used by Tenant in connection with its business operation from the Premises, Comprehensive Automobile Liability Insurance coverage with limits of not less than One Million and No/100 Dollars ($1,000,000.00) combined single limit coverage against bodily injury liability and property damage liability arising out of the use by or on behalf of Tenant, its agents and employees in connection with this Lease, of any owned, non-owned or hired motor vehicles. Landlord may from time to time require reasonable increases in any such limits or other insurance or coverages if Landlord reasonably believes that such additional coverage is generally consistent with coverage amounts then being requested by institutional landlords of comparable buildings with comparable use in the Emeryville/Berkeley market.

16.2 FORM OF POLICIES

Each policy referred to in Section 16.1 shall satisfy the following requirements. Each policy shall (i) name Landlord and the Indemnitees as additional insureds on the Commercial General Liability Insurance, (ii) be issued by one or more responsible insurance companies licensed to do business in the State of California having a rating of not less than A-:VIII in Best's Insurance Guide, (iii) where applicable, provide for commercially reasonable deductible amounts and not permit co-insurance, and (iv) each policy of "All-Risks" property insurance shall provide that the policy shall not be invalidated should the insured waive in writing prior to a loss, any or all rights of recovery against any other party for losses covered by such policies. Tenant shall deliver to Landlord, certificates of insurance and at Landlord's request, copies of all policies and renewals thereof to be maintained by Tenant hereunder, not less than ten (10) days prior to the Commencement Date and prior to any cancellation or expiration of each policy. If Tenant fails to carry the insurance required under this Article 16 or fails to provide certificates of renewal as and when required hereunder, Landlord may, but shall not be obligated to acquire such insurance on Tenant's behalf or Tenant's sole cost and expense.

16.3 LANDLORD'S INSURANCE

Landlord agrees to purchase and keep in full force and effect during the Term hereof, including any extensions or renewals thereof, insurance under policies issued by insurers of recognized responsibility, qualified to do business in the State of California on the Building in amounts not less than the greater of eighty (80%) percent of the then full replacement cost (without depreciation) of the Building (above foundations and excluding Tenant Alterations), against fire and such other risks as may be included in standard forms of all risk coverage insurance reasonably available from time to time. Landlord agrees to maintain in force during the Term, Commercial General Liability Insurance covering the Building on an occurrence basis against all claims for personal injury, bodily injury, death, and property damage. Such insurance shall be for a combined single limit of not less than Five Million and No/100 Dollars ($5,000,000.00). Neither Landlord's obligation to carry such insurance nor the carrying of such insurance shall be deemed to be an indemnity by Landlord with respect to any claim, liability, loss, cost or expense due, in whole or in part, to Tenant's negligent acts or omissions or willful misconduct. Without obligation to do so, Landlord may, in its sole discretion from time to time, carry insurance in amounts greater and/or for coverage additional to the coverage and amounts set forth above.

16.4 WAIVER OF SUBROGATION

(a) Landlord agrees that, so long as the same is permitted under the laws of the State of California, it will include in its "All Risks" policies appropriate clauses pursuant to which the insurance companies (i) waive all right of subrogation against Tenant with respect to losses payable under such policies and/or (ii) agree that such policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policies.

(b) Tenant agrees to include, so long as the same is permitted under the laws of the State of California, in its "All Risks" insurance policy or policies on Tenant Alterations, whether or not removable, and on Tenant's furniture, furnishings, fixtures and other property removable by Tenant under the provisions of this Lease appropriate clauses pursuant to which the insurance company or companies (i) waive the right of subrogation against Landlord and/or any tenant of space in the Building with respect to losses payable under such policy or policies and/or (ii) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies.

(c) Provided that Landlord's right of full recovery under its policy or policies aforesaid is not adversely affected or prejudiced thereby, Landlord hereby waives any and all right of recovery which it might otherwise have against Tenant, its servants, agents and employees, for loss or damage occurring to the Real Property and the fixtures, appurtenances and equipment therein, to the extent the same is covered by Landlord's insurance, notwithstanding that such loss or damage may result from the negligence or fault of Tenant, its servants, agents or employees. Provided that Tenant's right of full recovery under its aforesaid policy or policies is not adversely affected or prejudiced thereby, Tenant hereby waives any and all right of recovery which it might otherwise have against Landlord, its servants, and employees and against every other tenant of the Real Property who shall have executed a similar waiver as set forth in this Section 16.4 (c) for loss or damage to Tenant Alterations, whether or not removable, and to Tenant's furniture, furnishings, fixtures and other property removable by Tenant under the provisions hereof to the extent the same is coverable by Tenant's insurance required under this Lease, notwithstanding that such loss or damage may result from the negligence or fault of Landlord, its servants, agents or employees, or such other tenant and the servants, agents or employees thereof.

(d) Landlord and Tenant hereby agree to advise the other promptly if the clauses to be included in their respective insurance policies pursuant to subparagraphs (a) and (b) above cannot be obtained on the terms hereinbefore provided and thereafter to furnish the other with a certificate of insurance or copy of such policies showing the naming of the other as an additional insured, as aforesaid. Landlord and Tenant hereby also agree to notify the other promptly of any cancellation or change of the terms of any such policy that would affect such clauses or naming. All such policies which name both Landlord and Tenant as additional insureds shall, to the extent obtainable, contain agreements by the insurers to the effect that no act or omission of any additional insured will invalidate the policy as to the other additional insureds.

16.5 NOTICE OF CASUALTY

Tenant shall give Landlord notice in case of a fire or accident in the Premises promptly after Tenant is aware of such event.

ARTICLE 17
WAIVER OF CLAIMS AND INDEMNITY

17.1 WAIVER OF CLAIMS

To the extent permitted by Law, Tenant hereby releases the Indemnitees from, and waives all claims for, damage to person or property sustained by the Tenant or any occupant of the Premises or the Property resulting directly or indirectly from any existing or future condition, defect, matter or thing in and about the Premises or the Property or any part of either or any equipment or appurtenance therein, or resulting from any accident in or about the Premises or the Property, or resulting directly or indirectly from any act or neglect of any tenant or occupant of the Property or of any other person, including Landlord's agents and servants, except to the extent caused by the gross negligence or willful and wrongful act of any of the Indemnitees. To the extent permitted by Law, Tenant hereby waives any consequential damages, compensation or claims for inconvenience or loss of business, rents, or profits as a result of such injury or damage, whether or not caused by the gross negligence or willful and wrongful act of any of the Indemnitees. Subject to Section 16.4 above, if any such damage, whether to the Premises or the Property or any part of either, or whether to Landlord or to other tenants in the Property, results from any negligence or willful misconduct of Tenant, its employees, servants, agents, contractors, invitees or customers, Tenant shall be liable therefor and Landlord may, at Landlord's option, repair such damage and Tenant shall, upon demand by Landlord, as payment of additional Rent hereunder, reimburse Landlord within ten (10) days of demand for the total reasonable cost of such repairs, in excess of amounts, if any, paid to Landlord under insurance covering such damages. Tenant shall not be liable for any such damage caused by its acts or neglect if Landlord or a tenant has recovered the full amount of the damage from proceeds of insurance policies and the insurance company has waived its right of subrogation against Tenant.

17.2 INDEMNITY BY TENANT

To the extent permitted by Law, Tenant hereby indemnifies, and agrees to protect, defend and hold the Indemnitees harmless, against any and all actions, claims, demands, liability, costs and expenses, including attorneys' fees and expenses for the defense thereof, arising from Tenant's occupancy of the Premises, from the undertaking of any Tenant Alterations or repairs to the Premises, from the conduct of Tenant's business on the Premises, or from any willful act or negligence of Tenant, its agents, contractors, servants, employees, customers or invitees, in or about the Premises or the Property or any part of either. In case of any action or proceeding brought against the Indemnitees by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel chosen by Landlord, in Landlord's sole discretion. Landlord reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity. The foregoing indemnity shall not operate to relieve Indemnitees of liability to the extent such liability is caused by the willful and wrongful act of Indemnitees. Further, the foregoing indemnity is subject to and shall not diminish any waivers in effect in accordance with Section 16.4 by Landlord or its insurers to the extent of amounts, if any, paid to Landlord under its "All-Risks" property insurance. However, notwithstanding the foregoing, Tenant shall not be required to indemnify and/or hold the Indemnitees harmless from any loss, cost, liability, damage or expense, including, but not limited to, penalties, fines, attorneys' fees or costs (collectively, "Claims"), to any person, property or entity to the extent resulting from the negligence or willful misconduct of Landlord or its agents, contractors, or employees (except for damage to the Tenant Alterations and Tenant's personal property, fixtures, furniture and equipment in the Premises in which case Tenant shall be responsible to the extent Tenant is required to obtain the requisite insurance coverage pursuant to this Lease). Tenant's agreement to indemnify Landlord pursuant to this Article 17 is not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to this Lease, to the extent such policies cover the matters subject to such indemnification obligations. Further, the foregoing indemnity is subject to and shall not diminish any waivers in effect in accordance with Section 16.4 by Landlord or its insurers to the extent of amounts, if any, paid to Landlord under its "All-Risks" property insurance. This Article 17 shall survive the expiration or earlier termination of this Lease.

17.3 INDEMNITY BY LANDLORD

To the extent permitted by Law, Landlord hereby indemnifies, and agrees to protect, defend and hold Tenant and its directors, officers and employees (the "Tenant Indemnitees") harmless, against any and all actions, claims, demands, liability, costs and expenses, including reasonable attorneys' fees and expenses for the defense thereof, to the extent arising from any gross negligence or willful misconduct of Landlord or its agents, in or about the Premises or the Property or any part of either. In case of any action or proceeding brought against the Tenant Indemnitees by reason of any such claim, upon notice from Tenant, Landlord covenants to defend such action or proceeding by counsel chosen by Landlord. The foregoing indemnity shall not operate to relieve Tenant Indemnitees of liability to the extent such liability is caused by the willful and wrongful act of Tenant Indemnitees. Further, the foregoing indemnity is subject to and shall not diminish any waivers in effect in accordance with Section 16.4 by Tenant or its insurers to the extent of amounts, if any, paid to Tenant under its "All-Risks" property insurance.

ARTICLE 18
RULES AND REGULATIONS

18.1 RULES

Tenant agrees for itself and for its subtenants, employees, agents, and invitees to comply with the rules and regulations listed on Exhibit B attached hereto and with all reasonable modifications and additions thereto which Landlord may make from time to time.

18.2 ENFORCEMENT

Nothing in this Lease shall be construed to impose upon the Landlord any duty or obligation to enforce the rules and regulations as set forth on Exhibit B or as hereafter adopted, or the terms, covenants or conditions of any other lease as against any other tenant, and the Landlord shall not be liable to the Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees, Landlord shall use reasonable efforts to enforce the rules and regulations of the Project in a uniform and non-discriminatory manner.

ARTICLE 19
LANDLORD'S RESERVED RIGHTS

Landlord shall have the following rights exercisable without notice to Tenant and without liability to Tenant for damage or injury to persons, property or business and without being deemed an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for offset or abatement of Rent (except as otherwise set forth in this Lease): (1) to change the Building's name or street address upon thirty (30) days' prior written notice to Tenant; (2) to install, affix and maintain all signs on the exterior and/or interior of the Building; (3) to designate and/or approve prior to installation, all types of signs, window shades, blinds, drapes, awnings or other similar items, and all internal lighting that may be visible from the exterior of the Premises; (4) upon at least twenty-four (24) hours prior notice to Tenant, to display the Premises to prospective purchasers and lenders at reasonable hours at any time during the Term and to prospective tenants at reasonable hours during the last twelve (12) months of the Term (with Tenant having the opportunity to accompany any such individuals while in the Premises); (5) to have access for Landlord and other tenants of the Building to any mail chutes and boxes located in or on the Premises as required by any applicable rules of the United States Post Office; and (6) to close the Building after normal business hours, except that Tenant and its employees and invitees shall be entitled to admission at all times, under such reasonable regulations as Landlord prescribes for security purposes.

ARTICLE 20
ESTOPPEL CERTIFICATE

20.1 IN GENERAL

Within ten (10) business days after request therefor by Landlord, Mortgagee or any prospective mortgagee or owner, Tenant agrees as directed in such request to execute an Estoppel Certificate in recordable form, binding upon Tenant, certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Lease as modified is in full force and effect); (ii) the dates to which Rent has been paid; (iii) that Tenant is in the possession of the Premises if that is the case; (iv) that Landlord is not in default under this Lease (or if Tenant believes there exists any default by Landlord, a full and complete explanation thereof); (v) that Tenant has no offsets or defenses to the performance of its obligations under this Lease (or if Tenant believes there are any offsets or defenses, a full and complete explanation thereof); (vi) that Tenant has accepted the Premises and the condition thereof and of all improvements thereto and has no claims against Landlord or any other party with respect thereto (or if Tenant believes it has a claim against Landlord or any other party, a full and complete explanation thereof); (vii) that if an assignment of rents or leases has been served upon the Tenant by a Mortgagee, Tenant will acknowledge receipt thereof and agree to be bound by the provisions thereof; (viii) that Tenant will give to the Mortgagee copies of all notices required or permitted to be given by Tenant to Landlord; and (ix) to any other information reasonably requested.

20.2 ENFORCEMENT

In the event that Tenant fails to timely deliver an Estoppel Certificate within the ten (10) business day period following written request, and if such failure continues for an additional five (5) business days following written notice from Landlord, then such failure shall be a Default for which there shall be no cure or grace period. In addition to any other remedy available to Landlord, Landlord may impose a charge equal to $385.00 for each day that Tenant fails to deliver an Estoppel Certificate.

ARTICLE 21
INTENTIONALLY OMITTED

ARTICLE 22
REAL ESTATE BROKERS

Tenant represents that, except for the broker listed in Section 1.1(14), Tenant has not dealt with any real estate broker, sales person, or finder in connection with this Lease, and no such person initiated or participated in the negotiation of this Lease, or showed the Premises to Tenant. Tenant hereby agrees to indemnify, protect, defend and hold Landlord and the Indemnitees, harmless from and against any and all liabilities and claims for commissions and fees arising out of a breach of the foregoing representation. Landlord has not dealt with any real estate broker, sales person, or finder in connection with this Lease. Landlord agrees to pay any commission to which the broker listed in Section 1.1(14) is entitled in connection with its representation of Tenant under this Lease pursuant to Landlord's written agreement with such broker. Landlord hereby agrees to indemnify, protect, defend and hold Tenant harmless from and against any and all liabilities and claims for commissions and fees arising out of any real estate broker, sales person or finder that claims to have represented Landlord in connection with this Lease.

ARTICLE 23
MORTGAGEE PROTECTION

23.1 SUBORDINATION AND ATTORNMENT

This Lease is and shall be expressly subject and subordinate at all times to (i) any ground or underlying lease of the Real Property, now or hereafter existing, and all amendments, extensions, renewals and modifications to any such lease, and (ii) the lien of any mortgage or trust deed now or hereafter encumbering fee title to the Real Property and/or the leasehold estate under any such lease, and all amendments, extensions, renewals, replacements and modifications of such mortgage or trust deed and/or the obligation secured thereby, unless such ground lease or ground lessor, or mortgage, trust deed or Mortgagee, expressly provides or elects that the Lease shall be superior to such lease or mortgage or trust deed. If any such mortgage or trust deed is foreclosed (including any sale of the Real Property pursuant to a power of sale), or if any such ground or underlying lease is terminated, upon request of the Mortgagee or ground lessor, as the case may be, Tenant shall attorn to the purchaser at the foreclosure sale or to the ground lessor under such lease, as the case may be, provided, however, that such purchaser or ground lessor shall not be (i) bound by any payment of Rent for more than one month in advance except payments in the nature of security for the performance by Tenant of its obligations under this Lease; (ii) subject to any offset, defense or damages arising out of a default of any obligations of any preceding Landlord except to the extent of defaults continuing after the date of such attornment; or (iii) bound by any amendment or modification of this Lease made without the written consent of the Mortgagee or ground lessor; or (iv) liable for any security deposits not actually received by such purchaser or ground lessor. The foregoing subordination as to any future deed of trust or ground lease is conditioned upon the Mortgagee or ground lessor providing Tenant with its standard subordination, non-disturbance and attornment agreement. Additionally, Tenant agrees to execute promptly any reasonable certificate or instrument that Landlord, Mortgagee or ground lessor may request in connection with any such subordination. Upon request by such successor in interest, Tenant shall execute and deliver reasonable instruments confirming the attornment provided for herein. The terms of this paragraph shall survive any termination of this Lease by reason of foreclosure.

Landlord has informed Tenant that the Project is currently encumbered by a deed of trust (the “Security Instrument”). At Tenant’s sole cost and expense, Landlord shall request the Mortgagee of the existing Security Instrument to issue its standard subordination, non-disturbance and attornment agreement (“SNDA”), pursuant to which the beneficiary of such Security Instrument agrees to recognize this Lease in the event of default under such Security Instrument or sale under such Security Instrument, so long as Tenant is not in default hereunder beyond any applicable notice and cure period. Landlord’s sole obligation under this section is to use commercially reasonable efforts to cause Mortgagee to issue such SNDA. Tenant is responsible for paying all costs and expenses for such SNDA, including, without limitation, the lender attorneys’ fees and disbursements. Obtaining the SNDA is not a condition precedent or subsequent to the Lease. The failure of such lender to issue its SNDA shall not relieve Tenant of any of its obligations under the Lease or constitute a breach or default by Landlord.

23.2 MORTGAGEE PROTECTION

Tenant agrees to give any Mortgagee or ground lessor, by registered or certified mail, a copy of any notice of default served upon the Landlord by Tenant, provided that prior to such notice Tenant has received notice (by way of service on Tenant of a copy of an assignment of rents and leases, or otherwise) of the address of such Mortgagee or ground lessor. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the Mortgagee or ground lessor shall have an additional thirty (30) days after receipt of notice thereof within which to cure such default or if such default cannot be cured within that time, then such additional notice time as may be necessary, if, within such thirty (30) days, any Mortgagee or ground lessor has commenced and is diligently pursuing the remedies necessary to cure such default (including commencement of foreclosure proceedings or other proceedings to acquire possession of the Real Property, if necessary to effect such cure). Such period of time shall be extended by any period within which such Mortgagee or ground lessor is prevented from commencing or pursuing such foreclosure proceedings or other proceedings to acquire possession of the Real Property by reason of Landlord's bankruptcy. Until the time allowed as aforesaid for Mortgagee or ground lessor to cure such defaults has expired without cure, Tenant shall have no right to, and shall not, terminate this Lease on account of default. This Lease may not be modified or amended so as to reduce the Rent or shorten the Term, or so as to adversely affect in any other respect to any material extent the rights of the Landlord, nor shall this Lease be canceled or surrendered, without the prior written consent, in each instance, of the ground lessor or the Mortgagee.

ARTICLE 24
NOTICES

(a) All notices, demands or requests provided for or permitted to be given pursuant to this Lease must be in writing and shall be personally delivered, sent by Federal Express or other reputable overnight courier service, or mailed by first class, registered or certified United States mail, return receipt requested, postage prepaid.

(b) All notices, demands or requests to be sent pursuant to this Lease shall be deemed to have been properly given or served by delivering or sending the same in accordance with this Section, addressed to the parties hereto at their respective addresses listed in Section 1.1.

(c) Notices, demands or requests sent by mail or overnight courier service as described above shall be effective upon deposit in the mail or with such courier service. However, except with respect to a notice given under Code of Civil Procedure Section 1161 et seq., the time period in which a response to any such notice, demand or request must be given shall commence to run from (i) in the case of delivery by mail, the date of receipt on the return receipt of the notice, demand or request by the addressee thereof, or (ii) in the case of delivery by Federal Express or other overnight courier service, the date of acceptance of delivery by Landlord or Tenant. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given, as indicated by advice from Federal Express or other overnight courier service or by mail return receipt, shall be deemed to be receipt of notice, demand or request sent. Notices may also be served by personal service upon Landlord or Tenant, and shall be effective upon such service.

(d) By giving to the other party at least five (5) business days written notice thereof, either party shall have the right from time to time during the term of this Lease to change their respective addresses for notices, statements, demands and requests, provided such new address shall be within the United States of America.

ARTICLE 25
MISCELLANEOUS

25.1 LATE CHARGES

(a) All payments required hereunder (other than the Monthly Base Rent, Rent Adjustments, and Rent Adjustment Deposits, which shall be due as hereinbefore provided) to Landlord shall be paid within ten (10) days after Landlord's demand therefor. All such amounts (including Monthly Base Rent, Rent Adjustments, and Rent Adjustment Deposits) not paid within five (5) days after due shall bear interest from the date due until the date paid at the Default Rate in effect on the date such payment was due.

(b) In the event Tenant is more than five (5) days late in paying any installment of Rent due under this Lease, Tenant shall pay Landlord a late charge equal to five percent (5%) of the delinquent installment of Rent. The parties agree that (i) such delinquency will cause Landlord to incur costs and expenses not contemplated herein, the exact amount of which will be difficult to calculate, including the cost and expense that will be incurred by Landlord in processing each delinquent payment of rent by Tenant, (b) the amount of such late charge represents a reasonable estimate of such costs and expenses and that such late charge shall be paid to Landlord for each delinquent payment in addition to all Rent otherwise due hereunder. The parties further agree that the payment of late charges and the payment of interest provided for in subparagraph (a) above are distinct and separate from one another in that the payment of interest is to compensate Landlord for its inability to use the money improperly withheld by Tenant, while the payment of late charges is to compensate Landlord for its additional administrative expenses in handling and processing delinquent payments.

(c) Notwithstanding the foregoing, Tenant shall be entitled to notice and the expiration of a five (5) day cure period prior to a imposition of any late charge or interest charge under this Section 25.1 one (1) time per calendar year; after such written notice has been provided to Tenant in a calendar year, Tenant shall not be entitled to any further notice prior to imposition of a late charge or interest under this Section 25.1 in such calendar year.

(d) Payment of interest at the Default Rate and/or of late charges shall not excuse or cure any default by Tenant under this Lease, nor shall the foregoing provisions of this Article or any such payments prevent Landlord from exercising any right or remedy available to Landlord upon Tenant's failure to pay Rent when due, including the right to terminate this Lease.

25.2 NO JURY TRIAL; VENUE; JURISDICTION

To the fullest extent permitted by law, including laws enacted after the Commencement Date, each party hereto (which includes any assignee, successor, heir or personal representative of a party) shall not seek a jury trial, hereby waives trial by jury, and hereby further waives any objection to venue in the County in which the Project is located, and agrees and consents to personal jurisdiction of the courts of the State of California, in any action or proceeding or counterclaim brought by any party hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any statute, emergency or otherwise, whether any of the foregoing is based on this Lease or on tort law. No party will seek to consolidate any such action in which a jury has been waived with any other action in which a jury trial cannot or has not been waived. It is the intention of the parties that these provisions shall be subject to no exceptions. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

25.3 DISCRIMINATION

Tenant agrees for Tenant and Tenant's heirs, executors, administrators, successors and assigns and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry (whether in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises or otherwise) nor shall Tenant or any person claiming under or through Tenant establish or permit any such practice or practices of discrimination or segregation with reference to the use or occupancy of the Premises by Tenant or any person claiming through or under Tenant.

25.4 FINANCIAL STATEMENTS

Within ten (10) business days after written request from Landlord from time to time during the Term, Tenant shall provide Landlord with current financial statements setting forth Tenant's financial condition and net worth for the most recent quarter, including balance sheets and statements of profits and losses. Such statements shall be reviewed by an independent accountant and certified by Tenant's president, chief executive officer or chief financial officer. Landlord shall only request such financial information in connection with a sale or financing or a proposed sale or refinancing of the Property, or any portion thereof, or during any period in which Tenant is in default, and Landlord shall treat any such financial information as confidential information and shall only disclose the same to the extent reasonably necessary in connection with the foregoing purposes or as may be required by Law. Notwithstanding the foregoing, Tenant shall have no obligation to deliver any financial statements if Tenant is a publicly traded entity or an entity that is otherwise required to file financial statements with any governmental entity that are publicly available and Tenant is in compliance with such public reporting requirement.

25.5 OPTION

This Lease shall not become effective as a lease or otherwise until executed and delivered by both Landlord and Tenant. The submission of the Lease to Tenant does not constitute a reservation of or option for the Premises, but when executed by Tenant and delivered to Landlord, the Lease shall constitute an irrevocable offer by Tenant in effect for fifteen (15) days to lease the Premises on the terms and conditions herein contained.

25.6 TENANT AUTHORITY

Tenant represents and warrants to Landlord that it has full authority and power to enter into and perform its obligations under this Lease, that the person executing this Lease is fully empowered to do so, and that no consent or authorization is necessary from any third party. Landlord may request that Tenant provide Landlord reasonable evidence of Tenant's authority. Landlord represents and warrants to Tenant that it has full authority and power to enter into and perform its obligations under this Lease.

25.7 ENTIRE AGREEMENT

This Lease, the Exhibits, and Riders attached hereto contain the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements, either oral or written, and no other representations or statements, either oral or written, on which Tenant or Landlord has relied. This Lease shall not be modified except by a writing executed by Landlord and Tenant.

25.8 MODIFICATION OF LEASE FOR BENEFIT OF MORTGAGEE

If Mortgagee of Landlord requires a modification of this Lease which shall not result in any increased cost or expense to Tenant or in any other material and adverse change in the rights and obligations of Tenant hereunder, then Tenant agrees that the Lease may be so modified.

25.9 EXCULPATION

Tenant agrees, on its behalf and on behalf of its successors and assigns, that any liability or obligation under this Lease shall only be enforced against Landlord's equity interest in the Property up to a maximum of Five Million Dollars ($5,000,000.00) and in no event against any other assets of the Landlord, or Landlord's officers or directors or partners, and that any liability of Landlord with respect to this Lease shall be so limited and Tenant shall not be entitled to any judgment in excess of such amount. Notwithstanding anything to the contrary contained herein, in no event shall Landlord be liable to Tenant for consequential, punitive or special damages with respect to this Lease.

25.10 ACCORD AND SATISFACTION

No payment by Tenant or receipt by Landlord of a lesser amount than any installment or payment of Rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or payment of Rent or pursue any other remedies available to Landlord. No receipt of money by Landlord from Tenant after the termination of this Lease or Tenant's right of possession of the Premises shall reinstate, continue or extend the Term. Receipt or acceptance of payment from anyone other than Tenant, including an assignee of Tenant, is not a waiver of any breach of Article 10, and Landlord may accept such payment on account of the amount due without prejudice to Landlord's right to pursue any remedies available to Landlord.

25.11 LANDLORD'S OBLIGATIONS ON SALE OF BUILDING

In the event of any sale or other transfer of the Building, Landlord shall be entirely freed and relieved of all agreements and obligations of Landlord hereunder accruing or to be performed after the date of such sale or transfer, and any remaining liability of Landlord with respect to this Lease shall be limited to the dollar amount specified in Section 25.9 and Tenant shall not be entitled to any judgment in excess of such amount. Landlord shall have the right to assign this Lease to an entity comprised of the principals of Landlord or any Landlord Affiliate. Upon such assignment and assumption of the obligations of Landlord hereunder, Landlord shall be entirely freed and relieved of all obligations hereunder.

25.12 BINDING EFFECT

Subject to the provisions of Article 10, this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and permitted assigns.

25.13 CAPTIONS

The Article and Section captions in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such Articles and Sections.

25.14 TIME; APPLICABLE LAW; CONSTRUCTION

Time is of the essence of this Lease and each and all of its provisions. This Lease shall be construed in accordance with the Laws of the State of California. If more than one person signs this Lease as Tenant, the obligations hereunder imposed shall be joint and several. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each item, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by Law. Wherever the term "including" or "includes" is used in this Lease, it shall have the same meaning as if followed by the phrase "but not limited to". The language in all parts of this Lease shall be construed according to its normal and usual meaning and not strictly for or against either Landlord or Tenant.

25.15 ABANDONMENT

In the event Tenant vacates or abandons the Premises but is otherwise in compliance with all the terms, covenants and conditions of this Lease, Landlord shall (i) have the right to enter into the Premises in order to show the space to prospective tenants, (ii) have the right to reduce the services provided to Tenant pursuant to the terms of this Lease to such levels as Landlord reasonably determines to be adequate services for an unoccupied premises, and (iii) during the last six (6) months of the Term, have the right to prepare the Premises for occupancy by another tenant upon the end of the Term. Tenant expressly acknowledges that in the absence of written notice pursuant to Section 11.2(b) or pursuant to California Civil Code Section 1951.3 terminating Tenant's right to possession, none of the foregoing acts of Landlord or any other act of Landlord shall constitute a termination of Tenant's right to possession or an acceptance of Tenant's surrender of the Premises, and the Lease shall continue in effect.

25.16 LANDLORD'S RIGHT TO PERFORM TENANT'S DUTIES

If Tenant is in Default for the failure to timely to perform any of its duties under this Lease, then Landlord shall have the right (but not the obligation), to cure such Default on behalf and at the expense of Tenant following no fewer than three (3) business days prior notice to Tenant, and all sums reasonably expended or expenses reasonably incurred by Landlord in performing such duty shall be deemed to be additional Rent under this Lease and shall be due and payable upon demand by Landlord.

25.17 SECURITY SYSTEM

Landlord shall not be obligated to provide or maintain any security patrol or security system. Landlord shall not be responsible for the quality of any such patrol or system which may be provided hereunder or for damage or injury to Tenant, its employees, invitees or others due to the failure, action or inaction of such patrol or system.

25.18 NO LIGHT. AIR OR VIEW EASEMENTS

Any diminution or shutting off of light, air or view by any structure which may be erected on lands of or adjacent to the Project shall in no way affect this Lease or impose any liability on Landlord.

25.19 RECORDATION

Neither this Lease, nor any notice nor memorandum regarding the terms hereof, shall be recorded by Tenant. Any such unauthorized recording shall be a Default for which there shall be no cure or grace period. Tenant agrees to execute and acknowledge, at the request of Landlord, a commercially reasonable memorandum of this Lease, in recordable form.

25.20 SURVIVAL

The waivers of the right of jury trial, the other waivers of claims or rights, the releases and the obligations of a party under this Lease to indemnify, protect, defend and hold harmless the other party shall survive the expiration or termination of this Lease, and so shall all other obligations or agreements which by their terms survive expiration or termination of the Lease.

25.21 OFAC REPRESENTATION. WARRANTY AND COVENANT

Tenant represents, warrants and covenants that:

(1) Tenant and its principals are not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control;

(2) Tenant and its principals are not engaged, and will not engage, in this transaction, directly or indirectly, on behalf of, or instigating or facilitating, and will not instigate or facilitate, this transaction, directly or indirectly, on behalf of, any such person, group, entity, or nation; and

(3) Tenant acknowledges that the breach of this representation, warranty and covenant by Tenant shall be an immediate Default under this Lease.

25.22 COUNTERPARTS

This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Telecopied signatures or signatures transmitted by electronic mail in so-called "pdf" format may be used in place of original signatures on this Lease. Landlord and Tenant intend to be bound by the signatures on the telecopied or e-mailed document, are aware that the other party will rely on the telecopied or e-mailed signatures, and hereby waive any defenses to the enforcement of the terms of this Lease based on such telecopied or e-mailed signatures. Promptly following request by either party, the other party shall provide the requesting party with original signatures on this Lease.

25.23 BACKUP GENERATOR

Tenant to maintain in good operating condition and repair (including any required replacements), at Tenant's sole cost and expense, the backup generator currently located at the Project as well as the associated equipment and infrastructure (collectively, the "Generator"). All such maintenance and Tenant's use of the Generator shall be subject to all applicable Laws, and any terms and conditions as may be reasonably imposed by Landlord; provided, however, that Landlord shall not charge Tenant any separate charge in connection with the same. Without limiting the generality of the foregoing, Tenant shall, at Tenant's sole cost and expense, obtain and maintain all necessary federal, state, and municipal permits, licenses and approvals, including without limitation any such permits, licenses and approvals from the Bay Area Air Quality Management District, and Tenant shall deliver copies thereof to Landlord. The Generator may be used by Tenant only during (a) testing and regular maintenance, and (b) any period of electrical power outage in the Project. Tenant shall be entitled to operate the Generator for testing and regular maintenance only upon notice to Landlord and at times reasonably approved by Landlord. Tenant shall ensure that the backup generator does not result in any Hazardous Materials being introduced to the Project. Further, Tenant shall be responsible for ensuring that the Generator does not interfere with the use of the Project by other tenants or tenants or occupants of surrounding buildings. Any repairs and maintenance of such Generator shall be the sole responsibility of Tenant and Landlord makes no representation or warranty with respect to such Generator. Tenant shall protect, defend, indemnify and hold harmless the Indemnitees from and against claims, damages, liabilities, costs and expenses of every kind and nature, including attorneys' fees, incurred by or asserted against Landlord arising out of Tenant's installation, maintenance, replacement, use or removal of the Generator. On or prior to the Termination Date, Tenant shall either (i) surrender the Generator in good operating condition without compensation to Tenant, or (ii) remove the Generator (including all the associated equipment and infrastructure) from the Project and repair and restore the Project and the Building to the condition which existed prior to the installation of the Generator (including, new electrical panels for the Building and restoring and restriping the affected parking areas), all at the sole cost and expense of Tenant and otherwise in accordance with this Lease, without further notice from Landlord.

25.24 ROOFTOP EQUIPMENT

If Tenant desires to use the roof of the Building to install communication equipment to be used from the Premises, Tenant may so notify Landlord in writing ("Communication Equipment Notice"), which Communication Equipment Notice shall generally describe the specifications for the equipment desired by Tenant. If at the time of Landlord's receipt of the Communication Equipment Notice, Landlord reasonably determines that space is available on the roof of the Building for such equipment, then Tenant, at its sole cost and expense, shall have the non-exclusive right (it being understood that Landlord may grant, extend or renew similar rights to others) to install, maintain, and from time to time replace a satellite dish or antenna and related infrastructure and equipment ("Communication Equipment") on the roof of the Building, provided that prior to commencing any installation or maintenance, Tenant shall (i) obtain Landlord's prior written approval of the proposed size, weight and location of the Communication Equipment, the method for fastening the Communication Equipment to the roof, and any architectural screening as may be appropriate, which approval(s) may be granted or withheld in Landlord's sole but good faith determination, (ii) such installation and/or replacement shall comply strictly with all applicable governmental laws, rules and regulations and the conditions of any bond or warranty maintained by Landlord on the roof, (iii) use the Communication Equipment solely for its personal internal use, (iv) not grant any right to use of the Communication Equipment to any other party, and (v) obtain, at Tenant's sole cost and expense, any necessary federal, state, and municipal permits, licenses and approvals, and deliver copies thereof to Landlord. Landlord may supervise or perform any roof penetration related to the installation of any Communication Equipment, and Landlord may charge the cost thereof to Tenant. Tenant agrees that all installation, construction and maintenance shall be performed in a neat, responsible, and workmanlike manner, using generally acceptable construction standards, consistent with such reasonable requirements as shall be imposed by Landlord. Tenant shall, at its sole cost and expense, repair any damage to the Building caused by Tenant's installation. maintenance, replacement, use or removal of the Communication Equipment. The Communication Equipment shall remain the property of Tenant, and Tenant may remove the Communication Equipment at its sole cost and expense at any time during the Term. Tenant shall remove the Communication Equipment at Tenant's sole cost and expense on or prior to the Termination Date. Tenant agrees that the Communication Equipment, and any wires, cables or connections relating thereto, and the installation, maintenance and operation thereof shall in no way interfere with the use and enjoyment of the Building, or the operation of communications (including, without limitation, other satellite antenna) or computer devices by Landlord or by other tenants or occupants of the Project or surrounding buildings. If such interference shall occur, Landlord shall give Tenant written notice thereof and Tenant shall correct the same within two (2) business days of receipt of such notice. Landlord makes no warranty or representation that the Building or any portions thereof are suitable for the use of a Communication Equipment, it being assumed that Tenant has satisfied itself thereof. Tenant shall protect, defend, indemnify and hold harmless the Indemnitees from and against claims, damages, liabilities, costs and expenses of every kind and nature, including attorneys' fees, incurred by or asserted against Landlord arising out of Tenant's installation, maintenance, replacement, use or removal of the Communication Equipment.

25.25 EQUIPMENT FINANCING

Tenant shall have the right from time to time to pledge, encumber or grant a security interest in its equipment, inventory, merchandise, trade fixtures and personal property, but not any equipment, fixtures or leasehold improvements or alterations which belong to, inure to the benefit of, or will belong to Landlord after the expiration or earlier termination of the Lease including any Tenant Alterations (collectively, the "Collateral") in connection with financing or refinancing thereon by Tenant. Landlord will promptly execute following written request a waiver or release of lien rights and consent instrument in form and content reasonably acceptable to Landlord; provided, however, that any such instrument shall describe the Collateral with particularity and provide that (a) any entry into the Premises by such secured party may only be accomplished by prior written notice to Landlord and Landlord's property manager and must occur during the Term of this Lease, (b) any secured property which remains in the Premises after the expiration or earlier termination of this Lease may be disposed of by Landlord in accordance with California law, (c) the secured party may not conduct an auction or other sale at the Premises, (d) prior to entering the Premises, such secured party must provide Landlord with evidence of insurance reasonably required by Landlord, must agree to act in a manner so as to minimize interference with other tenants and to comply with Landlord's Rules and Regulations for the Project.

25.26 RIDERS

All Riders attached hereto and executed both by Landlord and Tenant shall be deemed to be a part hereof and hereby incorporated herein.

[Signatures on Following Page]

IN WITNESS WHEREOF, this Lease has been executed as of the date set forth in Section 1.1 (4) hereof.

TENANT:

XOMA CORPORATION,
a Delaware corporation

By: 
Print Name: FRED KURLAND
Its: Vice President, Finance and Chief Financial Officer

LANDLORD:

7th Street Property General Partnership,
a California general partnership

By: 
Richard K. Robbins
Its Managing Partner

EXHIBIT A

PLAN OF PREMISES


N
SCALE:
SECOND FLOOR PLAN
XO TRAINING AREA
KITCHEN
PHONE & DATA
MEN'S SHOWER
WOMEN'S SHOWER
WOMEN
MEN
ELEV
FRONT LOBBY

EXHIBIT B

RULES AND REGULATIONS

1. No sidewalks, entrance, passages, courts, elevators, vestibules, stairways, corridors or halls shall be obstructed or encumbered by Tenant or used for any purpose other than ingress and egress to and from the Premises and if the Premises are situated on the ground floor of the Project, Tenant shall further, at Tenant's own expense, keep the sidewalks and curb directly in front of the Premises clean and free from rubbish.

2. No awning or other projection shall be attached to the outside walls or windows of the Project without the prior written consent of Landlord. No curtains, blinds, shades, drapes or screens shall be attached to or hung in, or used in connection with any window or door of the Premises, without the prior written consent of Landlord. Such awnings, projections, curtains, blinds, shades, drapes, screens and other fixtures must be of a quality, type, design, color, material and general appearance approved by Landlord, and shall be attached in the manner approved by Landlord. All lighting fixtures hung in offices or spaces along the perimeter of the Premises visible from the exterior of the Building must be of a quality, type, design, bulb color, size and general appearance approved by Landlord.

3. Except as otherwise permitted in the Lease, no sign, advertisement, notice, lettering, decoration or other thing shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside or inside of the Premises or of the Project, without the prior written consent of Landlord. In the event of the violation of the foregoing by Tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to Tenant.

4. The sashes, sash doors, skylights, windows and doors that reflect or admit light or air into the halls, passageways or other public places in the Project shall not be covered or obstructed by Tenant, nor shall any bottles, parcels or other articles be placed on the window sills or in the public portions of the Project.

5. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Project, nor placed in public portions thereof without the prior written consent of Landlord.

6. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by Tenant to the extent that Tenant or Tenant's agents, servants, employees, contractors, visitors or licensees shall have caused the same.

7. Tenant shall not mark, paint, drill into or in any way deface any part of the Premises or the Project. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct.

8. No animal or bird of any kind shall be brought into or kept in or about the Premises or the Project, except seeing-eye dogs or other seeing-eye animals.

9. Prior to leaving the Premises for the day, Tenant shall draw or lower window coverings and extinguish all lights.

10. Tenant shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with neighboring buildings, or those having business with them. Tenant shall not throw anything out of the doors, windows or skylights or down the passageways.

11. Intentionally Omitted.

12. No additional locks, bolts or mail slots of any kind shall be placed upon any of the doors or windows by Tenant, nor shall any change be made in existing locks or the mechanism thereof. Tenant must, upon the termination of the tenancy, restore to Landlord all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by Tenant, and in the event of the loss of any keys so furnished, Tenant shall pay to Landlord the cost thereof.

13. Tenant shall not overload the floor(s) of the Building. Landlord reserves the right to prescribe the weight and position of all extraordinarily heavy items, which must be engineered to appropriately distribute the weight. The moving of extraordinarily heavy items must be made upon previous notice to the Building Manager and in a manner and at times prescribed by him. Landlord reserves the right to inspect all extraordinarily heavy items to be brought into the Project and to exclude from the Project all extraordinarily heavy items which violate any of these Rules and Regulations or the Lease of which these Rules and Regulations are a part.

14. Tenant shall not purchase spring water, towels, janitorial or maintenance or other like service from any company or persons not approved by Landlord. Landlord shall approve a sufficient number of sources of such services to provide Tenant with a reasonable selection, but only in such instances and to such extent as Landlord in its judgment shall consider consistent with security and proper operation of the Project.

15. Landlord shall have the right to prohibit any advertising or business conducted by Tenant referring to the Project which, in Landlord's opinion, tends to impair the reputation of the Project or its desirability as a first class building for offices and/or commercial services and upon notice from Landlord, Tenant shall refrain from or discontinue such advertising.

16. Landlord reserves the right to exclude from the Project between the hours of 6:00 p.m. and 8:00 a.m. Monday through Friday, after 1:00 p.m. on Saturdays and at all hours Sundays and legal holidays, all persons who do not present a pass to the Project issued by Landlord. Landlord may furnish passes to Tenant so that Tenant may validate and issue same. Tenant shall safeguard said passes and shall be responsible for all acts of persons in or about the Project who possess a pass issued to Tenant.

17. Tenant's contractors shall, while in the Premises or elsewhere in the Project, be subject to and under the control and direction of the Building Manager (but not as agent or servant of said Building Manager or of Landlord).

18. If the Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith at Tenant's expense cause the same to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord.

19. The requirements of Tenant will be attended to only upon application at the office of the Project. Project personnel shall not perform any work or do anything outside of their regular duties unless under special instructions from the office of the Landlord.

20. Canvassing, soliciting and peddling in the Project are prohibited and Tenant shall cooperate to prevent the same.

21. No water cooler, air conditioning unit or system or other apparatus shall be installed or used by Tenant without the written consent of Landlord.

22. Intentionally Omitted

23. Tenant, Tenant's agents, servants, employees, contractors, licensees, or visitors shall not park any vehicles in any driveways, service entrances, or areas posted "No Parking" and shall comply with any other parking restrictions imposed by Landlord from time to time.

24. Tenant shall install and maintain, at Tenant's sole cost and expense, an adequate visibly marked (at all times properly operational) fire extinguisher next to any duplicating or photocopying machine or similar heat producing equipment, which may or may not contain combustible material, in the Premises.

25. Tenant shall keep its window coverings closed during any period of the day when the sun is shining directly on the windows of the Premises.

26. Tenant shall not use the name of the Project for any purpose other than as the address of the business to be conducted by Tenant in the Premises, nor shall Tenant use any picture of the Project in its advertising, stationery or in any other manner without the prior written permission of Landlord. Landlord expressly reserves the right at any time to change said name without in any manner being liable to Tenant therefor.

27. Tenant shall not prepare any food nor do any cooking, operate or conduct any restaurant, luncheonette or cafeteria for the sale or service of food or beverages to its employees or to others, except that food and beverage preparation by Tenant's employees using microwave ovens or coffee makers shall be permitted provided no odors of cooking or other processes emanate from the Building. Tenant shall not install or permit the installation or use of any vending machine unless approved in advance in writing by Landlord.

28. The Premises shall not be used as an employment agency, a public stenographer or typist, a labor union office, a physician's or dentist's office, a dance or music studio, a school, a beauty salon, or barber shop, the business of photographic, multilith or multigraph reproductions or offset printing (not precluding using any part of the Premises for photographic, multilith or multigraph reproductions solely in connection with Tenant's own business and/or activities), a restaurant or bar, an establishment for the sale of confectionery, soda, beverages, sandwiches, ice cream or baked goods, an establishment for preparing, dispensing or consumption of food or beverages of any kind in any manner whatsoever, or news or cigar stand, or a radio, television or recording studio, theatre or exhibition hall, or manufacturing, or the storage or sale of merchandise, goods, services or property of any kind at wholesale, retail or auction, or for lodging, sleeping or for any immoral purposes.

29. Business machines and mechanical equipment shall be placed and maintained by Tenant at Tenant's expense in settings sufficient in Landlord's judgment to absorb and prevent vibration, noise and annoyance. Tenant shall not install any machine or equipment which causes noise, heat, cold or vibration to be transmitted to the structure of the building in which the Premises are located without Landlord's prior written consent, which consent may be conditioned on such terms as Landlord may require. Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot that such floor was designed to carry and which is allowed by Law.

30. Intentionally Omitted

31. Tenant shall not store any vehicle within the parking area. Tenant's parking rights are limited to the use of parking spaces for short-term parking, of up to twenty-four (24) hours, of vehicles utilized in the normal and regular daily travel to and from the Project. Tenants who wish to park a vehicle for longer than a 24-hour period shall notify the Building Manager for the Project and consent to such long-term parking may be granted for periods up to two (2) weeks. Any motor vehicles parked without the prior written consent of the Building Manager for the Project for longer than a 24-hour period shall be deemed stored in violation of this rule and regulation and shall be towed away and stored at the owner's expense or disposed of as provided by Law.

32. Smoking is prohibited in the Premises, the Building and all enclosed Common Areas of the Project, including all lobbies, all hallways, all elevators and all lavatories.

Canine Addendum

Notwithstanding the terms of Rule 8 above, trained and obedient dogs shall be permitted within the Premises, subject to the following conditions:

(i) All dogs must be one year of age or older, and must weigh no more than 35 pounds at full growth. All dogs must be an approved breed. All dogs must be spayed or neutered and shall be licensed and vaccinated in accordance with local laws.

(ii) The maximum number of dogs within the Premises shall be one (1) dog to every twenty (20) full time employees at the Premises.

(iii) Dogs shall never be left unattended at the Premises and shall not be kenneled or otherwise remain in the Premises for periods longer than twelve (12) hours in any twenty-four (24) hour period. No dog shall create noise or annoy other occupants of the Project. Dogs may not be bathed or groomed within the Premises. No pet food or water may be left outside of the Premises.

(iv) Dogs are not permitted to be walked or held in Common Areas, except for purposes of ingress and egress to the Premises. Dogs must remain on leash when not within the Premises. Dogs must be taken to the perimeter of the Project for their toilet purposes. In no event shall any toilet boxes, "pee-pee pads" or dog waste of any kind exist in the Premises. All dog waste is to be removed immediately, sealed in plastic bags, and disposed into an exterior dumpster or trash can.

(v) Tenant shall be charged, without the necessity of prior notice from Landlord, for any extra maintenance, janitorial or similar costs that are incurred by Landlord in connection with dogs within the Premises or Project, including but not limited to carpet cleaning, excrement removal, painting, wall repair, floor care, and landscape repair/replacement. Tenant's indemnity obligation as set forth in the Lease shall include any claims, suits, liabilities, judgments, costs, demands, causes of action and expenses (including, without limitation, reasonable attorneys' fees, costs and disbursements) arising from the presence of dogs in or about the Premises, the actions of any dogs, or any failure of Tenant or its employees to control such dogs.

(vi) Tenant shall abide by any additional rules and regulations established by Landlord.

(vii) Landlord may withdraw permission for any or all dogs immediately upon notice following any breach of the foregoing conditions, if Landlord determines that any such dog(s) are bothersome in any way or a nuisance to other occupants of the Project, or if revocation of permission is otherwise considered necessary by Landlord for the welfare of the Project.

EXHIBIT C

PARKING AREA

Exhibit 10. 31

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this **"First Amendment"**) is made and entered into as of February 22, 2013 by and between 7th Street Property General Partnership, a California general partnership (**"Landlord"**) and XOMA Corporation, a Delaware corporation (**"Tenant"**).

RECITALS

A. Landlord and Tenant are parties to that certain Office Lease agreement dated as of February 13, 2013 (the **"Lease"**), pursuant to which Landlord leases to Tenant certain premises containing 43,759 square feet of rentable area (the **"Premises"**), located at 2910 Seventh Street, Berkeley, California.

B. The Lease contains a scrivener's error relating to the Lease Term and Expiration Date, and the parties now desire to amend the Lease to correct such error, all on the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **Term**. Section 1.1(5) of the Lease is hereby revised to read as follows:

"(5) LEASE TERM: Eight (8) years, subject to the Renewal Options set forth in Section 2.5."

2. **Expiration Date**. Section 1.1 (7) of the Lease is hereby revised to read as follows:

"(7) EXPIRATION DATE: May 31, 2021"

3. **Monthly Base Rent**. The schedule of Monthly Base Rent set forth in Section 1.1 (8) of the Lease is hereby revised as follows:

PERIOD FROM/TO	MONTHLY BASE RENT
June 1, 2013 - May 31, 2014	$62,137.78
June 1, 2014 - May 31, 2015	$64,001.91
June 1, 2015 - May 31, 2016	$65,921.97
June 1, 2016 - May 31, 2017	$67,899.63
June 1, 2017 - May 31, 2018	$69,936.62
June 1, 2018 - May 31, 2019	$72,034.72
June 1, 2019 - May 31, 2020	$74,195.76
June 1, 2020 - May 31, 2021	$76,421.63

4. **Miscellaneous.**

(a) This First Amendment sets forth the entire agreement between the partieswith respect to the matters set forth herein. There have been no additional oral or written representations or agreements.

(b) Except as expressly modified or amended herein, the provisions, conditions and terms of the Lease are hereby ratified by the parties and shall remain unchanged and in full force and effect.

(c) In the ease of any inconsistency between the provisions of the Lease and this First Amendment, the provisions of this First Amendment shall govern and control.

(d) Capitalized terms used in this First Amendment shall have the same definitions as set forth in the Lease to the extent that such capitalized terms are defined therein and not redefined in this First Amendment.

(e) Each signatory of this First Amendment represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting.

(f) This First Amendment may be executed in multiple counterparts each of which is deemed an original but together constitute one and the same instrument. This First Amendment may be executed in so-called "PDF" format and each party has the right to rely upon a pdf counterpart of this First Amendment signed by the other party to the same extent as if such party had received an original counterpart.

IN WITNESS WHEREOF, Landlord and Tenant have executed this First Amendment as of the First Amendment Effective Date.

TENANT:

XOMA CORPORATION,
a Delaware corporation

By: Fred Kurland
Print Name: FRED KURLAND
Its: Vice President, Finance and Chief Financial Officer

LANDLORD:

7th Street Property General Partnership,
a California general partnership

By: _____
Richard K. Robbins
Its Managing Partner

Exhibit 10.32

LEASE

BETWEEN

EMERYSTATION TRIANGLE, LLC
a California limited liability company (LANDLORD)

AND

XOMA CORPORATION,
a Delaware corporation (TENANT)

5860 and 5864 Hollis Street
Emeryville, California 94608

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WAREHOUSE LEASE

ARTICLE 1
BASIC LEASE PROVISIONS

1.1 BASIC LEASE PROVISIONS

In the event of any conflict between these Basic Lease Provisions and any other Lease provision, such other Lease provision shall control.

(1) BUILDING AND ADDRESS:

5860 and 5864 Hollis Street
Emeryville, California 94608

(2) LANDLORD AND ADDRESS:

Emerystation Triangle, LLC
1120 Nye Street, Suite 400
San Rafael, California 94901

Notices to Landlord shall be addressed:

Emerystation Triangle, LLC
c/o Wareham Development Corporation
1120 Nye Street, Suite 400
San Rafael, California 94901

With a copy to:

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

(3) TENANT AND ADDRESS:

(a) Name: XOMA CORPORATION

(b) State of formation: Delaware

Notices to Tenant shall be addressed:

XOMA(US) LLC
2910 Seventh Street
Berkeley, CA 94710
Attn: Legal Department

with copies to:

XOMA(US) LLC
2910 Seventh Street
Berkeley, CA 94710
Attn: CFO

(4) DATE OF THIS LEASE: February 13, 2013

(5) LEASE TERM: Ten (10) years, subject to any option(s) set forth in Section 2.5 below.

(6) COMMENCEMENT DATE: May 1, 2013

(7) EXPIRATION DATE: April 30, 2023

(8) MONTHLY BASE RENT:

PERIOD FROM/TO	MONTHLY BASE RENT
May 1, 2013 - April 30, 2014	$21,685.00
May 1, 2014 - April 30, 2015	$22,335.55
May 1, 2015 - April 30, 2016	$23,005.62
May 1, 2016 - April 30, 2017	$23,695.78
May 1, 2017 - April 30, 2018	$24,406.66
May 1, 2018 - April 30, 2019	$25,138.86
May 1, 2019 - April 30, 2020	$25,893.02
May 1, 2020 - April 30, 2021	$26,669.81
May 1, 2021 - April 30, 2022	$27,469.91
May 1, 2022 - April 30, 2023	$28,294.01

(9) RENTABLE AREA OF THE PREMISES: 16,357 square feet

(10) SECURITY DEPOSIT: $28,294.01

(11) [INTENTIONALLY OMITTED]

(12) TENANT'S USE OF PREMISES: Warehouse and distribution of medical and incidental office/administrative uses

(13) [INTENTIONALLY OMITTED]

(14) TENANT'S BROKER: Cushman & Wakefield

(15) TENANT IMPROVEMENT ALLOWANCE: $81,785.00

1.2 ENUMERATION OF EXHIBITS AND RIDER

The Exhibits and Rider set forth below and attached to this Lease are incorporated in this Lease by this reference:

EXHIBIT A Plan of Premises
EXHIBIT B Rules and Regulations

1.3 DEFINITIONS

For purposes hereof, the following terms shall have the following meanings:

AFFILIATE: Any corporation or other business entity that is currently owned or controlled by, owns or controls, or is under common ownership or control with Tenant or Landlord, as the case may be.

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

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

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

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

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

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

FORCE MAJEURE: Any accident, casualty, act of God, war or civil commotion, strike or labor troubles, or any cause whatsoever beyond the reasonable control of a party, including water shortages, energy shortages or governmental preemption in connection with an act of God, a national emergency, or by reason of Law, or by reason of the conditions of supply and demand which have been or are affected by act of God, war or other emergency.

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

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

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

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

MONTHLY BASE RENT: The monthly rent specified in Section 1.1(8).

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

OPERATING EXPENSES: All costs, expenses and disbursements of every kind and nature which Landlord shall pay or become obligated to pay in connection with the ownership, management, operation, maintenance, replacement and repair of the Building and the Property, (as well as the reasonable allocation by Landlord of any expenses incurred and related to facilities located on other property owned or managed by Landlord or affiliates of Landlord, if the Property is managed as part of a portfolio involving more than one building and/or property) including, without limitation, (1) property management fees (not to exceed 3.5% of the Project's gross receipts); (2) costs of a commercially reasonable property management office and office operation; (3) insurance costs relating to the Project; (4) costs and expenses of any capital expenditure or improvement, amortized over the useful life of the applicable capital expenditure or improvement, in accordance with generally accepted accounting principles, together with interest thereon on the unamortized costs at the lower of the rate incurred by Landlord to finance such capital expenditure or improvement or the Default Rate, which capital expenditure or improvement (a) is made to the Property after the Commencement Date in order to comply with Laws enacted after the Commencement Date, or (b) is installed for the purpose of reducing or controlling Operating Expenses; and (5) if the Property is part of a multi-building portfolio, the Building's allocated share (as reasonably and equitably determined by Landlord according to sound real estate accounting and management principles, consistently applied) of those expenses incurred on a portfolio-wide basis benefiting the Building and/or Property which may include, without limitation, costs such as (a) landscaping, (b) utility and road repairs, and (c) security. Operating Expenses shall not include, (i) costs of alterations of the premises of tenants of the Project, (ii) costs of capital improvements to the Project (except as permitted in clause (4) above in the definition of "Operating Expenses"), (iii) depreciation charges, (iv) interest and principal payments on loans (except for loans for capital improvements which Landlord is allowed to include in Operating Expenses as provided above), (v) ground rental payments, (vi) real estate brokerage and leasing commissions or any fee in lieu of commission, (vii) advertising and marketing expenses, (viii) costs of Landlord reimbursed by insurance proceeds, condemnation awards, a tenant of the Project (outside of such tenant's Operating Expense payments) or otherwise to the extent so reimbursed, (ix) expenses incurred in negotiating leases of tenants in the Project or enforcing lease obligations of tenants in the Project, (x) Landlord's general corporate overhead, (xi) costs incurred by Landlord due to the violation by Landlord or any other tenant of the terms and conditions of any lease of space in the Project or any law, code, regulation, ordinance or the like, (xii) any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord, (xiii); bad debt expenses and interest, principal, points and fees on debts (except in connection with the financing of items which may be included in Operating Expenses); (xiv) marketing costs, attorneys' fees in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases and/or assignments, space planning costs, and other costs and expenses incurred in connection with lease, sublease and/or assignment negotiations and transactions with present or prospective tenants or other occupants of the Project, including attorneys' fees and other costs and expenditures incurred in connection with disputes with present or prospective tenants or other occupants of the Project; (xv) costs, including permit, license and inspection costs, incurred with respect to the installation of other tenants' or occupants' improvements made for tenants or other occupants in the Project or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants in the Project; (xvi) any costs expressly excluded from Operating Expenses elsewhere in this Lease; (xvii) expenses in connection with services or other benefits which are not offered to Tenant or for which Tenant is charged for directly but which are provided to another tenant or occupant of the Project, without charge; (xviii) costs (including in connection therewith all attorneys' fees and costs of settlement, judgments and/or payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation or arbitrations pertaining to Landlord and/or the Project; (xix) costs associated with the operation of the business of the partnership which constitutes Landlord as the same are distinguished from the costs of operation of the Project; (xx) costs incurred to remove, remedy, contain, or treat any Hazardous Material; provided, however, that (A) the costs of routine monitoring of and testing for Hazardous Material in, on, or about the Property, and (B) costs incurred in the cleanup or remediation of *de minimis* amounts of Hazardous Material customarily used in commercial buildings or used to operate motor vehicles and customarily found in parking facilities shall be included as Operating Expenses; (xxi) costs of utilities provided to any other tenant's space in the Project. If any Operating Expense, though paid in one year, relates to more than one calendar year, at the option of Landlord such expense may be proportionately allocated among such related calendar years.

PREMISES: The space located in the Building as depicted on Exhibit A attached hereto.

PRIOR LEASE: That certain lease agreement for the Premises between Landlord's predecessor and Tenant's predecessor, dated as of November 2, 2001 and as subsequently amended on October 16, 2007 and November 20, 2010.

PROJECT or PROPERTY: The Project consists of the building located at the street address specified in Section 1.1(1) in Emeryville, California, associated parking as designated by Landlord from time to time, landscaping and improvements, together with the Land, any associated interests in real property and the building thereon, and the personal property, fixtures, machinery, equipment, systems and apparatus located in or used in conjunction with any of the foregoing that is owned by Landlord. The Project may also be referred to as the Property.

REAL PROPERTY: The Property excluding any personal property.

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

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

RENT ADJUSTMENT DEPOSIT: An amount equal to Landlord's estimate of the Rent Adjustment attributable to each month of the applicable calendar year (or partial calendar year) during the Term. On or before the Commencement Date and with each Landlord's Statement (defined in Article 4), Landlord may reasonably estimate and notify Tenant in writing of its estimate of the Operating Expenses and of Taxes for such calendar year (or partial calendar year). Prior to the first determination by Landlord of the amount of Operating Expenses and of Taxes for the first calendar year (or partial calendar year), Landlord may reasonably estimate such amounts in the foregoing calculation. The last estimate by Landlord shall remain in effect as the applicable Rent Adjustment Deposit unless and until Landlord notifies Tenant in writing of a change, which notice may be given by Landlord from time to time during each year throughout the Term.

RENTABLE AREA OF THE PREMISES: The amount of square footage set forth in Section 1.1(9) provided, however, that any statement of rentable are set forth in this Lease is an approximation which Landlord and Tenant agree is reasonable and the Monthly Base Rent shall not be subject to revision whether or not the actual square footage is more or less.

SECURITY DEPOSIT: The funds specified in Section 1.1(10), if any, deposited by Tenant with Landlord as security for Tenant's performance of its obligations under this Lease.

TAXES: All federal, state and local governmental taxes, assessments and charges of every kind or nature, whether general, special, ordinary or extraordinary, which Landlord shall pay or become obligated to pay because of or in connection with the ownership, leasing, management, control, sale, transfer, or operation of the Property or any of its components (including any personal property used in connection therewith), which may also include any rental or similar taxes levied in lieu of or in addition to general real and/or personal property taxes. For purposes hereof, Taxes for any year shall be Taxes which are assessed for any period of such year, whether or not such Taxes are billed and payable in a subsequent calendar year. There shall be included in Taxes for any year the amount of all fees, costs and expenses (including reasonable attorneys' fees) paid by Landlord during such year in seeking or obtaining any refund or reduction of Taxes, but such fees, costs and expenses shall not exceed the greater of (a) Landlord's good faith estimation of the amount of refund or reduction of Taxes or (b) the actual amount of refund or reduction of Taxes. Taxes for any year shall be reduced by the net amount of any tax refund received by Landlord attributable to such year. If a special assessment payable in installments is levied against any part of the Property, Taxes for any year shall include only the installment of such assessment and any interest payable or paid during such year. Taxes shall not include (i) any items included in Operating Expenses, (ii) any items paid by Tenant under Section 4.4 below and (iii) any federal or state inheritance, general income, excess profit, franchise, capital stock, gift, estate taxes and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents or receipts attributable to operations at the Property) ("Prohibited Taxes"), except that if a change occurs in the method of taxation resulting in whole or in part in the substitution of any such taxes, or any other assessment, for any Taxes as above defined, such substituted taxes or assessments shall be included in the Taxes.

TENANT ALTERATIONS: Any alterations, improvements, additions, installations or construction in or to the Premises or any Building systems serving the Premises.

TENANT'S SHARE: The percentage that represents the ratio of the Rentable Area of the Premises to the Rentable Area of the Building, as determined by Landlord from time to time. Tenant acknowledges that the Rentable Area of the Premises or Building may change from remeasurement or otherwise during the Term.

TERM: The period specified in Section 1.1(5).

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

ARTICLE 2
PREMISES, TERM, CONDITION OF PREMISES, RENEWAL

2.1 LEASE OF PREMISES

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

2.2 TERM

The Term shall be for the period of years specified in Section 1.1(5) and the Commencement Date shall be May 1, 2013.

2.3 CONDITION OF PREMISES

Tenant acknowledges that prior to the Commencement Date it will have been, and continue to be, in possession of the Premises pursuant to the Prior Lease. Accordingly, Tenant is, and will be, familiar with the condition of the Premises and shall continue to occupy the Premises in its "as is, where is" condition, with all faults, without any representation, warranty or improvement by Landlord of any kind whatsoever, except as expressly set forth herein.

2.4 [INTENTIONALLY OMITTED]

2.5 RENEWAL OPTION

(a) Tenant shall have two successive options to renew this Lease (each a "Renewal Option") with respect to the entirety of the Premises for the term of five (5) years each (each a "Renewal Term"), commencing upon expiration of the initial Term, or if the first Renewal Option is exercised, upon the expiration of the first Renewal Term. Each Renewal Option must be exercised, if at all, by written notice given by Tenant to Landlord not earlier than twelve (12) months nor later than nine (9) months prior to expiration of the initial Term (or the first Renewal Term, as applicable). If Tenant properly exercises a Renewal Option, then references in the Lease to the Term shall be deemed to include the Renewal Term. The Renewal Option shall be null and void and Tenant shall have no right to renew this Lease if on the date Tenant exercises the Renewal Option or on the date immediately preceding the commencement date of the Renewal Term (i) a Default beyond the applicable cure period shall have occurred and be continuing hereunder, or (ii) Tenant (A) is then subletting more than fifty percent (50%) of the rentable square footage of the Premises other than in connection with a Permitted Transfer (as defined in Section 10.1(e) below) or (B) has assigned this Lease other than in connection with a Permitted Transfer.

(b) If Tenant properly exercises the Renewal Option, then during the Renewal Term all of the terms and conditions set forth in this Lease as applicable to the Premises during the initial Term shall apply during the Renewal Term, including without limitation the obligation to pay Rent Adjustments, except that (i) Tenant shall accept the Premises in their then "as-is" state and condition and Landlord shall have no obligation to make or pay for any improvements to the Premises (except as determined as part of the Fair Market Rent), and (ii) during the Renewal Term the Monthly Base Rent payable by Tenant shall be ninety-five percent (95%) of the Fair Market Rent during the Renewal Term as hereinafter set forth, except that in no event shall Monthly Base Rent during the Renewal Term be less than ninety-five percent (95%) of the Monthly Base Rent in effect during the last month of the initial Term, or first Renewal Term, as applicable, and shall increase by an annually compounded three percent (3%) during each year of the Renewal Term.

(c) For purposes of this Section, the term "Fair Market Rent" shall mean the rental rate, additional rent adjustment and other charges and increases, if any, for space comparable in size, location and quality of the Premises under primary lease (and not sublease) to new or renewing tenants, for a comparable term with a tenant improvement allowance, if applicable and taking into consideration any concessions and such amenities as existing improvements, parking ratio, view, floor on which the Premises are situated and the like, situated in comparable buildings in Berkeley and Emeryville. The Fair Market Rent shall not take into account any Tenant Alterations or other improvements paid for by Tenant.

(d) If Tenant properly exercises a Renewal Option, Landlord, by notice to Tenant not more than thirty (30) days after Tenant's exercise of such Renewal Option, shall indicate Landlord's determination of the Fair Market Rent. Tenant, within fifteen (15) days after the date on which Landlord provides such notice of the Fair Market Rent shall either (i) give Landlord final binding written notice ("Binding Notice") of Tenant's acceptance of Landlord's Determination of the Fair Market Rent, or (ii) if Tenant disagrees with Landlords' determination, provide Landlord with written notice of Tenant's election to submit the Fair Market Rent to binding arbitration (the "Arbitration Notice"). If Tenant fails to provide Landlord with either a Binding Notice or Arbitration Notice within such fifteen (15) day period, Tenant shall have been deemed to have given the Binding Notice. If Tenant provides or is deemed to have provided Landlord with a Binding Notice, Landlord and Tenant shall enter into the Renewal Amendment (as defined below) upon the terms and conditions set forth herein.

(e) If the parties are unable to agree upon the Fair Market Rent for the Premises within fifteen (15) days after Landlord's receipt of the Arbitration Notice, Fair Market Rent as of commencement of the Renewal Term shall be determined as follows:

(1) Within fifteen (15) days after the date Tenant delivers the Arbitration Notice, Tenant, at its sole expense, shall obtain and deliver in writing to Landlord a determination of the Fair Market Rent for the Premises for a term equal to the Renewal Term from a broker ("Tenant's broker") licensed in the State of California and engaged in the office and lab markets in Berkeley and Emeryville, California, for at least the immediately preceding five (5) years. If Landlord accepts such determination, Landlord shall provide written notice thereof within fifteen (15) days after Landlord's receipt of such determination and the Base Rent for the Renewal Term shall be adjusted to an amount equal to the Fair Market Rent determined by Tenant's broker. Landlord shall be deemed to have rejected Tenant's determination if Landlord fails to respond within the fifteen (15) day period.

(2) If Landlord provides notice that it rejects, or is deemed to have rejected, such determination, within twenty (20) days after receipt of the determination of Tenant's broker, Landlord shall designate a broker ("Landlord's broker") licensed in the State of California and possessing the qualifications set forth in (1) above. Landlord's broker and Tenant's broker shall name a third broker, similarly qualified and who is not then or has not previously acted for either party, within five (5) days after the appointment of Landlord's broker ("Neutral Broker").

(3) The Neutral Broker shall determine the Fair Market Rent for the Premises as of the commencement of the Renewal Term within fifteen (15) days after the appointment of such Neutral Broker by choosing the determination of the Landlord's broker or the Tenant's broker which is closest to its own determination of Fair Market Rent. The decision of the Neutral Broker shall be binding on Landlord and Tenant.

(f) Landlord shall pay the costs and fees of Landlord's broker in connection with any determination hereunder, and Tenant shall pay the costs and fees of Tenant's broker in connection with such determination. The costs and fees of the Neutral Broker shall be paid one-half by Landlord and one-half by Tenant.

(g) If the amount of the Fair Market Rent has not been determined pursuant to this Section 2.5 as of the commencement of the Renewal Term, then Tenant shall continue to pay the Base Rent in effect during the last month of the initial Term (or the first Renewal Term, as applicable) until the amount of the Fair Market Rent is determined. When such determination is made, Tenant shall pay any deficiency to Landlord upon demand.

(h) If Tenant is entitled to and properly exercises its Renewal Option, upon determination of Fair Market Rent pursuant to this Section 2.5, Landlord shall prepare an amendment (the "Renewal Amendment") to reflect changes in the Base Rent, Term, Expiration Date and other appropriate terms consistent with this Section 2.5. The Renewal Amendment shall be sent to Tenant within fifteen (15) days after determination of Fair Market Rent and, provided the same is accurate, Tenant shall execute and return the Renewal Amendment to Landlord within ten (10) business days after Tenant's receipt of same, but an otherwise valid exercise of the Renewal Option shall be fully effective whether or not the Renewal Amendment is executed.

ARTICLE 3
RENT

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

ARTICLE 4
RENT ADJUSTMENTS AND PAYMENTS

4.1 RENT ADJUSTMENTS

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

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

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

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

(d) For purposes of determining Rent Adjustments, if the Building or Property is not fully occupied during all or a portion of any calendar year during the Term, Landlord shall make appropriate adjustments to the variable components of Operating Expenses for such calendar year (or partial calendar year), employing sound accounting and management principles consistently applied, to determine the amount of Operating Expenses that would have been paid or incurred by Landlord had the Building or Property been ninety-five percent (95%) occupied, and the amount so determined shall be deemed to have been the amount of Operating Expenses for such calendar year (or partial calendar year).

4.2 STATEMENT OF LANDLORD

Landlord shall use commercially reasonably efforts to furnish to Tenant, within 120 days following the expiration of each calendar year (but in any event as soon as feasible after the expiration of each calendar year), a statement ("Landlord's Statement") showing the following:

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

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

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

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

4.3 BOOKS AND RECORDS

Landlord shall maintain books and records showing Operating Expenses and Taxes in accordance with sound accounting and management practices, consistently applied. Tenant or its representative (which representative shall be a certified public accountant licensed to do business in the state in which the Property is located and whose primary business is certified public accounting and who shall not be paid on a contingency basis) shall have the right, for a period of two hundred seventy (270) days following the date upon which Landlord's Statement is delivered to Tenant, to examine the Landlord's books and records with respect to the items in the foregoing statement of Operating Expenses and Taxes during normal business hours, upon written notice, delivered at least three (3) business days in advance. If Tenant does not object in writing to Landlord's Statement within two hundred seventy (270) days of Tenant's receipt thereof, specifying the nature of the item in dispute and the reasons therefor, then Landlord's Statement shall be considered final and accepted by Tenant and Tenant shall be deemed to have waived its right to dispute Landlord's Statement. If Tenant does dispute any Landlord's Statement, Tenant shall deliver a copy of any such audit to Landlord at the time of notification of the dispute. If Tenant does not provide such notice of dispute and a copy of such audit to Landlord within such two hundred seventy (270) day period, it shall be deemed to have waived such right to dispute Landlord's Statement. Any amount due to the Landlord as shown on Landlord's Statement, whether or not disputed by Tenant as provided herein shall be paid by Tenant when due as provided above, without prejudice to any such written exception. In no event shall Tenant be permitted to examine Landlord's records or to dispute any statement of Operating Expenses and Taxes unless Tenant has paid and continues to pay all Rent when due. If Landlord disagrees with the results of Tenant's review of Landlord's Statement, a certification as to the proper amount shall be made in accordance with generally accepted accounting practices by an independent certified public accountant selected by Landlord and who is a member of a nationally or regionally recognized accounting firm ("Landlord's Accountant"). Landlord's Accountant shall complete its review and certify such result to Landlord and Tenant within ninety (90) days following the date Tenant disputed the items in Landlord's Statement. Upon resolution of any dispute with respect to Operating Expenses and Taxes pursuant to this Section 4.3, Tenant shall either pay Landlord any shortfall or Landlord shall credit Tenant with respect to any overages paid by Tenant against Tenant's next Rent Adjustments coming due. In the event it is determined pursuant to this Section 4.3 that Landlord's Statement overstated the amount of Operating Expenses and Taxes by eight percent (8%) or more, then Landlord shall reimburse Tenant for its actual and reasonable out-of-pocket audit expenses, not to exceed eight thousand five hundred dollars ($8,500.00) and Landlord shall be responsible for the costs of Landlord's Accountant. The records obtained by Tenant shall be treated as confidential and neither Tenant nor any of its representatives or agents shall disclose or discuss the information set forth in the audit to or with any other person or entity ("Confidentiality Requirement") except (a) to Tenant's attorneys, accountants and consultants as reasonably necessary or (b) to the extent required by applicable laws or court order. Tenant shall indemnify and hold Landlord harmless for any losses or damages arising out of the breach of the Confidentiality Requirement.

4.4 TENANT OR LEASE SPECIFIC TAXES

In addition to Monthly Base Rent, Rent Adjustments, Rent Adjustment Deposits and other charges to be paid by Tenant, Tenant shall pay to Landlord, upon demand, any and all taxes payable by Landlord (other than the Prohibited Taxes) whether or not now customary or within the contemplation of the parties hereto: (a) upon, allocable to, or measured by the Rent payable hereunder, including any gross receipts tax or excise tax levied by any governmental or taxing body with respect to the receipt of such rent; or (b) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (c) upon the measured value of Tenant's personal property located in or about the Premises or in any storeroom or any other place in or about the Premises, it being the intention of Landlord and Tenant that, to the extent possible, such personal property taxes shall be billed to and paid directly by Tenant; (d) resulting from any Tenant Alterations; or (e) upon this transaction. Taxes paid by Tenant pursuant to this Section 4.4 shall not be included in any computation of Taxes payable pursuant to Sections 4.1 and 4.2.

ARTICLE 5
SECURITY DEPOSIT

Landlord acknowledges that it currently holds a security deposit under the Prior Lease (the "Existing Deposit"), which the parties agree is currently Eleven Thousand Nine Hundred Thirty-Six and 96/100 Dollars ($11,936.96). Concurrent with its execution of this Lease, Tenant shall deliver to Landlord, . in immediately available funds, an amount equal to the difference between the Existing Deposit and the amount of the Security Deposit required by Section 1.1(10) above. Tenant acknowledges and agrees that the Existing Deposit shall be available to Landlord as part of the Security Deposit required under this Lease and that upon the expiration or earlier termination of the Prior Lease, the Existing Deposit shall be retained by Landlord in partial satisfaction of the Security Deposit required hereunder. The Security Deposit may be applied by Landlord to cure, in whole or part, any default of Tenant under this Lease, and upon notice by Landlord of such application, Tenant shall replenish the Security Deposit in full by paying to Landlord within ten (10) days of demand the amount so applied. Landlord's application of the Security Deposit shall not constitute a waiver of Tenant's default to the extent that the Security Deposit does not fully compensate Landlord for all losses, damages, costs and expenses incurred by Landlord in connection with such default and shall not prejudice any other rights or remedies available to Landlord under this Lease or by Law. Landlord shall not pay any interest on the Security Deposit. Landlord shall not be required to keep the Security Deposit separate from its general accounts. The Security Deposit shall not be deemed an advance payment of Rent or a measure of damages for any default by Tenant under this Lease, nor shall it be a bar or defense of any action that Landlord may at any time commence against Tenant. In the absence of evidence satisfactory to Landlord of an assignment of the right to receive the Security Deposit or the remaining balance thereof, Landlord may return the Security Deposit to the original Tenant. regardless of one or more assignments of this Lease. Upon the transfer of Landlord's interest under this Lease, Landlord's obligation to Tenant with respect to the Security Deposit shall terminate upon transfer to the transferee of the Security Deposit, or any balance thereof. If Tenant shall fully and faithfully comply with all the terms, provisions, covenants, and conditions of this Lease, the Security Deposit, or any balance thereof, shall be returned to Tenant within thirty (30) days after Landlord recovers possession of the Premises. Tenant hereby waives any and all rights of Tenant under the provisions of Section 1950.7 of the California Civil Code or other Law regarding security deposits.

ARTICLE 6
UTILITIES AND SIGNAGE

6.1 UTILITIES GENERALLY

(a) Tenant pay for the cost of all services and utilities billed or metered separately to the Premises, including, but not limited to heating, ventilation and air conditioning, electricity, water, telephone, janitorial and interior Building security services, together with all taxes, assessments, charges and penalties added to or included within such cost.

(b) In the event the Premises are not separately metered for any given utility, Landlord may in its sole discretion either (i) install one or more meters to measure the consumption of such utility at the Premises or (ii) reasonably estimate the consumption of such utility at the Premises. Upon notice from Landlord, Tenant shall pay Landlord the cost of installing and maintaining all such meters or submeters and of any engineering or consulting firm, if Landlord retains such firm to estimate the utility current furnished to the Premises in lieu of installation of a meter.

(c) If Tenant uses heat generating machines or equipment in the Premises to an extent which adversely affects the temperature otherwise maintained by the air-cooling system or whenever the occupancy or electrical load adversely affects the temperature otherwise maintained by the air-cooling system, Landlord reserves the right to install or to require Tenant to install supplementary air-conditioning units in the Premises. Tenant shall bear all costs and expenses related to the installation, maintenance and operation of such units.

(d) Landlord shall not provide janitorial services for the interior of the Building. Tenant shall be solely responsible for performing all janitorial services and other cleaning of the Premises, all in compliance with applicable Laws.

6.2 INTERRUPTION OF USE

Except as otherwise provided in this Lease, Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for any failure or interruption of utilities or services to the Project, or for any diminution in the quality or quantity thereof, for any reason whatsoever, including without limitation when occasioned, in whole or in part, by breakage, repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Building or Project, by any riot or other dangerous condition, emergency, accident or casualty whatsoever; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring. Notwithstanding the foregoing, if the Premises is made untenantable, inaccessible or unsuitable for the ordinary conduct of Tenant's business, due to an interruption in access to the Premises or any of the utilities or services provided by Landlord as a result of Landlord's negligence or willful misconduct, then (i) Landlord shall use commercially reasonable good faith efforts to restore the same as soon as is reasonably possible, (ii) if, despite such commercially reasonable good faith efforts by Landlord, such interruption persists for a period in excess of three (3) consecutive business days, then Tenant, as its sole remedy, shall be entitled to receive an abatement of Base Rent and Rent Adjustments payable hereunder during the period beginning on the fourth (4th) consecutive business day of such interruption and ending on the day the utility or service has been restored.

6.3 SIGNAGE

(a) Provided Tenant is not in Default under this Lease, Tenant shall have the right, but not the obligation, at Tenant's sole cost and expense, to install either an eyebrow or a building top sign on the exterior of the Building ("Tenant's Signage"). Tenant's Signage shall be subject to Landlord's reasonable approval as to size, design, exact location, graphics, materials, colors and similar specifications and shall be consistent with the exterior design, materials and appearance of the Project and the Project's signage program (if any) and shall be further subject to all applicable local governmental laws, rules, regulations, codes and Tenant's receipt of all permits and other governmental approvals and any applicable covenants, conditions and restrictions. The cost to maintain and operate, if any, Tenant's Signage shall be paid for by Tenant. Upon the expiration of the Term, or other earlier termination of this Lease, Tenant shall be responsible for any and all costs associated with the removal of Tenant's Signage, including, but not limited to, the cost to repair and restore the area impacted by Tenant's Signage to its original condition, normal wear and tear excepted.

(b) Subject to the terms of Section 6.3(a) above, Tenant shall not place or permit to be placed in, upon, or about the Premises, the Building or the Project any exterior lights, decorations, balloons, flags, pennants, banners, advertisements or notices, or erect or install any signs, windows or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises without obtaining Landlord's prior written consent, which shall not be unreasonably withheld or delayed. Tenant shall remove any sign, advertisement or notice placed on the Premises, the Building or the Project by Tenant upon the expiration of the Term or sooner termination of this Lease, and Tenant shall repair any damage or injury to the Premises, the Building or the Project caused thereby, all at Tenant's expense. If any signs are not removed, or necessary repairs not made, Landlord shall have the right to remove the signs and repair any damage or injury to the Premises, the Building or the Project caused by such installation or removal at Tenant's sole cost and expense.

ARTICLE 7
POSSESSION, USE AND CONDITION OF PREMISES

7.1 POSSESSION AND USE OF PREMISES

(a) Tenant shall occupy and use the Premises only for the uses specified in Section 1.1(11) to conduct Tenant's business. Tenant shall not occupy or use the Premises (or permit the use or occupancy of the Premises) for any purpose or in any manner which: (1) is unlawful or in violation of any Law or Environmental Law; (2) may be dangerous to persons or property or which may increase the cost of, or invalidate, any policy of insurance carried on the Building or covering its operations; (3) is contrary to or prohibited by the terms and conditions of this Lease or the rules of the Building set forth in Article 18; or (4) would tend to create or continue a nuisance.

(b) Landlord and Tenant acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises, the Building and the Project depending on, among other things: (1) whether Tenant's business is deemed a "public accommodation" or "commercial facility", (2) whether such requirements are "readily achievable", and (3) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that: (a) Landlord shall be responsible , as part of Operating Expenses (to the extent permitted to be included in Operating Expenses pursuant to the definition of Operating Expenses in Section 1.03 above), for ADA Title III compliance in the Common Areas, except as provided below, (b) Tenant shall be responsible for ADA Title III compliance in the Premises, including any leasehold improvements or other work to be performed in the Premises under or in connection with this Lease, (c) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III "path of travel" requirements triggered by Tenant Alterations in the Premises, and (d) Landlord may perform, or require Tenant to perform, and Tenant shall be responsible for the cost of, ADA Title III compliance in the Common Areas necessitated by the Building being deemed to be a "public accommodation" instead of a "commercial facility" as a result of Tenant's specific use of the Premises. Tenant shall be solely responsible for requirements under Title I of the ADA relating to Tenant's employees.

(c) Hazardous Materials.

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

(i) **"Biohazardous Materials"** means any and all substances and materials defined or referred to as "medical waste," "biological waste," "biohazardous waste," "biohazardous material" or any other term of similar import under any Hazardous Materials Laws, including (but not limited to) California Health & Safety Code Sections 25100 et seq., and any regulations promulgated thereunder, as amended from time to time.

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

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

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

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

(vi) **"Hazardous Materials Laws"** means, collectively, (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601-9657, (B) the Hazardous Materials Transportation Act of 1975, 49 U.S.C. Sections 5101-5128 (formerly 1801-1812), (C) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901-6987 (together with any amendments thereto, any regulations thereunder and any amendments to any such regulations as in effect from time to time, **"RCRA"**), (D) the California Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health & Safety Code Sections 25300 et seq., (E) the Hazardous Materials Release Response Plans and Inventory Act, California Health & Safety Code Sections 25500 et seq., (F) the California Hazardous Waste Control Law, California Health & Safety Code Sections 25100 et seq. (together with any amendments thereto, any regulations thereunder and any amendments to any such regulations as in effect from time to time, the **"CHWCL"**), (G) California Health & Safety Code Sections 25015 et seq., (H) any amendments to or successor statutes to any of the foregoing, as adopted or enacted from time to time, (I) any regulations or amendments thereto promulgated pursuant to any of the foregoing from time to time, (J) any Laws relating to Biohazardous Materials, including (but not limited to) any regulations or requirements with respect to the shipping, use, decontamination and disposal thereof, and (K) any other Law now or at any time hereafter in effect regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials, including (but not limited to) any requirements or conditions imposed pursuant to the terms of any orders, permits, licenses, registrations or operating plans issued or approved by any governmental or quasi-governmental authority from time to time either on a Project-wide basis or in connection with any Handling of Hazardous Materials in, on or about the Premises or the Project.

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

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

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

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

(xi) **"Landlord's Contamination"** means any Hazardous Materials (A) which exist in, on, under or in the vicinity of the Project as of the date of this Lease not caused by Tenant, (B) which migrate onto or beneath the Project after termination of the Lease, or (C) introduced by Landlord or its agents, employees, contractors, vendors or suppliers. Tenant shall not be required to pay any costs with respect to the remediation or abatement of Landlord's Contamination.

(2) Handling of Hazardous Materials. The parties acknowledge that Tenant wishes and intends to use all or a portion of the Premises as a bio-pharmaceutical warehouse and dispensing facility and otherwise for the conduct by Tenant of its business in accordance with the use specified in Section 1.1(12), that such use, as conducted or proposed to be conducted by Tenant, would customarily include the Handling of Hazardous Materials, and that Tenant shall therefore be permitted to engage in the Handling in the Premises of necessary and reasonable quantities of Hazardous Materials customarily used in or incidental to the operation of a bio pharmaceutical warehouse and dispensing facility and the other business operations of Tenant in the manner conducted or proposed to be conducted by Tenant hereunder (**"Permitted Hazardous Materials"**), provided that the Handling of such Permitted Hazardous Materials by all Tenant Parties shall at all times comply with and be subject to all provisions of this Lease and all Laws, including all Hazardous Materials Laws. Without limiting the generality of the foregoing, Tenant shall comply at all times with all Hazardous Materials Laws applicable to any aspect of Tenant's use of the Premises and the Project and of Tenant's operations and activities in, on and about the Premises and the Project, and shall ensure at all times that Tenant's Handling of Hazardous Materials in, on and about the Premises does not violate (x) the terms of any governmental licenses or permits applicable to the Building (including, but not limited to, the Building Discharge Permit as defined below) or Premises or to Tenant's Handling of any Hazardous Materials therein, or (y) any applicable requirements or restrictions relating to the occupancy classification of the Building and the Premises.

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

(4) Information Regarding Hazardous Materials. Tenant shall provide the following information and/or documentation to Landlord in writing prior to the Commencement Date, and thereafter shall update and deliver to Landlord such information and/or documentation (x) annually, by no later than the date required by law, (y) upon any material change in Tenant's Hazardous Materials inventory or in Tenant's business operations involving Hazardous Materials, and (z) at such other times as Landlord may reasonably request in writing from time to time, which updates shall reflect any material changes in such information and/or documentation:

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

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

(iii) All Material Safety Data Sheets (**"MSDSs"**), if any, required to be completed with respect to operations of Tenant at the Premises from time to time in accordance with Title 26, California Code of Regulations Section 8-5194 or 42 U.S.C. Section 11021, or any amendments thereto, and any Hazardous Materials Inventory Sheets that detail the MSDSs. As of the Date of this Lease, all Tenant's current MSDSs are on file at 2910 Seventh Street, Berkeley, California 94710, and are available for review and copy by Landlord upon request.

(iv) All hazardous waste manifests (as defined in Title 26, California Code of Regulations Section 22-66481), if any, that Tenant is required to complete from time to time in connection with its operations at the Premises. As of the Date of this Lease, all Tenant's current hazardous waste manifests are on file at 2910 Seventh Street, Berkeley, California 94710, and are available for review and copy by Landlord upon request.

(v) A copy of any **"Hazardous Materials Business Plan"** required from time to time with respect to Tenant's operations at the Premises pursuant to California Health & Safety Code Sections 25500 et seq., and any regulations promulgated thereunder, as amended from time to time, or in connection with Tenant's application for a business license from the City of Emeryville. If applicable law does not require Tenant to prepare a Hazardous Materials Business Plan, Tenant shall furnish to Landlord at the times and in the manner set forth above the information that would customarily be contained in a Hazardous Materials Business Plan, including (but not limited to) information regarding Tenant's Hazardous Materials inventories. The parties acknowledge that a Hazardous Materials Business Plan would ordinarily include an emergency response plan, and that regardless of whether applicable Law requires Tenant or other tenants in the Building to prepare Hazardous Materials Business Plans, Landlord in its discretion may elect to prepare a coordinated emergency response plan for the entire Building and/or for multiple Buildings on or about the Project.

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

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

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

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

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

(5) Indemnification; Notice of Release. Tenant shall be responsible for and shall indemnify, defend and hold Landlord harmless from and against all Environmental Damages to the extent arising out of or otherwise relating to, (i) any Handling of Hazardous Materials by any Tenant Party in, on or about the Premises or the Project in violation of this Section, (ii) any breach of Tenant's obligations under this Section or of any Hazardous Materials Laws by any Tenant Party, or (iii) the existence of any Tenant Contamination in, on or about the Premises or the Project to the extent caused by any Tenant Party, including without limitation any removal, cleanup or restoration work and materials necessary to return the Project or any improvements of whatever nature located on the Project to the condition existing prior to the Handling of Hazardous Materials in, on or about the Premises or the Project by any Tenant Party. In the event of any Tenant Contamination in, on or about the Premises or any other portion of the Project or any adjacent lands, Tenant shall promptly remedy the problem in accordance with all applicable Hazardous Materials Laws and Laws, shall give Landlord oral notice of any such non--standard or non-customary Release promptly after Tenant becomes aware of such Release, followed by written notice to Landlord within five (5) days after Tenant becomes aware of such Release, and shall furnish Landlord with concurrent copies of any and all notices, reports and other written materials filed by any Tenant Party with any governmental authority in connection with such Release. Landlord shall be responsible for and shall indemnify and hold Tenant harmless from and against all costs of any Environmental Damages which arise during the Term, as a result of the presence of, any Release of or the Handling of any Hazardous Material in, on, about or under the Building or Property, except to the extent provided for in this Section 7.1(d); provided that Tenant shall have the burden of reasonably demonstrating that such Hazardous Materials were not of the type used by Tenant in the Building or at the Project. Tenant shall be conclusively presumed to have met its burden to the extent that any Hazardous Materials are identified as being present in any environmental report or other data prior to Tenant's original occupancy of the Premises and are not used by Tenant. In the event of any dispute between Landlord and Tenant as to liability for any Hazardous Materials or Environmental Damages, Landlord shall make available to Tenant copies of any environmental reports in the possession or control of Landlord that relate to the Building and that existed as of the Commencement Date. Tenant shall have no obligation to remedy any Hazardous Materials contamination which was not caused or released by a Tenant Party.

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

(7) Inspection by Landlord. In addition to, and not in limitation of, Landlord's rights under this Lease, upon reasonable prior request by Landlord, Tenant shall grant Landlord and its consultants, as well as any governmental authorities having jurisdiction over the Premises or over any aspect of Tenant's use thereof, reasonable access to the Premises at reasonable times following reasonable prior notice (with Tenant having the opportunity to accompany any such individuals while in the Premises) to inspect Tenant's Handling of Hazardous Materials in, on and about the Premises, and Landlord shall not thereby incur any liability to Tenant or be deemed guilty of any disturbance of Tenant's use or possession of the Premises by reason of such entry; provided, however, that Landlord shall use reasonable efforts to minimize interference with Tenant's use of the Premises caused by such entry. Landlord shall comply with any security precaution reasonably imposed by Tenant during any entry onto the Premises and shall minimize to the extent reasonably possible any interference with Tenant's use of the Premises caused by such entry. Notwithstanding Landlord's rights of inspection and review of documents, materials and physical conditions under this Section with respect to Tenant's Handling of Hazardous Materials, Landlord shall have no duty or obligation to perform any such inspection or review or to monitor in any way any documents, materials, physical conditions or compliance with Laws in connection with Tenant's Handling of Hazardous Materials, and no third Party shall be entitled to rely on Landlord to conduct any such inspection, review or monitoring by reason of the provisions of this Section.

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

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

(10) Post-Occupancy Study. If Tenant or any Tenant Party Handles any Hazardous Materials in, on or about the Premises or the Project during the Term, then no later than fifteen (15) days following the Termination Date, Tenant at its sole cost and expense, shall obtain and deliver to Landlord an environmental study, performed by an expert reasonably satisfactory to Landlord, evaluating, the presence or absence of any Tenant Contamination in, on and about the Premises and the Project. Such study shall be based on a reasonable and prudent level of tests and investigations of the Premises and surrounding portions of the Project (if appropriate) which tests shall be conducted no earlier than fifteen (15) days prior to the Termination Date. Liability for any remedial actions required or recommended on the basis of such study shall be allocated in accordance with the applicable provisions of this Lease. To the extent any such remedial actions are the responsibility of Tenant, Tenant at its sole expense shall promptly commence and diligently pursue to completion the required remedial actions.

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

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

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

(i) If Tenant Handles any Radioactive Materials in or about the Premises or the Project during the Term, then for so long as any license or permit relating to such Radioactive Materials remains open or valid following the Termination Date, and another entity handling Radioactive Materials which is a prospective tenant of Landlord is legally prohibited from occupying a portion of the Premises for a use similar to Tenant's use due to such license or permit remaining open or valid, then Tenant shall be deemed to be occupying that portion of the Premises on a holdover basis without Landlord's consent (notwithstanding such otherwise applicable termination or expiration of the Term) and shall be required to continue to pay Rent and other charges in accordance with Article 13 solely for that portion of the Premises effected by the radioactive materials license, until such time as the earlier of (a) all such Radioactive Materials licenses and permits have been fully closed out in accordance with the requirements of this Lease and with all applicable Hazardous Materials Laws and other Laws or (b) the date another tenant is no longer legally prohibited from occupying a portion of the Premises for a use similar to Tenant's use due to such license or permit remaining open or valid.

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

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

7.2 LANDLORD ACCESS TO PREMISES; APPROVALS

(a) Tenant shall permit Landlord to erect, use and maintain pipes, ducts, wiring and conduits in and through the Premises, so long as Tenant's use, layout or design of the Premises is not materially affected or altered. Upon at least forty-eight (48) hours prior notice (except in an emergency), Landlord or Landlord's agents shall have the right to enter upon the Premises in the event of an emergency, or to inspect the Premises, to perform services required of Landlord under this Lease, to conduct safety and other testing in the Premises and to make such repairs, alterations, improvements or additions to the Premises or the Building or other parts of the Property as Landlord may deem reasonably necessary or desirable. Any entry or work by Landlord may be during normal business hours and Landlord shall use reasonable efforts to ensure that any entry or work shall not materially interfere with Tenant's occupancy of the Premises. In connection with Landlord' right to enter the Premises as set forth in this Section 7.2(a), Tenant will have the opportunity to accompany Landlord's representatives while in the Premises.

(b) If Tenant shall not be personally present to permit an entry into the Premises when for any reason an entry therein shall be necessary or permissible, Landlord (or Landlord's agents), after attempting to notify Tenant at least forty-eight (48) hours in advance (unless Landlord believes an emergency situation exists), may enter the Premises without rendering Landlord or its agents liable therefor, and without relieving Tenant of any obligations under this Lease.

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

(d) Landlord may do any of the foregoing, or undertake any of the inspection or work described in the preceding paragraphs without such action constituting an actual or constructive eviction of Tenant, in whole or in part, or giving rise to an abatement of Rent by reason of loss or interruption of business of the Tenant, or otherwise.

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

7.3 QUIET ENJOYMENT

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

ARTICLE 8
MAINTENANCE

8.1 LANDLORD'S MAINTENANCE

Subject to the provisions of Articles 4 and 14, Landlord shall maintain and make necessary repairs to the Building structure (e.g. foundations, roof structure, load bearing walls), exterior walls (including windows, glazing, and curtain wall), roof membrane, and Project landscaping, sidewalks, utilities located outside of the Premises and parking areas, except that the cost of performing any of said maintenance or repairs whether to the Premises or to the Building caused by the negligence of Tenant, its employees, agents, servants, licensees, subtenants, contractors or invitees, shall be paid by Tenant, subject to the waivers set forth in Section 16.4. Landlord shall not be liable to Tenant for any expense, injury, loss or damage resulting from work done in or upon, or in connection with the use of, any adjacent or nearby building, land, street or alley outside of the Project. Landlord's obligations pursuant to this Section 8.1 shall be included in Operating Expenses to the extent permitted in the definition of Operating Expenses pursuant to Section 1.3 above.

8.2 TENANT'S MAINTENANCE

Tenant shall periodically inspect the Premises and the systems servicing the Premises to identify any conditions that are dangerous or in need of maintenance or repair or replacement. Tenant shall promptly provide Landlord with notice of any such conditions. Tenant shall, at its sole cost and expense, perform all maintenance, repairs and replacements to the Premises and systems servicing the Premises that are not Landlord's express responsibility under this Lease, and keep the same in good condition and repair. Tenant's repair and maintenance obligations include, without limitation, repairs to and replacements of: (a) the systems servicing the Premises, including the electrical, plumbing, heating, ventilating, air-conditioning, mechanical, communication, security and the fire and life safety systems; (b) interior partitions and other improvements; (c) floor coverings and doors; (d) the interior side of demising walls; (e) electronic, phone and data cabling and related equipment that is installed by or for the exclusive benefit of Tenant (collectively, "Cable"); (f) kitchens, including hot water heaters, fixtures and similar facilities exclusively serving Tenant; and (g) Tenant Alterations. Without limiting the generality of clause (a) above, in connection with Tenant's maintenance of the heating, ventilating, and air-conditioning systems, Tenant shall obtain and keep in force a preventive maintenance contract providing for regular (at least quarterly) inspection and maintenance by a qualified service contractor(s) reasonably acceptable to Landlord. Within ten (10) business days following written request, Tenant shall deliver Landlord written confirmation from such service contractor(s) verifying that such a contract has been entered into and that the required service will be provided. Subject to Section 16.4 and to the extent Landlord is not reimbursed by insurance proceeds, Tenant shall reimburse Landlord for the cost of repairing damage to the Building caused by the acts of Tenant, Tenant Related Parties and their respective contractors and vendors. If Tenant fails to make any repairs to the Premises for more than fifteen (15) days after notice from Landlord (although notice shall not be required in an emergency), Landlord may make the repairs, and Tenant shall pay the reasonable cost of the repairs, together with an administrative charge in an amount equal to 10% of the cost of the repairs. Tenant hereby waives all right to make repairs at the expense of Landlord or in lieu thereof to vacate the Premises and its other similar rights as provided in California Civil Code Sections 1932(1), 1941 and 1942 or any other Laws (whether now or hereafter in effect). In addition to the foregoing, Tenant shall be responsible for all costs in connection with repairing all special tenant fixtures and improvements constructed by or on behalf of Tenant prior to or during the Lease Term, including without limitation, garbage disposals, showers, plumbing, and appliances.

ARTICLE 9
ALTERATIONS AND IMPROVEMENTS

9.1 TENANT ALTERATIONS

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

(1) Tenant shall not, except as provided herein, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed, make or cause to be made any Tenant Alterations in or to the Premises or any Property systems serving the Premises. Prior to making any Tenant Alterations, Tenant shall give Landlord at least ten (10) days prior written notice (or such earlier notice as would be necessary pursuant to applicable Law) to permit Landlord sufficient time to post appropriate notices of non-responsibility. Subject to all other requirements of this Article 9, Tenant may undertake Decoration work without Landlord's prior written consent. Tenant shall furnish Landlord with the names and addresses of all contractors and subcontractors and copies of all contracts. All Tenant Alterations shall be completed at such time and in such manner as Landlord may from time to time reasonably approve, and only by contractors or mechanics approved by Landlord, which approval shall not be unreasonably withheld; provided, however, that Landlord may, in its sole discretion, specify the engineers and contractors to perform all work relating to the Building's systems (including the mechanical, heating, plumbing, security, ventilating, air-conditioning, electrical, communication and the fire and life safety systems in the Building) so long as such engineers and contractors are available and have competitive rates. The contractors, mechanics and engineers who may be used are further limited to those whose work will not cause or threaten to cause disharmony or interference with Landlord or other tenants in the Building and their respective agents and contractors performing work in or about the Building. Landlord may further condition its consent upon Tenant furnishing to Landlord and Landlord approving prior to the commencement of any work or delivery of materials to the Premises related to the Tenant Alterations such of the following as specified by Landlord: architectural plans and specifications, opinions from Landlord's engineers stating that the Tenant Alterations will not in any way adversely affect the Building's systems, necessary permits and licenses, certificates of insurance, and such other documents in such form reasonably requested by Landlord. In connection with Tenant Alterations which are reasonably anticipated to cost in excess of $500,000.00, Landlord may, in the exercise of commercially reasonable good-faith judgment, require that Tenant provide Landlord with appropriate evidence of Tenant's ability to complete and pay for the completion of the Tenant Alterations such as a performance bond or letter of credit. Upon completion of the Tenant Alterations, Tenant shall deliver to Landlord an as-built mylar and digitized (if available) set of plans and specifications for the Tenant Alterations.

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

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

(b) All Tenant Alterations shall without compensation or credit to Tenant, become part of the Premises and the property of Landlord at the time of their installation and shall remain in the Premises, unless pursuant to Article 12, Tenant may remove them or is required to remove them at Landlord's request.

(c) Tenant shall be solely responsible for all Tenant Alterations that Tenant desires to prepare the Premises for Tenant's use and occupancy thereof, which shall be performed in strict accordance with the foregoing terms and provisions of this Section 9.1. Subject to the terms and provisions hereof, Landlord agrees to contribute an amount not to exceed Eighty-One Thousand Seven Hundred Eighty-Five Dollars ($81,785.00) (the "Tenant Improvement Allowance") toward the cost of upgrades to the HVAC system servicing the Premises, with any remainder being available for any other Tenant Alterations to the Premises. If the cost of any such work exceeds the Tenant Improvement Allowance, then such excess amount shall be borne solely by Tenant. Landlord shall pay the Tenant Improvement Allowance to Tenant within thirty (30) days following the later to occur of (i) Landlord's receipt of documentary evidence reasonably satisfactory to Landlord of all of Tenant's expenditures for work performed and materials used in completing such work; and (ii) Landlord's receipt of final, unconditional lien releases in form and content satisfactory to Landlord from all persons or entities providing labor and/or materials in connection with such work; provided, however, in no event shall Landlord be obligated to pay any portion of the Tenant Improvement Allowance to Tenant prior to the Commencement Date. If Landlord fails to timely fund the Tenant Improvement Allowance within the time period set forth above in this Section 9.1(c), then Tenant shall be entitled to deliver written notice (a "Payment Notice") thereof to Landlord. If Landlord still fails to fulfill any such obligation within ten (10) business days after Landlord's receipt of the Payment Notice from Tenant and if Landlord fails to deliver written notice to Tenant within such ten (10) business day period explaining Landlord's reasons that the amounts described in Tenant's Payment Notice are not due and payable by Landlord ("Refusal Notice"), then Tenant shall be entitled to offset such amount(s), together with interest at the Default Rate from the date of the Payment Notice until the date of offset, against Tenant's obligation to pay monthly Base Rent. However, Tenant shall not be entitled to any such offset if Tenant is in default under the Lease at the time that such offset would otherwise be applicable. If Landlord delivers a Refusal Notice, and if Landlord and Tenant are not able to agree on the amounts to be so paid by Landlord, if any, within ten (10) business days after Tenant's receipt of a Refusal Notice, then either Landlord or Tenant may elect to have such dispute resolved by binding arbitration before a retired judge of the Superior Court of the State of California under the auspices of JAMS/ENDISPUTE (or any successor to such organization) in Alameda County, California, according to the then rules of commercial arbitration of such organization. If Tenant prevails in any such arbitration, Tenant shall be entitled to offset the amount determined to be payable by Landlord in such proceeding together with interest at the Default Rate from the date of the Payment Notice against Tenant's next obligations to pay monthly Base Rent (but Tenant shall not be entitled to any such offset if Tenant is in default under the Lease.

9.2 LIENS

Tenant shall not permit any lien or claim for lien of any mechanic, laborer or supplier or any other lien to be filed against the Building, the Land, the Premises, or any other part of the Property arising out of work performed, or alleged to have been performed by, or at the direction of. or on behalf of Tenant. If any such lien or claim for lien is filed, Tenant shall within ten (10) business days of receiving notice of such lien or claim (a) have such lien or claim for lien released of record or (b) deliver to Landlord a bond in form, content, amount, and issued by surety, satisfactory to Landlord, indemnifying, protecting, defending and holding harmless the Indemnitees against all costs and liabilities resulting from such lien or claim for lien and the foreclosure or attempted foreclosure thereof. If Tenant fails to take any of the above actions, Landlord, in addition to its rights and remedies under Article 11, without investigating the validity of such lien or claim for lien, may pay or discharge the same and Tenant shall, as payment of additional Rent hereunder, reimburse Landlord upon demand for the amount so paid by Landlord, including Landlord's expenses and reasonable attorneys' fees.

ARTICLE 10
ASSIGNMENT AND SUBLETTING

10.1 ASSIGNMENT AND SUBLETTING

(a) Subject to Landlord's recapture right set forth in Section 10.2, without the prior written consent of Landlord, which consent of Landlord shall not be unreasonably withheld, conditioned or delayed, Tenant may not sublease, assign, mortgage, pledge, hypothecate or otherwise transfer or permit the transfer of this Lease or the encumbering of Tenant's interest therein in whole or in part, by operation of Law or otherwise or permit the use or occupancy of the Premises, or any part thereof, by anyone other than Tenant. Tenant agrees that the provisions governing sublease and assignment set forth in this Article 10 shall be deemed to be reasonable. If Tenant desires to enter into any sublease of the Premises or assignment of this Lease, Tenant shall deliver written notice thereof to Landlord ("Tenant's Notice"), together with the identity of the proposed subtenant or assignee and the proposed principal terms thereof and financial and other information sufficient for Landlord to make an informed judgment with respect to such proposed subtenant or assignee at least fifteen (15) days prior to the commencement date of the term of the proposed sublease or assignment. If Tenant proposes to sublease less than all of the Rentable Area of the Premises, the space proposed to be sublet and the space retained by Tenant must each be a marketable unit as reasonably determined by Landlord and otherwise in compliance with all Laws. Landlord shall notify Tenant in writing of its approval or disapproval of the proposed sublease or assignment or its decision to exercise its rights under Section 10.2 within fifteen (15) business days after receipt of Tenant's Notice (and all required information). In the event Landlord fails to respond to the Tenant's Notice within said fifteen (15) business day period, then Tenant may resubmit the same to Landlord (any all other parties entitled to receive notices to Landlord) with a cover letter stating "Landlord's failure to respond shall result in the deemed approval of a proposed sublease or assignment" in all capital letters and in bold face type. In the event Landlord fails to respond to the second Tenant's Notice within fifteen (15) business days following such second submittal, then such second failure by Landlord shall be deemed consent to such proposed sublease or assignment by Landlord. In no event may Tenant sublease any portion of the Premises or assign the Lease to any other tenant of the Project. For the avoidance of doubt, any notice or submittal by Tenant pursuant to this Article 10 must be provided in accordance with the requirements of Article 24.

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

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

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

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

(iv) the proposed sublessee or assignee is a current occupant of the Project or a bona fide prospective tenant of Landlord in the Project as demonstrated by a written proposal dated within ninety (90) days prior to the date of Tenant's request; or

(v) the proposed sublessee or assignee would materially increase the estimated pedestrian and vehicular traffic to and from the Premises and the Project.

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

(d) For purposes of this Article 10 and except as provided in Section 10.1(e) below, an assignment shall be deemed to include a change in the majority control of Tenant, resulting from any transfer, sale or assignment of shares of stock of Tenant occurring by operation of Law or otherwise if Tenant is a corporation whose shares of stock are not traded publicly. If Tenant is a partnership, any change in the partners of Tenant shall be deemed to be an assignment.

(e) Notwithstanding the generality of the foregoing, so long as Tenant is not entering into a transaction described herein for the purpose of avoiding or otherwise circumventing the remaining terms of this Article, Tenant may, subject to the remaining terms of this Section 10 (except 10.2 and 10.3, which shall not apply), assign its entire interest under this Lease or sublease all or a portion of the Premises, without the consent of Landlord, to (i) an Affiliate, or (ii) a successor to Tenant by purchase or other acquisition of Tenant's capital stock or substantially all of Tenant's assets, merger, consolidation or reorganization, provided that all of the following conditions are satisfied: (1) Tenant is not then in Default under this Lease beyond applicable notice and cure periods; (2) Tenant shall give Landlord written notice at least fifteen (15) days prior to the effective date of the proposed transfer (or if prior disclosure is limited or restricted by applicable law or contractual confidentiality obligations, then as soon as permissible, but in not event later than the date which is one day following the effective date of the proposed transfer) together with the information required hereunder and such entity shall expressly assume Tenant's obligations hereunder; (3) with respect to an assignment to an Affiliate, Tenant continues to have a net worth that is not materially less than Tenant's net worth as of the date immediately prior to such transfer; and (4) with respect to a purchase, merger, consolidation or reorganization which results in Tenant ceasing to exist as a separate legal entity, Tenant's successor shall have a net worth equal to Tenant's net worth as of the date immediately prior to such transfer, each such transfer being referred to as a "Permitted Transfer".

10.2 RECAPTURE

Excluding any assignment or sublease contemplated in Section 10.1(e), in connection with any sublease or assignment for all or substantially all of the remaining term, Landlord shall have the option to exclude from the Premises covered by this Lease ("recapture") the space proposed to be sublet or subject to the assignment, effective as of the proposed commencement date of such sublease or assignment. If Landlord elects to recapture, Tenant shall surrender possession of the space proposed to be subleased or subject to the assignment to Landlord on the effective date of recapture of such space from the Premises, such date being the Termination Date for such space and Landlord shall be responsible for the costs to demise the subject space in the case of a sublease. Effective as of the date of recapture of any portion of the Premises pursuant to this section, the Monthly Base Rent, Rentable Area of the Premises and Tenant's Share shall be adjusted on an equitable and reasonable basis.

10.3 EXCESS RENT

Excluding any assignment or sublease contemplated in Section 10.1(e), Tenant shall pay Landlord on the first day of each month during the term of the sublease or assignment, fifty percent (50%) of the amount by which the sum of all rent and other consideration (direct or indirect, but excluding any consideration paid at fair market value for Tenant's assets, fixtures, inventory, equipment or furniture transferred by Tenant to the transferee in connection with such assignment or sublease) due from the subtenant or assignee for such month exceeds: (i) that portion of the Monthly Base Rent and Rent Adjustments due under this Lease for said month which is allocable to the space sublet or assigned; and (ii) the following costs and expenses for the subletting or assignment of such space: (1) reasonable and customary brokerage commissions, marketing expenses and attorneys' fees and expenses, (2) the actual costs paid in making any improvements or substitutions in the Premises required by any sublease or assignment; and (3) "free rent" periods, costs of any inducements or concessions given to subtenant or assignee, moving costs, and other amounts in respect of such subtenant's or assignee's other leases or occupancy arrangements. All such costs and expenses shall be amortized over the term of the sublease or assignment pursuant to sound accounting principles.

10.4 TENANT LIABILITY

In the event of any sublease or assignment, whether or not with Landlord's consent, Tenant shall not be released or discharged from any liability, whether past, present or future, under this Lease, including any liability arising from the exercise of any renewal or expansion option, to the extent such exercise is expressly permitted by this Lease as may be subsequently amended. Tenant's liability shall remain primary, and in the event of default by any subtenant, assignee or successor of Tenant in performance or observance of any of the covenants or conditions of this Lease, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against said subtenant, assignee or successor. After any assignment, Landlord may consent to subsequent assignments or subletting of this Lease, or amendments or modifications of this Lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto, and such action shall not relieve Tenant or any successor of Tenant of liability under this Lease. If Landlord grants consent to such sublease or assignment, Tenant shall pay all reasonable attorneys' fees and expenses incurred by Landlord with respect to such assignment or sublease. In addition, if Tenant has any options to extend the Term or to add other space to the Premises, such options shall not be available to any subtenant or assignee, directly or indirectly without Landlord's express written consent, which may be withheld in Landlord's sole discretion; provided, however, any assignee of Tenant's entire interest under this Lease in connection with an assignment in accordance with Section 10.1(e) above, shall continue to have the right to exercise any options to extend the Term.

10.5 ASSUMPTION AND ATTORNMENT

If Tenant shall assign this Lease as permitted herein, the assignee shall expressly assume all of the obligations of Tenant hereunder in a written instrument satisfactory to Landlord and furnished to Landlord prior to the effective date of the assignment. If Tenant shall sublease the Premises as permitted herein, Tenant shall, at Landlord's option, within fifteen (15) days following any request by Landlord, obtain and furnish to Landlord the written agreement of such subtenant to the effect that the subtenant will attorn to Landlord and will pay all subrent directly to Landlord.

10.6 PROCESSING EXPENSES.

Tenant shall pay to Landlord, as Landlord's cost of processing each proposed assignment or subletting (whether or not the same is ultimately approved by Landlord or consummated by Tenant), an amount equal to the sum of (i) Landlord's reasonable attorneys' and other professional fees, not to exceed $2,500.00 unless Tenant or its transferee requests changes to this Lease or Landlord's form of consent, in which case such monetary limitation shall not apply, plus (ii) the sum of $500.00 for the cost of Landlord's administrative, accounting and clerical time (collectively, "Processing Costs"). Notwithstanding anything to the contrary herein, Landlord shall not be required to process any request for Landlord's consent to an assignment or subletting until Tenant has paid to Landlord the amount of Landlord's good faith estimate of the Processing Costs. When the actual amount of the Processing Costs is determined, it shall be reconciled with Landlord's estimate, and any payments or refunds required as a result thereof shall promptly thereafter be made by the parties.

ARTICLE 11
DEFAULT AND REMEDIES

11.1 EVENTS OF DEFAULT

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

(i) Tenant fails to pay any installment or other payment of Rent including Rent Adjustment Deposits or Rent Adjustments within five (5) business days after notice of delinquency;

(ii) Tenant fails to observe or perform any of the other covenants, conditions or provisions of this Lease and fails to cure such default within thirty (30) days after written notice thereof to Tenant; provided, however, that if the nature of Tenant's failure is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion;

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

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

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

(vi) a receiver is appointed for Tenant or its property, which appointment is not discharged within sixty (60) days;

(vii) any action taken by or against Tenant to reorganize or modify such party's capital structure in a materially adverse way which in the case of an involuntary action is not discharged within sixty (60) days; or

(viii) upon the dissolution of Tenant.

11.2 LANDLORD'S REMEDIES

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

(b) With respect to a Default, at any time Landlord may terminate Tenant's right to possession by written notice to Tenant stating such election. Any written notice required pursuant to Section 11.1 shall constitute notice of unlawful detainer pursuant to California Code of Civil Procedure Section 1161 if, at Landlord's sole discretion, it states Landlord's election that Tenant's right to possession is terminated after expiration of any period required by Law or any longer period required by Section 11.1. Upon the expiration of the period stated in Landlord's written notice of termination (and unless such notice provides an option to cure within such period and Tenant cures the Default within such period), Tenant's right to possession shall terminate and this Lease shall terminate, and Tenant shall remain liable as hereinafter provided. Upon such termination in writing of Tenant's right to possession, Landlord shall have the right, subject to applicable Law, to re-enter the Premises and dispossess Tenant and the legal representatives of Tenant and all other occupants of the Premises by unlawful detainer or other summary proceedings, or as otherwise permitted by Law, regain possession of the Premises and remove their property (including their trade fixtures, personal property and Required Removables pursuant to Article 12), but Landlord shall not be obligated to effect such removal, and such property may, at Landlord's option, be stored elsewhere, sold or otherwise dealt with as permitted by Law, at the risk of, expense of and for the account of Tenant, and the proceeds of any sale shall be applied pursuant to Law. Landlord shall in no event be responsible for the value, preservation or safekeeping of any such property. Tenant hereby waives all claims for damages that may be caused by Landlord's removing or storing Tenant's personal property pursuant to this Section or Section 12.1, and Tenant hereby indemnifies, and agrees to defend, protect and hold harmless, the Indemnitees from any and all loss, claims, demands, actions, expenses, liability and cost (including attorneys' fees and expenses) arising out of or in any way related to such removal or storage unless caused by the negligence or willful misconduct of the Indemnitees. Upon such written termination of Tenant's right to possession and this Lease, Landlord shall have the right to recover damages for Tenant's Default as provided herein or by Law, including the following damages provided by California Civil Code Section 1951.2:

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

(2) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant proves could reasonably have been avoided;

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

(4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, Landlord's unamortized costs of tenant improvements, leasing commissions and reasonable legal fees incurred in connection with entering into this Lease. The word "rent" as used in this Section 11.2 shall have the same meaning as the defined term Rent in this Lease. The "worth at the time of award" of the amount referred to in clauses (1) and (2) above is computed by allowing interest at the Default Rate. The worth at the time of award of the amount referred to in clause (3) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). For the purpose of determining unpaid Rent under clause (3) above, the monthly Rent reserved in this Lease shall be deemed to be the sum of the Monthly Base Rent, and the amounts last payable by Tenant as Rent Adjustments for the calendar year in which Landlord terminated this Lease as provided hereinabove.

(c) Even if Tenant is in Default and/or has abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession by written notice as provided in Section 11.2(b) above, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due under this Lease. In such event. Landlord shall have all of the rights and remedies of a landlord under California Civil Code Section 1951.4 (lessor may continue Lease in effect after Tenant's Default and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations), or any successor statute. During such time as Tenant is in Default, if Landlord has not terminated this Lease by written notice and if Tenant requests Landlord's consent to an assignment of this Lease or a sublease of the Premises, subject to Landlord's option to recapture pursuant to Section 10.2, Landlord shall not unreasonably withhold its consent to such assignment or sublease. Tenant acknowledges and agrees that the provisions of Article 10 shall be deemed to constitute reasonable limitations of Tenant's right to assign or sublet. Tenant acknowledges and agrees that in the absence of written notice pursuant to Section 11.2(b) above terminating Tenant's right to possession, no other act of Landlord shall constitute a termination of Tenant's right to possession or an acceptance of Tenant's surrender of the Premises, including acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease or the withholding of consent to a subletting or assignment, or terminating a subletting or assignment, if in accordance with other provisions of this Lease.

(d) Tenant hereby waives any and all rights to relief from forfeiture, redemption or reinstatement granted by Law (including California Civil Code of Procedure Sections 1174 and 1179) in the event of Tenant being evicted or dispossessed for any cause or in the event of Landlord obtaining possession of the Premises by reason of Tenant's Default or otherwise;

(e) Notwithstanding any other provision of this Lease, a notice to Tenant given under this Article and Article 24 of this Lease or given pursuant to California Code of Civil Procedure Section 1161, and any notice served by mail, shall be deemed served, and the requisite waiting period deemed to begin under said Code of Civil Procedure Section upon mailing (except as may be required under Code of Civil Procedure Section 1161 et seq.), without any additional waiting requirement under Code of Civil Procedure Section 1011 et seq. or by other Law. For purposes of Code of Civil Procedure Section 1162, Tenant's "place of residence", "usual place of business", "the property" and "the place where the property is situated" shall mean and be the Premises, whether or not Tenant has vacated same at the time of service.

(f) The voluntary or other surrender or termination of this Lease, or a mutual termination or cancellation thereof, shall not work a merger and shall terminate all or any existing assignments, subleases, subtenancies or occupancies permitted by Tenant, except if and as otherwise specified in writing by Landlord.

(g) No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant, and no exercise by Landlord of its rights pursuant to Section 25.15 to perform any duty which Tenant fails timely to perform, shall impair any right or remedy or be construed as a waiver. No provision of this Lease shall be deemed waived by Landlord unless such waiver is in writing signed by Landlord. The waiver by Landlord of any breach of any provision of this Lease shall not be deemed a waiver of any subsequent breach of the same or any other provision of this Lease.

11.3 ATTORNEY'S FEES

In the event any party brings any suit or other proceeding with respect to the subject matter or enforcement of this Lease, the prevailing party (as determined by the court, agency or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover reasonable attorneys' fees, expenses and costs of investigation as actually incurred, including court costs, expert witness fees, costs and expenses of investigation, and all reasonable attorneys' fees, costs and expenses in any such suit or proceeding (including in any action or participation in or in connection with any case or proceeding under the Bankruptcy Code, 11 United States Code Sections 101 et seq., or any successor statutes, in establishing or enforcing the right to indemnification, in appellate proceedings, or in connection with the enforcement or collection of any judgment obtained in any such suit or proceeding).

11.4 BANKRUPTCY

The following provisions shall apply in the event of the bankruptcy or insolvency of Tenant:

(a) In connection with any proceeding under Chapter 7 of the Bankruptcy Code where the trustee of Tenant elects to assume this Lease for the purposes of assigning it, such election or assignment, may only be made upon compliance with the provisions of (b) and (c) below, which conditions Landlord and Tenant acknowledge to be commercially reasonable. In the event the trustee elects to reject this Lease then Landlord shall immediately be entitled to possession of the Premises without further obligation to Tenant or the trustee.

(b) Any election to assume this Lease under Chapter 11 or 13 of the Bankruptcy Code by Tenant as debtor-in-possession or by Tenant's trustee (the "Electing Party") must provide for:

The Electing Party to cure or provide to Landlord adequate assurance that it will cure all monetary defaults under this Lease within fifteen (15) days from the date of assumption and it will cure all nonmonetary defaults under this Lease within thirty (30) days from the date of assumption. Landlord and Tenant acknowledge such condition to be commercially reasonable.

(c) If the Electing Party has assumed this Lease or elects to assign Tenant's interest under this Lease to any other person, such interest may be assigned only if the intended assignee has provided adequate assurance of future performance (as herein defined), of all of the obligations imposed on Tenant under this Lease.

For the purposes hereof, "adequate assurance of future performance" means that Landlord has ascertained that each of the following conditions has been satisfied:

(i) The assignee has submitted a current financial statement, certified by its chief financial officer, which shows a net worth and working capital in amounts sufficient to assure the future performance by the assignee of Tenant's obligations under this Lease; and

(ii) Landlord has obtained consents or waivers from any third parties that may be required under a lease, mortgage, financing arrangement, or other agreement by which Landlord is bound, to enable Landlord to permit such assignment.

(d) Landlord's acceptance of rent or any other payment from any trustee, receiver, assignee, person, or other entity will not be deemed to have waived, or waive, the requirement of Landlord's consent, Landlord's right to terminate this Lease for any transfer of Tenant's interest under this Lease without such consent, or Landlord's claim for any amount of Rent due from Tenant.

11.5 LANDLORD'S DEFAULT

Landlord shall be in default hereunder in the event Landlord has not commenced and pursued with reasonable diligence the cure of any failure of Landlord to meet its obligations hereunder within thirty (30) days after the receipt by Landlord of written notice from Tenant of the alleged failure to perform. Failure to provide the requisite notice and cure period by Tenant under this paragraph shall be an absolute defense by Landlord against any claims for failure to perform any of its obligations. In no event shall Tenant have the right to terminate or rescind this Lease as a result of Landlord's default as to any covenant or agreement contained in this Lease. Tenant hereby waives such remedies of termination and rescission and hereby agrees that Tenant's remedies for default hereunder and for breach of any promise or inducement shall be limited to a suit for damages and/or injunction. In addition, Tenant hereby covenants that, prior to the exercise of any such remedies, it will give the Mortgagee notice and a reasonable time to cure any default by Landlord.

ARTICLE 12
SURRENDER OF PREMISES

12.1 IN GENERAL

Upon the Termination Date, Tenant shall surrender and vacate the Premises immediately and deliver possession thereof to Landlord in a clean, good and tenantable condition as existed on the Commencement Date, ordinary wear and tear, and damage caused by Landlord, casualty and condemnation excepted. Tenant shall deliver to Landlord all keys to the Premises. All improvements in and to the Premises, including any Tenant Alterations (collectively, "Leasehold Improvements") shall remain upon the Premises at the end of the Term without compensation to Tenant. Landlord, however, by written notice to Tenant at least 30 days prior to the Termination Date, may require Tenant, at its expense, to remove any Tenant Alterations (as so identified, a "Required Removable"); provided, however if requested by Tenant at the time it requests approval for a proposed Tenant Alteration, Landlord shall advise Tenant at the time of granting such consent whether the proposed Tenant Alteration or any portion of the proposed Tenant Alteration is a Required Removable. In no event shall any improvements existing in the Premises as of the Date of this Lease be a Required Removable. The designated Required Removables shall be removed by Tenant before the Termination Date. Tenant shall repair damage caused by the installation or removal of Required Removables. If Tenant fails to perform its obligations in a timely manner, Landlord may perform such work at Tenant's reasonable expense. In the event possession of the Premises is not delivered to Landlord when required hereunder, or if Tenant shall fail to remove those items described above. Landlord may (but shall not be obligated to), at Tenant's expense, remove any of such property and store, sell or otherwise deal with such property, and undertake, at Tenant's reasonable expense, such restoration work as Landlord deems reasonably necessary or advisable.

12.2 LANDLORD'S RIGHTS

All property which may be removed from the Premises by Landlord in accordance with Section 12.1 above shall be conclusively presumed to have been abandoned by Tenant and Landlord may deal with such property as provided in Section 11.2(b), including the waiver and indemnity obligations provided in that Section. Tenant shall also reimburse Landlord for all costs and expenses incurred by Landlord in removing any Tenant Alterations and in restoring the Premises to the condition required by this Lease.

ARTICLE 13
HOLDING OVER

In the event that Tenant holds over in possession of the Premises after the Termination Date, for each month or partial month Tenant holds over possession of the Premises. Tenant shall pay Landlord 150% of the monthly Rent payable for the month immediately preceding the holding over (including increases for Rent Adjustments which Landlord may reasonably estimate. If Landlord provides Tenant with at least thirty (30) days prior written notice that Landlord has a signed proposal or lease from a succeeding tenant to lease the Premises, and if Tenant fails to surrender the Premises upon the later of (i) the date of expiration of such thirty (30) day period, or (ii) the date of expiration or earlier termination of this Lease, then Tenant shall also pay all consequential damages sustained by Landlord by reason of such holding over. The provisions of this Article shall not constitute a waiver by Landlord of any re-entry rights of Landlord and Tenant's continued occupancy of the Premises shall be as a tenancy in sufferance.

ARTICLE 14
DAMAGE BY FIRE OR OTHER CASUALTY

14.1 SUBSTANTIAL UNTENANTABILITY

(a) If any fire or other casualty (whether insured or uninsured) renders all or a substantial portion of the Premises or the Building untenantable, Landlord shall, with reasonable promptness after the occurrence of such damage, estimate the length of time that will be required to substantially complete the repair and restoration and shall, by notice advise Tenant of such estimate ("Landlord's Notice"). If Landlord estimates that the amount of time required to substantially complete such repair and restoration will exceed one hundred eighty (180) days from the date such damage occurred, then Landlord, or Tenant if all or a substantial portion of the Premises is rendered untenantable, shall have the right to terminate this Lease as of the date of such damage by delivering written notice to the other at any time within twenty (20) days after delivery of Landlord's Notice, provided that if Landlord so chooses, Landlord's Notice may also constitute such notice of termination.

(b) Unless this Lease is terminated as provided in the preceding subparagraph, Landlord shall proceed with reasonable promptness to repair and restore the Premises, subject to reasonable delays for insurance adjustments and Force Majeure delays, and also subject to zoning Laws and building codes then in effect. Landlord shall have no liability to Tenant, and Tenant shall not be entitled to terminate this Lease if such repairs and restoration are not in fact completed within the time period estimated by Landlord so long as Landlord shall proceed with reasonable diligence to complete such repairs and restoration. However, if the repairs are not substantially completed such that the Premises are reasonably tenantable by the date which is three hundred sixty-five (365) days from the date such damage occurred, then Tenant, at any time thereafter until such rebuilding is completed, may terminate this Lease by delivering written notice to Landlord of such termination, in which event this Lease shall terminate as of the date of the giving of such notice.

(c) Tenant acknowledges that Landlord shall be entitled to the full proceeds of any insurance coverage if Landlord will rebuild the Premises pursuant to this Lease, whether carried by Landlord or Tenant, for damages to the Premises, except for those proceeds of Tenant's insurance of its own personal property and equipment which would be removable by Tenant at the Termination Date.

(d) Notwithstanding anything to the contrary herein set forth: (i) Landlord shall have no duty pursuant to this Section to repair or restore any portion of any Tenant Alterations or non-Building standard equipment or to expend for any repair or restoration of the Premises or Building in amounts in excess of insurance proceeds paid to Landlord and available for repair or restoration; and (ii) Tenant shall not have the right to terminate this Lease pursuant to this Section if any damage or destruction was caused by the negligence or willful misconduct of Tenant, its agent or employees. Whether or not the Lease is terminated pursuant to this Article 14, in no event shall Tenant be entitled to any compensation or damages for loss of the use of the whole or any part of the Premises or for any inconvenience or annoyance occasioned by any such damage, destruction, rebuilding or restoration of the Premises or the Building or access thereto.

(e) Any repair or restoration of the Premises performed by Tenant shall be in accordance with the provisions of Article 9 hereof.

14.2 INSUBSTANTIAL UNTENANTABILITY

If the Premises or the Building is damaged by a casualty but neither is rendered substantially untenantable and Landlord estimates that the time to substantially complete the repair or restoration will not exceed one hundred eighty (180) days from the date such damage occurred, then Landlord shall proceed to repair and restore the Building or the Premises other than Tenant Alterations and non-Building standard equipment, with reasonable promptness, unless such damage is to the Premises and occurs during the last six (6) months of the Term, in which event either Tenant or Landlord shall have the right to terminate this Lease as of the date of such casualty by giving written notice thereof to the other within twenty (20) days after the date of such casualty. Notwithstanding the aforesaid, Landlord's obligation to repair shall be limited in accordance with the provisions of Section 14.1 above.

14.3 RENT ABATEMENT

Except for the gross negligence or willful act of Tenant or its agents, employees, contractors or invitees, if all or any part of the Premises are rendered untenantable by fire or other casualty, Monthly Base Rent and Rent Adjustments shall abate for that part of the Premises which is untenantable on a per diem basis from the date of the casualty until Landlord has Substantially Completed the repair and restoration work in the Premises which it is required to perform or the date the Lease is terminated (as applicable), provided, that as a result of such casualty, Tenant does not occupy the portion of the Premises which is untenantable during such period.

14.4 WAIVER OF STATUTORY REMEDIES

The provisions of this Lease, including this Article 14, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, the Premises or the Property or any part of either, and any Law, including Sections 1932(2), 1933(4), 1941 and 1942 of the California Civil Code, with respect to any rights or obligations concerning damage or destruction shall have no application to this Lease or to any damage to or destruction of all or any part of the Premises or the Property or any part of either, and are hereby waived.

ARTICLE 15
EMINENT DOMAIN

15.1 TAKING OF WHOLE OR SUBSTANTIAL PART

In the event the whole or any substantial part of the Building or of the Premises is taken or condemned by any competent authority for any public use or purpose (including a deed given in lieu of condemnation) and is thereby rendered untenantable, this Lease shall terminate as of the date title vests in such authority, and Monthly Base Rent and Rent Adjustments shall be apportioned as of the Termination Date. Notwithstanding anything to the contrary herein set forth, in the event the taking is for a period that is less than the remaining Term of the Lease, then Landlord may elect either (i) to terminate this Lease (provided such temporary taking exceeds ninety (90) days), or (ii) permit Tenant to receive the entire award attributable to the Premises in which case Tenant shall continue to pay Rent and this Lease shall not terminate.

15.2 TAKING OF PART

In the event a part of the Building or the Premises is taken or condemned by any competent authority (or a deed is delivered in lieu of condemnation) and this Lease is not terminated, the Lease shall be amended to adjust the Monthly Base Rent and Tenant's Share to reflect the Rentable Area of the Premises or Building, as the case may be, remaining after any such taking or condemnation. Landlord, upon receipt and to the extent of the award in condemnation (or proceeds of sale) shall make necessary repairs and restorations to the Premises (exclusive of Tenant Alterations and non-Building standard equipment) and to the Building to the extent necessary to constitute the portion of the Building not so taken or condemned as a complete architectural and economically efficient unit. Notwithstanding the foregoing, if as a result of any taking, or a governmental order that the grade of any street or alley adjacent to the Building is to be changed and such taking or change of grade makes it necessary or desirable to substantially remodel or restore the Building or prevents the economical operation of the Building, Landlord shall have the right to terminate this Lease upon ninety (90) days prior written notice to Tenant.

15.3 COMPENSATION

Landlord shall be entitled to receive the entire award (or sale proceeds) from any such taking, condemnation or sale without any payment to Tenant, and Tenant hereby assigns to Landlord, Tenant's interest, if any, in such award; provided, however, Tenant shall have the right separately to pursue against the condemning authority a separate award in respect of the loss, if any, to Tenant Alterations paid for by Tenant without any credit or allowance from Landlord, moving expenses and loss of goodwill so long as there is no diminution of Landlord's award as a result.

ARTICLE 16
INSURANCE

16.1 TENANT'S INSURANCE

Tenant, at Tenant's expense, agrees to maintain in force, with a company or companies having a rating of not less than A-:VIII in Best's Insurance Guide, during the Term: (a) Commercial General Liability Insurance on a primary basis and without any right of contribution from any insurance carried by Landlord covering the Premises on an occurrence basis against all claims for personal injury, bodily injury, death and property damage, including contractual liability covering the indemnification provisions in this Lease, with a limit that is not less than a combined single limit of Five Million and No/100 Dollars ($5,000,000.00) (which limits may be satisfied by a blanket or umbrella policy); (b) Workers' Compensation and Employers' Liability Insurance to the extent required by and in accordance with the Laws of the State of California; (c) "All Risks" property insurance in an amount adequate to cover the full replacement cost of all Tenant Alterations, equipment, installations, fixtures and contents of the Premises in the event of loss; and (d) in the event a motor vehicle is to be used by Tenant in connection with its business operation from the Premises, Comprehensive Automobile Liability Insurance coverage with limits of not less than One Million and No/100 Dollars ($1,000,000.00) combined single limit coverage against bodily injury liability and property damage liability arising out of the use by or on behalf of Tenant, its agents and employees in connection with this Lease, of any owned, non-owned or hired motor vehicles. Landlord may from time to time require reasonable increases in any such limits or other insurance or coverages if Landlord reasonably believes that such additional coverage is generally consistent with coverage amounts then being requested by institutional landlords of comparable buildings with comparable use in the Emeryville/Berkeley market.

16.2 FORM OF POLICIES

Each policy referred to in Section 16.1 shall satisfy the following requirements. Each policy shall (i) name Landlord and the Indemnitees as additional insureds on the Commercial General Liability Insurance, (ii) be issued by one or more responsible insurance companies licensed to do business in the State of California having a rating of not less than A-:VIII in Best's Insurance Guide, (iii) where applicable, provide for commercially reasonable deductible amounts and not permit co-insurance, and (iv) each policy of "All-Risks" property insurance shall provide that the policy shall not be invalidated should the insured waive in writing prior to a loss, any or all rights of recovery against any other party for losses covered by such policies. Tenant shall deliver to Landlord, certificates of insurance and at Landlord's request, copies of all policies and renewals thereof to be maintained by Tenant hereunder, not less than ten (10) days prior to the Commencement Date and prior to any cancellation or expiration of each policy. If Tenant fails to carry the insurance required under this Article 16 or fails to provide certificates of renewal as and when required hereunder, Landlord may, but shall not be obligated to acquire such insurance on Tenant's behalf or Tenant's sole cost and expense.

16.3 LANDLORD'S INSURANCE

Landlord agrees to purchase and keep in full force and effect during the Term hereof, including any extensions or renewals thereof, insurance under policies issued by insurers of recognized responsibility, qualified to do business in the State of California on the Building in amounts not less than the greater of eighty (80%) percent of the then full replacement cost (without depreciation) of the Building (above foundations and excluding Tenant Alterations), against fire and such other risks as may be included in standard forms of all risk coverage insurance reasonably available from time to time. Landlord agrees to maintain in force during the Term, Commercial General Liability Insurance covering the Building on an occurrence basis against all claims for personal injury, bodily injury, death, and property damage. Such insurance shall be for a combined single limit of not less than Five Million and No/100 Dollars ($5,000,000.00). Neither Landlord's obligation to carry such insurance nor the carrying of such insurance shall be deemed to be an indemnity by Landlord with respect to any claim, liability, loss, cost or expense due, in whole or in part, to Tenant's negligent acts or omissions or willful misconduct. Without obligation to do so, Landlord may, in its sole discretion from time to time, carry insurance in amounts greater and/or for coverage additional to the coverage and amounts set forth above.

16.4 WAIVER OF SUBROGATION

(a) Landlord agrees that, so long as the same is permitted under the laws of the State of California, it will include in its "All Risks" policies appropriate clauses pursuant to which the insurance companies (i) waive all right of subrogation against Tenant with respect to losses payable under such policies and/or (ii) agree that such policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policies.

(b) Tenant agrees to include, so long as the same is permitted under the laws of the State of California, in its "All Risks" insurance policy or policies on Tenant Alterations, whether or not removable, and on Tenant's furniture, furnishings, fixtures and other property removable by Tenant under the provisions of this Lease appropriate clauses pursuant to which the insurance company or companies (i) waive the right of subrogation against Landlord and/or any tenant of space in the Building with respect to losses payable under such policy or policies and/or (ii) agree that such policy or policies shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy or policies.

(c) Provided that Landlord's right of full recovery under its policy or policies aforesaid is not adversely affected or prejudiced thereby, Landlord hereby waives any and all right of recovery which it might otherwise have against Tenant, its servants, agents and employees, for loss or damage occurring to the Real Property and the fixtures, appurtenances and equipment therein, to the extent the same is covered by Landlord's insurance, notwithstanding that such loss or damage may result from the negligence or fault of Tenant, its servants, agents or employees. Provided that Tenant's right of full recovery under its aforesaid policy or policies is not adversely affected or prejudiced thereby, Tenant hereby waives any and all right of recovery which it might otherwise have against Landlord, its servants, and employees and against every other tenant of the Real Property who shall have executed a similar waiver as set forth in this Section 16.4 (c) for loss or damage to Tenant Alterations, whether or not removable, and to Tenant's furniture, furnishings, fixtures and other property removable by Tenant under the provisions hereof to the extent the same is coverable by Tenant's insurance required under this Lease, notwithstanding that such loss or damage may result from the negligence or fault of Landlord, its servants, agents or employees, or such other tenant and the servants, agents or employees thereof.

(d) Landlord and Tenant hereby agree to advise the other promptly if the clauses to be included in their respective insurance policies pursuant to subparagraphs (a) and (b) above cannot be obtained on the terms hereinbefore provided and thereafter to furnish the other with a certificate of insurance or copy of such policies showing the naming of the other as an additional insured, as aforesaid. Landlord and Tenant hereby also agree to notify the other promptly of any cancellation or change of the terms of any such policy that would affect such clauses or naming. All such policies which name both Landlord and Tenant as additional insureds shall, to the extent obtainable, contain agreements by the insurers to the effect that no act or omission of any additional insured will invalidate the policy as to the other additional insureds.

16.5 NOTICE OF CASUALTY

Tenant shall give Landlord notice in case of a fire or accident in the Premises promptly after Tenant is aware of such event.

ARTICLE 17
WAIVER OF CLAIMS AND INDEMNITY

17.1 WAIVER OF CLAIMS

To the extent permitted by Law, Tenant hereby releases the Indemnitees from, and waives all claims for, damage to person or property sustained by the Tenant or any occupant of the Premises or the Property resulting directly or indirectly from any existing or future condition, defect, matter or thing in and about the Premises or the Property or any part of either or any equipment or appurtenance therein, or resulting from any accident in or about the Premises or the Property, or resulting directly or indirectly from any act or neglect of any tenant or occupant of the Property or of any other person, including Landlord's agents and servants, except to the extent caused by the gross negligence or willful and wrongful act of any of the Indemnitees. To the extent permitted by Law, Tenant hereby waives any consequential damages, compensation or claims for inconvenience or loss of business, rents, or profits as a result of such injury or damage, whether or not caused by the gross negligence or willful and wrongful act of any of the Indemnitees. Subject to Section 16.4 above, if any such damage, whether to the Premises or the Property or any part of either, or whether to Landlord or to other tenants in the Property, results from any negligence or willful misconduct of Tenant, its employees, servants, agents, contractors, invitees or customers, Tenant shall be liable therefor and Landlord may, at Landlord's option, repair such damage and Tenant shall, upon demand by Landlord, as payment of additional Rent hereunder, reimburse Landlord within ten (10) days of demand for the total reasonable cost of such repairs, in excess of amounts, if any, paid to Landlord under insurance covering such damages. Tenant shall not be liable for any such damage caused by its acts or neglect if Landlord or a tenant has recovered the full amount of the damage from proceeds of insurance policies and the insurance company has waived its right of subrogation against Tenant.

17.2 INDEMNITY BY TENANT

To the extent permitted by Law, Tenant hereby indemnifies, and agrees to protect, defend and hold the Indemnitees harmless, against any and all actions, claims, demands, liability, costs and expenses, including attorneys' fees and expenses for the defense thereof, arising from Tenant's occupancy of the Premises, from the undertaking of any Tenant Alterations or repairs to the Premises, from the conduct of Tenant's business on the Premises, or from any willful act or negligence of Tenant, its agents, contractors, servants, employees, customers or invitees, in or about the Premises or the Property or any part of either. In case of any action or proceeding brought against the Indemnitees by reason of any such claim, upon notice from Landlord, Tenant covenants to defend such action or proceeding by counsel chosen by Landlord, in Landlord's sole discretion. Landlord reserves the right to settle, compromise or dispose of any and all actions, claims and demands related to the foregoing indemnity. The foregoing indemnity shall not operate to relieve Indemnitees of liability to the extent such liability is caused by the willful and wrongful act of Indemnitees. Further, the foregoing indemnity is subject to and shall not diminish any waivers in effect in accordance with Section 16.4 by Landlord or its insurers to the extent of amounts, if any, paid to Landlord under its "All-Risks" property insurance. However, notwithstanding the foregoing, Tenant shall not be required to indemnify and/or hold the Indemnitees harmless from any loss, cost, liability, damage or expense, including, but not limited to, penalties, fines, attorneys' fees or costs (collectively, "Claims"), to any person, property or entity to the extent resulting from the negligence or willful misconduct of Landlord or its agents, contractors, or employees (except for damage to the Tenant Alterations and Tenant's personal property, fixtures, furniture and equipment in the Premises in which case Tenant shall be responsible to the extent Tenant is required to obtain the requisite insurance coverage pursuant to this Lease). Tenant's agreement to indemnify Landlord pursuant to this Article 17 is not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to this Lease, to the extent such policies cover the matters subject to such indemnification obligations. Further, the foregoing indemnity is subject to and shall not diminish any waivers in effect in accordance with Section 16.4 by Landlord or its insurers to the extent of amounts, if any, paid to Landlord under its "All-Risks" property insurance. This Article 17 shall survive the expiration or earlier termination of this Lease.

17.3 INDEMNITY BY LANDLORD

To the extent permitted by Law, Landlord hereby indemnifies, and agrees to protect, defend and hold Tenant and its directors, officers and employees (the "Tenant Indemnitees") harmless, against any and all actions, claims, demands, liability, costs and expenses, including reasonable attorneys' fees and expenses for the defense thereof, to the extent arising from any gross negligence or willful misconduct of Landlord or its agents, in or about the Premises or the Property or any part of either. In case of any action or proceeding brought against the Tenant Indemnitees by reason of any such claim, upon notice from Tenant, Landlord covenants to defend such action or proceeding by counsel chosen by Landlord. The foregoing indemnity shall not operate to relieve Tenant Indemnitees of liability to the extent such liability is caused by the willful and wrongful act of Tenant Indemnitees. Further, the foregoing indemnity is subject to and shall not diminish any waivers in effect in accordance with Section 16.4 by Tenant or its insurers to the extent of amounts, if any, paid to Tenant under its "All-Risks" property insurance.

ARTICLE 18
RULES AND REGULATIONS

18.1 RULES

Tenant agrees for itself and for its subtenants, employees, agents, and invitees to comply with the rules and regulations listed on Exhibit B attached hereto and with all reasonable modifications and additions thereto which Landlord may make from time to time.

18.2 ENFORCEMENT

Nothing in this Lease shall be construed to impose upon the Landlord any duty or obligation to enforce the rules and regulations as set forth on Exhibit B or as hereafter adopted, or the terms, covenants or conditions of any other lease as against any other tenant, and the Landlord shall not be liable to the Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees. Landlord shall use reasonable efforts to enforce the rules and regulations of the Project in a uniform and non-discriminatory manner.

ARTICLE 19
LANDLORD'S RESERVED RIGHTS

Landlord shall have the following rights exercisable without notice to Tenant and without liability to Tenant for damage or injury to persons, property or business and without being deemed an eviction or disturbance of Tenant's use or possession of the Premises or giving rise to any claim for offset or abatement of Rent (except as otherwise set forth in this Lease): (1) to change the Building's name or street address upon thirty (30) days' prior written notice to Tenant; (2) to install, affix and maintain all signs on the exterior and/or interior of the Building; (3) to designate and/or approve prior to installation, all types of signs, window shades, blinds, drapes, awnings or other similar items, and all internal lighting that may be visible from the exterior of the Premises; (4) upon at least twenty-four (24) hours prior notice to Tenant, to display the Premises to prospective purchasers and lenders at reasonable hours at any time during the Term and to prospective tenants at reasonable hours during the last twelve (12) months of the Term (with Tenant having the opportunity to accompany any such individuals while in the Premises); (5) to grant to any party the exclusive right to conduct any business or render any service in or to the Building, provided such exclusive right shall not operate to prohibit Tenant from using the Premises for the purpose permitted hereunder; (6) to change the arrangement and/or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, washrooms or public portions of the Building, and to close entrances, doors, corridors, elevators or other facilities, provided that such action shall not materially and adversely interfere with Tenant's access to the Premises or the Building; (7) to have access for Landlord and other tenants of the Building to any mail chutes and boxes located in or on the Premises as required by any applicable rules of the United States Post Office; and (8) to close the Building after normal business hours, except that Tenant and its employees and invitees shall be entitled to admission at all times, under such reasonable regulations as Landlord prescribes for security purposes.

ARTICLE 20
ESTOPPEL CERTIFICATE

20.1 IN GENERAL

Within ten (10) business days after request therefor by Landlord, Mortgagee or any prospective mortgagee or owner, Tenant agrees as directed in such request to execute an Estoppel Certificate in recordable form, binding upon Tenant, certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Lease as modified is in full force and effect); (ii) the dates to which Rent has been paid; (iii) that Tenant is in the possession of the Premises if that is the case; (iv) that Landlord is not in default under this Lease (or if Tenant believes there exists any default by Landlord, a full and complete explanation thereof); (v) that Tenant has no offsets or defenses to the performance of its obligations under this Lease (or if Tenant believes there are any offsets or defenses, a full and complete explanation thereof); (vi) that Tenant has accepted the Premises and the condition thereof and of all improvements thereto and has no claims against Landlord or any other party with respect thereto (or if Tenant believes it has a claim against Landlord or any other party, a full and complete explanation thereof); (vii) that if an assignment of rents or leases has been served upon the Tenant by a Mortgagee, Tenant will acknowledge receipt thereof and agree to be bound by the provisions thereof; (viii) that Tenant will give to the Mortgagee copies of all notices required or permitted to be given by Tenant to Landlord; and (ix) to any other information reasonably requested.

20.2 ENFORCEMENT

In the event that Tenant fails to timely deliver an Estoppel Certificate within the ten (10) business day period following written request, and if such failure continues for an additional five (5) business days following written notice from Landlord, then such failure shall be a Default for which there shall be no cure or grace period. In addition to any other remedy available to Landlord, Landlord may impose a charge equal to $385.00 for each day that Tenant fails to deliver an Estoppel Certificate.

ARTICLE 21
INTENTIONALLY OMITTED

ARTICLE 22
REAL ESTATE BROKERS

Tenant represents that, except for the broker listed in Section 1.1(14), Tenant has not dealt with any real estate broker, sales person, or finder in connection with this Lease, and no such person initiated or participated in the negotiation of this Lease, or showed the Premises to Tenant. Tenant hereby agrees to indemnify, protect, defend and hold Landlord and the Indemnitees, harmless from and against any and all liabilities and claims for commissions and fees arising out of a breach of the foregoing representation. Landlord has not dealt with any real estate broker, sales person, or finder in connection with this Lease. Landlord agrees to pay any commission to which the broker listed in Section 1.1(14) is entitled in connection with its representation of Tenant under this Lease pursuant to Landlord's written agreement with such broker. Landlord hereby agrees to indemnify, protect, defend and hold Tenant harmless from and against any and all liabilities and claims for commissions and fees arising out of any real estate broker, sales person or finder that claims to have represented Landlord in connection with this Lease.

ARTICLE 23
MORTGAGEE PROTECTION

23.1 SUBORDINATION AND ATTORNMENT

This Lease is and shall be expressly subject and subordinate at all times to (i) any ground or underlying lease of the Real Property, now or hereafter existing, and all amendments, extensions, renewals and modifications to any such lease, and (ii) the lien of any mortgage or trust deed now or hereafter encumbering fee title to the Real Property and/or the leasehold estate under any such lease, and all amendments, extensions, renewals, replacements and modifications of such mortgage or trust deed and/or the obligation secured thereby, unless such ground lease or ground lessor, or mortgage, trust deed or Mortgagee, expressly provides or elects that the Lease shall be superior to such lease or mortgage or trust deed. If any such mortgage or trust deed is foreclosed (including any sale of the Real Property pursuant to a power of sale), or if any such ground or underlying lease is terminated, upon request of the Mortgagee or ground lessor, as the case may be, Tenant shall attorn to the purchaser at the foreclosure sale or to the ground lessor under such lease, as the case may be, provided, however, that such purchaser or ground lessor shall not be (i) bound by any payment of Rent for more than one month in advance except payments in the nature of security for the performance by Tenant of its obligations under this Lease; (ii) subject to any offset, defense or damages arising out of a default of any obligations of any preceding Landlord except to the extent of defaults continuing after the date of such attornment; or (iii) bound by any amendment or modification of this Lease made without the written consent of the Mortgagee or ground lessor; or (iv) liable for any security deposits not actually received by such purchaser or ground lessor. The foregoing subordination as to any future deed of trust or ground lease is conditioned upon the Mortgagee or ground lessor providing Tenant with its standard subordination, non-disturbance and attornment agreement. Additionally, Tenant agrees to execute promptly any reasonable certificate or instrument that Landlord, Mortgagee or ground lessor may request in connection with any such subordination. Upon request by such successor in interest, Tenant shall execute and deliver reasonable instruments confirming the attornment provided for herein. The terms of this paragraph shall survive any termination of this Lease by reason of foreclosure.

Landlord represents and warrants to Tenant, as of the date of this Lease, that the Project is not currently encumbered by a ground or underlying lease or a mortgage or deed of trust.

23.2 MORTGAGEE PROTECTION

Tenant agrees to give any Mortgagee or ground lessor, by registered or certified mail, a copy of any notice of default served upon the Landlord by Tenant, provided that prior to such notice Tenant has received notice (by way of service on Tenant of a copy of an assignment of rents and leases, or otherwise) of the address of such Mortgagee or ground lessor. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the Mortgagee or ground lessor shall have an additional thirty (30) days after receipt of notice thereof within which to cure such default or if such default cannot be cured within that time, then such additional notice time as may be necessary, if, within such thirty (30) days, any Mortgagee or ground lessor has commenced and is diligently pursuing the remedies necessary to cure such default (including commencement of foreclosure proceedings or other proceedings to acquire possession of the Real Property, if necessary to effect such cure). Such period of time shall be extended by any period within which such Mortgagee or ground lessor is prevented from commencing or pursuing such foreclosure proceedings or other proceedings to acquire possession of the Real Property by reason of Landlord's bankruptcy. Until the time allowed as aforesaid for Mortgagee or ground lessor to cure such defaults has expired without cure, Tenant shall have no right to, and shall not, terminate this Lease on account of default. This Lease may not be modified or amended so as to reduce the Rent or shorten the Term, or so as to adversely affect in any other respect to any material extent the rights of the Landlord, nor shall this Lease be canceled or surrendered, without the prior written consent, in each instance, of the ground lessor or the Mortgagee.

ARTICLE 24
NOTICES

(a) All notices, demands or requests provided for or permitted to be given pursuant to this Lease must be in writing and shall be personally delivered, sent by Federal Express or other reputable overnight courier service, or mailed by first class, registered or certified United States mail, return receipt requested, postage prepaid.

(b) All notices, demands or requests to be sent pursuant to this Lease shall be deemed to have been properly given or served by delivering or sending the same in accordance with this Section, addressed to the parties hereto at their respective addresses listed in Section 1.1.

(c) Notices, demands or requests sent by mail or overnight courier service as described above shall be effective upon deposit in the mail or with such courier service. However, except with respect to a notice given under Code of Civil Procedure Section 1161 et seq., the time period in which a response to any such notice, demand or request must be given shall commence to run from (i) in the case of delivery by mail, the date of receipt on the return receipt of the notice, demand or request by the addressee thereof, or (ii) in the case of delivery by Federal Express or other overnight courier service, the date of acceptance of delivery by Landlord or Tenant. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given, as indicated by advice from Federal Express or other overnight courier service or by mail return receipt, shall be deemed to be receipt of notice, demand or request sent. Notices may also be served by personal service upon Landlord or Tenant, and shall be effective upon such service.

(d) By giving to the other party at least five (5) business days written notice thereof, either party shall have the right from time to time during the term of this Lease to change their respective addresses for notices, statements, demands and requests, provided such new address shall be within the United States of America.

ARTICLE 25
MISCELLANEOUS

25.1 LATE CHARGES

(a) All payments required hereunder (other than the Monthly Base Rent, Rent Adjustments, and Rent Adjustment Deposits, which shall be due as hereinbefore provided) to Landlord shall be paid within ten (10) days after Landlord's demand therefor. All such amounts (including Monthly Base Rent, Rent Adjustments, and Rent Adjustment Deposits) not paid within five (5) days after due shall bear interest from the date due until the date paid at the Default Rate in effect on the date such payment was due.

(b) In the event Tenant is more than five (5) days late in paying any installment of Rent due under this Lease, Tenant shall pay Landlord a late charge equal to five percent (5%) of the delinquent installment of Rent. The parties agree that (i) such delinquency will cause Landlord to incur costs and expenses not contemplated herein, the exact amount of which will be difficult to calculate, including the cost and expense that will be incurred by Landlord in processing each delinquent payment of rent by Tenant, (b) the amount of such late charge represents a reasonable estimate of such costs and expenses and that such late charge shall be paid to Landlord for each delinquent payment in addition to all Rent otherwise due hereunder. The parties further agree that the payment of late charges and the payment of interest provided for in subparagraph (a) above are distinct and separate from one another in that the payment of interest is to compensate Landlord for its inability to use the money improperly withheld by Tenant, while the payment of late charges is to compensate Landlord for its additional administrative expenses in handling and processing delinquent payments.

(c) Notwithstanding the foregoing, Tenant shall be entitled to notice and the expiration of a five (5) day cure period prior to a imposition of any late charge or interest charge under this Section 25.1 one (1) time per calendar year; after such written notice has been provided to Tenant in a calendar year, Tenant shall not be entitled to any further notice prior to imposition of a late charge or interest under this Section 25.1 in such calendar year.

(d) Payment of interest at the Default Rate and/or of late charges shall not excuse or cure any default by Tenant under this Lease, nor shall the foregoing provisions of this Article or any such payments prevent Landlord from exercising any right or remedy available to Landlord upon Tenant's failure to pay Rent when due, including the right to terminate this Lease.

25.2 NO JURY TRIAL; VENUE; JURISDICTION

To the fullest extent permitted by law, including laws enacted after the Commencement Date, each party hereto (which includes any assignee, successor, heir or personal representative of a party) shall not seek a jury trial, hereby waives trial by jury, and hereby further waives any objection to venue in the County in which the Project is located, and agrees and consents to personal jurisdiction of the courts of the State of California, in any action or proceeding or counterclaim brought by any party hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any statute, emergency or otherwise, whether any of the foregoing is based on this Lease or on tort law. No party will seek to consolidate any such action in which a jury has been waived with any other action in which a jury trial cannot or has not been waived. It is the intention of the parties that these provisions shall be subject to no exceptions. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

25.3 DISCRIMINATION

Tenant agrees for Tenant and Tenant's heirs, executors, administrators, successors and assigns and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry (whether in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises or otherwise) nor shall Tenant or any person claiming under or through Tenant establish or permit any such practice or practices of discrimination or segregation with reference to the use or occupancy of the Premises by Tenant or any person claiming through or under Tenant.

25.4 FINANCIAL STATEMENTS

Within ten (10) business days after written request from Landlord from time to time during the Term, Tenant shall provide Landlord with current financial statements setting forth Tenant's financial condition and net worth for the most recent quarter, including balance sheets and statements of profits and losses. Such statements shall be reviewed by an independent accountant and certified by Tenant's president, chief executive officer or chief financial officer. Landlord shall only request such financial information in connection with a sale or financing or a proposed sale or refinancing of the Property, or any portion thereof, or during any period in which Tenant is in default, and Landlord shall treat any such financial information as confidential information and shall only disclose the same to the extent reasonably necessary in connection with the foregoing purposes or as may be required by Law. Notwithstanding the foregoing, Tenant shall have no obligation to deliver any financial statements if Tenant is a publicly traded entity or an entity that is otherwise required to file financial statements with any governmental entity that are publicly available and Tenant is in compliance with such public reporting requirement.

25.5 OPTION

This Lease shall not become effective as a lease or otherwise until executed and delivered by both Landlord and Tenant. The submission of the Lease to Tenant does not constitute a reservation of or option for the Premises, but when executed by Tenant and delivered to Landlord, the Lease shall constitute an irrevocable offer by Tenant in effect for fifteen (15) days to lease the Premises on the terms and conditions herein contained.

25.6 TENANT AUTHORITY

Tenant represents and warrants to Landlord that it has full authority and power to enter into and perform its obligations under this Lease, that the person executing this Lease is fully empowered to do so, and that no consent or authorization is necessary from any third party. Landlord may request that Tenant provide Landlord reasonable evidence of Tenant's authority. Landlord represents and warrants to Tenant that it has full authority and power to enter into and perform its obligations under this Lease.

25.7 ENTIRE AGREEMENT

This Lease, the Exhibits, and Riders attached hereto contain the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements, either oral or written, and no other representations or statements, either oral or written, on which Tenant or Landlord has relied. This Lease shall not be modified except by a writing executed by Landlord and Tenant.

25.8 MODIFICATION OF LEASE FOR BENEFIT OF MORTGAGEE

If Mortgagee of Landlord requires a modification of this Lease which shall not result in any increased cost or expense to Tenant or in any other material and adverse change in the rights and obligations of Tenant hereunder, then Tenant agrees that the Lease may be so modified.

25.9 EXCULPATION

Tenant agrees, on its behalf and on behalf of its successors and assigns, that any liability or obligation under this Lease shall only be enforced against Landlord's equity interest in the Property up to a maximum of Five Million Dollars ($5,000,000.00) and in no event against any other assets of the Landlord, or Landlord's officers or directors or partners, and that any liability of Landlord with respect to this Lease shall be so limited and Tenant shall not be entitled to any judgment in excess of such amount. Notwithstanding anything to the contrary contained herein. in no event shall Landlord be liable to Tenant for consequential, punitive or special damages with respect to this Lease.

25.10 ACCORD AND SATISFACTION

No payment by Tenant or receipt by Landlord of a lesser amount than any installment or payment of Rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or payment of Rent or pursue any other remedies available to Landlord. No receipt of money by Landlord from Tenant after the termination of this Lease or Tenant's right of possession of the Premises shall reinstate, continue or extend the Term. Receipt or acceptance of payment from anyone other than Tenant, including an assignee of Tenant, is not a waiver of any breach of Article 10, and Landlord may accept such payment on account of the amount due without prejudice to Landlord's right to pursue any remedies available to Landlord.

25.11 LANDLORD'S OBLIGATIONS ON SALE OF BUILDING

In the event of any sale or other transfer of the Building, Landlord shall be entirely freed and relieved of all agreements and obligations of Landlord hereunder accruing or to be performed after the date of such sale or transfer, and any remaining liability of Landlord with respect to this Lease shall be limited to the dollar amount specified in Section 25.9 and Tenant shall not be entitled to any judgment in excess of such amount. Landlord shall have the right to assign this Lease to an entity comprised of the principals of Landlord or any Landlord Affiliate. Upon such assignment and assumption of the obligations of Landlord hereunder, Landlord shall be entirely freed and relieved of all obligations hereunder.

25.12 BINDING EFFECT

Subject to the provisions of Article 10, this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and permitted assigns.

25.13 CAPTIONS

The Article and Section captions in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such Articles and Sections.

25.14 TIME; APPLICABLE LAW; CONSTRUCTION

Time is of the essence of this Lease and each and all of its provisions. This Lease shall be construed in accordance with the Laws of the State of California. If more than one person signs this Lease as Tenant, the obligations hereunder imposed shall be joint and several. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each item, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by Law. Wherever the term "including" or "includes" is used in this Lease, it shall have the same meaning as if followed by the phrase "but not limited to". The language in all parts of this Lease shall be construed according to its normal and usual meaning and not strictly for or against either Landlord or Tenant.

25.15 ABANDONMENT

In the event Tenant vacates or abandons the Premises but is otherwise in compliance with all the terms, covenants and conditions of this Lease, Landlord shall (i) have the right to enter into the Premises in order to show the space to prospective tenants, (ii) have the right to reduce the services provided to Tenant pursuant to the terms of this Lease to such levels as Landlord reasonably determines to be adequate services for an unoccupied premises, and (iii) during the last six (6) months of the Term, have the right to prepare the Premises for occupancy by another tenant upon the end of the Term. Tenant expressly acknowledges that in the absence of written notice pursuant to Section 11.2(b) or pursuant to California Civil Code Section 1951.3 terminating Tenant's right to possession, none of the foregoing acts of Landlord or any other act of Landlord shall constitute a termination of Tenant's right to possession or an acceptance of Tenant's surrender of the Premises, and the Lease shall continue in effect.

25.16 LANDLORD'S RIGHT TO PERFORM TENANT'S DUTIES

If Tenant is in Default for the failure to timely to perform any of its duties under this Lease, then Landlord shall have the right (but not the obligation), to cure such Default on behalf and at the expense of Tenant following no fewer than three (3) business days prior notice to Tenant, and all sums reasonably expended or expenses reasonably incurred by Landlord in performing such duty shall be deemed to be additional Rent under this Lease and shall be due and payable upon demand by Landlord.

25.17 SECURITY SYSTEM

Landlord shall not be obligated to provide or maintain any security patrol or security system. Landlord shall not be responsible for the quality of any such patrol or system which may be provided hereunder or for damage or injury to Tenant, its employees, invitees or others due to the failure, action or inaction of such patrol or system.

25.18 NO LIGHT, AIR OR VIEW EASEMENTS

Any diminution or shutting off of light, air or view by any structure which may be erected on lands of or adjacent to the Project shall in no way affect this Lease or impose any liability on Landlord.

25.19 RECORDATION

Neither this Lease, nor any notice nor memorandum regarding the terms hereof, shall be recorded by Tenant. Any such unauthorized recording shall be a Default for which there shall be no cure or grace period. Tenant agrees to execute and acknowledge, at the request of Landlord, a commercially reasonable memorandum of this Lease, in recordable form.

25.20 SURVIVAL

The waivers of the right of jury trial, the other waivers of claims or rights, the releases and the obligations of a party under this Lease to indemnify, protect, defend and hold harmless the other party shall survive the expiration or termination of this Lease, and so shall all other obligations or agreements which by their terms survive expiration or termination of the Lease.

25.21 OFAC REPRESENTATION, WARRANTY AND COVENANT

Tenant represents, warrants and covenants that:

(1) Tenant and its principals are not acting, and will not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control;

(2) Tenant and its principals are not engaged, and will not engage, in this transaction, directly or indirectly, on behalf of, or instigating or facilitating, and will not instigate or facilitate, this transaction, directly or indirectly, on behalf of, any such person, group, entity, or nation; and

(3) Tenant acknowledges that the breach of this representation, warranty and covenant by Tenant shall be an immediate Default under this Lease.

25.22 OPC REQUIREMENTS

(a) Tenant has been informed that Landlord has entered into an Owner Participation Agreement ("OPA") with the Emeryville Redevelopment Agency ("Agency). Tenant understands that by virtue of the OPA or other agreements between Landlord and the Agency and/or the City of Emeryville ("City"), Tenant may be eligible for relocation payments and other relocation assistance under Government Code Sections 7260 et seq. or other State, Federal or local laws and regulations ("Relocation Assistance Law"). Tenant understands that the Relocation Assistance Law provides, among other things, for: (a) advisory assistance, including referral to comparable facilities; (b) payment of actual, reasonable moving and related expenses or for a fixed expense and dislocation allowance, at the displaced tenant's election; (c) payment of certain business reestablishment expenses; and (d) ninety (90) days written notice before being required to move.

(b) As material consideration for Landlord's obligations under this Lease, Tenant fully waives, releases and discharges Landlord, Agency, City and its and their respective officers, employees, volunteers, agents and representatives, from and against any and all manner of rights, demands, liabilities, obligations, claims, damages, fines, penalties, expenses (including attorneys' fees and costs), and causes of action, in law or equity, of any kind or nature, known or unknown, now existing or hereinafter arising, which arise from or relate in any manner to the expiration or termination of Tenant's leasehold interest as provided for herein, or the discontinuance or relocation of Tenant's business operations, or the relocation of any other person, business, or other occupant located on or within the premises, including the waiver and release of all business goodwill claims (if any) and all relocation rights and benefits available under the Relocation Assistance Law. Tenant acknowledges and agrees that the waiver and release set forth herein, and that, but for this waiver and release, Landlord would not have entered into this Lease with Tenant. By releasing and forever discharging all of the claims and rights described above, Tenant expressly waives any rights under California Civil Code section 1542, which provides:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

As such relates to this paragraph. Tenant hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

Tenant Initials

(c) The obligation of Tenant under this Section 25.22 shall survive the termination or expiration of this Lease.

25.23 COUNTERPARTS

This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Telecopied signatures or signatures transmitted by electronic mail in so-called "pdf" format may be used in place of original signatures on this Lease. Landlord and Tenant intend to be bound by the signatures on the telecopied or e-mailed document, are aware that the other party will rely on the telecopied or e-mailed signatures, and hereby waive any defenses to the enforcement of the terms of this Lease based on such telecopied or e-mailed signatures. Promptly following request by either party, the other party shall provide the requesting party with original signatures on this Lease.

25.24 BACKUP GENERATOR

Tenant to maintain in good operating condition and repair (including any required replacements), at Tenant's sole cost and expense, the backup generator currently located at the Project as well as the associated equipment and infrastructure (collectively, the "Generator"). All such maintenance and Tenant's use of the Generator shall be subject to all applicable Laws, and any terms and conditions as may be reasonably imposed by Landlord; provided, however, that Landlord shall not charge Tenant any separate charge in connection with the same. Without limiting the generality of the foregoing, Tenant shall, at Tenant's sole cost and expense, obtain and maintain all necessary federal, state, and municipal permits, licenses and approvals, including without limitation any such permits, licenses and approvals from the Bay Area Air Quality Management District, and Tenant shall deliver copies thereof to Landlord. The Generator may be used by Tenant only during (a) testing and regular maintenance, and (b) any period of electrical power outage in the Project. Tenant shall be entitled to operate the Generator for testing and regular maintenance only upon notice to Landlord and at times reasonably approved by Landlord. Tenant shall ensure that the backup generator does not result in any Hazardous Materials being introduced to the Project. Further, Tenant shall be responsible for ensuring that the Generator does not interfere with the use of the Project by other tenants or tenants or occupants of surrounding buildings. Any repairs and maintenance of such Generator shall be the sole responsibility of Tenant and Landlord makes no representation or warranty with respect to such Generator. Tenant shall protect, defend, indemnify and hold harmless the Indemnitees from and against claims, damages, liabilities, costs and expenses of every kind and nature, including attorneys' fees, incurred by or asserted against Landlord arising out of Tenant's installation, maintenance, replacement, use or removal of the Generator. On or prior to the Termination Date, Tenant shall either (i) surrender the Generator in good operating condition without compensation to Tenant, or (ii) remove the Generator (including all the associated equipment and infrastructure) from the Project and repair and restore the Project and the Building to the condition which existed prior to the installation of the Generator (including, new electrical panels for the Building and restoring and restriping the affected parking areas), all at the sole cost and expense of Tenant and otherwise in accordance with this Lease, without further notice from Landlord.

25.25 ROOFTOP EQUIPMENT

If Tenant desires to use the roof of the Building to install communication equipment to be used from the Premises, Tenant may so notify Landlord in writing ("Communication Equipment Notice"), which Communication Equipment Notice shall generally describe the specifications for the equipment desired by Tenant. If at the time of Landlord's receipt of the Communication Equipment Notice, Landlord reasonably determines that space is available on the roof of the Building for such equipment, then Tenant, at its sole cost and expense, shall have the nonexclusive right (it being understood that Landlord may grant, extend or renew similar rights to others) to install, maintain, and from time to time replace a satellite dish or antenna and related infrastructure and equipment ("Communication Equipment") on the roof of the Building, provided that prior to commencing any installation or maintenance, Tenant shall (i) obtain Landlord's prior written approval of the proposed size, weight and location of the Communication Equipment, the method for fastening the Communication Equipment to the roof, and any architectural screening as may be appropriate, which approval(s) may be granted or withheld in Landlord's sole but good faith determination, (ii) such installation and/or replacement shall comply strictly with all applicable governmental laws, rules and regulations and the conditions of any bond or warranty maintained by Landlord on the roof, (iii) use the Communication Equipment solely for its personal internal use, (iv) not grant any right to use of the Communication Equipment to any other party, and (v) obtain, at Tenant's sole cost and expense, any necessary federal, state, and municipal permits, licenses and approvals, and deliver copies thereof to Landlord. Landlord may supervise or perform any roof penetration related to the installation of any Communication Equipment, and Landlord may charge the cost thereof to Tenant. Tenant agrees that all installation, construction and maintenance shall be performed in a neat, responsible, and workmanlike manner, using generally acceptable construction standards, consistent with such reasonable requirements as shall be imposed by Landlord. Tenant shall, at its sole cost and expense, repair any damage to the Building caused by Tenant's installation, maintenance, replacement, use or removal of the Communication Equipment. The Communication Equipment shall remain the property of Tenant, and Tenant may remove the Communication Equipment at its sole cost and expense at any time during the Term. Tenant shall remove the Communication Equipment at Tenant's sole cost and expense on or prior to the Termination Date. Tenant agrees that the Communication Equipment, and any wires, cables or connections relating thereto, and the installation, maintenance and operation thereof shall in no way interfere with the use and enjoyment of the Building, or the operation of communications (including, without limitation, other satellite antenna) or computer devices by Landlord or by other tenants or occupants of the Project or surrounding buildings. If such interference shall occur, Landlord shall give Tenant written notice thereof and Tenant shall correct the same within two (2) business days of receipt of such notice. Landlord makes no warranty or representation that the Building or any portions thereof are suitable for the use of a Communication Equipment, it being assumed that Tenant has satisfied itself thereof. Tenant shall protect, defend, indemnify and hold harmless the Indemnitees from and against claims, damages, liabilities, costs and expenses of every kind and nature, including attorneys' fees, incurred by or asserted against Landlord arising out of Tenant's installation, maintenance, replacement, use or removal of the Communication Equipment.

25.26 EQUIPMENT FINANCING

Tenant shall have the right from time to time to pledge, encumber or grant a security interest in its equipment, inventory, merchandise, trade fixtures and personal property, but not any equipment, fixtures or leasehold improvements or alterations which belong to, inure to the benefit of, or will belong to Landlord after the expiration or earlier termination of the Lease including any Tenant Alterations (collectively, the "Collateral") in connection with financing or refinancing thereon by Tenant. Landlord will promptly execute following written request a waiver or release of lien rights and consent instrument in form and content reasonably acceptable to Landlord; provided, however, that any such instrument shall describe the Collateral with particularity and provide that (a) any entry into the Premises by such secured party may only be accomplished by prior written notice to Landlord and Landlord's property manager and must occur during the Term of this Lease, (b) any secured property which remains in the Premises after the expiration or earlier termination of this Lease may be disposed of by Landlord in accordance with California law, (c) the secured party may not conduct an auction or other sale at the Premises, (d) prior to entering the Premises, such secured party must provide Landlord with evidence of insurance reasonably required by Landlord, must agree to act in a manner so as to minimize interference with other tenants and to comply with Landlord's Rules and Regulations for the Project.

25.27 RIDERS

All Riders attached hereto and executed both by Landlord and Tenant shall be deemed to be a part hereof and hereby incorporated herein.

[Signatures on Following Page]

IN WITNESS WHEREOF, this Lease has been executed as of the date set forth in Section 1.1(4) hereof.

TENANT:

XOMA Corporation,
a Delaware corporation

By: 
Print Name: FRED KURLAND
Its: Vice President, Finance and Chief Financial Officer

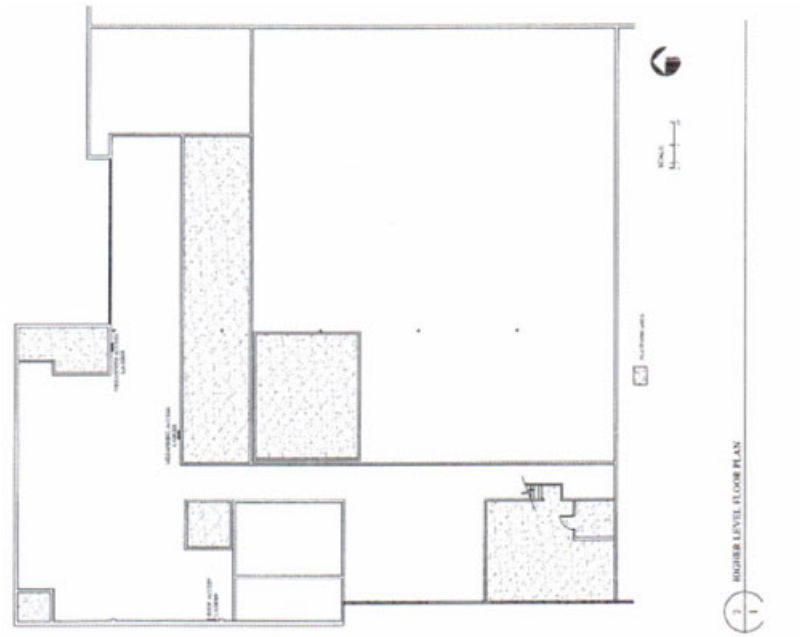
LANDLORD:

Emerystation Triangle, LLC,
a California limited liability company

By: 
Print Name: RICHARD K. ROBBINS
Its: MANAGING MEMBER

EXHIBIT A

PLAN OF PREMISES



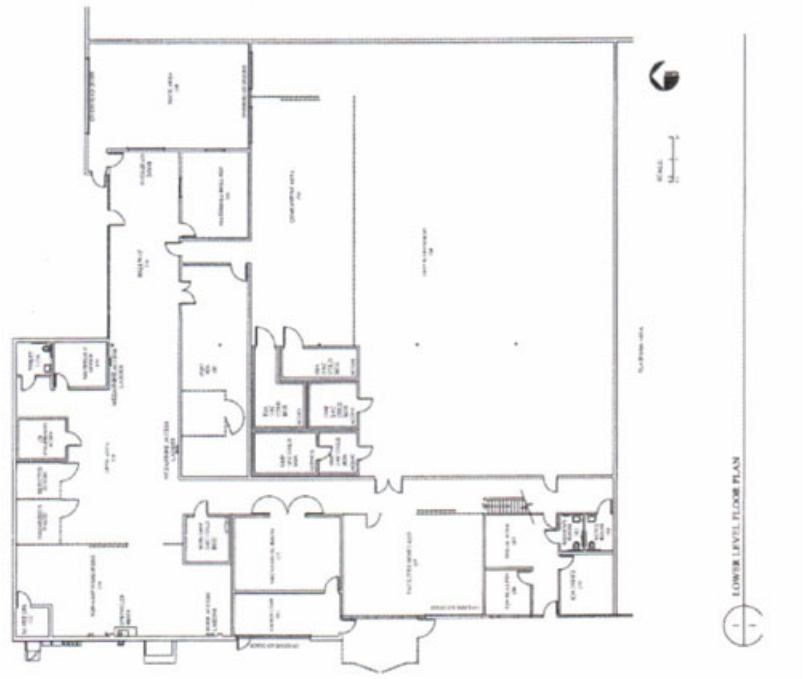


EXHIBIT B

RULES AND REGULATIONS

1. No sidewalks, entrance, passages, courts, elevators, vestibules, stairways, corridors or halls shall be obstructed or encumbered by Tenant or used for any purpose other than ingress and egress to and from the Premises and if the Premises are situated on the ground floor of the Project, Tenant shall further, at Tenant's own expense, keep the sidewalks and curb directly in front of the Premises clean and free from rubbish.

2. No awning or other projection shall be attached to the outside walls or windows of the Project without the prior written consent of Landlord. No curtains, blinds, shades, drapes or screens shall be attached to or hung in, or used in connection with any window or door of the Premises, without the prior written consent of Landlord. Such awnings, projections, curtains, blinds, shades, drapes, screens and other fixtures must be of a quality, type, design, color, material and general appearance approved by Landlord, and shall be attached in the manner approved by Landlord. All lighting fixtures hung in offices or spaces along the perimeter of the Premises visible from the exterior of the Building must be of a quality, type, design, bulb color, size and general appearance approved by Landlord.

3. Except as otherwise permitted in the Lease, no sign, advertisement, notice, lettering, decoration or other thing shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside or inside of the Premises or of the Project, without the prior written consent of Landlord. In the event of the violation of the foregoing by Tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to Tenant.

4. The sashes, sash doors, skylights, windows and doors that reflect or admit light or air into the halls, passageways or other public places in the Project shall not be covered or obstructed by Tenant, nor shall any bottles, parcels or other articles be placed on the window sills or in the public portions of the Project.

5. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the Project, nor placed in public portions thereof without the prior written consent of Landlord.

6. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by Tenant to the extent that Tenant or Tenant's agents, servants, employees, contractors, visitors or licensees shall have caused the same.

7. Tenant shall not mark, paint, drill into or in any way deface any part of the Premises or the Project. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct.

8. No animal or bird of any kind shall be brought into or kept in or about the Premises or the Project, except seeing-eye dogs or other seeing-eye animals.

9. Prior to leaving the Premises for the day, Tenant shall draw or lower window coverings and extinguish all lights.

10. Tenant shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of the Project, or neighboring buildings or premises, or those having business with them. Tenant shall not throw anything out of the doors, windows or skylights or down the passageways.

11. Intentionally Omitted.

12. No additional locks, bolts or mail slots of any kind shall be placed upon any of the doors or windows by Tenant, nor shall any change be made in existing locks or the mechanism thereof. Tenant must, upon the termination of the tenancy, restore to Landlord all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by Tenant, and in the event of the loss of any keys so furnished, Tenant shall pay to Landlord the cost thereof.

13. All removals, or the carrying in or out of any safes, freight, furniture, construction material, bulky matter or heavy equipment of any description must take place during the hours which Landlord or its agent may determine from time to time. Landlord reserves the right to prescribe the weight and position of all safes, which must be placed upon two-inch thick plank strips to distribute the weight. The moving of safes, freight, furniture, fixtures, bulky matter or heavy equipment of any kind must be made upon previous notice to the Building Manager and in a manner and at times prescribed by him, and the persons employed by Tenant for such work are subject to Landlord's prior approval. Landlord reserves the right to inspect all safes, freight or other bulky articles to be brought into the Project and to exclude from the Project all safes, freight or other bulky articles which violate any of these Rules and Regulations or the Lease of which these Rules and Regulations are a part.

14. Tenant shall not purchase spring water, towels, janitorial or maintenance or other like service from any company or persons not approved by Landlord. Landlord shall approve a sufficient number of sources of such services to provide Tenant with a reasonable selection, but only in such instances and to such extent as Landlord in its judgment shall consider consistent with security and proper operation of the Project.

15. Landlord shall have the right to prohibit any advertising or business conducted by Tenant referring to the Project which, in Landlord's opinion, tends to impair the reputation of the Project or its desirability as a first class building for offices, warehouse and/or commercial services and upon notice from Landlord, Tenant shall refrain from or discontinue such advertising.

16. Landlord reserves the right to exclude from the Project between the hours of 6:00 p.m. and 8:00 a.m. Monday through Friday, after 1:00 p.m. on Saturdays and at all hours Sundays and legal holidays, all persons who do not present a pass to the Project issued by Landlord. Landlord may furnish passes to Tenant so that Tenant may validate and issue same. Tenant shall safeguard said passes and shall be responsible for all acts of persons in or about the Project who possess a pass issued to Tenant.

17. Tenant's contractors shall, while in the Premises or elsewhere in the Project, be subject to and under the control and direction of the Building Manager (but not as agent or servant of said Building Manager or of Landlord).

18. If the Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith at Tenant's expense cause the same to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord.

19. The requirements of Tenant will be attended to only upon application at the office of the Project. Project personnel shall not perform any work or do anything outside of their regular duties unless under special instructions from the office of the Landlord.

20. Canvassing, soliciting and peddling in the Project are prohibited and Tenant shall cooperate to prevent the same.

21. No water cooler, air conditioning unit or system or other apparatus shall be installed or used by Tenant without the written consent of Landlord.

22. Intentionally Omitted.

23. Tenant, Tenant's agents, servants, employees, contractors, licensees, or visitors shall not park any vehicles in any driveways, service entrances, or areas posted "No Parking" and shall comply with any other parking restrictions imposed by Landlord from time to time.

24. Tenant shall install and maintain, at Tenant's sole cost and expense, an adequate visibly marked (at all times properly operational) fire extinguisher next to any duplicating or photocopying machine or similar heat producing equipment, which may or may not contain combustible material, in the Premises.

25. Tenant shall keep its window coverings closed during any period of the day when the sun is shining directly on the windows of the Premises.

26. Tenant shall not use the name of the Project for any purpose other than as the address of the business to be conducted by Tenant in the Premises, nor shall Tenant use any picture of the Project in its advertising, stationery or in any other manner without the prior written permission of Landlord. Landlord expressly reserves the right at any time to change said name without in any manner being liable to Tenant therefor.

27. Tenant shall not prepare any food nor do any cooking, operate or conduct any restaurant, luncheonette or cafeteria for the sale or service of food or beverages to its employees or to others, except that food and beverage preparation by Tenant's employees using microwave ovens or coffee makers shall be permitted provided no odors of cooking or other processes emanate from the Premises. Tenant shall not install or permit the installation or use of any vending machine unless approved in advance in writing by Landlord.

28. The Premises shall not be used as an employment agency, a public stenographer or typist, a labor union office, a physician's or dentist's office, a dance or music studio, a school, a beauty salon, or barber shop, the business of photographic, multilith or multigraph reproductions or offset printing (not precluding using any part of the Premises for photographic, multilith or multigraph reproductions solely in connection with Tenant's own business and/or activities), a restaurant or bar, an establishment for the sale of confectionery, soda, beverages, sandwiches, ice cream or baked goods, an establishment for preparing, dispensing or consumption of food or beverages of any kind in any manner whatsoever, or news or cigar stand, or a radio, television or recording studio, theatre or exhibition hall, or manufacturing, or the storage or sale of merchandise, goods, services or property of any kind at wholesale, retail or auction, or for lodging, sleeping or for any immoral purposes.

29. Business machines and mechanical equipment shall be placed and maintained by Tenant at Tenant's expense in settings sufficient in Landlord's judgment to absorb and prevent vibration, noise and annoyance. Tenant shall not install any machine or equipment which causes noise, heat, cold or vibration to be transmitted to the structure of the building in which the Premises are located without Landlord's prior written consent, which consent may be conditioned on such terms as Landlord may require. Tenant shall not place a load upon any floor of the Premises exceeding the floor load per square foot that such floor was designed to carry and which is allowed by Law.

30. Intentionally Omitted.

31. Tenant shall not store any vehicle within the parking area. Tenant's parking rights are limited to the use of parking spaces for short-term parking, of up to twenty-four (24) hours, of vehicles utilized in the normal and regular daily travel to and from the Project. Tenants who wish to park a vehicle for longer than a 24-hour period shall notify the Building Manager for the Project and consent to such long-term parking may be granted for periods up to two (2) weeks. Any motor vehicles parked without the prior written consent of the Building Manager for the Project for longer than a 24-hour period shall be deemed stored in violation of this rule and regulation and shall be towed away and stored at the owner's expense or disposed of as provided by Law.

32. Smoking is prohibited in the Premises, the Building and all enclosed Common Areas of the Project, including all lobbies, all hallways, all elevators and all lavatories.

Exhibit 21.1

Subsidiaries of the Company	Jurisdiction of Organization
XOMA Ireland Limited	Ireland
XOMA Technology Ltd.	Bermuda
XOMA (US) LLC	Delaware
XOMA Commercial LLC	Delaware
XOMA CDRA LLC	Delaware
XOMA UK Limited	United Kingdom

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements on Form S-8 of XOMA Corporation (Nos. 333-108306, 333-151416, 333-171429, 333-174730, and 333-181849) pertaining to the 1981 Share Option Plan, the Restricted Share Plan, the 1992 Directors Share Option Plan, the Amended and Restated 1998 Employee Stock Purchase Plan, the 2007 CEO Share Option Plan and the Amended and Restated 2010 Long Term Incentive and Stock Award Plan and in the Registration Statement on Form S-3 of XOMA Corporation (Nos. 333-172197 and 333-183486) and the related Prospectuses of XOMA Corporation, of our reports dated March 12, 2014, with respect to the consolidated financial statements of XOMA Corporation, and the effectiveness of internal control over financial reporting of XOMA Corporation included in this Annual Report (Form 10-K) for the year ended December 31, 2013.

/s/ ERNST & YOUNG LLP

San Francisco, California
March 12, 2014

Exhibit 31.1

CERTIFICATION

I, John Varian, certify that:

1. I have reviewed this annual report on Form 10-K of XOMA Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f))) for the registrant and we have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 12, 2014

/s/ JOHN VARIAN

John Varian
Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Fred Kurland, certify that:

1. I have reviewed this annual report on Form 10-K of XOMA Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f))) for the registrant and we have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 12, 2014

/s/ FRED KURLAND

Fred Kurland

Vice President, Finance, Chief Financial Officer and Secretary

Exhibit 32.1

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), John Varian, Chief Executive Officer of XOMA Corporation (the "Company"), and Fred Kurland, Chief Financial Officer of the Company, each hereby certifies that, to the best of his or her knowledge:

1. The Company's Annual Report on Form 10-K for the year ended December 31, 2013, to which this Certification is attached as Exhibit 32.1, fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and

2. The information contained in Exhibit 32.1 fairly presents, in all material respects, the financial condition and results of operations of the Company.

IN WITNESS WHEREOF, the undersigned have set their hands hereto as of the 12th day of March, 2014.

/s/ JOHN VARIAN

John Varian
Chief Executive Officer

/s/ FRED KURLAND

Fred Kurland
Vice President, Finance, Chief Financial Officer and Secretary

3. This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of XOMA Corporation under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.