

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

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

For the quarterly period ended **September 30, 2022**

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 Number: **001-37854**

**Ekso Bionics Holdings, Inc.**

(Exact name of registrant as specified in its charter)

**Nevada**  
(State or other jurisdiction of  
incorporation or organization)

**99-0367049**  
(I.R.S. Employer  
Identification No.)

**101 Glacier Point, Suite A**  
**San Rafael, CA**  
(Address of principal executive offices)

**94901**  
(Zip Code)

**(510) 984-1761**  
(Registrant's telephone number, including area code)

(Former name, former address, and former fiscal year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act: Title of each class Trading Name of each exchange on which registered:

<b>Title of each class</b>	<b>Trading Symbol(s)</b>	<b>Name of each exchange on which registered</b>
Common Stock, \$0.001 par value per share	EKSO	Nasdaq Capital Market

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

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

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

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

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

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

The number of shares of registrant's common stock outstanding as of November 1, 2022 was 13,142,418.

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**Ekso Bionics Holdings, Inc.**  
**Quarterly Report on Form 10-Q**

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**PART I. FINANCIAL INFORMATION****Item 1. Financial Statements**

**Ekso Bionics Holdings, Inc.**  
**Condensed Consolidated Balance Sheets**  
**(In thousands, except par value)**

	<u>September 30, 2022</u>	<u>December 31, 2021</u>
	<u>(unaudited)</u>	<u>(Note 2)</u>
<b>Assets</b>		
Current assets:		
Cash	\$ 29,180	\$ 40,406
Accounts receivable, net of allowances of \$30 and \$28, respectively	3,398	4,662
Inventories	3,508	2,242
Prepaid expenses and other current assets	668	485
Total current assets	<u>36,754</u>	<u>47,795</u>
Property and equipment, net	959	991
Right-of-use assets	1,374	216
Other assets	224	164
Total assets	<u>\$ 39,311</u>	<u>\$ 49,166</u>
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 2,387	\$ 3,107
Accrued liabilities	2,172	2,299
Deferred revenues, current	1,059	1,220
Note payable, current	1,996	—
Lease liabilities, current	244	229
Total current liabilities	<u>7,858</u>	<u>6,855</u>
Deferred revenues	1,032	1,475
Note payable, net	—	1,993
Lease liabilities	1,167	—
Warrant liabilities	539	1,550
Other non-current liabilities	101	74
Total liabilities	<u>10,697</u>	<u>11,947</u>
Commitments and contingencies (Note 13)		
Stockholders' equity:		
Convertible preferred stock, \$0.001 par value; 10,000 shares authorized; none issued and outstanding at September 30, 2022 and December 31, 2021	—	—
Common stock, \$0.001 par value; 141,429 shares authorized; 13,127 and 12,693 shares issued and outstanding at September 30, 2022 and December 31, 2021, respectively	13	13
Additional paid-in capital	247,884	246,090
Accumulated other comprehensive income (loss)	1,486	(17)
Accumulated deficit	<u>(220,769)</u>	<u>(208,867)</u>
Total stockholders' equity	<u>28,614</u>	<u>37,219</u>
Total liabilities and stockholders' equity	<u>\$ 39,311</u>	<u>\$ 49,166</u>

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

**Ekso Bionics Holdings, Inc.**  
**Condensed Consolidated Statements of Operations and Comprehensive Loss**  
(In thousands, except per share amounts)  
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Revenue	\$ 3,329	\$ 3,049	\$ 9,361	\$ 7,170
Cost of revenue	1,643	1,242	4,825	2,836
Gross profit	<u>1,686</u>	<u>1,807</u>	<u>4,536</u>	<u>4,334</u>
Operating expenses:				
Sales and marketing	1,742	1,685	5,212	5,265
Research and development	936	618	2,855	1,930
General and administrative	2,662	2,293	7,589	6,415
Total operating expenses	<u>5,340</u>	<u>4,596</u>	<u>15,656</u>	<u>13,610</u>
Loss from operations	(3,654)	(2,789)	(11,120)	(9,276)
Other (expense) income, net:				
Interest expense	(34)	(24)	(90)	(77)
Gain on revaluation of warrant liabilities	112	1,125	1,011	2,011
Gain on forgiveness of note payable	—	—	—	1,099
Unrealized loss on foreign exchange	(732)	(268)	(1,704)	(640)
Other income (expense), net	4	(2)	1	(18)
Total other (expense) income, net	<u>(650)</u>	<u>831</u>	<u>(782)</u>	<u>2,375</u>
Net loss	\$ (4,304)	\$ (1,958)	\$ (11,902)	\$ (6,901)
Other comprehensive income	652	261	1,503	601
Comprehensive loss	<u>\$ (3,652)</u>	<u>\$ (1,697)</u>	<u>\$ (10,399)</u>	<u>\$ (6,300)</u>
Net loss per share applicable to common shareholders, basic	\$ (0.33)	\$ (0.15)	\$ (0.92)	\$ (0.57)
Net loss per share applicable to common shareholders, diluted	\$ (0.33)	\$ (0.17)	\$ (0.92)	\$ (0.62)
Weighted average number of shares outstanding, basic	13,071	12,661	12,896	12,029
Weighted average number of shares outstanding, diluted	13,071	12,710	12,896	12,133

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

**Ekso Bionics Holdings, Inc.**  
**Condensed Consolidated Statements of Stockholders' Equity**  
(In thousands)  
(Unaudited)

	Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive (Loss) Income	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
<b>Balance at December 31, 2021</b>	—	\$ —	12,693	\$ 13	\$ 246,090	\$ (17)	\$ (208,867)	\$ 37,219
Net loss	—	—	—	—	—	—	(4,620)	(4,620)
Issuance of common stock under:								
Matching contribution to 401(k) plan	—	—	68	—	176	—	—	176
Equity incentive plan	—	—	83	—	—	—	—	—
Stock-based compensation expense	—	—	—	—	499	—	—	499
Foreign currency translation adjustments	—	—	—	—	—	212	—	212
<b>Balance at March 31, 2022</b>	—	\$ —	12,844	\$ 13	\$ 246,765	\$ 195	\$ (213,487)	\$ 33,486
Net loss	—	—	—	—	—	—	(2,978)	(2,978)
Issuance of common stock under:								
Equity incentive plan	—	—	166	—	—	—	—	—
Stock-based compensation expense	—	—	—	—	582	—	—	582
Foreign currency translation adjustments	—	—	—	—	—	639	—	639
<b>Balance at June 30, 2022</b>	—	\$ —	13,010	\$ 13	\$ 247,347	\$ 834	\$ (216,465)	\$ 31,729
Net loss	—	—	—	—	—	—	(4,304)	(4,304)
Issuance of common stock under:								
Equity incentive plan	—	—	117	—	—	—	—	—
Stock-based compensation expense	—	—	—	—	537	—	—	537
Foreign currency translation adjustments	—	—	—	—	—	652	—	652
<b>Balance at September 30, 2022</b>	—	\$ —	13,127	\$ 13	\$ 247,884	\$ 1,486	\$ (220,769)	\$ 28,614

**Ekso Bionics Holdings, Inc.**  
**Condensed Consolidated Statements of Stockholders' Equity**  
(In thousands)  
(Unaudited)

	Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive (Loss) Income	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
<b>Balance at December 31, 2020</b>	—	\$ —	8,349	\$ 8	\$ 204,376	\$ (847)	\$ (199,103)	\$ 4,434
Net loss	—	—	—	—	—	—	(3,670)	(3,670)
Issuance of common stock under:								
Equity financing, net	—	—	3,980	4	35,356	—	—	35,360
Exercise of warrants	—	—	300	1	3,877	—	—	3,878
Matching contribution to 401(k) plan	—	—	26	—	152	—	—	152
Stock-based compensation expense	—	—	—	—	356	—	—	356
Foreign currency translation adjustments	—	—	—	—	—	465	—	465
<b>Balance at March 31, 2021</b>	—	\$ —	12,655	\$ 13	\$ 244,117	\$ (382)	\$ (202,773)	\$ 40,975
Net loss	—	—	—	—	—	—	(1,273)	(1,273)
Stock-based compensation expense	—	—	—	—	519	—	—	519
Foreign currency translation adjustments	—	—	—	—	—	(125)	—	(125)
<b>Balance at June 30, 2021</b>	—	\$ —	12,655	\$ 13	\$ 244,636	\$ (507)	\$ (204,046)	\$ 40,096
Net loss	—	—	—	—	—	—	(1,958)	(1,958)
Issuance of common stock under:								
Equity incentive plan	—	—	9	—	—	—	—	—
Stock-based compensation expense	—	—	—	—	663	—	—	663
Foreign currency translation adjustments	—	—	—	—	—	261	—	261
<b>Balance at September 30, 2021</b>	—	\$ —	12,664	\$ 13	\$ 245,299	\$ (246)	\$ (206,004)	\$ 39,062

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

**Ekso Bionics Holdings, Inc.**  
**Condensed Consolidated Statements of Cash Flows**  
(In thousands)  
(Unaudited)

	<b>Nine Months Ended September 30,</b>	
	<b>2022</b>	<b>2021</b>
<b>Operating activities:</b>		
Net loss	\$ (11,902)	\$ (6,901)
Adjustments to reconcile net loss to net cash used in operating activities		
Depreciation and amortization	632	782
Changes in allowance for doubtful accounts	(11)	48
Gain on forgiveness of note payable	—	(1,099)
Gain on revaluation of warrant liabilities	(1,011)	(2,011)
Stock-based compensation expense	1,618	1,538
Common stock contribution to 401(k) plan	147	141
Unrealized loss on foreign currency transactions	1,704	640
Changes in operating assets and liabilities:		
Accounts receivable	1,044	(10)
Inventories	(1,477)	(171)
Prepaid expenses and other assets, current and noncurrent	(277)	(251)
Accounts payable	(704)	(189)
Accrued, lease and other liabilities, current and noncurrent	(270)	(70)
Deferred revenues	(537)	(528)
Net cash used in operating activities	(11,044)	(8,081)
<b>Investing activities:</b>		
Acquisition of property and equipment	(141)	(60)
Net cash used in investing activities	(141)	(60)
<b>Financing activities:</b>		
Proceeds from issuance of common stock and warrants, net	—	37,295
Proceeds from exercise of warrants	—	1,417
Net cash provided by financing activities	—	38,712
Effect of exchange rate changes on cash	(41)	6
Net (decrease) increase in cash	(11,226)	30,577
Cash at beginning of period	40,406	12,862
Cash at end of period	\$ 29,180	\$ 43,439
<b>Supplemental disclosure of cash flow activities</b>		
Cash paid for interest	\$ 88	\$ 69
Cash paid for income taxes	\$ 14	\$ —
<b>Supplemental disclosure of non-cash activities</b>		
Fair value of warrants issued upon equity financing	\$ —	\$ 1,936
Reclassification of warrant liability to equity upon exercise of warrants	\$ —	\$ 2,461
Transfer of inventory to property and equipment	\$ 192	\$ 387
Initial recognition of operating lease liabilities and right of use assets	\$ 1,459	\$ —
Share issuance for common stock contribution to 401(k) plan	\$ 176	\$ 152

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

**Ekso Bionics Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
**(\$ and share amounts in thousands, except per share amounts)**  
**(Unaudited)**

**1. Organization**

**Description of Business**

Ekso Bionics Holdings, Inc. (the "Company") designs, develops, and markets exoskeleton products to augment human strength, endurance and mobility. The Company's exoskeleton technology serves multiple markets and can be utilized both by able-bodied users and by persons with physical disabilities. The Company has marketed devices that (i) enable individuals with neurological conditions affecting gait, including acquired brain injury ("ABI") and multiple sclerosis ("MS"), and spinal cord injury ("SCI"), to rehabilitate and to walk again, (ii) assist individuals with a broad range of upper extremity impairments, and (iii) allow industrial workers to perform difficult repetitive work for extended periods. Founded in 2005, the Company is headquartered in the San Francisco Bay area and listed on the Nasdaq Capital Market under the symbol "EKSO".

**Liquidity and Capital Resources**

As of September 30, 2022, the Company had an accumulated deficit of \$220,769. Largely as a result of significant research and development activities related to the development of the Company's advanced technology and commercialization of such technology into its medical device business, the Company has incurred significant operating losses and negative cash flows from operations since inception. In the nine months ended September 30, 2022, the Company used \$11,044 of cash in its operations. Cash on hand as of September 30, 2022 was \$29,180.

As described in Note 8, Notes payable, net, borrowings under the Company's secured term loan agreement with Pacific Western Bank have a liquidity covenant requiring minimum cash on hand equivalent to the current outstanding principal balance. As of September 30, 2022, \$2,000 of cash must remain as restricted. After considering cash restrictions, effective unrestricted cash as of September 30, 2022 is approximately \$27,180. With this unrestricted cash balance, the Company believes that it currently has sufficient cash to fund its operations beyond the look forward period of one year from the issuance of these condensed consolidated financial statements.

**2. Basis of Presentation and Summary of Significant Accounting Policies and Estimates**

***Basis of Presentation and Consolidation***

The accompanying condensed consolidated financial statements have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission ("SEC"). Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles in the United States ("U.S. GAAP") have been condensed or omitted pursuant to such rules and regulations. These financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021, which was filed with the SEC on February 24, 2022.

In the opinion of management, the accompanying unaudited condensed consolidated financial statements have been prepared on a consistent basis with the audited consolidated financial statements for the fiscal year ended December 31, 2021, and include all adjustments, consisting of only normal recurring adjustments, necessary to fairly state the information set forth herein.

The results of operations for the three and nine months ended September 30, 2022 are not necessarily indicative of the results to be expected for the year ending December 31, 2022 or any future periods.

The condensed consolidated financial statements include the financial statements of Ekso Bionics Holdings, Inc. and its subsidiaries. All significant transactions and balances between Ekso Bionics Holdings, Inc. and its subsidiaries have been eliminated in consolidation.

***Reclassifications***

During the nine months ended September 30, 2022, the Company reclassified the amortization of operating lease right-of-use assets in its condensed consolidated statements of cash flows. Amounts amortized related to operating lease right-of-use assets

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**Ekso Bionics Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
**(\$ and share amounts in thousands, except per share amounts)**  
**(Unaudited)**

have been reclassified to "Depreciation and amortization" from "Prepaid expenses and other assets, current and noncurrent" as applicable. Accordingly, prior period amounts have been reclassified to conform to the current period presentation, in all material respects. These reclassifications did not affect changes in cash flow used in operating activities or net (decrease) in cash for the nine months ended September 30, 2021.

***Use of Estimates***

The preparation of the condensed consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the balance sheet, and the reported amounts of revenues and expenses during the reporting period. For the Company, these estimates include, but are not limited to, revenue recognition, deferred revenue, the valuation of warrants and employee equity awards, future warranty costs, accounting for leases, useful lives assigned to long-lived assets, valuation of inventory, realizability of deferred tax assets, and contingencies. Actual results could differ from those estimates.

***Foreign Currency***

The assets and liabilities of foreign subsidiaries and equity investments, where the local currency is the functional currency, are translated from their respective functional currencies into U.S. dollars at the rates in effect at the balance sheet date, and revenue and expense amounts are translated at average rates during the period, with resulting foreign currency translation adjustments recorded in accumulated other comprehensive income as a component of stockholders' equity. Gains and losses from the re-measurement of balances denominated in currencies other than the entities' functional currencies, are recorded in other expense, net in the accompanying condensed consolidated statements of operations and comprehensive loss.

***Inventory***

Inventories are recorded at the lower of cost or net realizable value. Cost is computed using the standard cost method, which approximates actual cost on a first-in, first-out basis. Materials from vendors are received and recorded as raw materials. Once the raw materials are incorporated in the fabrication of the product, the related value of the component is recorded as work in progress ("WIP"). Direct and indirect labor and applicable overhead costs are also allocated and recorded to WIP inventory. Finished goods are comprised of completed products that are ready for customer shipment. The Company periodically evaluates the carrying value of inventory on hand for potential excess amounts over sales and forecasted demand. Excess and obsolete inventories identified, if any, are recorded as an inventory impairment charge within the consolidated statements of operations and comprehensive loss. The Company's estimate of write-downs for excess and obsolete inventory is based on a detailed analysis which includes on-hand inventory and purchase commitments in excess of forecasted demand. Subsequent disposals of inventories are recorded as a reduction of inventory.

***Leases***

The Company records its leases in accordance with the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 842, *Leases*. At the inception of an arrangement, the Company determines whether the arrangement is or contains a lease based on the unique facts and circumstances present. Operating lease liabilities and their corresponding right-of-use assets are recorded based on the present value of lease payments over the expected lease term. The interest rate implicit in lease contracts is typically not readily determinable. As such, the Company utilizes its incremental borrowing rate, which is the rate incurred to borrow on a collateralized basis over a similar term an amount equal to the lease payments in a similar economic environment. Certain adjustments to the right-of-use asset may be required for items, such as initial direct costs paid or incentives received.

Lease expense is recognized over the expected lease term on a straight-line basis. Operating leases are recognized on the balance sheet as right-of-use assets, lease liabilities current and lease liabilities non-current.

Leases with an initial term of 12 months or less are not recorded on the balance sheet. The Company recognizes the lease expense for such leases on a straight-line basis over the lease term.

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**Ekso Bionics Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
**(\$ and share amounts in thousands, except per share amounts)**  
**(Unaudited)**

***Revenue Recognition***

The Company records its revenue in accordance with ASC 606, *Revenue from Contracts with Customers*. Revenue is recognized upon transfer of control of promised products or services to customers in an amount that reflects the consideration the Company expects to receive in exchange for those products or services. The Company enters into contracts that can include various combinations of products and services, which when capable of being distinct, are accounted for as separate performance obligations. Revenue recognition is evaluated based on the following five steps: (i) identification of the contract with the customer; (ii) identification of the performance obligations in the contract; (iii) determination of the transaction price; (iv) allocation of the transaction price to the performance obligations in the contract; and (v) recognition of revenue when or as a performance obligation is satisfied.

For multiple-element arrangements, revenue is allocated to each performance obligation based on its relative standalone selling price. Standalone selling prices are determined based on observable prices at which the Company separately sells its products or services. If a standalone selling price is not directly observable, judgment is made to estimate the selling price based on market conditions and entity-specific factors including cost plus analyses, features and functionality of the product and/or services, the geography of the Company's customers, and type of the Company's markets. Any discounts or other reductions to the transaction price are allocated proportionately to all performance obligations within the multiple-element arrangement. The Company periodically validates the stand-alone selling price for performance obligations by evaluating whether changes in the key assumptions used to determine the stand-alone selling prices will have a significant effect on the allocation of transaction price between multiple performance obligations.

The Company exercised judgement to determine that a product returns reserve was not required as historical returns activity have not been material.

***Going Concern***

The Company assesses its ability to continue as a going concern at every interim and annual period in accordance with ASC 205-40. The accompanying condensed consolidated financial statements have been prepared assuming that the Company will continue as a going concern.

***Concentration of Credit Risk and Other Risks and Uncertainties***

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash and accounts receivable. The Company maintains cash accounts in excess of federally insured limits. However, the Company believes it is not exposed to significant credit risk due to the financial position of the depository institutions in which these deposits are held. The Company extends credit to customers in the normal course of business. Concentrations of credit risk with respect to accounts receivable exist to the full extent of amounts presented in the condensed consolidated financial statements. The Company does not require collateral from its customers to secure accounts receivable.

Accounts receivable are derived from the sale of products shipped and services performed for customers primarily located in the U.S., Europe, Asia, and Australia. Invoices are aged based on contractual terms with the customer. The Company reviews accounts receivable for collectability and provides an allowance for potential credit losses. The Company has not experienced material losses related to accounts receivable as of September 30, 2022 and December 31, 2021. Many of the sales contracts with customers outside of the U.S. are settled in a foreign currency other than the U.S. dollar. The Company does not enter into any foreign currency hedging agreements and is susceptible to gains and losses from foreign currency fluctuations. To date, the Company has not experienced significant gains or losses upon collecting receivables denominated in a foreign currency.

At September 30, 2022, the Company had two customers (13% and 12%) with an accounts receivable balance totaling 10% or more of the Company's total accounts receivable, as compared with zero customers at December 31, 2021.

During the three months ended September 30, 2022, the Company had two customers with sales of 10% or more of the Company's total revenue (20% and 14%), as compared with none in the three months ended September 30, 2021.

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**Ekso Bionics Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
**(\$ and share amounts in thousands, except per share amounts)**  
**(Unaudited)**

During the nine months ended September 30, 2022, the Company had one customer with sales of 10% or more of the Company's total revenue (14%), as compared with none in the nine months ended September 30, 2021.

#### **Recent Accounting Pronouncements**

In June 2016, the FASB issued Accounting Standards Update ("ASU") No. 2016-13, Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments and subsequent amendments to the initial guidance under ASU 2018-19, ASU 2019-04, ASU 2019-05, ASU 2019-10 and ASU 2022-02, which amends the current approach to estimate credit losses on certain financial assets, including trade and other receivables. Generally, this amendment requires entities to establish a valuation allowance for the expected lifetime losses of these certain financial assets. Upon the initial recognition of such assets, which will be based on, among other things, historical information, current conditions, and reasonable supportable forecasts. Subsequent changes in the valuation allowance are recorded in current earnings and reversal of previous losses are permitted. Currently, U.S. GAAP requires entities to write down credit losses only when losses are probable and loss reversals are not permitted. The update will be effective for the Company beginning in the first quarter of 2023. Early adoption is permitted. The Company is currently evaluating the impact the adoption of this standard will have on its condensed consolidated financial statements and related disclosures.

In August 2020, the FASB issued ASU No. 2020-06, Accounting for Convertible Instruments and Contracts in an Entity's Own Equity, which simplifies the accounting for convertible instruments. ASU 2020-06 eliminates certain models that require separate accounting for embedded conversion features, in certain cases. Additionally, among other changes, the guidance eliminates certain of the conditions for equity classification for contracts in an entity's own equity. The guidance also requires entities to use the if-converted method for all convertible instruments in the diluted earnings per share calculation and include the effect of share settlement for instruments that may be settled in cash or shares, except for certain liability-classified share-based payment awards. This guidance is effective for the Company beginning in the first quarter of 2024 and must be applied using either a modified or full retrospective approach. Early adoption is permitted. The Company does not expect the impact of adopting ASU 2020-06 to be material on its consolidated financial statements.

#### **3. Accumulated Other Comprehensive Income (Loss)**

The Company's accumulated other comprehensive income (loss) consists of the accumulated net unrealized gains or losses on foreign currency translation adjustments. The change in accumulated other comprehensive income (loss) presented on the condensed consolidated balance sheets for the nine months ended September 30, 2022 and 2021, is reflected in the table below net of tax:

	<b>Nine Months Ended September 30,</b>	
	<b>2022</b>	<b>2021</b>
Balance at beginning of period	\$ (17)	\$ (847)
Net unrealized gain on foreign currency translation	1,503	601
Balance at end of period	<u>\$ 1,486</u>	<u>\$ (246)</u>

#### **4. Fair Value Measurement**

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. Three levels of inputs, of which the first two are considered observable and the last unobservable, may be used to measure fair value which are the following:

- **Level 1**—Quoted prices in active markets for identical assets or liabilities. The Company considers a market to be active when transactions for the asset occur with sufficient frequency and volume to provide pricing information on an ongoing basis.
  - **Level 2**—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
-

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- **Level 3**—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. The valuation of Level 3 investments requires the use of significant management judgments or estimation.

The Company's fair value hierarchies for its financial assets and liabilities, which require fair value measurement on a recurring basis are as follows:

	Total	Level 1	Level 2	Level 3
<b>September 30, 2022</b>				
Liabilities				
Warrant liabilities	\$ 539	\$ —	\$ —	\$ 539
<b>December 31, 2021</b>				
Liabilities				
Warrant liabilities	\$ 1,550	\$ —	\$ —	\$ 1,550

The following table sets forth a summary of the changes in the fair value of the Company's Level 3 financial liabilities for the nine months ended September 30, 2022, which were measured at fair value on a recurring basis:

	Warrant Liability
<b>Balance at December 31, 2021</b>	\$ 1,550
Gain on revaluation of warrants issued in connection with the February 2021, June 2020, December 2019 and May 2019 financings	(1,011)
<b>Balance at September 30, 2022</b>	<u>\$ 539</u>

Refer to *Note 10. Capitalization and Equity Structure – Warrants* for additional information regarding the valuation of warrants

## 5. Inventories

Inventories consisted of the following:

	September 30, 2022	December 31, 2021
Raw materials	\$ 2,845	\$ 2,061
Work in progress	373	145
Finished goods	290	36
Inventories	<u>\$ 3,508</u>	<u>\$ 2,242</u>

## 6. Revenue

The Company's medical device segment (EksoHealth) revenue is primarily generated through the sale and subscription of the EksoNR, the sale of support and maintenance contracts (Ekso Care), and the sale of accessories for the EksoNR. In 2021, the Company moved to a customer subscription sales model and away from a rental sales model. Under the rental sales model, the Company offered customers a short-term rental arrangement of its products to help bridge to a capital purchase since customers typically have challenges in obtaining approvals for capital expenditures. Subscription sales arrangements, however, bypass the customer capital purchase process, are intended to renew annually, and provide a long-term revenue stream.

Revenue from medical device product sales is recognized at the point in time when control of the product transfers to the customer. Transfer of control generally occurs upon shipment from the Company's facility for sales of the EksoNR, software and accessories. Ekso Care support and maintenance contracts extend coverage beyond the Company's standard warranty agreements. The separately priced Ekso Care contracts range from 12 to 48 months. The Company receives payment at the

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inception of the contract and recognizes revenue evenly over the term of the contracts. Revenue from medical device subscriptions is recognized evenly over the initial contract term, typically over 12 to 24 months.

The Company's industrial device segment (EksoWorks) revenue is generated through the sale of the upper body exoskeletons (EksoVest and the EVO) and the support arm (EksoZeroG). Revenue from industrial device sales is recognized at the point in time when control of the product transfers to the customer. Transfer of control generally occurs upon shipment from the Company's facility.

At the end of the second quarter of 2022, the Company ceased commercialization of the EksoZeroG support arm and related products and accessories. The Company may continue to sell parts and accessories to existing EksoZeroG customers to deplete its current stock of EksoZeroG inventories, however, the Company does not expect any future revenues derived from the sale of the EksoZeroG product line to have a material contribution to EksoWorks segment revenues. Refer to Note 13 *Commitment and Contingencies* for further information regarding commitments and obligations related to the EksoZeroG product line.

#### **Deferred Revenue**

For the sale of its products, the Company recognizes revenue upon the transfer of control of products to its customers, typically upon shipment from its facilities. For the subscription of its products, the Company generally recognizes revenue over the subscription term commencing upon the completion of customer training. For service agreements, the Company generally invoices customers at the beginning of the coverage period and records revenue related to the billed amounts over time, equivalent to the coverage period of the maintenance and support contract.

Deferred revenue is comprised mainly of unearned revenue related to service agreement contracts (Ekso Care), but also includes other offerings for which the Company has been paid in advance and earns revenue when the Company transfers control of the product or service.

Deferred revenue consisted of the following:

	<b>September 30, 2022</b>	<b>December 31, 2021</b>
Deferred extended maintenance and support	\$ 2,056	\$ 2,349
Deferred royalties	—	280
Customer advances	35	66
Total deferred revenues	2,091	2,695
Less current portion	(1,059)	(1,220)
Deferred revenues, non-current	<u>\$ 1,032</u>	<u>\$ 1,475</u>

Deferred revenue activity consisted of the following for the nine months ended September 30, 2022:

Beginning balance	\$	2,695
Deferral of revenue		1,014
Recognition of deferred revenue		(1,618)
Ending balance	<u>\$</u>	<u>2,091</u>

As of September 30, 2022, the Company's deferred revenue was \$2,091. The Company expects to recognize approximately \$375 of the deferred revenue during the remainder of 2022, \$897 in 2023, and \$819 thereafter.

In addition to deferred revenue, the Company has a non-cancellable backlog of \$2,527 related to its contracts for subscription units with its customers. These subscription contracts typically have 12 to 24 month terms, and subscription income is recognized on a straight-line basis over the term of the contract.

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In the nine months ended September 30, 2022, the Company recognized revenue of \$280 related to a \$300 upfront royalty payment associated with a license and distribution agreement that expired. The unrecognized royalty balance of \$280 was included in deferred revenue as of December 31, 2021.

As of September 30, 2022 and December 31, 2021, total accounts receivable, net of allowance for doubtful accounts, were \$,536 and \$4,824, respectively, and are included in accounts receivable, net and other assets on the Company's condensed consolidated balance sheets.

The allowance for doubtful accounts reflects the Company's best estimate of probable losses inherent in the accounts receivable balance. The Company determines the allowance based on known troubled accounts, historical experience, and other currently available evidence. Payment terms and conditions vary by contract type, although terms generally include a requirement of payment within 30 to 90 days.

**Disaggregation of Revenue**

The following table disaggregates the Company's revenue by major source for the three months ended September 30, 2022:

	<b>EksoHealth</b>	<b>EksoWorks</b>	<b>Total</b>
Device revenue	\$ 2,338	\$ 72	\$ 2,410
Service and support	484	—	484
Subscriptions	237	14	251
Parts and other	165	19	184
	<u>\$ 3,224</u>	<u>\$ 105</u>	<u>\$ 3,329</u>

The following table disaggregates the Company's revenue by major source for the nine months ended September 30, 2022:

	<b>EksoHealth</b>	<b>EksoWorks</b>	<b>Total</b>
Device revenue	\$ 5,670	\$ 544	\$ 6,214
Service and support	1,440	—	1,440
Subscriptions	678	134	812
Parts and other	438	350	788
Collaborative arrangements	107	—	107
	<u>\$ 8,333</u>	<u>\$ 1,028</u>	<u>\$ 9,361</u>

The following table disaggregates the Company's revenue by major source for the three months ended September 30, 2021:

	<b>EksoHealth</b>	<b>EksoWorks</b>	<b>Total</b>
Device revenue	\$ 1,791	\$ 240	\$ 2,031
Service and support	477	—	477
Rentals and subscriptions	173	66	239
Parts and other	233	27	260
Collaborative arrangements	42	—	42
	<u>\$ 2,716</u>	<u>\$ 333</u>	<u>\$ 3,049</u>

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The following table disaggregates the Company's revenue by major source for the nine months ended September 30, 2021:

	<b>EksoHealth</b>	<b>EksoWorks</b>	<b>Total</b>
Device revenue	\$ 3,900	\$ 625	\$ 4,525
Service and support	1,412	—	1,412
Rentals and subscriptions	510	188	698
Parts and other	427	51	478
Collaborative arrangements	57	—	57
	<u>\$ 6,306</u>	<u>\$ 864</u>	<u>\$ 7,170</u>

**7. Accrued Liabilities**

Accrued liabilities consisted of the following:

	<b>September 30, 2022</b>	<b>December 31, 2021</b>
Salaries, benefits and related expenses	\$ 1,822	\$ 2,015
Device warranty	224	195
Other	126	89
Total	<u>\$ 2,172</u>	<u>\$ 2,299</u>

The current portion of the device warranty liability is classified as a component of Accrued liabilities, while the long-term portion of the device warranty liability is classified as a component of Other non-current liabilities in the condensed consolidated balance sheets. A reconciliation of the changes in the device warranty liability for the three and nine months ended September 30, 2022 is as follows:

	<b>Three Months Ended September 30, 2022</b>	<b>Nine Months Ended September 30, 2022</b>
Balance at beginning of period	\$ 275	\$ 270
Additions for estimated future costs	124	256
Incurring costs	(74)	(201)
Balance at end of period	<u>\$ 325</u>	<u>\$ 325</u>
		<b>Balance as of September 30, 2022</b>
Current portion		\$ 224
Long-term portion		101
Total		<u>\$ 325</u>

**8. Notes Payable, net**

***PWB Term Loan***

In August 2020, the Company entered into a new loan agreement (the "PWB Loan Agreement") with a lender, Pacific Western Bank, and received a loan in the principal amount of \$2,000 (the "PWB Term Loan") that bears interest on the outstanding daily balance at a rate equal to the greater of: (a) 0.50% above the variable rate of interest announced by the lender as its "prime rate" then in effect; or (b) 4.50%. The PWB Loan Agreement created a first priority security interest with respect to substantially all assets of the Company, including proceeds of intellectual property, but expressly excluding intellectual property itself.

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The Company is required to pay accrued interest on the current loan on the 13th day of each month through and including August 13, 2023. The principal balance of the PWB Term Loan matures on August 13, 2023, at which time all unpaid principal and accrued and unpaid interest shall be due and payable in full. The interest rate of the PWB Term Loan is subject to increase in the event of late payments and after occurrence of and during the continuation of an event of default. The Company may elect to prepay the PWB Term Loan at any time, in whole or in part, without penalty or premium.

The PWB Loan Agreement contains a liquidity covenant, which requires that the Company maintain unrestricted cash and cash equivalents in accounts of the lender or subject to control agreements in favor of the lender in an amount equal to at least the outstanding balance of the PWB Term Loan, which was \$2,000 as of September 30, 2022. On September 30, 2022, with cash on hand of \$29,180, the Company was compliant with this liquidity covenant and all other covenants.

The debt issuance costs and debt discounts combined with the stated interest resulted in an effective interest rate of 6.45% and 5.37% for the three and nine months ended September 30, 2022, respectively. The debt issuance costs are amortized to interest expense using the effective interest method over the life of the loan.

The following table presents scheduled principal payments of the Company's PWB term loan as of September 30, 2022:

<b>Period</b>	<b>Amount</b>
Remainder of 2022	\$ —
2023	2,000
Total principal payments	2,000
Less debt discount and issuance cost	4
Note payable, net	<u>\$ 1,996</u>
Current portion	\$ 1,996
Long-term portion	—
Note payable, net	<u>\$ 1,996</u>

#### ***Paycheck Protection Program Loan***

On April 20, 2020, the Company received an unsecured loan (the "PPP Loan") in the principal amount of \$1,086 under the Paycheck Protection Program (the "PPP") administered by the U.S. Small Business Administration (the "SBA"), pursuant to the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). The PPP Loan bore interest at 1.00% per annum, and matured two years after the date of initial disbursement. The terms of the PPP Loan were subsequently revised in accordance with the provisions of the Paycheck Protection Flexibility Act of 2020, (the "PPP Flexibility Act"), which was enacted on June 5, 2020. The PPP Loan was used for payroll costs, costs related to certain group health care benefits and insurance premiums, rent payments, utility payments and interest payments on other debt obligation that were incurred before February 15, 2020. Under the terms of the CARES Act and the PPP Flexibility Act, the Company could apply for and be granted forgiveness for all or a portion of the PPP Loan, with such forgiveness to be determined, subject to limitations (including whether employees of the Company have been terminated and not re-hired by a certain date), based on the use of the PPP Loan proceeds for payment of payroll costs and any payments of mortgage interest, rent, and utilities. The terms of any forgiveness were also subject to further requirements in regulations and guidelines adopted by the SBA.

On June 28, 2021, the Company received notification from the SBA that the Company's forgiveness application for the PPP Loan and accrued interest, totaling \$1,099, was approved in full, and the Company had no further obligations related to the PPP Loan. Accordingly, the Company recorded a gain on the forgiveness of the PPP Loan as gain on forgiveness of note payable on the condensed consolidated statement of operations during the nine months ended September 30, 2021.

#### **9. Lease Obligations**

The Company maintained a five-year operating lease agreement for its headquarters and manufacturing facility in Richmond, California (the "Richmond Lease") which expired at the end of May 2022. The Company continued to maintain its tenancy at this location until the end of August 2022. Pursuant to the terms of the original lease agreement, the Company incurred monthly

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expenses equal to the most recent monthly lease payment under the now expired lease agreement and common area maintenance costs plus a 25% mark-up.

In July 2022, the Company entered into an operating lease agreement for its new headquarters and manufacturing facility in San Rafael, California (the "San Rafael Lease") expiring in October 2026 with the option to renew for an additional three-year period at the prevailing market rate at the time of extension. At the end of August 2022, the Company relocated to its new headquarters and manufacturing facility in San Rafael.

The Company has determined that the new San Rafael Lease constitutes an operating lease under ASC 842 and estimates the lease term as July 2022 through October 2026. The option to extend for a three-year period lacks significant economic incentives and disincentives, which would make exercise reasonably certain. Fixed lease payments for identified lease components over the identified term have been discounted at the Company's estimated incremental borrowing rate as of the date of contract execution and are reflected in the condensed consolidated balance sheets under the captions Lease liabilities, current and Lease liabilities, and the corresponding right of use asset is reflected in the condensed consolidated balance sheets under the caption Right-of-use assets. Non-lease components, such as common area maintenance costs, are excluded from the lease liability calculation and expensed as incurred. The Company records a straight-line monthly rent expense for the San Rafael Lease equal to the sum of all fixed lease payments divided by the number of months in the lease term.

The Company previously maintained a five-year operating lease agreement for its European operations office in Hamburg, Germany, which was originally set to expire in July 2022. In February 2022, the Company executed a new lease agreement with the same landlord for a replacement office in Hamburg, Germany commencing May 1, 2022 and expiring June 30, 2025 with an option to renew for one five-year period. Upon the early termination of the previous lease agreement, it was agreed between the landlord and the Company that access to the previously leased office space would be revoked and the Company would be relieved of its payment obligations for the final two months of the lease term. Consequently, the Company removed the right of use asset and lease liability, \$ 15 and \$16 respectively, recorded in its condensed consolidated financial statements related to the original Hamburg tenancy.

The Company has determined that the new Hamburg lease agreement constitutes a lease under ASC 842 and estimates the lease term as May 2022 through June 2025. The option to extend for a five-year period lacks significant economic incentives and disincentives which would make exercise reasonably certain. Fixed lease payments for identified lease components over the identified term have been discounted at the Company's estimated incremental borrowing rate and are reflected in the condensed consolidated balance sheets under the captions Lease liabilities, current and Lease liabilities, and the corresponding right of use asset is reflected in the condensed consolidated balance sheets under the caption Right-of-use assets. Non-lease components, such as common area maintenance costs, are excluded from the lease liability calculation and expensed as incurred. The Company records a straight-line monthly rent expense for this lease equal to the sum of all fixed lease payments divided by the number of months in the lease term.

The Company's future lease payments as of September 30, 2022, which are presented as Lease liabilities, current and Lease liabilities on the Company's condensed consolidated balance sheets are as follows:

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<b>Periods</b>	<b>Operating Leases</b>
Remainder of 2022	\$ 13
2023	403
2024	415
2025	399
2026	349
Total lease payments	1,579
Less: imputed interest	(168)
Present value of lease liabilities	\$ 1,411
Weighted-average remaining lease term (in years)	3.95
Weighted-average discount rate	5.4 %

Lease expense under the Company's operating leases was \$189 and \$130 for the three months ended September 30, 2022 and 2021, respectively, and \$455 and \$395 for the nine months ended September 30, 2022 and 2021, respectively.

## 10. Capitalization and Equity Structure

### *Summary*

The Company's authorized capital stock at September 30, 2022 and December 31, 2021 consisted of 141,429 shares of common stock and 10,000 shares of preferred stock. As of September 30, 2022 and December 31, 2021, there were 13,127 and 12,693, respectively, shares of common stock issued and outstanding and no shares of preferred stock issued and outstanding.

### *Common Stock*

#### *February 2021 Offering*

In February 2021, the Company entered into an amended and restated underwriting agreement (the "Underwriting Agreement") with H.C. Wainwright & Co., LLC ("Wainwright"), to sell 3,902 shares of the Company's common stock for a public price of \$0.25 per share, for gross proceeds of \$40,000 (the "February 2021 Offering"). The Company received net proceeds of \$36,504 from the February 2021 Offering after deducting underwriting discounts, commissions and estimated offering expenses. Pursuant to the Underwriting Agreement, the Company issued, to certain designees of Wainwright, five-year warrants (the "2021 Warrants") to purchase shares of Common Stock in an amount equal to 7.0% of the aggregate number of shares sold in the February 2021 Offering, or 273 shares, at an exercise price of \$12.81 per share.

#### *At the Market Offering*

In October 2020, the Company entered into an At The Market Offering Agreement (the "ATM Agreement") with H.C. Wainwright & Co., LLC (the "Agent"), under which the Company may issue and sell shares of its common stock, from time to time, to or through the Agent. The Company may offer and sell shares having an aggregate offering price of up to \$7,500 under the registration statement and prospectus supplement filed with the SEC related to such offering. Under the ATM Agreement, shares of the Company's common stock may not be sold for a price lower than \$6.75 per share. The Company did not sell any shares under the ATM agreement during the three and nine months ended September 30, 2022. During the nine months ended September 30, 2021, the Company sold 78 shares of common stock at an average price of \$0.72 for proceeds of \$791, net of commissions and issuance costs. The Company did not sell any shares under the ATM Agreement during the three months ended September 30, 2021. As of September 30, 2022, the Company has \$6,668 available for future offerings under the prospectus filed with respect to the ATM Agreement.

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**Warrants**

Warrants outstanding as of September 30, 2022 and December 31, 2021 were as follows:

Source	Exercise Price	Term (Years)	December 31, 2021	Issued	Exercised	September 30, 2022
2021 Warrants	\$ 12.81	5	273	—	—	273
June 2020 Investor Warrants	\$ 5.18	5.5	127	—	—	127
June 2020 Placement Agent Warrants	\$ 5.64	5	39	—	—	39
December 2019 Warrants	\$ 8.10	5	556	—	—	556
December 2019 Placement Agent Warrants	\$ 8.44	5	52	—	—	52
May 2019 Warrants	\$ 3.52	5	193	—	—	193
			1,240	—	—	1,240

During the nine months ended September 30, 2021, the Company received net proceeds of \$1,417 from the exercise of 358 warrants and issued 300 shares of common stock, respectively, as a result of those exercises. No warrants were exercised during the nine months ended September 30, 2022.

2021 Warrants

In February 2021, the Company issued the 2021 Warrants, exercisable for up to 273 shares of the Company's common stock at an exercise price of \$12.81 per share. The 2021 Warrants were exercisable immediately, and will expire five years from the date of issuance, or on February 11, 2026.

In addition, the 2021 Warrants contain a cashless exercise provision, whereby, if, at the time a holder exercises its 2021 Warrants, a registration statement registering the issuance or the resale of the shares of common stock underlying the 2021 Warrants under the Securities Act is not then effective or available for the issuance of such shares, then in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the aggregate exercise price, the holder may elect to instead receive, upon such exercise (either in whole or in part), the net number of shares of the Company's common stock determined according to a formula set forth in the 2021 Warrants. The 2021 Warrants will be automatically exercised on a cashless basis on their expiration date. The 2021 Warrants could also require payment of liquidated damages by the Company in the form of cash payments in the event of a failure by the Company to timely deliver shares of common stock upon exercise of such warrants.

The 2021 Warrants also contain a put option, under which, if the Company enters into a Fundamental Transaction, as defined in the 2021 Warrants, the Company or any successor entity will, at the option of a holder of a 2021 Warrant, exercisable concurrently with or at any time within 30 days after the consummation of such Fundamental Transaction, purchase such holder's 2021 Warrant by paying to such holder an amount of cash equal to the Black-Scholes value of the remaining unexercised portion of such holder's 2021 Warrant within five trading days after the notice of exercise by the holder of the put option. Because of this put-option provision, the 2021 Warrants are classified as a liability and are marked to market at each reporting date.

The warrant liability related to the 2021 Warrants is measured at fair value upon issuance and at each reporting date using certain estimated inputs, which are classified within Level 3 of the fair value hierarchy. The following assumptions were used in the Black-Scholes Model to measure the fair value of the 2021 Warrants:

	September 30, 2022	December 31, 2021
Current share price	\$ 1.56	\$ 2.65
Conversion price	\$ 12.81	\$ 12.81
Risk-free interest rate	4.22 %	1.13 %
Expected term (years)	3.36	4.11
Volatility of stock	97.7 %	98.3 %

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June 2020 Investor Warrants

In June 2020, the Company issued warrants (the "June 2020 Investor Warrants"), exercisable for up to 874 shares of the Company's common stock at an exercise price of \$5.18 per share. The June 2020 Investor Warrants were immediately exercisable, and will expire five and one-half years from the date of issuance, or on December 10, 2025.

In addition, the June 2020 Investor Warrants contain a cashless exercise provision, whereby, if, at the time a holder exercises its June 2020 Investor Warrants, a registration statement registering the issuance or the resale of the shares of common stock underlying the June 2020 Investor Warrants under the Securities Act is not then effective or available for the issuance of such shares, then in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the aggregate exercise price, the holder may elect to instead receive, upon such exercise (either in whole or in part), the net number of shares of the Company's common stock determined according to a formula set forth in the June 2020 Investor Warrant. The June 2020 Investor Warrants will be automatically exercised on a cashless basis on their expiration date.

The June 2020 Investor Warrants could also require payment of liquidated damages by the Company in the form of cash payments in the event of a failure by the Company to timely deliver shares of common stock upon exercise of such warrants. During the nine months ended September 30, 2022 and 2021, no shares and 270 shares of the June 2020 Investor Warrants were exercised, respectively.

The June 2020 Investor Warrants also contain a put option, under which, if the Company enters into a Fundamental Transaction, as defined in the June 2020 Investor Warrants, the holders of the June 2020 Investor Warrants will be entitled to receive upon exercise of the June 2020 Investor Warrants the kind and amount of securities, cash or other property that the holders would have received had they exercised the June 2020 Investor Warrants immediately prior to such fundamental transaction. Alternatively, the Company or any successor entity will, at the option of a holder of a June 2020 Investor Warrant, exercisable concurrently with or at any time within 30 days after the consummation of such Fundamental Transaction, purchase such holder's June 2020 Investor Warrant by paying to such holder an amount of cash equal to the Black-Scholes value of the remaining unexercised portion of such holder's June 2020 Investor Warrant. Because of this put-option provision, the June 2020 Investor Warrants are classified as a liability and are marked to market at each reporting date.

The warrant liability related to the June 2020 Investor Warrants is measured at fair value at each reporting and exercise date using certain estimated inputs, which are classified within Level 3 of the fair value hierarchy. The following assumptions were used in the Black-Scholes Model to measure the fair value of the June 2020 Investor Warrants:

	<b>September 30, 2022</b>		<b>December 31, 2021</b>
Current share price	\$ 1.56	\$	2.65
Conversion price	\$ 5.18	\$	5.18
Risk-free interest rate	4.23 %		1.11 %
Expected term (years)	3.19		3.94
Volatility of stock	99.5 %		103.9 %

June 2020 Placement Agent Warrants

In June 2020, the Company issued warrants (the "June 2020 Placement Agent Warrants"), exercisable for up to 122 shares of the Company's common stock, to the placement agent for such offering. The June 2020 Placement Agent Warrants have substantially the same form as the June 2020 Investor Warrants, including the put option described above, except that they have an exercise price per share equal to \$5.64, subject to adjustment in certain circumstances, and will expire on June 7, 2025. During the nine months ended September 30, 2022 and 2021, no shares and 83 shares of the June 2020 Placement Agent Warrants were exercised, respectively.

Because of the put-option provision in the June 2020 Placement Agent Warrants, these warrants are classified as a liability and are marked to market at each reporting date.

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The warrant liability related to the June 2020 Placement Agent Warrants is measured at fair value at each reporting and exercise date using certain estimated inputs, which are classified within Level 3 of the fair value hierarchy. The following assumptions were used in the Black-Scholes Model to measure the fair value of the June 2020 Placement Agent Warrants:

	<b>September 30, 2022</b>	<b>December 31, 2021</b>
Current share price	\$ 1.56	\$ 2.65
Conversion price	\$ 5.64	\$ 5.64
Risk-free interest rate	4.19 %	1.03 %
Expected term (years)	2.69	3.44
Volatility of stock	101.4 %	100 %

December 2019 Warrants

In December 2019, pursuant to a securities purchase agreement (the "December 2019 Offering"), the Company issued warrants (the "December 2019 Warrants") to purchase 556 shares of common stock. The December 2019 Warrants are currently exercisable, have an exercise price of \$8.10 per share, and will expire five years from the date they initially became exercisable, or on June 21, 2025.

The December 2019 Warrants also contain a cashless exercise provision and could require cash payments in the event of a failure to timely deliver securities or in the event of insufficient authorized shares. The December 2019 Warrants will be automatically exercised on a cashless basis on their expiration date. The December 2019 Warrants also contain a put option, under which, if the Company enters into a Fundamental Transaction, as defined in the December 2019 Warrants, the Company or any successor entity will, at the option of a holder of a December 2019 Warrant, exercisable concurrently with or at any time within 30 days after the consummation of such Fundamental Transaction, purchase such holder's December 2019 Warrant by paying to such holder an amount of cash equal to the Black-Scholes value of the remaining unexercised portion of such holder's December 2019 Warrant within five trading days after the notice of exercise by the holder of the put option. Because of this put-option provision, the December 2019 Warrants are classified as a liability and are marked to market at each reporting date.

The warrant liability related to the December 2019 Warrants is measured at fair value at each reporting date using certain estimated inputs, which are classified within Level 3 of the fair value hierarchy. The following assumptions were used in the Black-Scholes Model to measure the fair value of the December 2019 Warrants:

	<b>September 30, 2022</b>	<b>December 31, 2021</b>
Current share price	\$ 1.56	\$ 2.65
Conversion price	\$ 8.10	\$ 8.10
Risk-free interest rate	4.19 %	1.04 %
Expected term (years)	2.72	3.47
Volatility of stock	101.3 %	99.7 %

December 2019 Placement Agent Warrants

In December 2019, in connection with the December 2019 Offering, the Company issued warrants to purchase 52 shares of the Company's common stock to the placement agent for such offering (the "December 2019 Placement Agent Warrants"). The December 2019 Placement Agent Warrants have substantially the same form as the December 2019 Warrants, except that they have an exercise price per share equal to \$8.44, subject to adjustment in certain circumstances, and will expire on December 18, 2025.

The warrant liability related to the December 2019 Placement Agent Warrants is measured at fair value at each reporting date using certain estimated inputs, which are classified within Level 3 of the fair value hierarchy. The following assumptions were used in the Black-Scholes Model to measure the fair value of the December 2019 Placement Agent Warrants:

**Ekso Bionics Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
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**(Unaudited)**

	September 30, 2022		December 31, 2021	
Current share price	\$	1.56	\$	2.65
Conversion price	\$	8.44	\$	8.44
Risk-free interest rate		4.09 %		0.96 %
Expected term (years)		2.22		2.97
Volatility of stock		72.9 %		102.9 %

Management has assessed that the likelihood of a Change of Control (as defined in the December 2019 Placement Agent Warrants), occurring during the term of the December 2019 Placement Agent Warrants is low, and that if such an event were to occur, the difference between the cashless exercise value and the warrants fair value is nominal.

#### May 2019 Warrants

In May 2019, pursuant to an underwriting agreement, (the "May 2019 Offering"), the Company issued the warrants (the "May 2019 Warrants") to purchase 444 shares of common stock. The May 2019 Warrants are currently exercisable, have a current exercise price of \$3.52 per share, and will expire five years from the date of their issuance, or on May 24, 2024. The May 2019 Warrants contain a price protection feature, pursuant to which, subject to certain exceptions, if shares of common stock are sold or issued in the future, or securities convertible or exercisable for shares of the Company's common stock are sold or issued in the future, for consideration, or with an exercise price or conversion price, as applicable, per share less than the exercise price per share then in effect for the May 2019 Warrants, the exercise price of the May 2019 Warrants is reduced to the consideration paid for, or the exercise price or conversion price of, as the case may be, the securities issued in such offering. Pursuant to this provision, in connection with the June 2020 Offering, the exercise price of the May 2019 Warrants was reduced to \$3.52 per share, being the amount that is equal to the lower of (x) the consideration paid for the securities issued in the June 2020 Offering, or \$4.51 per share, (y) the lowest exercise price of the June 2020 Investor Warrants, or \$5.18, and (z) the lowest one-day volume-weighted average price of the Company's Common Stock on the Nasdaq Capital Market as measured each day during the five trading day period starting on June 8, 2020, rounded to the nearest share, or \$3.52. During the nine months ended September 30, 2022 and 2021, no shares and 5 shares of the May 2019 Warrants were exercised, respectively.

In addition, if the Company effects or enters into any issuance of common stock or options or convertible securities exercisable for or convertible into common stock at a price which varies or may vary with the market price of the shares of the Company's common stock, subject to certain exceptions, a May 2019 Warrant holder may, at the time of exercise of the holder's warrant, elect to exercise the warrant at such variable price.

The May 2019 Warrants include a put option, whereby while the May 2019 Warrants are outstanding, if the Company enters into a Change of Control, as defined in the May 2019 Warrants, the Company or any successor entity will, at the option of a 2019 Warrant holder exercise within 90 days after the public disclosure of the Change of Control transaction, purchase such holder's May 2019 Warrants by paying to such holder an amount of cash equal to the Black-Scholes value of the remaining unexercised portion of such warrants on the later date of consummation of the Change of Control transaction or two trading days after the notice of such request. Because of this put option provision, the May 2019 Warrants are classified as a liability and are marked to market at each reporting date.

The warrant liability related to the May 2019 Warrants is measured at fair value at each reporting and exercise date using certain estimated inputs, which are classified within Level 3 of the fair value hierarchy. Because of the price protection feature contained in the May 2019 Warrants, the Company uses a combination of the Black-Scholes Model and the Lattice Model to estimate the fair value of the warrants at each reporting period. The following assumptions were used in the Black-Scholes Model in combination with the Lattice Model to measure the fair value of the May 2019 Warrants:

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**Ekso Bionics Holdings, Inc.**  
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(\$ and share amounts in thousands, except per share amounts)  
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	September 30, 2022	December 31, 2021
Share price	\$ 1.56	\$ 2.65
Conversion price	\$ 3.52	\$ 3.52
Risk-free interest rate	4.16 %	0.83 %
Expected term (years)	1.6	2.4
Volatility of stock	73.7 %	109.1 %

Management has assessed that the likelihood of a Change of Control occurring during the term of the warrants is low, and that if such an event were to occur, the difference between the cashless exercise value and the May 2019 Warrants fair value is nominal.

**11. Stock-based Compensation**

*Shares available to grant*

On June 9, 2022, the Company held its 2022 annual meeting of stockholders and ratified an amendment to the Company's Amended and Restated 2014 Equity Incentive Plan to increase the total number of shares of common stock authorized for issuance by 550 shares. As of September 30, 2022, the total shares authorized for grant under the 2014 Plan was 2,524, of which 654 were available for future grants.

*Stock Options*

The following table summarizes information about the Company's stock options outstanding as of September 30, 2022, and activity during the nine months then ended:

	Stock Awards	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value
Balance as of December 31, 2021	491	\$ 32.53		
Options forfeited	(51)	12.66		
Options cancelled	(169)	29.82		
Balance as of September 30, 2022	<u>271</u>	\$ 37.97	5.51	\$ —
Vested and expected to vest at September 30, 2022	<u>271</u>	\$ 37.97	5.51	\$ —
Exercisable as of September 30, 2022	<u>259</u>	\$ 39.24	5.44	\$ —

As of September 30, 2022, total unrecognized compensation cost related to unvested stock options was \$9. This amount is expected to be recognized as stock-based compensation expense in the Company's condensed consolidated statements of operations and comprehensive loss over the remaining weighted average vesting period of 1.02 years.

There were no stock options awarded for the three and nine months ended September 30, 2022 or the three and nine months ended September 30, 2021.

*Restricted Stock Units*

The Company issues time-based restricted stock units ("RSUs") and performance-based restricted stock units ("PSUs") to employees and non-employee members of the Board. Each RSU and PSU represents the right to receive one share of the Company's common stock upon vesting and subsequent settlement. PSUs vest upon achievement of performance targets based on the Company's annual operating plan.

**Ekso Bionics Holdings, Inc.**  
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(\$ and share amounts in thousands, except per share amounts)  
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The fair values of RSUs and PSUs are determined based on the closing price of the Company's common stock on the date of grant.

Combined RSU and PSU activity for the nine months ended September 30, 2022 is summarized below:

	Number of Shares	Weighted- Average Grant Date Fair Value
Unvested as of December 31, 2021	655	\$ 5.63
Granted	896	2.05
Vested	(409)	4.65
Forfeited	(193)	5.52
Unvested at September 30, 2022	949	\$ 2.72

As of September 30, 2022, \$2,051 of total unrecognized compensation expense related to unvested RSUs and PSUs was expected to be recognized over a weighted average period of 1.61 years.

**Compensation Expense**

Total stock-based compensation expense related to options, RSUs and PSUs granted to employees and non-employee members of the board of directors is included in the condensed consolidated statements of operations and comprehensive loss as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Sales and marketing	\$ 61	\$ 119	\$ 202	\$ 310
Research and development	90	74	273	184
General and administrative	386	470	1,143	1,045
	\$ 537	\$ 663	\$ 1,618	\$ 1,539

**401(k) Plan Share Match**

During the nine months ended September 30, 2022 and 2021, the Company issued 68 and 26 shares of common stock with a fair value of \$76 and \$152, to eligible employees' deferral accounts for the 401(k) Plan matching contribution representing 50% of each eligible employee's elected deferral (up to the statutory limit) for the fiscal years ended December 31, 2021 and 2020, respectively.

The expense related to the accrual for the 401(k) plan share matching was \$47 and \$141 for the nine months ended September 30, 2022 and 2021, respectively.

**12. Income Taxes**

There were no material changes to the unrecognized tax benefits in the nine months ended September 30, 2022, and the Company does not expect significant changes to unrecognized tax benefits through the end of the fiscal year. Because of the Company's history of tax losses, all years remain open to tax examination.

**13. Commitments and Contingencies**

**Material Contracts**

The Company enters various license, research collaboration and development agreements, which provide for payments to the Company primarily for technology transfer and license fees, and royalty payments on sales.

**Ekso Bionics Holdings, Inc.**  
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**(Unaudited)**

The Company has two license agreements with the Regents of the University of California to maintain exclusive rights to certain patents. The Company is required to pay 1% of net sales of licensed medical devices sold to entities other than the U.S. government. In addition, the Company is required to pay 21% of consideration collected from any sub-licensee for the grant of the sub-license.

The Company entered into a research and development collaboration agreement in December 2021 with a party that develops technologies having utility in robotic exoskeletons from research and development activities associated with a specific set of government funded research projects. Since January 2022, the Company has assisted with research and development activities in exchange for access to a worldwide, royalty free, transferable, sublicensable, exclusive license to design and market products that use or incorporate the jointly-developed technology within Ekso's target market segments.

Under a license agreement with the developer of certain intellectual property related to mechanical balance and support arm technologies, which granted the Company an exclusive license with respect to the technology and patent rights for certain fields of use, the Company was required to pay the developer a single-digit royalty on net receipts, subject to a \$50 annual minimum royalty requirement. At the end of the second quarter of 2022, the Company ceased commercialization of the EksoZeroG support arm and is no longer required to pay the developer any further royalties.

***Purchase Obligations***

The Company purchases components from a variety of suppliers and uses contract manufacturers to provide manufacturing services for its products. Purchase obligations are defined as agreements that are enforceable and legally binding and that specify all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction. Due to a variety of factors, including the COVID-19 pandemic, various materials the Company used to manufacture its products are currently experiencing shortages and supply chain disruptions. Electronic components in general, semiconductor chips, battery cells, metals and plastics, all of which are used in the Company's products, are also in shorter supply compared to prior periods, and the Company is also experiencing longer lead times for manufacturing services such as machining and tool making and increased pricing. Numerous factors, such as the ongoing pandemic or further trade tensions between the U.S. and China, may prolong or deepen these challenges.

The Company had purchase obligations primarily for purchases of inventory and manufacturing related service contracts totaling \$2,203 as of September 30, 2022, which are expected to be paid within one year, and \$1,446 as of December 31, 2021. Timing of payments and actual amounts paid may be different depending on the time of receipt of goods or services or changes to agreed-upon amounts for some obligations. Timing of payments and actual amounts paid may be different depending on the time of receipt of goods or services or changes to agreed-upon amounts for some obligations.

The Company has operating lease commitments totaling \$1,579 payable over 49 months related to the San Rafael and Hamburg leases disclosed in Note 9 *Lease Obligations*.

***Contingencies***

In the normal course of business, the Company is subject to various legal matters. In the opinion of management, the resolution of such matters will not have a material adverse effect on the Company's condensed consolidated financial statements.

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**Ekso Bionics Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
(\$ and share amounts in thousands, except per share amounts)  
(Unaudited)

**14. Net Loss Per Share**

The following table sets forth the computation of basic and diluted net loss per share:

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2022</b>	<b>2021</b>	<b>2022</b>	<b>2021</b>
<b>Numerator:</b>				
Net loss applicable to common stockholders, basic and diluted	\$ (4,304)	\$ (1,958)	\$ (11,902)	\$ (6,901)
Adjustment for gain on revaluation of warrant liabilities	—	(158)	—	(643)
Net loss applicable to common stockholders, diluted	\$ (4,304)	\$ (2,116)	\$ (11,902)	\$ (7,544)
<b>Denominator:</b>				
Weighted-average number of shares, basic	13,071	12,661	12,896	12,029
Effect of dilutive warrants	—	49	—	104
Weighted-average number of shares, diluted	13,071	12,710	12,896	12,133
Net loss per share, basic	\$ (0.33)	\$ (0.15)	\$ (0.92)	\$ (0.57)
Net loss per share, diluted	\$ (0.33)	\$ (0.17)	\$ (0.92)	\$ (0.62)

The following table sets forth potential shares of common stock that are not included in the calculation of diluted net loss per share because to do so would be anti-dilutive as of the end of each period presented:

	<b>Three Months Ended September 30,</b>		<b>Nine Months Ended September 30,</b>	
	<b>2022</b>	<b>2021</b>	<b>2022</b>	<b>2021</b>
Options to purchase common stock	271	499	271	499
Restricted stock units	949	596	949	596
Warrants for common stock	1,240	1,047	1,240	881
Total common stock equivalents	2,460	2,142	2,460	1,976

**15. Segment Disclosures**

The Company has two reportable segments: EksoHealth and EksoWorks. The EksoHealth segment designs, engineers, manufactures, and markets exoskeletons for applications in the medical markets. The EksoWorks segment designs, engineers, manufactures, and markets exoskeleton devices to allow able-bodied users to perform difficult repetitive work for extended periods. The reportable segments are each managed separately because they serve distinct markets.

The Company evaluates performance and allocates resources based on segment gross profit margin. The Company does not consider net assets as a segment measure and, accordingly, assets are not allocated.

**Ekso Bionics Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
**(\$ and share amounts in thousands, except per share amounts)**  
**(Unaudited)**

Segment reporting information is as follows:

	<u>EksoHealth</u>	<u>EksoWorks</u>	<u>Total</u>
Three months ended September 30, 2022			
Revenue	\$ 3,224	\$ 105	\$ 3,329
Cost of revenue	1,524	119	1,643
Gross profit	<u>\$ 1,700</u>	<u>\$ (14)</u>	<u>\$ 1,686</u>
Three months ended September 30, 2021			
Revenue	\$ 2,716	\$ 333	\$ 3,049
Cost of revenue	1,044	198	1,242
Gross profit	<u>\$ 1,672</u>	<u>\$ 135</u>	<u>\$ 1,807</u>
	<u>EksoHealth</u>	<u>EksoWorks</u>	<u>Total</u>
Nine months ended September 30, 2022			
Revenue	\$ 8,333	\$ 1,028	\$ 9,361
Cost of revenue	4,170	655	4,825
Gross profit	<u>\$ 4,163</u>	<u>\$ 373</u>	<u>\$ 4,536</u>
Nine months ended September 30, 2021			
Revenue	\$ 6,306	\$ 864	\$ 7,170
Cost of revenue	2,326	510	2,836
Gross profit	<u>\$ 3,980</u>	<u>\$ 354</u>	<u>\$ 4,334</u>

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**Ekso Bionics Holdings, Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
**(\$ and share amounts in thousands, except per share amounts)**  
**(Unaudited)**

The Company operates in the following regions: (1) Americas, (2) Europe, the Middle East, and Africa (EMEA), and (3) Asia Pacific (APAC). Individual countries with revenue greater than 10% of total revenue for the three and nine months ended September 30, 2022 and 2021 are disclosed separately from the regional totals. Geographic information for revenue based on location of customers is as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Americas				
United States	\$ 1,475	\$ 1,777	\$ 4,889	\$ 3,914
Other	73	25	249	105
Americas	1,548	1,802	5,138	4,019
EMEA				
Germany	237	313	487	845
Romania	449	121	449	121
Other	372	394	1,472	1,356
EMEA	1,058	828	2,408	2,322
APAC				
Indonesia	668	—	668	—
Other	55	419	1,147	829
APAC	723	419	1,815	829
Total Revenue	\$ 3,329	\$ 3,049	\$ 9,361	\$ 7,170

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

In this Quarterly Report, the "Company", "we", "its" and "our" refers to Ekso Bionics Holdings, Inc. and its wholly-owned subsidiaries. The following discussion of our financial condition and results of operations should be read in conjunction with the condensed consolidated financial statements and the notes thereto included elsewhere in this Quarterly Report on Form 10-Q for the quarter ended September 30, 2022 (this "Quarterly Report") and in our Annual Report on Form 10-K for the fiscal year ended December 31, 2021, which is incorporated herein by reference (the "Annual Report").

This Quarterly Report contains forward-looking statements. These forward-looking statements include statements other than statements of historical facts contained or incorporated by reference in this Quarterly Report, including statements regarding (i) the plans and objectives of management for future operations, including those relating to the design, development and commercialization of exoskeleton products for humans, (ii) a projection of income (including income/loss), earnings (including earnings/loss) per share, capital expenditures, dividends, capital structure or other financial items, (iii) our future financial performance, including any such statement contained in a discussion and analysis of financial condition by management or in the results of operations included pursuant to the rules and regulations of the SEC, (iv) our beliefs regarding the potential for commercial opportunities for exoskeleton technology in general and our exoskeleton products in particular, (v) our beliefs regarding potential clinical and other health benefits of our medical devices, and (vi) the assumptions underlying or relating to any statement described in points (i), (ii), (iii), (iv) or (v) above. The words "may," "might," "would," "should," "could," "project," "estimate," "pro-forma," "predict," "potential," "strategy," "anticipate," "attempt," "develop," "plan," "help," "believe," "continue," "intend," "expect," "future," and similar expressions (including the negative of any of the foregoing) are intended to identify forward-looking statements.

The following factors, among others, including those described in the section titled "Risk Factors" included in our Annual Report, as updated and supplemented in this Quarterly Report under the heading "Part II – Item 1A. Risk Factors," could cause our future results to differ materially from those expressed in the forward-looking information:

- our ability to obtain adequate financing to fund operations and to develop or enhance our technology;
  - our ability to obtain or maintain regulatory approval to market our medical devices;
  - our ability to complete clinical trials on a timely basis and that completed clinical trials will be sufficient to support commercialization of our products;
  - the anticipated timing, cost and progress of the development and commercialization of new products or services, and improvements to our existing products, and related impacts on our profitability and cash position;
  - our ability to effectively market and sell our products and expand our business, both in unit sales and product diversification;
  - our ability to achieve broad customer adoption of our products and services;
  - existing or increased competition;
  - rapid changes in technological solutions available to our markets;
  - volatility with our business, including long and variable sales cycles, which could have a negative impact on our results of operations for any given quarter;
  - changes to our domestic or international sales and operations;
  - our ability to obtain or maintain patent protection for our intellectual property;
  - the scope, validity and enforceability of our and third-party intellectual property rights;
  - significant government regulation of medical devices and the healthcare industry;
  - our ability to receive regulatory clearance from certain government authorities, including any conditions, limitations or restrictions placed on such approvals;
  - our customers' ability to get third-party reimbursement for our products and services associated with them;
  - the potential for our products to be subject to voluntary or involuntary recall;
  - our product liability insurance may not adequately cover potential claims;
  - warrant claims and our accelerated maintenance program results in additional operating costs to us;
  - our failure to implement our business plan or strategies;
  - our ability to successfully consummate acquisitions on acceptable terms and to integrate any such acquisitions;
  - our early termination of leases, difficulty filling vacancies or negotiating improved lease terms;
  - our ability to retain or attract key employees;
  - scope, scale and duration of the impact of outbreaks of a pandemic disease, such as COVID-19 (coronavirus);
  - stock volatility or illiquidity;
  - our ability to maintain adequate internal controls over financial reporting;
  - the impacts of foreign currency price fluctuations; and
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- overall economic and market conditions.

Although we believe that the assumptions underlying the forward-looking statements and forward-looking information contained herein are reasonable, any of the assumptions could be inaccurate, and therefore, such statements and information included in this Quarterly Report may not prove to be accurate. In light of the significant uncertainties inherent in the forward-looking statements and forward-looking information included herein, the inclusion of such statements and information should not be regarded as a representation by us or any other person that the results or conditions described in such statements and information or that our objectives and plans will be achieved. Such forward-looking statements speak only as of the date of this Quarterly Report. Except as required by law, we undertake no obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements.

## Overview

### Our Business

We design, develop, and market exoskeleton products that augment human strength, endurance and mobility. Our exoskeleton technology serves multiple markets and can be utilized both by able-bodied persons and by persons with physical disabilities. We have sold or leased devices that (i) enable individuals with neurological conditions affecting gait, including ABI, SCI and MS, to rehabilitate, and in some cases, to walk again, (ii) assist individuals with a broad range of upper extremity impairments, and (iii) allow industrial workers to perform difficult repetitive work for extended periods.

We believe that the commercial opportunity for exoskeleton technology adoption is accelerating as a result of recent advancements in material technologies, electronic and electrical engineering, control technologies, and sensor and software development. Taken individually, many of these advancements have become ubiquitous in peoples' everyday lives. Supported by an industry leading intellectual property portfolio, we believe that we have learned how to integrate these existing technologies and wrap the result around a human being efficiently, elegantly and safely. We further believe this endeavor is achievable across a broad spectrum of applications, from persons with lower limb paralysis to able-bodied users.

#### *EksoHealth*

EksoHealth is our business unit focused on developing and marketing exoskeletons for medical applications.

Our leading product in EksoHealth, the EksoNR, is a robotic exoskeleton used to provide physical therapy for patients with lower extremity impairment. EksoNR includes unique features designed specifically to assist physical therapists and other clinicians to teach patients to walk again after suffering a neurological impairment. Typical conditions that can be treated with the assistance of EksoNR include ABIs, such as stroke and traumatic brain injuries, as well as SCIs, MS, and others. The benefits of EksoNR rehabilitation can include earlier mobilization of patients, longer and more intense rehab sessions, and increased quality of sessions as compared to alternative therapies. EksoNR is typically used in clinical settings, most commonly at inpatient rehab facilities and stroke centers.

EksoUE, our exoskeleton device purposed for upper-extremity medical applications, is a wearable upper body exoskeleton used for rehabilitation. EksoUE is designed to assist patients with a broad range of upper extremity impairments and aims to provide them with a wider active range of motion and increased endurance for rehabilitation sessions of higher intensity.

#### *EksoWorks*

EksoWorks is our business unit focused on developing, marketing, and selling exoskeletons and other assistive tools for industrial applications. Target users for these devices are generally able-bodied, and, as such, the technologies are primarily employed to reduce worker fatigue. The benefits of fatigue reduction can include reduced rates of injuries, higher productivity, increased worker morale, and lower employee turnover. EksoWorks products are primarily sold to companies deploying the technologies for use directly in their operations.

Our wearable exoskeleton products in EksoWorks include EksoVest and the new EVO, both of which are designed to support the weight of a worker's arms and tools during overhead applications, reducing the fatigue associated with working at or above shoulder height for extended periods. These products are currently targeted at end users in the aerospace, automotive, manufacturing, and construction trades.

Prior to ceasing commercialization of the EksoZeroG support arm and related products and accessories, at the end of the second quarter of 2022, we manufactured and sold our EksoZeroG tool holder, which could mount on an aerial lift platform or

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scaffolding. Refer to Note 6. *Revenue Recognition* in the notes to our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q for more information.

### **Third Quarter 2022 Highlights**

- Booked a total of 33 EksoNR units in the third quarter of 2022
- Reported revenue of \$3.3 million in the third quarter of 2022, an increase of 9% year-over-year
- Strong cash position of \$29.2 million as of September 30, 2022

### Economic and Industry Trends

Our revenue is highly dependent on market demand for our exoskeleton products. This market demand is influenced by many factors including the level of awareness of robotic exoskeleton rehabilitation among the rehabilitation clinics with significant ABI and SCI populations, the imperatives among construction and manufacturing companies to drive adoption of improved safety and health practices, as well as conditions relating to overall economic growth and general business activity. Difficult and challenging economic conditions, including growing supply chain issues amidst an increasingly inflationary environment, could lead to increased price-based competition. In particular, the effects of such increasing price-based competition may have an especially significant impact on certain products that we offer, including the EksoNR, which have a lengthy sale and purchase order cycle because they are major capital expenditure items and generally require the approval of senior management at purchasing institutions. Furthermore, our business includes operations in the Americas, EMEA and APAC, so we are affected by demand for our products in those regions, as well as the strengthening or weakening of local currencies relative to the U.S. Dollar.

The COVID-19 pandemic and related public health measures have also materially affected how we and our customers are operating our businesses, and have materially affected our operating results, as demand for our exoskeleton products decreased as many inpatient rehabilitation facilities temporarily shifted priorities and delayed capital expenditures. While the duration and extent to which this will impact our future results remain uncertain, we have seen certain recovery in the demand for our exoskeleton products following the gradual reopening and recovery of the broader global economy, and we believe the clinical need for our products has not diminished, as evidenced by clinical data showing the increased prevalence of strokes during the pandemic. Although concerns about the emergence of new, more infectious variants of the coronavirus remain, we have gradually resumed in-person engagements in addition to virtual meetings with our current and prospective customers through conferences, training events and educational demos to offer our support and showcase the value of our Ekso devices. Further, now that our clinical team is fully vaccinated and are active onsite at U.S. rehab centers, we expect to see an uptick in live in-person interactions going forward. Although market uncertainties related to the pandemic make it difficult for us to project the full impact on our business and customers, we believe that we are well-positioned to serve our customers when business conditions begin to normalize.

Throughout the pandemic, our top priority has been to protect the health and safety of our employees and our consumers. Employees who are essential to the daily operations are required to work in our facilities where enhanced personal protective equipment is in place. In addition, we have a hybrid work from home and office policy for our employees whose jobs can be performed outside of the office.

Management continues to actively monitor the global situation, including the geopolitical instability arising out of military conflict and escalating tensions between Russia and Ukraine, and its effects on our financial position and operations.

### Management Changes

On January 14, 2022, Jack Peurach, our former President and Chief Executive Officer, notified us of his intention to resign as an officer and member of the Board of Directors of the Company to pursue other endeavors. On January 20, 2022, our Board and Mr. Peurach reached an understanding regarding his decision to leave the Company and entered into an Executive Separation and Release Agreement pursuant to which Mr. Peurach's last day of service as the President, Chief Executive Officer and as a member of the Company's Board was January 21, 2022.

In addition, our Board of Directors appointed Steven Sherman, who currently serves and previously had served as the Chairman of our Board, to become Chief Executive Officer of the Company effective January 22, 2022. Mr. Sherman continues to serve as the Chairman of the Board of the Company, and Board member Stanley Stern has been designated the Board's lead

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independent director. Furthermore, our Board of Directors appointed Scott Davis to become President and Chief Operating Officer effective January 22, 2022.

On March 4, 2022, William Shaw, our former Chief Commercial Officer, notified our Board of Directors of his intention to resign as Chief Commercial Officer of the Company effective March 11, 2022 in connection with his retention as an employee at another company.

On May 23, 2022, John F. Glenn our former Chief Financial Officer, notified the Company of his decision to resign from his position as the Company's Chief Financial Officer, effective June 17, 2022, in connection with his retention as an employee at another public company. Mr. Glenn's resignation is not the result of any dispute or disagreement with the Company including any matters relating to the Company's accounting practices or financial reporting. On May 25, 2022, our board of directors approved the appointment of Jerome Wong as Interim Chief Financial Officer, effective upon Mr. Glenn's departure. Mr. Wong was approved by our board of directors as Chief Financial Officer, Corporate Secretary and Principal Financial Officer on October 26, 2022, after serving as Interim Chief Financial Officer from May 25, 2022 to October 25, 2022.

### **Critical Accounting Policies and Estimates**

Our discussion and analysis of our financial condition and results of operations is based upon our condensed consolidated financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these condensed consolidated financial statements requires us to make estimates, judgments and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses, and the related disclosure of contingent assets and liabilities. We base our estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances. Our estimates form the basis for our judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates. Our most critical accounting estimates include:

- the standalone selling prices used to allocate the contract consideration to the individual performance obligations in our device sales arrangements, which impacts revenue recognition;
- the unobservable inputs and assumptions used by management in estimating the fair value of our warrant liabilities, which impacts net income or loss;
- the valuation of inventory, which impacts gross profit margins; and
- the estimates made regarding the recoverability of our net deferred tax asset, which impacts our financial condition.

#### *Standalone Selling Prices*

Our device sales arrangements contain multiple products and services, most often including the device(s) and service, both of which we have identified as distinct performance obligations. Revenue is allocated to each performance obligation based on its relative standalone selling price. Standalone selling prices are based on observable prices at which we separately sell the products or services. If a standalone selling price is not directly observable, then we estimate the standalone selling prices considering market conditions and entity-specific factors including, but not limited to, features and functionality of the products and services, geographies, type of customer, and gross margin targets. Changes in the relative standalone selling price between devices and service can have an impact on how transaction prices are allocated between revenue and deferred revenue.

#### *Warrant Liabilities*

We use the Black-Scholes option-pricing model to value our warrant liabilities at each reporting period, which requires the input of highly subjective assumptions, most notably the estimated volatility of our common stock over the expected term. We use our historical common stock volatility to estimate expected volatility over the warrant terms. Management must also make uncertain estimates regarding the likelihood and timing of certain future events for application of the Lattice Model for the valuation of certain warrants. Changes in these assumptions could have potential material impacts on the estimated fair value of warrant liabilities. During the three months ended September 30, 2022, management made no changes to its estimates regarding the likelihood of future events, but revised its estimates regarding the timing of future events. We do not believe the revision resulted in a material impact to the estimated fair value of warrant liabilities measured using the Lattice Model.

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*Inventory Valuation*

Inventory is stated at the lower of cost or net realizable value. Cost is computed using the standard cost method which approximates actual cost on a first-in, first-out basis. The cost basis of our inventory is reduced for any products that are considered excessive or obsolete based upon assumptions about future demand and market conditions. If actual future demand or market conditions are less favorable than those projected by management, additional inventory write-downs may be required, which could have a material adverse effect on the results of our operations.

*Deferred Tax Asset*

We estimate a valuation allowance in consideration of the realizability of our net deferred tax assets, primarily based on our assessment of the timing, likelihood and amounts of potential future income during which such items become deductible. It is inherently difficult and subjective to estimate such amounts, as we must determine the probability of various possible outcomes and estimate future amounts. Management does not believe it is more likely than not that we will generate future income in a timeframe and amount sufficient to realize our net deferred tax assets. Changes in management's estimate of future income in the timeframe during which the temporary differences and carryforwards comprising our deferred tax assets become deductible could result in a material impact to our financial position including the recognition of a net deferred tax asset.

*Accounting Policies*

An accounting policy is considered to be critical if it requires an accounting estimate to be made based on assumptions about matters that are highly uncertain at the time the estimate is made, and if different estimates that reasonably could have been used, or changes in the accounting estimate that are reasonably likely to occur, could materially impact the condensed consolidated financial statements. We believe that our critical accounting policies reflect the more significant estimates and assumptions used in the preparation of the condensed consolidated financial statements. Refer to Note. 2 Basis of Presentation and Summary of Significant Accounting Policies and Estimates in the notes to our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

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**Results of Operations**

The following table presents our results of operations for the three months ended September 30, 2022 and 2021 (in thousands, except percentages):

	<b>Three Months Ended September 30,</b>		<b>Change</b>	<b>% Change</b>
	<b>2022</b>	<b>2021</b>		
Revenue	\$ 3,329	\$ 3,049	\$ 280	9 %
Cost of revenue	1,643	1,242	401	32 %
Gross profit	1,686	1,807	(121)	(7)%
<i>Gross profit %</i>	<i>51 %</i>	<i>59 %</i>		
<b>Operating expenses:</b>				
Sales and marketing	1,742	1,685	57	3 %
Research and development	936	618	318	51 %
General and administrative	2,662	2,293	369	16 %
Total operating expenses	5,340	4,596	744	16 %
Loss from operations	(3,654)	(2,789)	(865)	31 %
<b>Other (expense) income, net:</b>				
Interest expense	(34)	(24)	(10)	42 %
Gain on revaluation of warrant liabilities	112	1,125	(1,013)	n/m(1)
Unrealized loss on foreign exchange	(732)	(268)	(464)	n/m(1)
Other income (expense), net	4	(2)	6	n/m(1)
Total other (expense) income, net	(650)	831	(1,481)	(178)%
Net loss	\$ (4,304)	\$ (1,958)	\$ (2,346)	120 %

(1) *Not Meaningful*

**Revenue**

Revenue increased \$0.3 million, or 9%, for the three months ended September 30, 2022, compared to the same period of 2021. Revenue in the third quarter of 2022 included approximately \$3.2 million in EksoHealth revenue and approximately \$0.1 million in EksoWorks revenue.

EksoHealth revenue increased approximately \$0.5 million for the three months ended September 30, 2022, compared to the same period of 2021. The increase in revenue was primarily driven by an increase in the volume of EksoNR device sales in the EMEA and APAC regions. EksoWorks revenue decreased approximately \$0.2 million for the three months ended September 30, 2022, compared to the same period of 2021. The decrease in EksoWorks revenue was primarily driven by a reduction in the volume of EVO and EksoVest sales.

**Gross Profit**

Gross profit decreased 7% for the three months ended September 30, 2022 compared to the same period of 2021, driven by a decrease in gross profit margins in EksoHealth and EksoWorks segments. Gross margin was approximately 51% for the three months ended September 30, 2022, compared to a gross margin of 59% for the same period of 2021. The overall decrease in gross margin was primarily due to the increase in EksoHealth service costs for both labor and materials usage, and increases in inventory costs due to the continued global supply shortage. Additionally, the average selling price for the EksoNR, on an aggregate basis across all regions, for the three months ended September 30, 2022 decreased 12% compared to the same period in 2021 as a result of a relative increase of indirect device sales placed through our distributors. The decrease in gross margin was partially offset by the relative increase in EksoHealth revenue, which generally has higher gross margins, in overall revenue composition.

EksoHealth service costs increased due to increased headcount, significant increases in the cost of shipping and freight related to service activities, and the servicing of on an increased number of customer units.

### Operating Expenses

Research and development expenses increased \$0.3 million, or 51%, for the three months ended September 30, 2022, compared to the same period of 2021, primarily due to an increase in product development activity mostly related to sustaining engineering activity for the EksoNR and the development of next generation products.

General and administrative expenses increased \$0.4 million, or 16%, for the three months ended September 30, 2022, compared to the same period of 2021, primarily due to an increase in business development activities and costs associated with our move to our new headquarters and manufacturing facility in San Rafael, California.

### Total Other (Expense) Income, Net

Gain on revaluation of warrant liabilities was \$0.1 million for the three months ended September 30, 2022, and was associated with the revaluation of warrants issued in 2019, 2020 and 2021. Gain on warrant liabilities was \$1.1 million for the three months ended September 30, 2021, and was associated with the revaluation of warrants issued in 2019, 2020 and 2021. Gains and losses on revaluation of warrants are primarily driven by changes in our stock price and the risk-free rate.

Unrealized loss on foreign exchange for the three months ended September 30, 2022 was \$0.7 million compared to an unrealized loss on foreign exchange of \$0.3 million for the same period of 2021. The unrealized loss was primarily the result of foreign currency revaluations of our inter-company monetary assets and liabilities.

The following table presents our results of operations for the nine months ended September 30, 2022 and 2021 (in thousands, except percentages):

	Nine Months Ended September 30,		Change	% Change
	2022	2021		
Revenue	\$ 9,361	\$ 7,170	\$ 2,191	31 %
Cost of revenue	4,825	2,836	1,989	70 %
Gross profit	4,536	4,334	202	5 %
<i>Gross profit %</i>	<i>48 %</i>	<i>60 %</i>		
Operating expenses:				
Sales and marketing	5,212	5,265	(53)	(1) %
Research and development	2,855	1,930	925	48 %
General and administrative	7,589	6,415	1,174	18 %
Total operating expenses	15,656	13,610	2,046	15 %
Loss from operations	(11,120)	(9,276)	(1,844)	20 %
Other (expense) income, net:				
Interest expense	(90)	(77)	(13)	17 %
Gain on revaluation of warrant liabilities	1,011	2,011	(1,000)	n/m(1)
Gain on forgiveness of note payable	—	1,099	(1,099)	n/m(1)
Unrealized loss on foreign exchange	(1,704)	(640)	(1,064)	n/m(1)
Other income (expense), net	1	(18)	19	(106) %
Total other (expense) income, net	(782)	2,375	(3,157)	(133) %
Net loss	<u>\$ (11,902)</u>	<u>\$ (6,901)</u>	\$ (5,001)	72 %

(1) Not Meaningful

### **Revenue**

Revenue increased \$2.2 million, or 31%, for the nine months ended September 30, 2022, compared to the same period of 2021. Revenue for the nine months ended September 30, 2022 included approximately \$8.3 million in EksoHealth revenue and approximately \$1.0 million in EksoWorks revenue.

EksoHealth revenue increased approximately \$2.0 million, or 32%, for the nine months ended September 30, 2022, compared to the same period of 2021. The increase in revenue was primarily driven by an increase in the volume of EksoNR device sales in the Americas, EMEA, and APAC regions. EksoWorks revenue increased approximately \$0.2 million, or 19%, for the nine months ended September 30, 2022, compared to the same period of 2021. The increase in revenue was primarily related to the recognition of previously deferred prepaid royalties associated with a license and distribution agreement that expired.

### **Gross Profit**

Gross profit increased 5% for the nine months ended September 30, 2022 compared to the same period of 2021, largely driven by the increase in EksoHealth revenue as discussed above. Gross margin was approximately 48% for the nine months ended September 30, 2022, compared to a gross margin of 60% for the same period of 2021. The overall decrease in gross margin was primarily due to an increase in EksoHealth service costs for both labor and materials usage, and increases in inventory costs due to the continued global supply shortage. The decrease in gross margin was partially offset by the recognition of previously deferred prepaid royalties associated with a license and distribution agreement that expired.

EksoHealth service costs increased due to increased headcount and the servicing of an increased number of customer units, owing to the receipt of service parts during the period, the shortage of which had previously precluded the completion of service. Additionally, we have experienced significant increases in the cost of shipping and freight related to service activities.

### **Operating Expenses**

Research and development expenses increased \$0.9 million, or 48%, for the nine months ended September 30, 2022, compared to the same period of 2021, due to an increase in product development activity mostly related to sustaining engineering activity for the EksoNR.

General and administrative expenses increased \$1.2 million, or 18%, for the nine months ended September 30, 2022, compared to the same period of 2021 primarily due to noncash stock-based compensation related to the appointment of our new Chief Executive Officer, severance expense associated with the departure of our former Chief Executive Officer, an increase in business development activities, and costs associated with our move to our new headquarters and manufacturing facility in San Rafael, California.

### **Total Other (Expense) Income, Net**

Gain on revaluation of warrant liabilities was \$1.0 million for the nine months ended September 30, 2022, and was associated with the revaluation of warrants issued in 2019, 2020 and 2021. Gain on warrant liabilities was \$2.0 million for the nine months ended September 30, 2021, and was associated with the revaluation of warrants issued in 2019, 2020 and 2021. Gains and losses on revaluation of warrants are primarily driven by changes in our stock price and risk free rate.

Gain on forgiveness of note payable of \$1.1 million for the nine months ended September 30, 2021, related to the forgiveness of our PPP Loan. There was no comparable item in the nine months ended September 30, 2022.

Unrealized loss on foreign exchange for the nine months ended September 30, 2022 was \$1.7 million compared to an unrealized loss on foreign exchange of \$0.6 million for the same period of 2021. The unrealized loss was primarily due to foreign currency revaluations of our inter-company monetary assets and liabilities.

### **Liquidity and Capital Resources**

Since our inception, we have devoted substantially all of our efforts toward the development and commercialization of exoskeletons for the medical and industrial markets. and toward raising capital. We have financed our operations primarily through the issuance and sale of equity securities for cash consideration and through bank debt.

#### Liquidity and Capital Resources

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On September 30, 2022, we had working capital of \$28.9 million, compared to working capital of \$40.9 million at December 31, 2021. The decrease in working capital was primarily due to a lower cash balance from cash used in operations. Our cash as of September 30, 2022, consisted of bank deposits with third party financial institutions. As of September 30, 2022, of our \$29.2 million of cash, \$28.1 million was held domestically while \$1.1 million was held by foreign subsidiaries.

As described in Note 8 in the notes to our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q under the caption Notes Payable, net, borrowings under our new secured term loan agreement with Pacific Western Bank have a requirement of minimum cash on hand equivalent to the current outstanding principal balance. As of September 30, 2022, \$2.0 million of cash must remain as restricted. After considering cash restrictions, effective unrestricted cash as of September 30, 2022 is estimated to be \$27.2 million. With this unrestricted cash balance, we believe that we currently have sufficient cash to fund our operations beyond the look forward period of one year from the issuance of these condensed consolidated financial statements.

#### Cash

The following table summarizes the sources and uses of cash (in thousands).

	Nine months ended September 30,	
	2022	2021
Net cash used in operating activities	\$ (11,044)	\$ (8,081)
Net cash used in investing activities	(141)	(60)
Net cash provided by financing activities	—	38,712
Effect of exchange rate changes on cash	(41)	6
Net (decrease) increase in cash	(11,226)	30,577
Cash at the beginning of the period	40,406	12,862
Cash at the end of the period	\$ 29,180	\$ 43,439

#### Net Cash Used in Operating Activities

Net cash used in operations increased \$3.0 million, or 37%, for the nine months ended September 30, 2022, compared to the same period of 2021 primarily due to higher payments for business development costs incurred in late 2021, increased employee compensation, and increased inventory purchases.

#### Net Cash Used in Investing Activities

Net cash used in investing activities increased \$0.1 million for the nine months ended September 30, 2022, compared to the same period of 2021 due to cash outflows for leasehold improvements for our new headquarters and manufacturing facility in San Rafael, California.

#### Net Cash Provided by Financing Activities

Net cash provided by financing activities of \$38.7 million for the nine months ended September 30, 2021, was generated from the sale of common stock and warrants for net proceeds of \$36.5 million in connection with the equity financing, net proceeds of \$0.7 million from our “at the market offering” program, and proceeds of \$1.4 million from the exercise of warrants. There was no comparable amount for the nine months ended September 30, 2022.

#### Material Cash Requirements

Our material cash requirements include the following items, some of which are represented in the table of Contractual Obligations and Commitments: (1) employee wages, benefits and incentives, (2) the procurement of raw materials and components to support the manufacturing and sale of our products, (3) expenditures for the ongoing improvement and development of existing and new technologies, (4) debt repayments (for additional information see Note 8 in the notes to our condensed consolidated financial statements included elsewhere in the Quarterly Report on Form 10-Q), and (5) operating lease payments (for additional information see Note 9 in the notes to our condensed consolidated financial statements included elsewhere in the Quarterly Report on Form 10-Q).

We plan on utilizing our existing unrestricted cash balance to fund our material cash requirements in the short and long term.

### Contractual Obligations and Commitments

The following table summarizes our outstanding contractual obligations as of September 30, 2022, and the effect those obligations are expected to have on our liquidity and cash flows in future periods (in thousands):

	Payments Due By Period:			
	Total	Less than One Year	1-3 Years	3-5 Years
Note payable, principal and interest	\$ 2,124	\$ 2,124	\$ —	\$ —
Facility operating leases	1,579	314	822	443
Purchase obligations	3,203	3,203	—	—
Total	\$ 6,906	\$ 5,641	\$ 822	\$ 443

In response to, or in anticipation of, supplier disruptions and extended lead times, we may stockpile certain components or raw materials to help prevent disruption in our production of the EksoNR. Such purchasing behavior is a contributing factor to the increase in purchase obligations as compared to prior periods. These actions have, and could continue to have, a short-term adverse impact on our cash used in operating activities and increase our inventory balance. Obligations related to these activities are reflected in the line purchase obligations in the table above.

Refer to Note 13, *Commitments and Contingencies* in the notes to our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q for additional information regarding our license agreements, purchase obligations, and lease commitments.

### Item 3. Quantitative and Qualitative Disclosure About Market Risk

There have been no material changes in our market risk during the nine months ended September 30, 2022, compared to the disclosures in Part II, Item 7A of our Annual Report on Form 10-K for the year ended December 31, 2021.

### Item 4. Controls and Procedures

#### *Disclosure Controls and Procedures.*

Our management, with the participation of our principal executive officer and principal financial officer, conducted an evaluation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (“Exchange Act”)) as of the end of the period covered by this Quarterly Report. Based upon that evaluation, our principal executive officer and principal financial officer concluded that, as of such date, our disclosure controls and procedures were effective to ensure that information required to be disclosed in reports filed by us under the Exchange Act is recorded, processed, summarized and reported within the required time periods and is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

It should be noted that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment and makes assumptions about the likelihood of future events. There can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote. Management believes that the financial statements included in this Quarterly Report fairly present in all material respects our financial condition, results of operations and cash flows for the periods presented.

#### *Changes in Internal Control Over Financial Reporting*

There were no changes in our internal control over financial reporting that occurred during the most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings**

From time to time we are subject to legal proceedings and claims arising in the ordinary course of business. Based on our current knowledge, we believe that the amount or range of reasonably possible losses will not, either individually or in the aggregate, have a material adverse effect on our business, results of operations, or financial condition.

The results of any litigation cannot be predicted with certainty, and an unfavorable resolution in any legal proceedings could materially affect our future business, results of operations, or financial condition. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources, and other factors. For additional information, please refer to Note 13. *Commitments and Contingencies* in the notes to our condensed consolidated financial statements included elsewhere in this Quarterly Report on Form 10-Q.

### **Item 1A. Risk Factors**

We have not identified any material changes to the risk factors previously disclosed in Part I - Item 1A - "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2021.

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**Item 6. Exhibits**

<b>Exhibit Number</b>	<b>Description</b>
<a href="#">10.1*</a>	<a href="#">Lease, dated July, 15, 2022, between Don Tornberg and Ekso Bionics, Inc.</a>
<a href="#">31.1*</a>	<a href="#">Certification of Chief Executive Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as amended.</a>
<a href="#">31.2*</a>	<a href="#">Certification of Chief Financial Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as amended.</a>
<a href="#">32.1+</a>	<a href="#">Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
<a href="#">32.2+</a>	<a href="#">Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101*	The following financial statements from the Ekso Bionics Holdings, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2022, formatted in Extensible Business Reporting Language (“XBRL”): <ul style="list-style-type: none"><li>• unaudited condensed consolidated balance sheets;</li><li>• unaudited condensed consolidated statements of operations and comprehensive income (loss);</li><li>• unaudited condensed consolidated statements of stockholders’ equity;</li><li>• unaudited condensed consolidated statement of cash flows; and</li><li>• notes to unaudited condensed consolidated financial statements.</li></ul>
*	Filed herewith.
+	Furnished herewith.

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### STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - NET

**1. Basic Provisions ("Basic Provisions").**

1.1 **Parties.** This Lease ("Lease"), dated for reference purposes only July 15, 2022, is made by and between Don Tornberg ("Lessor") and Ekso Bionics Inc. ("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as (street address, unit/suite, city, state, zip): 101 Glacier Point Road Suite A & E San Rafael, California 94901 ("Premises"). The Premises are located in the County of Marin, and are generally described as (describe briefly the nature of the Premises and the "Project"): An approximate 17,267 rentable square feet located in that certain freestanding commercial building containing 51,827 total rentable square feet. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("Building") and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." (See also Paragraph 2)

1.2(b) **Parking:** 4 reserved and 30 unreserved vehicle parking spaces. (See also Paragraph 2.6) and paragraph 56 of addendum #1

1.3 **Term:** 4 years and 4 months ("Original Term") commencing Five (5) days following mutual execution of this lease ("Commencement Date") and ending on the last day of the fifty second (52nd) month following the Commencement Date ("Expiration Date"). (See also Paragraph 3)

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

1.5 **Base Rent:** \$28,705.85 per month ("Base Rent"), payable on the 1st day of each month commencing on the first day of the fifth (5th) month after the Commencement. (See also Paragraph 4) and Paragraph 50 of Addendum #1

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

1.6 **Lessee's Share of Common Area Operating Expenses:** Thirty Three point three one percent (33.31%) ("Lessee's Share"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

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

(a) **Base Rent:** \$28,705.85 for the period Month 5.

(b) **Common Area Operating Expenses:** The current estimate for the period Month 5 is \$7,079.47.

(c) **Security Deposit:** \$57,411.70 ("Security Deposit"). (See also Paragraph 5)

(d) **Other:** \$0 for 0.

(e) **Total Due Upon Execution of this Lease:** \$93,197.02.

1.8 **Agreed Use:** General office, R&D, Light manufacturing and light assembly and any other legally permitted uses. (See also Paragraph 6)

1.9 **Insuring Party.** Lessor is the "Insuring Party". (See also Paragraph 8)

1.10 **Real Estate Brokers.** (See also Paragraphs 15 and 25)

(a) **Representation:** Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)"):

Lessor's Brokerage Firm Cushman & Wakefield License No. 01393059 Is the broker of (check one):  the Lessor; or  both the Lessee and Lessor (dual agent).

Lessor's Agent Brian Foster License No. 01393059 is (check one):  the Lessor's Agent (salesperson or broker associate); or  both the Lessee's Agent and the Lessor's Agent (dual agent).

Lessee's Brokerage Firm T3Advisors License No. 02020060 Is the broker of (check one):  the Lessee; or  both the Lessee and Lessor (dual agent).

Lessee's Agent Kyle Duckworth License No. 02020060 is (check one):  the Lessee's Agent (salesperson or broker associate); or  both the Lessee's Agent and the Lessor's Agent (dual agent).

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

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by \_\_\_\_\_ ("Guarantor"). (See also Paragraph 37)

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

an Addendum consisting of Paragraphs 50 through 61;

a site plan depicting the Premises;

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- a site plan depicting the Project;
- a current set of the Rules and Regulations for the Project;
- a current set of the Rules and Regulations adopted by the owners' association;
- a Work Letter;
- other (specify): \_\_\_\_\_.

## 2. Premises.

**2.1 Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. , **except if such adjustment is due to physical changes in the Premises (e.g., casualty or condemnation) NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

**2.2 Condition.** Lessor shall deliver ~~that portion of the Premises contained within the Building ("Unit")~~ to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, ~~so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date,~~ warrants that the existing electrical, **mechanical**, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, **exterior doors**, sump pumps, if any, and all other such elements in the **premises Unit**, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the **Building, including the roof, bearing walls and foundation of the premises Unit** shall be free of material defects, and that the **premises Unit** does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) **90 30** days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of ~~Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls)~~ of the party obligated to perform such repairs pursuant to see Paragraph 7). Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

**2.3 Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the **particular** use to which Lessee will put the Premises (**other than for the Agreed Use**), , modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (**other than for the Agreed Use**), (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee's particular intended use, (other than for the Agreed Use), and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense; **provided, however, Lessee shall be responsible for any compliance with Applicable Requirements to the extent that such compliance is required due to Lessee's use of the Premises (other than for the Agreed Use) or due to any Alterations or Utility Installations made by or on the behalf of Lessee.** ~~If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense.~~ If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, ~~the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"),~~ Lessor and Lessee shall allocate the cost of such work as follows:

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

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to **the monthly amortized cost of such Capital Expenditure amortized over its useful life ad determined in accordance with generally accepted accounting principles consistently applied (with interest at the lesser of 8% per annum or the rate actually charged by Lessor's Lender), such amount to be included in the Common Area Operating Costs.** ~~1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure.~~ If Lessor **does not elect to terminate,** and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use (from the Agreed Use),

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change in intensity of use, or modification to the Premises by Lessee then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

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

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

2.6 **Vehicle Parking.** Lessee shall be entitled to use the number of Parking Spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

- (a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.
- (b) Lessee shall not service or store any vehicles in the Common Areas.
- (c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 **Common Areas - Definition.** The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit Premises that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roofs, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any reasonable rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

- (a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;
- (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
- (c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;
- (d) To add additional buildings and improvements to the Common Areas;
- (e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and
- (f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

### 3. Term.

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

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

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

  
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possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing. See Paragraph 53 in Addendum #1.

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

#### 4. Rent.

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

4.2 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "Common Area Operating Expenses" are defined, for purposes of this Lease, as all costs relating to the ownership and operation of the Project, ~~in accordance with sound real estate management and accounting practices, consistently applied,~~ including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, and if necessary the replacement, of the following:  
(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

(dd) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management, security services, owners' association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

~~(iv) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.~~

(iv) Real Property Taxes (as defined in Paragraph 10).

(v) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

(vi) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(vii) Reasonable Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.

(iiiix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over the greater of (1) the useful life of the capital improvements and (2) a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month. ~~Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.~~

(ix) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Premises Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such premises Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

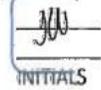
(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after ~~written request~~ the end of each calendar year ~~(but not more than once each year)~~ Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments, or if no payments are due, Lessor shall pay the amount of such overpayment within thirty (30) days of delivery of the statement by Lessor to Lessee. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

4.3 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as

4.3 **Payment.** Lessee shall cause payment of rent to be received by Lessor in lawful money of the United States, in legal tender or equivalent (except as specifically permitted in this Lease), on or before the day on which it is due. ~~All monetary amounts shall be rounded to the nearest whole dollar.~~ In the event that any statement or invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge to compensate Lessor for additional time and expenses incurred in handling the dishonored payment ~~and Lessor, at its option, may require all future Rent be paid by cashier's check.~~ Payments will be applied first to accrued late charges ~~and attorney's fees,~~ second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent **within any applicable notice and cure period**, or otherwise Defaults under this Lease, Lessor may use, apply or

  
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retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. ~~If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition.~~ Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 30 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall bear interest or be considered prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

## 6. Use.

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

### 6.2 Hazardous Substances.

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

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

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

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

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

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

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue

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in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor ~~shall~~ ~~may, at Lessor's option, either (i)~~ investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, ~~or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.~~

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

**6.4 Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1(e)) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor. ~~Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.~~

## 7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

### 7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the interior non-structural portions of the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations made by Lessee in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, ~~after written notice and failure to cure within thirty (30) days (or such longer period of time as may be reasonably necessary provided Lessee has commenced to cure within such 30 day period and is diligently proceeding to completion),~~ Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to ~~115% of the reasonably, out of pocket~~ the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

**7.2 Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the structural portions of the Building, foundations, exterior walls, curtain walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system and any other Building systems, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots,

walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises; **provided, however, Lessor shall be responsible**

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**for the maintenance, repair and replacement of windows, doors or plate glass of the Premises if such damage is caused by acts of God or structural issues with the Building.**

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

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent, **which consent shall not be unreasonably withheld, conditioned or delayed.** Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and/or life safety systems, ~~and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year.~~ Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor, **which approval shall not be unreasonably withheld, conditioned or delayed.** Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor, **which approval shall not be unreasonably withheld, conditioned or delayed.** Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. ~~For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.~~

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

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

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

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

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted, **damage due to fire or casualty, eminent domain and Lessor's repair obligations under this Lease.** "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Project) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

## 8. Insurance; Indemnity.

8.1 **Payment of Premiums.** The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

### 8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an

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

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to

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be maintained by Lessee. Lessee shall not be named as an additional insured therein.

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

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

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

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

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

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

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

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

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

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

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

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

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its

agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places; (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project; or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

**8.9 Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater **provided, however that such rent increase shall only apply until Lessee has cured the condition for which such increase was imposed.** The parties agree that such increase in Base Rent represents fair and reasonable compensation for the

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additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

## 9. Damage or Destruction.

### 9.1 Definitions.

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in ~~180 days 3 months~~ or less from the date of the damage or destruction, ~~and the cost thereof does not exceed a sum equal to 6 month's Base Rent.~~ Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in ~~180 days 3 months~~ or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to ~~18 6~~ month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

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

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

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

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

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a **grossly** negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

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

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

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

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

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to

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Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

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

#### 10. Real Property Taxes.

10.1 **Definition.** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

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

#### 11. Utilities and Services.

11.1 Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. ~~Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs.~~ There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

11.2 Within fifteen days of Lessee's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

#### 12. Assignment and Subletting.

##### 12.1 Lessor's Consent Required.

(a) ~~Except as provided in the Addendum,~~ Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent, **which consent shall not be unreasonably withheld, conditioned or delayed.**

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

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

(d) ~~An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a non-curable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a non-curable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.~~

- (Ce) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.
- (df) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.
- (Eg) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e. 20 square feet or less, to be used by a third party vendor in

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connection with the installation of a vending machine or payphone shall not constitute a subletting.

#### 12.2 Terms and Conditions Applicable to Assignment and Subletting.

- (a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.
- (b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.
- (c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.
- (d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.
- (e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)
- (f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.
- (g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

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

- (a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.
- (b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.
- (c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.
- (d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent, **not to be unreasonably withheld, conditioned or delayed.**
- (e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, **if Lessee has failed to cure such Default** who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for **any the reasonable, out of pocket costs of** such Defaults cured by the sublessee.

### 13. Default; Breach; Remedies.

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

- (a) The abandonment of the Premises; **(as defined in Section 1951.3 of the California Civil Code) the vacating of the Premises** prior to the expiration or termination of this Lease without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism; or failure to deliver to Lessor exclusive possession of the entire Premises in accordance herewith prior to the expiration or termination of this Lease.
- (b) The failure of Lessee to (i) make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, (ii) to provide reasonable evidence of insurance or surety bond, or (iii) to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. **THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.**
- (c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences

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such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

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

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

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

**13.2 Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to ~~110~~<sup>110.15</sup>% of the costs and expenses incurred by Lessor in such performance ~~upon~~ **within thirty (30) days of** receipt of an invoice therefor **with reasonable back-up documentation**. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

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

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

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

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

**13.4 Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which shall be determined by Lessor. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be

amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to ~~510~~5% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. ~~In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.~~

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

13.6 **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name

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and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

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

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

**15. Brokerage Fees.**

~~15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed. The provisions of this paragraph are intended to supersede the provisions of any earlier agreement to the contrary.~~

~~15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15.22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

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

**16. Estoppel Certificates.**

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

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater ~~for remainder of the Lease~~; **provided, however that such rent increase shall only apply until Lessee has cured the condition for which such increase was imposed.** The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

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

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

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

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provision hereof.

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

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

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

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

**23. Notices.**

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

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

**23.3 Options.** Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

**24. Waivers.**

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

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

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

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

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

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

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

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they

not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

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

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

**26. No Right To Holdover. Except as provided in Addendum #1,** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. At or prior to the expiration or termination of this Lease Lessee shall deliver exclusive possession of the Premises to Lessor. For purposes of this provision and Paragraph 13.1(a), exclusive possession shall mean that Lessee shall have vacated the Premises, removed all of its personal property therefrom and that the Premises have been returned in the condition specified in this Lease. In the event that Lessee does not deliver exclusive possession to Lessor as specified above, then Lessor's damages during any holdover period shall be computed at the amount of the Rent (as defined in Paragraph 4.1) due during the last full month before the expiration or termination of this Lease (disregarding any temporary abatement of Rent that may have been in effect), but with Base Rent being 150% of the Base Rent payable during such last full month. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

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

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

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

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

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

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

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

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

**31. Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. ~~The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently~~

~~commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).~~

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

**33. Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be



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obligated to exercise any standard of reasonableness in determining whether to permit an auction.

**34. Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent.

All signs must comply with all Applicable Requirements. **See Addendum #1.**

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

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

**37. Guarantor.**

**37.1 Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by AIR CRE.

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

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

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

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

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

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

**39.4 Effect of Default on Options.**

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

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

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

**40. Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures and that Lessee shall have an obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises. Lessee, its

measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

**41. Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary; (ii) to cause the recordation of parcel maps and restrictions; and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

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

**43. Authority; Multiple Parties; Execution.**

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

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

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

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

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

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

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

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

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

(a) The Premises:

have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises **except as set forth in Section 2.3 above**, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's particular use of the Premises (other than for the Agreed Use) requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

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

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

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

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

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

Executed at: \_\_\_\_\_  
On: \_\_\_\_\_

Executed at: \_\_\_\_\_  
On: 7/16/2022

By LESSOR:

By LESSEE:

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1/1/11



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Don Tornberg  
By:   
Name Printed: DON TORNBERG  
Title: LESSDR  
Phone: 415-883-6184  
Fax: 415-883-0593  
Email: DTORNBERG@GMAIL.COM

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
  
Address: \_\_\_\_\_  
Federal ID No.: \_\_\_\_\_

**BROKER**

Cushman & Wakefield  
Attn: Brian Foster  
Title: \_\_\_\_\_  
  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Federal ID No.: \_\_\_\_\_  
Broker DRE License #: \_\_\_\_\_  
Agent DRE License #: \_\_\_\_\_

Ekso Bionics Inc.  
DocuSigned by:  
Jerome Wong  
By: \_\_\_\_\_  
Name Printed: Jerome Wong  
Title: \_\_\_\_\_ Interim CFO  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: jwong@eksobionics.com

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
  
Address: \_\_\_\_\_  
Federal ID No.: \_\_\_\_\_

**BROKER**

T3Advisors  
Attn: Kyle Duckworth  
Title: \_\_\_\_\_  
  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Federal ID No.: \_\_\_\_\_  
Broker DRE License #: 02020060  
Agent DRE License #: \_\_\_\_\_

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**ADDENDUM # 1 TO LEASE  
BY AND BETWEEN  
DON TORNBURG (LESSOR)  
AND  
EKSO BIONICS, INC. (LESSEE)  
DATED July 15, 2022**

This Addendum #1 To Lease ("Addendum #1") is incorporated into the form Standard Industrial/Commercial Multi-Tenant Lease – Net, dated July 15, 2022 (the "Form Lease") by and between Don Tornberg, an individual ("Lessor") and Ekso Bionics, Inc. ("Lessee") for that certain premises more particularly described in the Form Lease. All capitalized terms used, but not defined, in this Addendum have the meanings given in the Form Lease. References in the Form Lease and this Addendum to the "Lease" shall refer to the Form Lease and this Addendum collectively.

**50. Rent Schedule:**

The Premises consist of approximately 17,267 rentable square feet.

For the first four (4) full calendar months of the Term, the "Base Rent" and "Common Area Operating Expenses" as defined in the lease agreement shall be abated.

On each yearly anniversary date of the Commencement Date, the Base Rent payable shall increase per the table below:

The "Common Area Expenses" are based upon the square footage of the Premises.

If any payment of Rent is for a period which is shorter than one month, the Rent for any fractional month shall accrue on a daily basis for the period from the date such payment is due to the end of such calendar month or to the end of the Lease Term at a rate per day which is equal to 1/365 of the applicable annual Rent.

<u>Month</u>	<u>Year</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>	<u>Abated Rent</u>
0-12	2022-2023	\$ 28,705.85	\$ 229,646.80	4 Months free
13-24	2023-2024	\$ 29,567.03	\$ 354,804.31	
25-36	2024-2025	\$ 30,454.04	\$ 365,448.44	
37-48	2025-2026	\$ 31,367.66	\$ 376,411.89	
49-52	2026-2027	\$ 32,308.69	\$ 129,234.75	
	Term			52
	Total Rent		<u>\$ 1,455,546.18</u>	

**51. Commencement:**

Lessee shall have the right to take possession of the Premises on the sixth (6th) day following mutual Lease

Lessee shall have the right to take possession of the Premises on the sixth (6th) day following material Lease execution.

### 52. Tenant Improvements:

Lessor shall provide to Lessee an allowance in the amount of \$50,000.00 ("Tenant Improvement Allowance") toward Tenant Improvements (as defined below) to be constructed by Lessee in the Premises. Lessee shall use all the Tenant Improvement Allowance within the first twelve (12) months of the Term.

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Lessee shall have the right to complete the following improvements (collectively, the "Tenant Improvements"), at its sole cost and expense subject to reimbursement from the Allowance:

- Build out of a machine room in lower level suite
- Install electrical power for machinery
- Install computer network cabling
- Construct shower room in the storage suite
- Lighting changes/upgrade
- Mounting solutions for AV equipment
- Installation of white boards
- Construct an entrance to the suite from the lobby which is large/wide enough to accommodate Lessee's equipment.

By its execution hereof, Lessor approves of the Tenant Improvements, subject to approval of any plans and specifications, which shall not be unreasonably withheld, conditioned or delayed.

**53. Lessor's Work.** In addition to, and separate from the Tenant Improvement Allowance, Lessor shall complete the following improvements at Lessor's expense. The term, "Lessor's Work" shall mean Phase I of Lessor's Work and Phase II of Lessor's Work, as further defined below

"Phase I of Lessor's Work" shall consist of:

- Remove the drop ceiling in back half of Suite A
- Temporary lighting to be installed
- New building standard paint in Suites A and E. Tenant to provide color for accent walls.
- Professional clean the carpets in lobby and in suite E.

"Phase II of Lessor's Work" shall consist of:

- Install glass double door entrance replacing existing single door entrance at back of R&D space in suite A. Double doors to be approximately seven (7) feet. ("Double Doors")
- Widen sidewalk to at the minimum width of the new double entry doors from curb up to building to the new Double Doors. No curb cut or modifications to the curb is required.
- Add building standard lighting to back half of Suite A to match the lighting throughout the suite.

Phase I of Lessor's Work shall be complete no later than September 1, 2022 (the "Phase I Completion Date", If Phase I of Lessor's Work is not complete by the Phase I Completion Date, then Lessee shall be entitled to an abatement of Base Rent equal to one (1) day of Base Rent for each day until Phase I of Lessor's Work is complete.

Phase II of Lessor's Work shall be complete no later than that date that is four (4) months following the date Lessee's executes this Lease (the "Phase II Completion Date"). If Phase II of Lessor's Work is not complete by the Phase II Completion Date, then Lessee shall be entitled to an abatement of Base Rent equal to one (1) day of Base Rent for each day until Phase II of Lessor's Work is complete.

of Base Rent for each day until Phase II of Lessor's work is complete.

In the event any portion of Suite A is unable to be used by Phase II completion date, Lessee shall be entitled to abatement of Base rent equal to one (1) day of base Rent for each day until Phase II of Lessor's Work is complete. Lessee shall be able to occupy and use Suite E and the abatement of Base rent shall apply to Suite A only,

Any abatement provided under this Paragraph 53 shall be in addition to the four (4) months of rent abatement provided in Paragraph 50 above, and shall be applied immediately following the expiration of the Rent Abatement Period.

Lessor and Lessee acknowledge that Lessor's Work and the Tenant Improvements will be performed simultaneously, and as such, each of Lessor and Lessee agree to work in good faith and to cause their contractors, subcontractors, etc. to cooperate with each other to ensure that their respective work can be

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performed in as efficient and cost effective a manner as possible. Each of Lessor and Lessee shall take commercially reasonable efforts to minimize unnecessary interference with the other's ability to construct its work.

**54. Renewal Option:**

Lessee shall have the option ("Option") to extend the Lease Term for one (1) additional period of three (3) years ("Option Term") on all the terms and conditions of this Lease. Lessee must exercise the Option, if at all, by giving Lessor written notice of its exercise of the Option ("Extension Notice" no less than six (6) months and no more than twelve (12) months before the expiration of the Lease Term. Upon the exercise of the Option, the Lease Term shall be deemed extended for an additional three (3) years from the expiration of the initial lease term.

Tenant's failure to deliver a written Lessee's Extension Notice to Lessor in a timely manner, shall be deemed a waiver of Lessee's option to extend the Term and Lessee's extension option, regardless of whether Lessor delivered a prior reminder to Lessee and Lessee shall have no further option to extend the Term.

The monthly Base Rent for the Extension Term shall be the Fair Market Rent (as herein defined) prevailing at the commencement of the Extension Term and the Tenant will lease the Premises in "as-is" condition.

For the purposes of this Lease, "Fair Market Rent" means the monthly base rent (i.e., rent other than operating expenses, taxes and insurance premiums) that Lessor has accepted in then-recent transactions with non-affiliated parties for a comparable term in the Building or that lessors are accepting in leases for comparable space within office buildings located in the same city as the Premises and taking into account all relevant factors including, but not limited to tenant improvement allowance, rental abatement, other inducements made to tenants, quality of the building, interior improvements, parking, site amenities, building systems, location, and access ("Comparable Transactions"). Within fifteen (15) days after Landlord's receipt of Lessee's Extension Notice, by written notice to Lessee ("Lessor's Rent Notice"), Lessor shall advise Lessee as to Landlord's determination of the Fair Market Rent, together with the basis for such determination. If Lessee disagrees with Lessor's determination, Lessee shall, within fifteen (15) days after Lessee's receipt of Lessor's Rent Notice, either (a) accept the determination of the Fair Market Rent set forth in Lessor's Rental Notice; 'determination, by written notice ("Lessee's Rent Notice") or (c) withdraw Lessee's Extension Notice. If Lessee fails to respond as provided above, within the time period provided above, Lessee shall no longer have the right to exercise its option for the Extension Term. If Lessee shall timely deliver to Lessor Lessee's Rent Notice, Lessor and Lessee shall attempt in good faith to reach agreement as to the Fair Market Rent within fifteen (15) days after Lessor's receipt of Lessee's Rent Notice.

If Landlord and Lessee are unable to agree as to the amount of the Fair Market Rent within the aforementioned fifteen (15) day period as evidenced by a written amendment to this Lease executed by them, then, within ten(10) days after the expiration of the fifteen(15) day period, Lessor and Lessee shall each, at its sole cost and by giving notice to the other party, appoint a competent real estate broker licensed in California with at least five (5) years' full-time commercial real estate leasing experience in the city where the Premises is located to determine the Fair Market Rent. If either Lessor or Lessee does not appoint a broker within ten (10) days after the other party has given notice of the name of its broker, the single broker appointed shall be the sole broker and shall determine the Fair Market Rent. If both Lessor and Lessee appoint a broker, the two brokers shall attempt to select a third broker meeting the qualifications stated in this Section within ten(10) days, provided that the third broker shall be a person who has not previously acted in any capacity for either Lessor or Lessee. Lessor and Lessee each shall bear one-half (1/2) of the cost of appointing the third broker and of paying the third broker's fee. If they are unable to agree on the third broker, the engagement of the brokers shall be terminated, and the determination of Fair Market Rent shall be submitted to arbitration in the county in which the Premises is located under the commercial rules of the American Arbitration Association.

(3) Rent Determined by Broker(s). The broker(s) shall determine the Fair Market Rent by using the "Market Comparison Approach" with the relevant market being office buildings located in the same city as the Premises. Within thirty (30) days after the selection of the third broker, Lessor's broker shall arrange for the simultaneous delivery to Landlord and Lessee of written appraisals from each of the brokers, the three appraisals shall be added together and their total divided by three; the resulting quotients shall be the Fair Market Rent. If, however, the low appraisal is more than 10% lower than the middle appraisal or the high appraisal is more than 10% higher than the middle appraisal, such appraisal shall be disregarded. If only one appraisal is disregarded



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the remaining two appraisals shall be added together and their total divided by two; the resulting quotient shall be the Fair Market Rent. If both the low appraisal and the high appraisal of the Fair Market Rent are disregarded as stated in this Section, the middle appraisal shall be the Fair Market Rent.

#### **55. Permitted Transfers:**

Notwithstanding anything to the contrary contained in this Lease, Lessee shall have the right, without the prior written consent of Lessor, to assign this Lease or to sublease all or any portion of the Premises to the following (each, a "Permitted Transferee" and, collectively, "Permitted Transferees"): (a) an entity which is controlled by, controls, or is under common control with, Lessee, (b) any successor entity to Lessee by way of merger, consolidation or other non-bankruptcy corporate reorganization, (c) an entity which acquires all or substantially all of Lessee's assets or stock, or (d) an entity acquiring and continuing Lessee's business operations at or from the Premises.

#### **56. Parking:**

Throughout the Term, Lessee shall have the right to four (4) reserved parking spaces located outside of the Double Doors on the side of the Building. Lessor shall ensure, at its sole cost and expense, that such parking spaces are clearly designated as "Reserved - Ekso Bionics" (either with a sign or painted on each reserved parking space).

#### **57. Signage.**

Lessor shall provide Building standard signage for Lessee, at Lessor's sole cost and expense, including identifying signage outside of each suite that is a part of the Premises.

#### **58. Common Area Operating Expenses.**

- a. Common Area Operating Expenses shall be limited to the categories of expenses enumerated in Paragraph 4.2(a)(i) of the Lease.
- b. At any time within 180 days after receipt of a statement of the Common Area Operating Expenses, if Lessee disputes the amount set forth in such statement, Lessee shall have the right to audit Lessor's books and records related to the Common Area Operating Expenses. Lessor shall provide access to its books and records at Lessor's designated address within thirty (30) days following Lessee's notice. Notwithstanding the foregoing, Lessee shall only have the right to review Lessor's records one (1) time during any twelve (12) month period. Lessee's failure to review Lessor's records with respect to the amounts set forth in any statement within the 180 day period shall be deemed to be Lessee's approval of such statement and Lessee, thereafter, waives the right or ability to dispute the amounts set forth in such statement. If any audit should disclose that Lessee has been overcharged by Lessor for Lessee's Share of Common Area Operating Expenses for any year, Lessee shall be credited for such overpayment (or if the Lease has expired, Lessor shall promptly refund such amount to Lessee). If any audit should disclose that Lessee has been overcharged by Lessor by more than 5% for Lessee's Share of Common Area Operating Expenses for any year, then in addition to the credit or refund, Lessor shall pay for the reasonable cost of Lessee's audit.
- c. Common Area Operating Expenses shall exclude reserves and all costs which are capital in nature excluding capital costs which are: (i) reasonably expected to reduce the normal Common Area

Operating Expenses, but not to exceed the extent of actual cost savings; or (ii) improvements made in order to comply with any Applicable Requirement promulgated by any governmental authority after the Commencement, provided in all cases, any capital expenditure must be amortized using a commercially reasonable interest rate over the useful economic life of such

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improvements as determined by Lessor in accordance with generally accepted accounting principles consistently applied.

#### 59. Right to Holdover:

Notwithstanding anything to the contrary in the Form Lease, Lessee shall have the option to holdover in the Premises past the Expiration Date, for three (3) periods of thirty (30) days each (each a "Holdover Option"), exercisable by delivering written notice to Lessor not less than ten (10) days prior to the then-current Expiration Date. In the event that Lessee exercises the Holdover Option(s), then during each Holdover Option, Lessee shall pay monthly Base Rent at a rate equal to 125% of the monthly Base Rent in effect during the last year of the Original Term.

#### 60. Additional Provisions:

- a. Lessor shall exercise the rights set forth in Paragraphs 2.10 and Section 41 of the Form Lease only if (i) Lessee's use of the Premises, access thereto, or services or facilities furnished or available to the Premises are not materially and adversely affected, and (ii) Lessee's parking (including availability and proximity of parking spaces) is not material and adversely affected.
- b. Notwithstanding anything in this Lease to the contrary, Lessee shall not be obligated to make or pay for structural changes to the Premises or the Project, or changes to the systems and equipment therein that Lessor is responsible for maintaining, except where such changes are necessitated by Tenant's particular use of the Premises (beyond general office use) or due to Alterations made by or for Lessee.
- c. Lessor shall give Lessee at least 24 hours' prior written notice before any entry into the Premises (except in the case of an emergency, in which case no notice is necessary). Lessor's entry rights shall be subject to the following: (a) promptly finishing any inspection, testing or verification of compliance for which it entered; (b) complying with all of Lessee's security and safety regulations and if Lessee so elects, Lessor shall be accompanied by a representative of Lessee during any such entry; (c) Lessor shall not interfere with or disrupt Lessee's use of or access to the Premises; and (d) Lessor shall promptly repair any damage caused to the Premises by Lessee or anyone accessing the Premises.
- d. Lessee, its officers and employees shall have access to the Building, the Premises, the ground floor lobby, and the parking lot seven (7) days per week, twenty-four (24) hours per day, subject to reasonable building security measures implemented by Lessor and applicable to all tenants of the Building.
- e. Lessor shall not unreasonably withhold consent to Lessee's request to perform alterations or improvements. Lessor shall notify Lessee at such time as Lessee seeks Lessor's consent to any Alterations or Utility Installations whether Lessor will require Lessee to remove the same upon the expiration or earlier termination of this Lease. Lessor's failure to provide such consent that consent would be required shall constitute a waiver of Lessor's right

to notify Lessee that removal would be required shall constitute a waiver of Lessor's right to require such removal upon the expiration or earlier termination of this Lease.

- f. Lessee shall be permitted to maintain commercially reasonable insurance deductibles. The reference to \$1,000 in the Form Lease is deleted.
- g. Except to the extent of Lessee's gross negligence or willful misconduct, Lessor shall indemnify, protect, defend and hold harmless Lessee and its agents, employees, partners and contractors, from and against any and all claims, damages, liens, judgments, penalties,

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reasonable attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the negligence or willful misconduct of Lessor, or its agents, employees, contractors or invitees. If any action or proceeding is brought against Lessee by reason of any of the foregoing matters, Lessor shall upon notice defend the same at Lessor's expense by counsel reasonably satisfactory to Lessee and Lessee shall cooperate with Lessor in such defense. Lessee need not have first paid any such claim in order to be defended or indemnified.

- h. In the event of any damage or destruction to the Premises, Lessee shall have the right, in addition to all other rights of Lessee, to terminate this Lease: (i) if the repair of the Premises does not reasonably appear to be capable of being completed, in the reasonable opinion of the contractor, within 180 days from the date the Premises is damaged or destroyed, by delivering written notice to Lessor thereof within 30 days after the contractor's determination; or (ii) if such repairs are not actually completed within 180 days from the date the Premises is damaged or destroyed, then within 30 days after the expiration of such 180 days period, provided such termination right shall terminate if Lessor substantially completes the repair or restoration prior to Lessee's delivery of such termination notice. If there is a casualty, Base Rent and all Additional Rent shall be abated until the casualty is fully repaired.
- i. Notwithstanding Section 13.4, of the Form Lease, on the first occasion of Lessee's late payment during any given twelve (12) month period, Lessor shall give Lessee written notice of such late payment and Lessee shall have a period of five (5) business days thereafter in which to make such payment before any late charges are assessed against Lessee.
- j. Notwithstanding anything to the contrary in the Lease, Lessor shall look solely to public sources of information to secure data concerning Lessee's financial condition and affairs, and Lessee shall not be required to provide financial statements to Lessor, for so long as Lessee's shares are traded on a public exchange.
- k. Notwithstanding any other provision of this Lease, if the Premises (or any material portion thereof) shall be rendered untenantable or unfit for Lessee's customary business operations as a result of (i) Lessor's failure to make any repair or perform any work that it is required to make or perform under the Lease, (ii) any interruptions in utilities or services provided to the Premises under Lessor's control, (iv) Lessor's performance of any construction or repair work, then in any case that such untenantability or unfitness shall continue for a period of two (2) consecutive business days, all base rent and additional rent shall abate for the period that the Premises remain untenantable or unfit for Lessee's use in a customary manner (or, in the event that only a portion of the Premises are rendered untenantable or unfit for Lessee's use in a customary manner, base rent and additional rent shall abate for such period with respect to the portion of the Premises that are rendered untenantable or unfit)

untransferable or assign.

- I. Lessor and Lessee each represent and warrant that the individual signing the Lease and this Addendum on their behalf has full right, power and authority to do so and to bind such party. Lessor and Lessee each represent and warrant that it has received and any all approvals from any third party which may be required to enter into the Lease and this Addendum, and this representation shall survive expiration or sooner termination of the Lease.

**61. Conflict with Printed Form:**

Where the provisions of this addendum are in conflict with the provisions of the printed form the provisions of this addendum shall prevail.

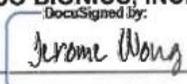
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Disclaimer – Lessor has made Lessee aware that there could be sound transfer from the upstairs space into the premises.

IN WITNESS WHEREOF, this Addendum #1 is hereby made by the parties.

LESSOR:   
\_\_\_\_\_  
**Don Tornberg**, an individual

LESSEE: **EKSO BIONICS, INC.**

By   
\_\_\_\_\_  
95CA181588C644C...  
Jerome Wong

Name: \_\_\_\_\_

Interim CFO

Title \_\_\_\_\_



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### CONFIRMATION OF REAL ESTATE AGENCY RELATIONSHIPS

Subject Property Address: 101 Glacier Point Road San Rafael, CA

The following agency relationship is/are hereby confirmed for this transaction:

LISTING AGENT: Cushman & Wakefield

CUSHMAN & WAKEFIELD represents (check one):

- the Lessee exclusively, or
- the Lessor exclusively, or
- both the Lessor and Lessee

**I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE.**

LESSOR  Date \_\_\_\_\_ Time \_\_\_\_\_ AM/PM.

LESSEE Jerome Wong Date 7/16/2022 Time \_\_\_\_\_ AM/PM.  
9BCA181588C644C

**AGENT** \_\_\_\_\_

**By:** \_\_\_\_\_

License #: 01393059

**Date:** \_\_\_\_\_

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### Dual Agency Notification and Consent

This authorization is sought in accordance with the provisions of the Consent to Dual Agency paragraph the Exclusive Authorization to Lease, Sell, Sell or Lease, Sublease, Represent Purchaser or Lessee.

#### AGENT REPRESENTING BOTH SELLER / LESSOR & BUYER / LESSEE

Note: Throughout the body of this Dual Agency Notification, "Seller" shall refer to a Seller, Lessor, or Sublessor; and "Buyer" shall refer to a Buyer, Lessee, or Sublessee.

A real estate agent, either acting directly or through one or more associate licensees, can legally be agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer.

- A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Seller or the Buyer.
- Diligent exercise of reasonable skill and care in performance of the agent's duties.
- A duty to disclose all facts known to the agent materially affecting the value of desirability of the property that are not known to, or within the diligent attention and observation of the parties.

A dual agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above. In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do no relieve a Seller or a Buyer from the responsibility to protect their own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

By execution hereof, the parties confirm that Cushman & Wakefield ("Broker") has been and is the agent of both Seller and Buyer. The parties acknowledge that Broker has explained to each client the implications of common representation, including the risks involved, and the parties have consented to this dual representation.

I/WE ~~ACKNOWLEDGE~~ RECEIPT OF A COPY OF THIS NOTIFICATION.

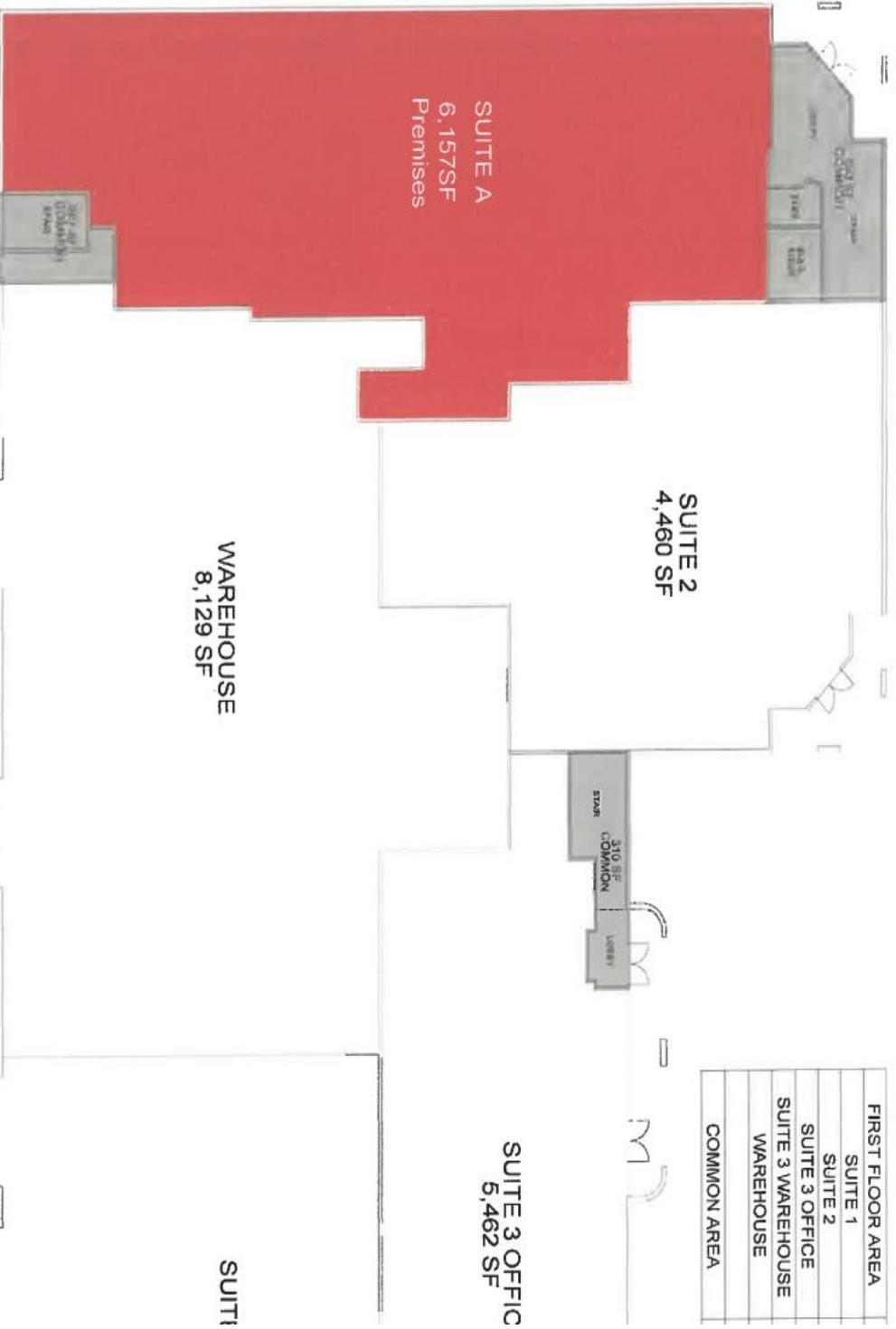
LESSOR  Date \_\_\_\_\_ Time \_\_\_\_\_ AM/PM.

LESSEE Jerome Wong Date 7/16/2022 Time \_\_\_\_\_ AM/PM.

Cushman & Wakefield  
By: Brian Foster

License #: 01393059

Locosign Envelope ID: EUECEUCZ6-8606-429U-99AR-5R08F-769851B



101 GLACIER POINT ROAD  
SAN RAFAEL, CA

FIRST FLOOR  
AREA CALCULATION PLAN

DS  
*[Signature]*

DS  
*[Signature]*

33,175 GROSS SF
6,157 SF
4,460 SF
5,462 SF
6,885 SF
8,129 SF
2,082 SF



**E**  
**3 WAREHOUSE**  
**6,885 SF**

SCALE: 1/8" = 1'-0"  
 0 5 10 20 FT  
 DATE: 2/19/21



RES  
STATION

172 SF  
NONRENT  
STAIR

DATE 2/18/21

3/11



**CERTIFICATION**

I, Steven Sherman, certify that:

- (1) I have reviewed this Quarterly Report on Form 10-Q of Ekso Bionics Holdings, Inc.;
- (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- (3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
- (4) The company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, 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 company'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 company's internal control over financial reporting that occurred during the company's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
- (5) The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company'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 company's internal control over financial reporting.

Date: November 3, 2022

/s/ Steven Sherman

Steven Sherman

Principal Executive Officer

**CERTIFICATION**

I, Jerome Wong, certify that:

- (1) I have reviewed this Quarterly Report on Form 10-Q of Ekso Bionics Holdings, Inc.;
- (2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- (3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
- (4) The company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, 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 company'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 company's internal control over financial reporting that occurred during the company's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
- (5) The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company'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 company's internal control over financial reporting.

Date: November 3, 2022

/s/ Jerome Wong

Jerome Wong

Principal Financial Officer

**CERTIFICATION BY THE PRINCIPAL EXECUTIVE OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350**

In connection with the Quarterly Report on Form 10-Q of Ekso Bionics Holdings, Inc. (the "Company"), for the quarterly period ended September 30, 2022 as filed with the Securities and Exchange Commission (the "Report"), I, Steven Sherman, Chief Executive Officer and principal executive officer, hereby certify as of the date hereof, solely for purposes of 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company at the dates and for the periods indicated.

Dated: November 3, 2022

/s/ Steven Sherman

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Steven Sherman

Principal Executive Officer

**CERTIFICATION BY THE PRINCIPAL FINANCIAL OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350**

In connection with the Quarterly Report on Form 10-Q of Ekso Bionics Holdings, Inc. (the "Company"), for the quarterly period ended September 30, 2022 as filed with the Securities and Exchange Commission (the "Report"), I, Jerome Wong, Chief Financial Officer and principal financial officer, hereby certify as of the date hereof, solely for purposes of 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company at the dates and for the periods indicated.

Dated: November 3, 2022

/s/ Jerome Wong

Jerome Wong

Principal Financial Officer