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

**FORM 8-K**

**CURRENT REPORT  
Pursuant to Section 13 OR 15(d) of the  
Securities Exchange Act of 1934**

**Date of Report (Date of Earliest Event Reported): July 26, 2007**

**HALOZYME THERAPEUTICS, INC.**

(Exact name of registrant as specified in its charter)

Nevada	000-49616	88-0488686
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)
11588 Sorrento Valley Road, Suite 17, San Diego, California		92121
(Address of principal executive offices)		(Zip Code)

Registrant's telephone number, including area code: (858) 794-8889

Not Applicable

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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### Item 1.01 Entry into a Material Definitive Agreement.

On July 26, 2007, Halozyme Therapeutics, Inc. (“Halozyme”), through its subsidiary Halozyme, Inc., entered into a Standard Industrial Net Lease (the “11388 Lease”) with BC Sorrento, LLC (“BC Sorrento”), for office and research facilities in San Diego, California. Halozyme will lease approximately 27,575 square feet of space located at 11388 Sorrento Valley Road, San Diego, California. Halozyme will receive a tenant improvement allowance of \$275,750 under the 11388 Lease.

In connection with the execution of the 11388 Lease, the following sublease agreements became effective, as disclosed in the Form 8-K filed with the Securities and Exchange Commission on July 9, 2007: (i) Sublease Agreement with Avanir Pharmaceuticals (the “11404 Sublease”) and (ii) Sublease Agreement with Avanir Pharmaceuticals (the “11388 Sublease” and collectively with the 11388 Lease and the 11404 Sublease, the “Leases”). The 11388 Lease will commence in September 2008 in conjunction with the expiration of the 11388 Sublease.

Halozyme will pay base rent to BC Sorrento under the 11388 Lease beginning in September 2008, as follows:

<u>Period</u>	<u>Monthly Base Rent</u>
September 1, 2008 — August 31, 2009	\$73,075
September 1, 2009 — August 31, 2010	\$75,005
September 1, 2010 — August 31, 2011	\$78,038
September 1, 2011 — August 31, 2012	\$81,071
September 1, 2012 — January 14, 2013	\$84,380

Connie Matsui, a director of Halozyme, and her husband have a controlling ownership interest in an entity that holds a minority ownership position in BC Sorrento. In addition, this entity currently serves as the managing member of BC Sorrento. The transaction with BC Sorrento was reviewed and approved by Halozyme’s Board of Directors in accordance with Halozyme’s related party transaction policy.

The preceding description of the 11388 Lease is a summary of the material terms of that agreement and does not purport to be complete, and is qualified in its entirety by the copy of such agreement which is attached as an exhibit to this Form 8-K. In addition, copies of the 11404 Sublease and the 11388 Subleases previously described in the Form 8-K filed on July 9, 2007 are also attached as exhibits to this Form 8-K.

### Item 9.01 Financial Statements and Exhibits.

(d) Exhibits .

<u>Exhibit No.</u>	<u>Description</u>
99.1	Sublease Agreement (11404 Sorrento Valley Road), effective as of July 2, 2007.
99.2	Sublease Agreement (11388 Sorrento Valley Road), effective as of July 2, 2007.
99.3	Standard Industrial Net Lease (11388 Sorrento Valley Road), effective as of July 26, 2007.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Halozyme Therapeutics, Inc.

July 31, 2007

By: /s/ David A. Ramsay  
**David A. Ramsay**  
**Secretary and Chief Financial Officer**



**SUBLEASE AGREEMENT**  
**between**  
**AVANIR PHARMACEUTICALS**  
**as Sublandlord**  
**and**  
**HALOZYME, INC.**  
**as Subtenant**

Building Address: 11404 Sorrento Valley Road  
San Diego, California 92121

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## **SUBLEASE AGREEMENT**

THIS SUBLEASE AGREEMENT (“**Sublease**”) is made as of this 2nd day of July, 2007 (the “**Effective Date**”), by and between AVANIR PHARMACEUTICALS, a California corporation (“**Sublandlord**”) and HALOZYME, INC., a California corporation (“**Subtenant**”), a subsidiary of HALOZYME THERAPEUTICS, INC., a Nevada corporation (“**Parent**”), with Sublandlord and Subtenant hereinafter sometimes referred to collectively as the “**Parties**” and individually as a “**Party**”).

### **WITNESSETH:**

WHEREAS, Sorrento Plaza, a California limited partnership (“**Master Landlord**”) and Sublandlord, are parties to a certain Standard Industrial Net Lease, dated as of May 20, 2002, as amended by that certain First Amendment to Standard Industrial Net Lease, dated as of August 1, 2002, and as amended by that certain Second Amendment to Standard Industrial Net Lease, dated as of April 2, 2003 (collectively, the “**Master Lease**”), a copy of which is attached hereto as Exhibit A ;s

WHEREAS, pursuant to the terms of the Master Lease, Master Landlord has leased to Sublandlord, certain premises consisting of approximately 30,370 rentable square feet (the “**Master Lease Premises**”) and which are located in an office industrial center with a street address of 11404 and 11408 Sorrento Valley Road, San Diego, California 92121 (collectively, the “**Center**”);

WHEREAS, BC Sorrento, LLC, a California limited liability company (“**Additional Master Landlord**”) and Sublandlord, are parties to a certain Standard Industrial Net Lease, dated March 20, 2000 (the “**Additional Master Lease**”).

WHEREAS, pursuant to the terms of the Additional Master Lease, Additional Master Landlord has leased to Sublandlord, a portion of the premises (the “**Additional Master Lease Premises**”) which are part of an office industrial center which includes 11388 Sorrento Valley Road, San Diego, California 92121 (the “**Additional Center**”), collectively the Center and the Additional Center will herein be referred to as the **Campus** (“the **Campus**”).

(Initially capitalized terms not otherwise defined in this Sublease shall have the meanings attributed to such terms in the Master Lease, and unless otherwise expressly provided herein, all references in this Sublease to “Section” shall refer to the respective “Section” of the Master Lease and all references to “Paragraph” in this Sublease shall refer to the respective “Paragraph” of this Sublease.)

WHEREAS, Sublandlord now desires to sublease to Subtenant and Subtenant now desires to sublease from Sublandlord a portion of the Master Lease Premises containing approximately 21,184 rentable square feet with a street address of 11404 Sorrento Valley Road (the “**Sublease Premises**”), on the terms, covenants and conditions hereinafter provided; and

NOW, THEREFORE, Sublandlord and Subtenant covenant and agree as follows:

**1. Summary and Definitions :** The following definitions apply in this Sublease:

(a) **Base Rent** . Base Rent shall be as follows:

Period During Sublease Term	Monthly Base Rent	Annual Base Rent (or shorter period as noted)
Sublease Commencement Date (estimated to be July 1, 2007, through and including December 31, 2007)	\$0.00	\$ 0.00
January 1, 2008 through and including June 30, 2008	\$1.225 per sq. foot per month or \$25,950.40	\$155,702.40 (for the six month period)
July 1, 2008 through and including June 30, 2009	\$2.548 per sq. foot per month or \$53,976.83	\$647,722.00
July 1, 2009 through and including June 30, 2010	\$2.65 per sq. foot per month or \$56,137.60	\$ 673,651.20
July 1, 2010 through and including June 30, 2011	\$2.756 per sq. foot per month or \$58,383.10	\$ 700,597.20
July 1, 2011 through and including June 30, 2012	\$2.866 per sq. foot per month or \$60,713.34	\$ 728,556.08
July 1, 2012 through and including January 14, 2013	\$2.981 per sq. foot per month or \$63,149.50	\$407,963.07 (for the six months and 14 day period)

- (b) **Security Deposit** : \$400,000.00, subject to reduction on certain terms and conditions, all as set forth in Paragraph 16 hereof. Subtenant’s obligation to make a Security Deposit shall be satisfied by the delivery of a letter of credit.
- (c) **Sublease Premises** : A portion of the Master Lease Premises constituting approximately 21,184 Rentable Square Feet at 11404 Sorrento Valley Road, San Diego, California 92121 (the “**Building**”), as depicted on Exhibit B attached hereto.
- (d) **Term** : The term of this Sublease (“**Sublease Term**”) shall commence on the later of the following two occurrences: 1) the date upon which Subtenant shall have obtained the consent of Master Landlord to this Sublease, which shall be diligently prosecuted, or 2) the date upon which Subtenant obtains clearance of its license applications required for the conduct of its business, which shall be diligently prosecuted (“**Sublease Commencement Date**”). The Sublease Term shall expire on January 14, 2013, or such earlier date on which this Sublease may be terminated in accordance with the provisions hereof or the provisions of the Master Lease, as incorporated herein (“**Sublease Expiration Date**”), in which case Sublandlord shall promptly provide Subtenant with prior written notice of such termination. In no event shall Subtenant conduct Subtenant’s business

operations from the Sublease Premises prior to the Sublease Commencement Date. Subtenant shall have the right to enter the Sublease Premises upon execution of the Sublease prior to the anticipated Sublease Commencement Date for any purposes other than to conduct its business operations, including but not limited to monitoring construction, installing furniture, networks, telecommunication equipment and fiber and any other personal property, provided, however that any such entry shall be subject to Subtenant's waiver and indemnity provisions set forth in this Sublease and Subtenant shall not interfere with any activity of Sublandlord on the Sublease Premises.

## **2. Sublease.**

Sublandlord hereby subleases to Subtenant, and Subtenant hereby subleases from Sublandlord, the Sublease Premises, together with all appurtenances thereto as provided in the Master Lease, for the Sublease Term and on the terms and conditions contained in this Sublease. Subtenant's sublease of the Sublease Premises is subject to the terms and conditions of the Master Lease as incorporated herein and further subject to the terms and conditions of this Sublease.

## **3. Condition of Sublease Premises.**

- (a) In entering into this Sublease, Subtenant acknowledges that, except as expressly set forth in this Sublease, Subtenant has not relied upon or been induced by any statements or representations of Sublandlord or any other parties or persons with respect to the physical condition of the Sublease Premises or with respect to any other matter affecting the Sublease Premises, that might be pertinent in considering the leasing of the Sublease Premises or the execution of this Sublease. Subtenant has, on the contrary and except as expressly set forth in this Sublease, relied solely on such investigations, examinations and inspections as Subtenant has chosen to make or have made on its behalf. Upon taking possession of the Sublease Premises, Subtenant shall be deemed to have accepted the Sublease Premises in its then "as-is" "where-is" condition, except for Sublandlord's remediation obligations set forth in Paragraph 3 of this Sublease.
- (b) Sublandlord represents and warrants that: (i) to the best of its knowledge, as of the Sublease Commencement Date, the Sublease Premises complies with all laws, codes, ordinances and other governmental requirements then applicable to the Sublease Premises and (ii) to the best of its knowledge, as of the Sublease Commencement Date, there are no material defects in the Sublease Premises which would unreasonably interfere with Subtenant's use and enjoyment of the Sublease Premises.
- (c) By taking possession of the Sublease Premises, Subtenant shall conclusively evidence that the Sublease Premises are fully completed and are suitable for Subtenant's purposes, that the Building and the Sublease Premises are in good and satisfactory condition, and that Subtenant waives any defect therein.

- (d) Sublandlord shall complete an Exit Assessment as described in Section 14.8 of the Master Lease and shall obtain any required regulatory certification of the Sublease Premises at least five (5) days prior to the Sublease Commencement Date, unless waived in writing by Subtenant.

**4. Base Rent.**

During the Sublease Term, Subtenant shall pay Sublandlord, as rent for the Sublease Premises, the Base Rent as set forth in Paragraph 1 of this Sublease, without set-off or deduction whatsoever, except as otherwise provided herein. Base Rent shall be due and payable by Subtenant in immediately available funds, in advance on or before the first day of each calendar month without notice or demand.

**5. Additional Rent.**

In addition to the Base Rent under Paragraph 4 above, any and all charges, expenses or other sums Subtenant is required to pay under the terms of this Sublease, including, without limitation, any additional rent required under the Master Lease shall be deemed additional rent (“**Additional Rent**,” and together with Base Rent, “**Subtenant’s Rent**”) and shall be paid by Subtenant. Sublandlord shall have the same rights and remedies with respect to payment of Additional Rent as Sublandlord shall have with respect to the Base Rent. Subtenant shall remain responsible for Subtenant’s Rent and any other charges, expenses or other sums which first arise, accrue or are invoiced at any time during or after the expiration of the Sublease Term, whether by Sublandlord or Master Landlord, to the extent they arise or accrue with respect to any period during the Sublease Term from any liabilities or obligations of Subtenant under the provisions of this Sublease (including any obligations under the Master Lease which are incorporated herein as liabilities or obligations of Subtenant). Notwithstanding anything to the contrary set forth in this Sublease, Subtenant shall not be required to pay any Additional Rent, or to perform any obligation that is (i) allocable to any period of time prior to the Sublease Commencement Date or following the expiration or sooner termination of the Sublease (for any reason other than Subtenant’s default), (ii) allocable to any portion of the Master Premises other than the Sublease Premises, (iii) payable as a result of a default by Sublandlord of any of its obligations under the Master Lease, or as a result of the gross negligence or willful misconduct of Sublandlord or any of its agents, employees or contractors, or (iv) are incurred for the sole and exclusive benefit of Sublandlord.

**6. Rent Payments.**

- (a) Subtenant’s Rent and all other charges, expenses or other sums Subtenant is required to pay to Sublandlord hereunder shall be due and payable without billing or demand, and without deduction, set-off or counterclaim, except as otherwise provided herein, in lawful money of the United States of America, at Sublandlord’s address for notices in Paragraph 15 hereof or to such other person or at such other place as Sublandlord may designate in writing, and shall be due and payable by Subtenant to Sublandlord on or before the date specified in this Sublease, provided that if no date is specified as to the applicable payment, then on or before (i) three (3) business days prior to the corresponding date

provided in the Master Lease for payment of the same by Sublandlord to Master Landlord (provided that in no event shall such period be shortened to a duration of less than two (2) business days) or (ii) if there is no corresponding date provided in the Master Lease for payment of the same by Sublandlord to Master Landlord, then ten (10) business days after written request from Sublandlord to Subtenant. The failure of Subtenant to make payment in full of Subtenant's Rent or any other charges, expenses or other sums Subtenant is required to pay to Sublandlord hereunder by the due date provided herein for such payment, shall potentially subject Subtenant to the obligation to pay to Sublandlord interest in accordance with the provisions of Paragraph 18.

- (b) If the Sublease Term commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, then Subtenant's Rent for the first and last fractional months of the Sublease Term shall be appropriately prorated.
- (c) Sublandlord may upon reasonable prior written notice (which notice shall include Master Landlord's address and Master Landlord's acknowledgement of such notice) instruct Subtenant to make any payment of Subtenant's Rent directly to Master Landlord, in which event Subtenant shall timely make all such payments so instructed directly to Master Landlord (with a copy of the check to be contemporaneously forwarded by Subtenant to Sublandlord at the time of making of each such payment), and in such event Sublandlord shall have no responsibility to Subtenant for the payment of any such amount, and Subtenant shall be solely responsible for any interest or late charges that may be imposed as a result of any failure of Subtenant to have timely and properly made any such payment to Master Landlord. Any payment made directly by Subtenant to Master Landlord at the request of Sublandlord shall be credited against any of Subtenant's Rent due under this Sublease as and when received by Master Landlord.

#### **7. Use.**

Subtenant shall use and occupy the Sublease Premises only for the purposes permitted under, and in a manner consistent with, the provisions of the Master Lease. Subtenant will pay for any damage to any part of the Sublease Premises, Building or Center, subject to any applicable waiver of subrogation provisions, if (i) caused by any act or omission by Subtenant or Subtenant's employees, agent, licensees, contractors or invitees and (ii) Sublandlord is required to pay for such damage under the Master Lease. Subtenant will comply with applicable provisions of the Master Lease and the Center's Rules and Regulations.

#### **8. Operating Costs, Real Estate Taxes and Utilities.**

- (a) Commencing on the Sublease Commencement Date, Subtenant shall pay Subtenant's Pro Rata Share (as defined below) of Operating Costs (as defined in the Master Lease), Real Property Taxes (as defined in the Master Lease), and insurance costs incurred by Sublandlord under the Master Lease. Subtenant's Pro Rata Share is sixty-nine and three quarters percent (69.75%), which represents the

ratio of the Rentable Square Footage of the Sublease Premises to the Rentable Square Footage of the Master Lease Premises (“**Subtenant’s Pro Rata Share**”). Subtenant’s Pro Rata Share shall be computed by Sublandlord on a monthly or other periodic basis selected by Sublandlord. Subtenant’s shall pay the amount of such pro rata share within ten (10) business days after receipt of a statement from Sublandlord.

- (b) Sublandlord may incur actual, third-party, out-of-pocket costs and expenses related to the operation of the Center or Campus, as more specifically described on Exhibit I attached hereto (collectively, “**Additional Operating Costs**”). Subtenant shall be responsible for reimbursing Sublandlord for Subtenant’s prorata share of such Additional Operating Costs as provided below. Subtenant’s pro rata share of Additional Operating Costs shall be one hundred percent (100%) with respect to Additional Operating Costs that are incurred by Sublandlord for the sole benefit of the Sublease Premises. To the extent that the Additional Operating Costs are not for the sole benefit of the Sublease Premises and benefit or are related to the Campus and/or Center as a whole, then Subtenant’s pro rata share of the Additional Operating costs shall represent the ratio of the Rentable Square Footage of the Sublease Premises to the Rentable Square Footage of the Campus and/or the Center, as applicable; provided, however, that in no event shall Subtenant have any obligation to reimburse Sublandlord for any Additional Operating Costs that are incurred for the sole benefit of the premises located at 11404 Sorrento Valley Road. Subtenant shall pay the amount of such pro rata share within ten (10) business days after receipt of a statement from Sublandlord along with reasonable documentary evidence of Sublandlord’s payment of such costs. Subtenant shall bear such Additional Operating Costs commencing on the Sublease Commencement Date. The Additional Operating Costs shall be included in the defined term Subtenant’s Rent.
- (c) To the extent not separately metered or monitored with respect to the Sublease Premises, Sublandlord shall use commercially reasonable efforts to provide those utilities set forth in Exhibit G attached hereto (as provided in the Sublease Premises, the “**Utilities**”). Subtenant shall be responsible for its Pro Rata Share of Sublandlord’s cost of those Utilities in accordance with Paragraph 8(a) above. Sublandlord shall in no way be liable or responsible for any loss, damage or expense the Subtenant may sustain or incur by reason of any change, failure, interruption, interference or defect in the supply or character of the electricity or other Utilities supplied to the Sublease Premises. Sublandlord makes no representation or warranty as the suitability of the Utility service for Subtenant’s requirements, and no such change, failure, defect, unavailability or unsuitability shall constitute any actual or constructive eviction, in whole or in part, or entitle Subtenant to any abatement or diminution of rent, or relieve Subtenant of any of its obligations under this Sublease. Sublandlord shall not be liable in damages or otherwise for any failure or interruption of any Utility service, and no such failure or interruption shall entitle Subtenant to terminate this Sublease or abate the rent due hereunder.

## **9. Status of Master Lease.**

- (a) Sublandlord and Subtenant confirm and agree that this Sublease is subject and subordinate to all of the terms, covenants and conditions of the Master Lease and to the matters to which the Master Lease shall be subordinate. Without limiting the generality of the foregoing, in the event of termination of Sublandlord's interest under the Master Lease for any reason (including, without limitation, upon the occurrence of any casualty or condemnation pertaining to the Sublease Premises) this Sublease shall terminate coincidentally therewith and Sublandlord shall return to Subtenant the Security Deposit and any prepaid Subtenant's Rent not applied to a default of Subtenant within twenty (20) days of such termination.
- (b) Sublandlord represents to Subtenant that the Master Lease represents that entire agreement between Master Landlord and Sublandlord respecting the subject matter thereof, is in full force and effect, and, that to Sublandlord's knowledge, no default or event that, with the passing of time or the giving of notice or both, would constitute a default, exists on the part of Sublandlord, or, to Sublandlord's knowledge, the Master Landlord. Sublandlord agrees to perform all of its obligations under the Master Lease and, except for a termination of the Master Lease in connection with a casualty or condemnation pursuant to Sublandlord's express rights as set forth therein, to maintain the Master Lease in full force and effect, except to the extent that any failure to maintain the Master Lease is due to the failure of Subtenant to comply with any of its obligations under this Sublease. Sublandlord shall not amend or modify the Master Lease in such a manner as to materially adversely affect Subtenant's use of the Subleased Premises or increase the obligations or decrease the rights of Subtenant hereunder, without the prior written consent of Subtenant, which may be granted or withheld at Subtenant's sole discretion.
- (c) If Sublandlord fails to pay any sum of money to Master Landlord, or fails to perform any other act on its part to be performed under the Master Lease or this Sublease, then Subtenant may, but shall not be obligated to, make such payment or perform such act. All such sums paid, and all reasonable costs and expenses of performing any such act, shall be payable by Sublandlord to Subtenant upon demand.
- (d) In the event that Subtenant desires to make any alterations or improvements, or otherwise take any action that will require the consent of Master Landlord, then Subtenant shall process such consent with the Master Landlord. Sublandlord shall cooperate, at no cost or expense to Sublandlord in connection with Subtenant obtaining such consent of Master Landlord.

## **10. Incorporation of Master Lease Terms.**

- (a) The applicable terms, covenants and conditions contained in the Master Lease are hereby incorporated herein and shall, as between Sublandlord and Subtenant, constitute additional terms, covenants and conditions of this Sublease, except to

the extent set forth below. Except as provided in this Paragraph 10, all references in the Master Lease to “Landlord” “Tenant” “Lease” “Premises” “Commencement Date” and “Rent” shall, for purposes of incorporation thereof into this Sublease, mean and refer to “Sublandlord”, “Subtenant”, “Sublease”, “Sublease Premises”, “Sublease Commencement Date” and “Subtenant’s Rent”, respectively. Subtenant agrees to be bound by the provisions of the Master Lease incorporated herein and to keep, observe and perform for the benefit of the Master Landlord and Sublandlord each off the terms, covenants and conditions on its part to be kept, observed and performed hereunder as well as those applicable terms, covenants and conditions to be observed and performed by Sublandlord as Tenant under the Master Lease with respect to the Sublease Premises. Without limiting the foregoing, Subtenant shall not commit or permit to be committed on the Sublease Premises any act or omission which shall violate any term, covenant or condition of the Master Lease. Subtenant shall under no circumstances have any rights with respect to the Sublease Premises greater than Sublandlord’s rights under the Master Lease.

- (b) In the event of conflict between any provision of the Master Lease which is incorporated herein as described above in this Paragraph 10 and any provision of this Sublease, the provisions of this Sublease shall control.
- (c) The following Sections and provisions of the Mater Lease do not apply to, shall not be a part of, and are not incorporated into this Sublease.

Section	Subject Matter	Specific Section Excluded If not entire Section)
Section 1	Basic Lease Terms	1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.9, 1.10
Section 2	The Premises	
Section 3	Lease Term	
Section 4	Rent	Section 4.1 (Minimum Monthly Rent)
Section 5	Security Deposit	
Section 6	Operating Expenses	6.1, 6.2, 6.5
Section 8	Real Property Taxes	8.1, 8.2
Section 16	Damage and Destruction	
Section 17	Condemnation	
Section 18	Assignment and Subletting	18.2 (c)
Section 20	Surrender	20.4
Section 21	Default by Tenant	Section 21(d)(v)

Section	Subject Matter	Specific Section Excluded (If not entire Section)
Section 23	Default by Landlord	23.3 (a)
Section 24	General Provisions	24.6

Exhibits B “ **Rules and Regulations** ” and C “ **Sign Criteria** ” to the Master Lease shall be incorporated into this Sublease but all other exhibits and references thereto shall be excluded.

- (d) References in the following sections of the Master Lease to “Landlord” shall be deemed to refer to Master Landlord only: 7.2, 9.1, 9.4, 9.7, 11.5, and 24.24.
- (e) The reference to “Avanir Pharmaceuticals” in Section 14.2 shall be deemed to refer to Halozyme, Inc.
- (f) Sublandlord and Subtenant agree that Sublandlord shall not be responsible or liable to Subtenant for the performance or non-performance of any obligations of Master Landlord under the Master Lease, and in furtherance thereof agree as follows:
  - (i) Notwithstanding anything to the contrary contained in this Sublease, Sublandlord shall not be required to (A) provide or perform any insurance and services or any alterations, improvements, improvement allowances or other construction obligations as to the Sublease Premises, (B) perform any maintenance or make any of the repairs to the Sublease Premises, Building or the Center, (C) comply with any laws or requirements of governmental authorities regarding the maintenance or operation of the Sublease Premises after Subtenant takes possession of the Premises or prior thereto the extent required to be complied with by Master Landlord under the Master Lease, (D) take any other action relating to the operation, maintenance, repair, alteration or servicing of the Sublease Premises that Master Landlord may have agreed to provide, furnish, make, comply with, or take, or cause to be provided, furnished, made, complied with or taken under the Master Lease, or (E) provide Subtenant with any rebate, credit, allowance or other concession required of Master Landlord for any reason pursuant to the Master Lease unless Sublandlord receives a rent abatement with respect to the Sublease Premises and Subtenant is not in default of its obligations under the Sublease, beyond all applicable notice and cure periods. Sublandlord makes no representation or warranty of quiet enjoyment as to any persons claiming by, through or under Master Landlord, but Sublandlord represents and warrants quiet enjoyment as against any person claiming by, through or under Sublandlord.
  - (ii) Sublandlord agrees, upon request of Subtenant, to use reasonable efforts, at Subtenant’s sole cost and expense, to cause Master Landlord to provide, furnish, or comply with any of Master Landlord’s obligations under the Master Lease or to provide any required consents or approvals; provided, however, that Sublandlord shall not be obligated to use such efforts or take any action which, in Sublandlord’s reasonable judgment, might give rise

to a default by Sublandlord under the Master Lease. Such efforts shall include, without limitation, upon Subtenant's request, notifying Master Landlord within two (2) business days of its non-performance under the Master Lease and requesting that Master Landlord perform its obligations thereunder. If Master Landlord shall default in the performance of any of its obligations under the Master Lease or at law, Sublandlord shall, upon request and at the expense of Subtenant, cooperate with Subtenant in the prosecution of any reasonable action or proceeding, in order to have Master Landlord (A) make such repairs, furnish such electricity, provide such services or comply with any other obligation of Master Landlord under the Master Lease or as required by law, (B) compensate Subtenant for any earlier default by Master Landlord in the payment or performance of its liabilities and obligations under the Master Lease during the Sublease Term, and/or (C) assigning Sublandlord's rights under the Master Lease to Subtenant to the extent necessary to permit Subtenant to institute legal proceedings against Master Landlord to obtain the performance of Master Landlord's obligations under the Master Lease; provided, however, that if Subtenant commences a lawsuit or other action, Subtenant shall pay all costs and expenses incurred in connection therewith (with any matter affecting the Sublease Premises, or a proportionate share of such costs if the matter also effects the Master Premises), and Subtenant shall indemnify Sublandlord against, and hold Sublandlord harmless from, all costs and expenses incurred by Sublandlord in connection therewith.

- (iii) Subtenant shall not make any claim against Sublandlord for any damage which may arise by reason of: (i) the failure of Master Landlord to keep, observe or perform any of its obligations under the Master Lease; or (ii) the acts or omissions of Master Landlord or its employees, agents, licensees, contractors or invitees.
- (iv) Subtenant agrees that any waiver of liability, waiver of subrogation rights, or indemnification provisions in the Master Lease which are incorporated herein as waivers or obligations of Subtenant (including, but not limited to, in Sections 9.5, 12.2, 13 and 14.5 of the Master Lease, to the extent applicable to and incorporated in this Sublease), shall be deemed expanded so as to provide for Subtenant to make such waivers and provide such indemnities not only in favor of Sublandlord, but also in favor of Master Landlord, and the respective affiliated employees, agents and the like of both Sublandlord and Master Landlord as enumerated in such provisions.
- (g) In the event that Sublandlord, as Tenant, is entitled to termination rights for all or a portion of the Sublease Premises, including, without limitation, as a result of (i) damage and destruction under Section 16 of the Master Lease, or (ii) a partial condemnation under Section 17 of the Master Lease, then Subtenant shall be entitled to similar termination rights with respect to the portion or all of the

Sublease Premises affected, regardless of whether or not Sublandlord seeks to enforce such termination rights under the Master Lease.

- (h) In the event that Sublandlord, as Tenant, receives a rent abatement for all or a portion of the Sublease Premises, including, without limitation, as a result of (i) damage and destruction under Section 16 of the Master Lease, or (ii) a partial condemnation under Section 17 of the Master Lease, then Subtenant shall be entitled to similar abatement of Subtenant's Rent with respect to the portion or all of the Sublease Premises affected.
- (i) Notwithstanding the incorporation of Section 6 of the Master Lease, Subtenant shall only be responsible for its proportionate share of Operating Costs, Real Property Taxes and insurance costs incurred by the Master Landlord under the Master Lease and charged through to Sublandlord. Subject to the provisions of Section 8(b) above, under no circumstances shall Subtenant be liable for any such costs directly incurred by Sublandlord.

#### **11. Insurance.**

Subtenant shall comply at all times and in all respects with the provisions of Section 9 of the Master Lease with regard to the maintenance of insurance by "Tenant". Such insurance shall name, as additional insureds, Master Landlord, Sublandlord and any other parties required to be named under the terms of the Master Lease, and a policy or certificate thereof shall be provided to Sublandlord not later than two (2) business days prior to the Sublease Commencement Date. The maintenance of insurance coverage with respect to the Sublease Premises and any property of Subtenant shall be the sole obligation of Subtenant. All insurance required to be maintained by Subtenant shall provide for thirty (30) days prior written notice to Sublandlord and Master Landlord in the event of any termination or reduction in coverage of such insurance. All property insurance policies which either Party obtains affecting the Sublease Premises shall include a clause or endorsement denying the insurer any rights of subrogation against the other Party or Master Landlord. Sublandlord and Subtenant waive any rights of recovery against the other for any actually insured injury or loss including all amounts within any deductible or self-insured retention amount applicable to any such insured injury or loss.

#### **12. Surrender of Sublease Premises; Holding Over.**

- (a) As soon as its right to possession ends, Subtenant shall surrender the Sublease Premises to Sublandlord in as good repair and condition as when Subtenant first occupied, except for reasonable wear and tear and those improvements that Sublandlord made to the Sublease Premises that were not otherwise acquired by Subtenant in connection with this Sublease, or as otherwise consented to by the Master Landlord in the consent. Subtenant will concurrently deliver to Sublandlord all keys to the Sublease Premises, and restore any locks that it has changed to the system that existed at the commencement of the Sublease Term. If possession is not immediately surrendered, Sublandlord may enter upon and take possession of the Sublease Premises and expel or remove Subtenant and any other person who may be occupying the Sublease Premises or any part thereof.

- (b) (b) At the expiration or termination of the Sublease Term, Sublandlord may require the removal of any or all furniture, personal property and equipment from the Sublease Premises, and the restoration of the Sublease Premises to its prior condition, except for reasonable wear and tear, at Subtenant's expense. All of Subtenant's furniture, personal property and equipment on or about the Sublease Premises, shall be removed from the Sublease Premises by Subtenant at the expiration or termination of the Sublease Term. All removals by Subtenant will be accomplished in a good and workmanlike manner so as not to damage any portion of the Center, Building or the Master Lease Premises and Subtenant will promptly repair and restore all damage done except for normal wear and tear. If Subtenant does not so remove any property which it has the right or duty to remove, Sublandlord may immediately either claim it as abandoned property, or remove, store and dispose of it in any manner Sublandlord may choose, at Subtenant's cost and without liability to Subtenant or any other party.
- (c) As a condition to this Sublease and to facilitate Sublandlord's performance of its obligations under the Master Lease, Subtenant agrees that Sublandlord shall be entitled to enter the Sublease Premises, upon two (2) business days' advance notice to Subtenant, at any time during the ten (10) days preceding the Sublease Expiration Date for the purpose of making any repairs or modifications or removing any alterations or other improvements required under the terms of the Master Lease to the extent the same will not materially interfere with Subtenant's continuous use of the Sublease Premises for the purposes of conducting its business therein. Sublandlord's right to enter the Sublease Premises under this Paragraph 12(c) shall not be exclusive of any other right of entry Sublandlord may have under the terms of this Sublease.
- (d) If Subtenant does not surrender the Sublease Premises as required and holds over after its right to possession ends, Subtenant shall become a tenant at sufferance only, at a monthly rental rate equal to the greater of (i) one hundred fifty percent (150%) of the total Subtenant's Rent payable in the last prior full month, or (ii) the amount payable by Sublandlord as "Tenant" under the Master Lease as a result of such holdover, without renewal, extension or expansion rights, and otherwise subject to the terms, covenants and conditions herein specified, so far as applicable. Nothing other than a fully executed written agreement of the Parties creates any other relationship. Subtenant will be liable for Sublandlord's loss, costs and damage from such holding over, including, without limitation, those from Sublandlord's delay in delivering possession to other parties. These provisions are in addition to other rights of Sublandlord hereunder and as provided by law.

### **13. Waiver and Indemnification.**

The provisions of the Master Lease relating to waiver of liability, waiver of subrogation and indemnification shall apply to this Sublease as incorporated by Paragraph 10 hereof.

**14. Hazardous Materials.**

- (a) The provisions of the Master Lease relating to Hazardous Materials shall apply to this Sublease as incorporated by Paragraph 10. Notwithstanding anything in this Sublease to the contrary, Subtenant shall have no liability or obligation whatsoever for any Hazardous Materials located in, on or about the Center, Building or Sublease Premises prior to the Sublease Commencement Date or that migrate onto the property on which the Center is located or appear within the Center, Building, or Sublease Premises, provided that neither Subtenant nor its employees, agents, licensees, contractors or invitees was the cause or source of such Hazardous Materials.
- (b) To the extent required by law or for Subtenant's use and occupancy of the Building and Sublease Premises, Sublandlord shall cause, at its sole cost and expense, any and all such Hazardous Materials discovered in, on or about the Building or Sublease Premises to be removed or otherwise remediated.

**15. Notices.**

In the event any notice from the Master Landlord or otherwise relating to this Sublease or the Master Lease is delivered to, or is otherwise received by, Sublandlord, then Sublandlord shall, as soon thereafter as possible, but in any event within forty-eight (48) hours, deliver such notice to Subtenant if such notice is written or advise Subtenant thereof by telephone if such notice is oral. All notices, demands, statements and other communications that may or are required to be given by either Party to the other hereunder shall be in writing and shall be (i) personally delivered to the address or addressee provided herein, or (ii) sent by certified mail, postage prepaid and return receipt requested or (iii) delivered by a reputable messenger or overnight courier service and, in any case, addressed as follows:

If to Sublandlord:

Avanir Pharmaceuticals  
c/o Chief Financial Officer  
101 Enterprise, Suite 300  
Aliso Viejo, CA 92656  
Attention: Michael J. Puntoriero

With a copy to:

Goodwin Procter LLP  
4370 La Jolla Village Drive, Suite 400  
San Diego, CA 92122  
Fax: (858) 232-0349  
Attention: Ryan Murr, Esq.

If to Subtenant prior to the Sublease Commencement Date:

Halozyme, Inc.  
11588 Sorrento Valley Rd, Suite 17  
San Diego, CA 92121  
Fax: (858) 259-2539  
Attention: Chief Financial Officer

If to Subtenant after the Sublease Commencement Date

Halozyme, Inc.  
11388 Sorrento Valley Rd  
San Diego, CA 92121  
Fax: TBD  
Attention: Chief Financial Officer

With a copy to:

Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105-2482  
Fax: (415) 268-7522  
Attention: Derek Boswell, Esq.

Any notice or document addressed to the Parties hereto at the respective addresses set forth on this Sublease or at such other address as they may specify from time to time by written notice delivered in accordance with this Paragraph 15 shall be considered delivered (w) in the case of personal delivery, at the time of delivery or refusal to accept delivery; (x) on the third day after deposit in the United States mail, certified mail, postage prepaid; (y) in the case of reputable messenger or overnight courier service, upon delivery or refusal to accept delivery; or (z) in the event of failure of delivery by reason of changed address of which no notice was delivered or refusal to accept delivery, as of the date of such failure or refusal. If any such day of delivery is not a business day, the notice or document will be considered delivered on the next business day.

#### **16. Security Deposit.**

Within one business day of the Effective Date, Subtenant shall provide Sublandlord with a letter of credit for the full initial amount of the Security Deposit listed in Paragraph 1(a) (the "**Letter of Credit**"). Such Letter of Credit shall be in a form and substance reasonably acceptable to Sublandlord (with the form attached hereto as Exhibit "D" deemed acceptable). The Letter of Credit shall have an original term of no less than one year with provisions for extensions unless sixty (60) days prior notice is given to Sublandlord by the issuing bank Subtenant shall keep the Letter of Credit in force throughout the Term and for sixty days after (i) the Sublease Expiration Date of the Term or (ii) the earlier termination of the Term, except that if such earlier termination is based on Subtenant's default, Subtenant shall keep the Letter of Credit in force until sixty days after the date when the Term would have expired had it not been earlier terminated. Subtenant shall deliver to Sublandlord a renewal Letter of Credit no later than thirty days prior to the expiration date of any Letter of Credit issued under this Paragraph 16, and if Subtenant fails to do so, Sublandlord may draw the entire amount of the expiring Letter of Credit and hold the proceeds in cash for the same purposes as the Letter of Credit. The Letter of Credit shall be issued by Silicon Valley Bank (or other bank satisfactory to and approved in advance by Sublandlord). The Letter of Credit shall be reduced to \$300,000 on July 1, 2008. On the third anniversary of the Sublease Commencement Date and thereafter on each anniversary thereof, the principal amount of the Letter of Credit shall be reduced by \$50,000; provided, however, that Parent's unrestricted cash and marketable securities on hand are greater than the amount of cash used in operations for the prior 6 months), as reflected in Halozyme Therapeutics, Inc.'s most recently filed 10-Q or 10-K.

### **17. Assignment and Subletting.**

Subject to the prior written consent of both Sublandlord (which shall not be unreasonably withheld, conditioned or delayed) and Master Landlord, Subtenant shall have the same rights as Sublandlord enjoys as Tenant under such portions of Section 18 of the Master Lease as are incorporated herein, to assign this Sublease or sub-sublease the Sublease Premises. Except in connection with a Permitted Transfer (as defined below), Sublandlord shall have the right to fifty percent (50%) of all subrent or other consideration (net of Subtenant's reasonable expenses in connection with such assignment or sub sublease, including, without limitation, brokerage commissions, legal costs, and tenant improvement costs or allowances) to be paid to Subtenant under the terms of any assignment or sub sublease in excess of the total Subtenant's Rent due hereunder. Notwithstanding anything in this Sublease to the contrary, Subtenant may assign the Sublease or sublet the Sublease Premises, or any portion thereof, without Sublandlord's consent, to any entity which controls, is controlled by, or is under common control with Subtenant; to any entity which results from a merger of, reorganization of, or consolidation with Subtenant; to any entity which acquires substantially all of the stock or assets of Subtenant, as a going concern, with respect to the business that is being conducted in the Sublease Premises (hereinafter each a "**Permitted Transfer**"). In addition, a sale or transfer of the majority capital stock of Subtenant shall be deemed a Permitted Transfer if (1) such sale or transfer occurs in connection with any *bona fide* financing or capitalization for the benefit of Subtenant, or (2) Subtenant is or becomes a publicly traded corporation. Sublandlord shall have no right to terminate the Lease in connection with, and shall have no right to any sums or other economic consideration resulting from any Permitted Transfer.

### **18. Interest on Subtenant's Obligations.**

Any Subtenant's Rent or other charge, expense or other sum due from Subtenant to Sublandlord under this Sublease which is not paid on the date due, shall bear interest from the date such payment is due until paid (computed on the basis of a 365-day-year) at the lesser of (a) the maximum lawful rate per annum or (b) twelve percent (12%) per annum. The payment of such interest shall not excuse or cure a default by Subtenant hereunder.

### **19. Authority.**

By delivering this Sublease, each Party hereby represents and warrants to the other that such execution and delivery has been duly authorized by all necessary corporate or partnership action and that the person(s) executing same have been duly authorized to do so.

### **20. Signage and Access.**

Subject to Master Landlord's approval, Subtenant shall have the right to install signage at the Center, Building and Sublease Premises, at its sole cost and expense, subject to, and in compliance with, the provisions of the Master Lease. In addition, subject to Master Landlord's approval, Subtenant shall have the right, at its sole cost and expense, to install signage that is visible from Sorrento Valley Road, subject to the provisions of the Master Lease. At its cost, Subtenant shall remove any such signage at the expiration of the Sublease Term and repair any damage caused thereby.

**21. Commissions.**

Sublandlord has entered into certain listing agreements with Grubb & Ellis/BRE Commercial, pursuant to which Sublandlord shall pay any commission payable in connection with this Sublease. Sublandlord hereby represents and warrants to Subtenant, and Subtenant hereby represents and warrants to Subtenant, that no other broker or finder has been engaged by it, respectively, in connection with any of the transactions contemplated by this Sublease or to its knowledge is in any way connected with any such transactions. In the event of any other claims for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Sublease, then Subtenant shall indemnify, save harmless and defend Sublandlord from and against such claims if they shall be based upon any statement, representation or agreement by Subtenant, and Sublandlord shall indemnify, save harmless and defend Subtenant from and against such claims if they shall be based upon any statement, representation or agreement by Sublandlord.

**22. Captions.**

The captions in this Sublease are used for convenience and reference only and are not to be taken as part of this Sublease or to be used in determining the intent of the Parties or otherwise interpreting this Sublease.

**23. Successors and Assigns.**

Subject to the restrictions on assignment set forth in this Sublease, this Sublease shall be binding upon and inure to the benefit of Sublandlord and Subtenant and their respective successors and assigns.

**24. Parking.**

Subtenant shall have the non-exclusive right to use all parking areas available to Sublandlord under the Master Lease, which are adjacent to 11404 Sorrento Valley Road, provided Subtenant shall not use more than fifty-two (52) spaces at any one time, which represents Subtenant's Pro Rata Share or parking spaces at the Center.

**25. Master Landlord Consent.**

This Sublease shall not become effective and shall not be deemed to be an offer to sublease or create any rights or obligations between Subtenant or Sublandlord unless and until Sublandlord and Subtenant have executed and delivered the same, and Master Landlord has executed and delivered a consent to this Sublease in the form attached hereto as Exhibit E, with such changes as may reasonably be accepted by Subtenant and Sublandlord as long as Master Landlord does not change the non-disturbance language of paragraph 4 of the consent set forth in Exhibit E. Subtenant shall use commercially reasonable efforts to obtain the consent of Master Landlord promptly following mutual execution hereon. If no such consent to this Sublease is given by Master Landlord within thirty (30) days after the delivery of a copy of the fully executed Sublease to Master Landlord, then either Sublandlord or Subtenant shall have the right, by written notice to the other, to terminate this Sublease at any time prior to such consent from

Master Landlord being given. By delivering this Sublease, each Party hereby represents and warrants to the other that such execution and delivery has been duly authorized by all necessary corporate or partnership action and that the person(s) executing same have been duly authorized to do so.

In the event the Master Lease is terminated prior to the expiration of the Sublease Term, whether as a result of a voluntary termination by Sublandlord or a default on the part of Sublandlord, this Sublease shall, upon notice from Master Landlord to Subtenant, remain in full force and effect as a direct lease between Subtenant and Master Landlord (in which event Subtenant shall attorn to Master Landlord).

**26. Financial Statements.**

Subtenant represents, warrants and covenants that any financial statements heretofore furnished to Sublandlord, in connection with this Sublease, are accurate and are not materially misleading.

**27. Furniture, Fixtures and Equipment.**

As of the Sublease Commencement Date, Sublandlord does hereby sell, transfer, and convey to Subtenant the furniture, fixtures and equipment described on Exhibit C attached hereto (the "FF&E ") for a purchase price of \$173,000.00. Sublandlord covenants and warrants that it has full legal title to the FF&E and that the FF&E is free and clear of any and all security agreements, financings statements or other liens and encumbrances. Except as set forth in the immediately preceding sentence, the FF&E is sold to Subtenant in its then "as-is" condition, and Sublandlord makes no, and Subtenant acknowledges it is not relying on any, representation or warranty of any kind whatsoever, express or implied, as to any other matters concerning the FF&E including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

**28. Parent Guaranty.**

Concurrent with the execution of this Sublease, Parent covenants and agrees to execute a guaranty substantially in the form attached hereto as Exhibit H.

**29. Miscellaneous.**

- (a) Time is of the essence of each and every term of this Sublease.
- (b) Subtenant waives any right it may now or hereafter have (i) for exemption of property from liability for debt or for distress for rent or (ii) relating to notice or delay in levy of execution in case of eviction for nonpayment of rent.
- (c) If there is more than one party constituting Subtenant, their obligations are joint and several, and Sublandlord need not first proceed against all of them before proceeding against any or all of the others.

- (d) Subtenant acquires no rights by implication from this Sublease, and is not a beneficiary of any past, current or future agreements between Sublandlord and third parties.
- (e) California law governs this Sublease. Neither Party may record this Sublease or a copy or memorandum thereof. Submission of this Sublease to Subtenant is not an offer, and Subtenant will have no rights hereunder until each Party executes a counterpart and delivers it to the other Party.
- (f) This Sublease cannot be changed or terminated orally. All informal understandings and agreements, representation or warranties heretofore made between the Parties are merged in this Sublease, which alone fully and completely expresses the agreement between Sublandlord and Subtenant as to the subleasing of the Sublease Premises.
- (g) Each and every indemnification obligation set forth in this Sublease, or incorporated into this Sublease from the Master Lease, shall survive the expiration or earlier termination of the term of this Sublease.
- (h) If, for any reason, any suit be initiated between Sublandlord and Subtenant to interpret or enforce any provision of this Sublease, the prevailing Party shall be entitled to recover from the other Party its legal costs, expert witness expenses, and reasonable attorneys' fees, as fixed by the court.
- (i) The Parties mutually acknowledge that this Sublease has been negotiated at arm's length. The provisions of this Sublease shall be deemed to have been drafted by all of the Parties and this Sublease shall not be interpreted or constructed against any Party solely by virtue of the fact that such Party or its counsel was responsible for its preparation.
- (j) This Sublease may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, this Sublease has been executed as of the day and year first above written.

“SUBLANDLORD”:

AVANIR PHARMACEUTICALS,  
a California corporation

By: /s/ Michael J. Puntoriero  
Name: Michael J. Puntoriero  
Title: Chief Financial Officer

“SUBTENANT”:

HALOZYME, INC.,  
a California corporation

By: /s/ Jonathan Lim  
Name: Jonathan Lim  
Title: President and Chief Executive Officer

The undersigned “Parent” has executed this Sublease for the purpose of affirming its obligation under Section 28.

“PARENT”:

HALOZYME THERAPEUTICS, INC.,  
a Nevada corporation

By: /s/ Jonathan Lim  
Name: Jonathan Lim  
Title: President and Chief Executive Officer



**SUBLEASE AGREEMENT**  
**between**  
**AVANIR PHARMACEUTICALS**  
**as Sublandlord**  
**and**  
**HALOZYME, INC.**  
**as Subtenant**

Building Address: 11388 Sorrento Valley Road  
San Diego, California 92121

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**SUBLEASE AGREEMENT**

THIS SUBLEASE AGREEMENT (“**Sublease**”) is made as of this 2nd day of July, 2007 (the “**Effective Date**”), by and between AVANIR PHARMACEUTICALS, a California corporation (“**Sublandlord**”) and HALOZYME, INC., a California corporation (“**Subtenant**”), a subsidiary of HALOZYME THERAPEUTICS, INC., a Nevada corporation (“**Parent**”), with Sublandlord and Subtenant hereinafter sometimes referred to collectively as the “**Parties**” and individually as a “**Party**”).

**WITNESSETH:**

WHEREAS, BC Sorrento, LLC, a California limited liability company (“**Master Landlord**”) and Sublandlord, are parties to a certain Standard Industrial Net Lease, dated as of March 20, 2000, as amended by that certain First Amendment to Standard Industrial Net Lease, dated as of February 1, 2001, and as amended by that certain Second Amendment to Standard Industrial Net Lease, dated as of March 1, 2006 (collectively, the “**Master Lease**”), a copy of which is attached hereto as Exhibit A;

WHEREAS, pursuant to the terms of the Master Lease, Master Landlord has leased to Sublandlord, certain premises consisting of approximately 27,575 rentable square feet (the “**Master Lease Premises**”) and which are located in an office industrial center with a street address of 11388 Sorrento Valley Road, San Diego, California 92121 (collectively, the “**Center**”);

WHEREAS, Sorrento Plaza, a California limited partnership (“**Additional Master Landlord**”) and Sublandlord, are parties to a certain Standard Industrial Net Lease, dated May 20, 2002 (the “**Additional Master Lease**”);

WHEREAS, pursuant to the terms of the Additional Master Lease, Additional Master Landlord has leased to Sublandlord, a portion of the premises (the “**Additional Master Lease Premises**”) which are part of an office industrial center which includes 11404 and 11408 Sorrento Valley Road, San Diego, California 92121 (the “**Additional Center**”), collectively the Center and the Additional Center will herein be referred to as the Campus (“the **Campus**”);

(Initially capitalized terms not otherwise defined in this Sublease shall have the meanings attributed to such terms in the Master Lease, and unless otherwise expressly provided herein, all references in this Sublease to “Section” shall refer to the respective “Section” of the Master Lease and all references to “Paragraph” in this Sublease shall refer to the respective “Paragraph” of this Sublease.)

WHEREAS, Sublandlord now desires to sublease to Subtenant and Subtenant now desires to sublease from Sublandlord the Master Lease Premises containing approximately 27,575 rentable square feet (the “**Sublease Premises**”), on the terms, covenants and conditions hereinafter provided; and

NOW, THEREFORE, Sublandlord and Subtenant covenant and agree as follows:

**1. Summary and Definitions :** The following definitions apply in this Sublease:

(a) **Base Rent** . Base Rent shall be as follows:

Period During Sublease Term	Monthly Base Rent
Sublease Commencement Date (estimated to be July 1, 2007) through and including December 31, 2007	\$0.00
January 1, 2008 through and including June 30, 2008	\$1.10 per sq. foot per month or \$30,332.50
July 1, 2008 through and including August 31, 2008	\$2.288 per sq. foot per month or \$63,091.60

- (b) **Security Deposit** : \$400,000.00. Subtenant’s obligation to make a Security Deposit may be satisfied by the deposit of a letter of credit, which letter of credit’s principal face amount is subject to reduction on certain terms and conditions, all as set forth in Paragraph 16 hereof. Sublandlord and Subtenant acknowledge that the deposit of a single letter of credit in the principal face amount of \$400,000 in connection with that certain sublease governing the premises located at 11404 Sorrento Valley Road, San Diego, California 92121 shall satisfy the Subtenant’s obligation to make a Security Deposit under this Sublease.
- (c) **Sublease Premises** : The entirety of the Master Lease Premises constituting approximately 27,575 rentable square feet at 11388 Sorrento Valley Road, San Diego, California 92121 (the “**Building**”), as depicted on Exhibit B attached hereto.
- (d) **Term** : The term of this Sublease (“**Sublease Term**”) shall commence on the later of the following two occurrences: 1) the date upon which Subtenant shall have obtained the consent of Master Landlord to this Sublease, which shall be diligently prosecuted, or 2) the date upon which Subtenant obtains clearance of its license applications required for the conduct of its business, which shall be diligently prosecuted (“**Sublease Commencement Date**”). The Sublease Term shall expire on August 31, 2008, or such earlier date on which this Sublease may be terminated in accordance with the provisions hereof or the provisions of the Master Lease, as incorporated herein (“**Sublease Expiration Date**”), in which case Sublandlord shall promptly provide Subtenant with prior written notice of such termination. In no event shall Subtenant conduct Subtenant’s business

operations from the Sublease Premises prior to the Sublease Commencement Date. Subtenant shall have the right to enter the Sublease Premises upon execution of the Sublease prior to the anticipated Sublease Commencement Date for any purposes other than to conduct its business operations, including but not limited to, monitoring construction, installing furniture, networks, telecommunication equipment and fiber and any other personal property, provided, however that any such entry shall be subject to Subtenant's waiver and indemnity provisions set forth in this Sublease and Subtenant shall not interfere with any activity of Sublandlord on the Sublease Premises.

## **2. Sublease.**

Sublandlord hereby subleases to Subtenant, and Subtenant hereby subleases from Sublandlord, the Sublease Premises, together with all appurtenances thereto as provided in the Master Lease, for the Sublease Term and on the terms and conditions contained in this Sublease. Subtenant's sublease of the Sublease Premises is subject to the terms and conditions of the Master Lease as incorporated herein and further subject to the terms and conditions of this Sublease.

## **3. Condition of Sublease Premises.**

- (a) In entering into this Sublease, Subtenant acknowledges that, except as expressly set forth in this Sublease, Subtenant has not relied upon or been induced by any statements or representations of Sublandlord or any other parties or persons with respect to the physical condition of the Sublease Premises or with respect to any other matter affecting the Sublease Premises, that might be pertinent in considering the leasing of the Sublease Premises or the execution of this Sublease. Subtenant has, on the contrary and except as expressly set forth in this Sublease, relied solely on such investigations, examinations and inspections as Subtenant has chosen to make or have made on its behalf. Upon taking possession of the Sublease Premises, Subtenant shall be deemed to have accepted the Sublease Premises in its then "as-is" "where-is" condition.
- (b) Sublandlord represents and warrants that: (i) to the best of its knowledge, as of the Sublease Commencement Date, the Sublease Premises complies with all laws, codes, ordinances and other governmental requirements then applicable to the Sublease Premises and (ii) to the best of its knowledge, as of the Sublease Commencement Date, there are no material defects in the Sublease Premises which would unreasonably interfere with Subtenant's use and enjoyment of the Sublease Premises.
- (c) By taking possession of the Sublease Premises, Subtenant shall conclusively evidence that the Sublease Premises are fully completed and are suitable for Subtenant's purposes, that the Building and the Sublease Premises are in good and satisfactory condition, and that Subtenant waives any defect therein.

- (d) Sublandlord shall complete an Exit Assessment as described in Section 14.8 of the Master Lease and shall obtain any required regulatory certification of the Sublease Premises at least five (5) days prior to the Sublease Commencement Date, unless waived in writing by Subtenant.
- (e) Subject to the terms and conditions of this Paragraph 3(e), Sublandlord and its agents, employees and contractors shall be afforded full access to the Sublease Premises during normal business hours for the purpose of removing the Cesium 137 Irradiator (the “ **Irradiator** ”) and removing any Hazardous Materials from the Sublease Premises that were caused by the Irradiator. Sublandlord shall remove the Irradiator and such Hazardous Materials by July 31, 2007. Sublandlord shall hold harmless, defend and indemnify Subtenant from all liability, costs (including reasonable attorneys’ fees), damage and claims arising from any bodily injury, property damage or mechanics’ lien claims directly and solely resulting from entry and activities on the Sublease Premises by Sublandlord, its agents, employees and contractors arising from the Irradiator and the existence and removal of Hazardous Materials caused by the Irradiator. Notwithstanding the foregoing, Sublandlord shall not be liable to Subtenant, nor shall Sublandlord have any obligation to hold harmless, defend or indemnify Subtenant from any liability, costs, damage or claims which are related to Subtenant’s gross negligence or willful misconduct.

#### **4. Base Rent.**

During the Sublease Term, Subtenant shall pay Sublandlord, as rent for the Sublease Premises, the Base Rent as set forth in Paragraph 1 of this Sublease, without set-off or deduction whatsoever, except as otherwise provided herein. Base Rent shall be due and payable by Subtenant in immediately available funds, in advance on or before the first day of each calendar month without notice or demand.

#### **5. Additional Rent.**

In addition to the Base Rent under Paragraph 4 above, any and all charges, expenses or other sums Subtenant is required to pay under the terms of this Sublease, including, without limitation, any additional rent required under the Master Lease shall be deemed additional rent (“ **Additional Rent** ,” and together with Base Rent and Additional Operating Costs, “ **Subtenant’s Rent** ”) and shall be paid by Subtenant. Sublandlord shall have the same rights and remedies with respect to payment of Additional Rent as Sublandlord shall have with respect to the Base Rent. Subtenant shall remain responsible for Subtenant’s Rent and any other charges, expenses or other sums which first arise, accrue or are invoiced at any time during or after the expiration of the Sublease Term, whether by Sublandlord or Master Landlord, to the extent they arise or accrue with respect to any period during the Sublease Term from any liabilities or obligations of Subtenant under the provisions of this Sublease (including any obligations under the Master Lease which are incorporated herein as liabilities or obligations of Subtenant). Notwithstanding anything to the contrary set forth in this Sublease, Subtenant shall not be required to pay any Additional Rent, or to perform any obligation that is (i) allocable to any period of time prior to

the Sublease Commencement Date or following the expiration or sooner termination of the Sublease (for any reason other than Subtenant's default), (ii) allocable to any portion of the Master Premises other than the Sublease Premises, (iii) payable as a result of a default by Sublandlord of any of its obligations under the Master Lease, or as a result of the gross negligence or willful misconduct of Sublandlord or any of its agents, employees or contractors, or (iv) are incurred for the sole and exclusive benefit of Sublandlord.

#### **6. Rent Payments.**

- (a) Subtenant's Rent and all other charges, expenses or other sums Subtenant is required to pay to Sublandlord hereunder shall be due and payable without billing or demand, and without deduction, set-off or counterclaim, except as otherwise provided herein, in lawful money of the United States of America, at Sublandlord's address for notices in Paragraph 15 hereof or to such other person or at such other place as Sublandlord may designate in writing, and shall be due and payable by Subtenant to Sublandlord on or before the date specified in this Sublease, provided that if no date is specified as to the applicable payment, then on or before (i) three (3) business days prior to the corresponding date provided in the Master Lease for payment of the same by Sublandlord to Master Landlord (provided that in no event shall such period be shortened to a duration of less than two (2) business days) or (ii) if there is no corresponding date provided in the Master Lease for payment of the same by Sublandlord to Master Landlord, then ten (10) business days after written request from Sublandlord to Subtenant. The failure of Subtenant to make payment in full of Subtenant's Rent or any other charges, expenses or other sums Subtenant is required to pay to Sublandlord hereunder by the due date provided herein for such payment, shall potentially subject Subtenant to the obligation to pay to Sublandlord interest in accordance with the provisions of Paragraph 18.
- (b) If the Sublease Term commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, then Subtenant's Rent for the first and last fractional months of the Sublease Term shall be appropriately prorated.
- (c) Sublandlord may upon reasonable prior written notice (which notice shall include Master Landlord's address and Master Landlord's acknowledgement of such notice) instruct Subtenant to make any payment of Subtenant's Rent directly to Master Landlord, in which event Subtenant shall timely make all such payments so instructed directly to Master Landlord (with a copy of the check to be contemporaneously forwarded by Subtenant to Sublandlord at the time of making of each such payment), and in such event Sublandlord shall have no responsibility to Subtenant for the payment of any such amount, and Subtenant shall be solely responsible for any interest or late charges that may be imposed as a result of any failure of Subtenant to have timely and properly made any such payment to Master Landlord. Any payment made directly by Subtenant to Master Landlord at

the request of Sublandlord shall be credited against any of Subtenant's Rent due under this Sublease as and when received by Master Landlord.

#### **7. Use.**

Subtenant shall use and occupy the Sublease Premises only for the purposes permitted under, and in a manner consistent with, the provisions of the Master Lease. Subtenant will pay for any damage to any part of the Sublease Premises, Building or Center, subject to any applicable waiver of subrogation provisions, if (i) caused by any act or omission by Subtenant or Subtenant's employees, agent, licensees, contractors or invitees and (ii) Sublandlord is required to pay for such damage under the Master Lease. Subtenant will comply with applicable provisions of the Master Lease and the Center's Rules and Regulations.

#### **8. Operating Costs, Real Estate Taxes and Utilities.**

- (a) Commencing on the Sublease Commencement Date, Subtenant shall pay Subtenant's Pro Rata Share (as defined below) of Operating Costs (as defined in the Master Lease), Real Property Taxes (as defined in the Master Lease), and insurance costs incurred by Sublandlord under the Master Lease. Subtenant's Pro Rata Share is one hundred percent (100%), which represents the ratio of the rentable square footage of the Sublease Premises to the Rentable Square Footage of the Master Lease Premises ("**Subtenant's Pro Rata Share**"). Subtenant's Pro Rata Share shall be computed by Sublandlord on a monthly or other periodic basis selected by Sublandlord. Subtenant's shall pay the amount of such pro rata share within ten (10) business days after receipt of a statement from Sublandlord.
- (b) Sublandlord may incur actual, third-party, out-of-pocket costs and expenses related to the operation of the Center or Campus, as more specifically described on Exhibit F attached hereto (collectively, "**Additional Operating Costs**"). Subtenant shall be responsible for reimbursing Sublandlord for Subtenant's prorata share of such Additional Operating Costs as provided below. Subtenant's pro rata share of Additional Operating Costs shall be one hundred percent (100%) with respect to Additional Operating Costs that are incurred by Sublandlord for the sole benefit of the Sublease Premises. To the extent that the Additional Operating Costs are not for the sole benefit of the Sublease Premises and benefit or are related to the Campus and/or Center as a whole, then Subtenant's pro rata share of the Additional Operating costs shall represent the ratio of the Rentable Square Footage of the Sublease Premises to the Rentable Square Footage of the Campus and/or the Center, as applicable; provided, however, that in no event shall Subtenant have any obligation to reimburse Sublandlord for any Additional Operating Costs that are incurred for the sole benefit of the premises located at 11388 Sorrento Valley Road. Subtenant shall pay the amount of such pro rata share within ten (10) business days after receipt of a statement from Sublandlord along with reasonable documentary evidence of Sublandlord's payment of such costs. Subtenant shall bear such Additional Operating Costs commencing on the

Sublease Commencement Date. The Additional Operating Costs shall be included in the defined term Subtenant's Rent.

**9. Status of Master Lease.**

- (a) Sublandlord and Subtenant confirm and agree that this Sublease is subject and subordinate to all of the terms, covenants and conditions of the Master Lease and to the matters to which the Master Lease shall be subordinate. Without limiting the generality of the foregoing, in the event of termination of Sublandlord's interest under the Master Lease for any reason (including, without limitation, upon the occurrence of any casualty or condemnation pertaining to the Sublease Premises) this Sublease shall terminate coincidentally therewith and Sublandlord shall return to Subtenant the Security Deposit and any prepaid Subtenant's Rent not applied to a default of Subtenant within twenty (20) days of such termination.
- (b) Sublandlord represents to Subtenant that the Master Lease represents that entire agreement between Master Landlord and Sublandlord respecting the subject matter thereof, is in full force and effect, and, that to Sublandlord's knowledge, no default or event that, with the passing of time or the giving of notice or both, would constitute a default, exists on the part of Sublandlord, or, to Sublandlord's knowledge, the Master Landlord. Sublandlord agrees to perform all of its obligations under the Master Lease and, except for a termination of the Master Lease in connection with a casualty or condemnation pursuant to Sublandlord's express rights as set forth therein, to maintain the Master Lease in full force and effect, except to the extent that any failure to maintain the Master Lease is due to the failure of Subtenant to comply with any of its obligations under this Sublease. Sublandlord shall not amend or modify the Master Lease in such a manner as to materially adversely affect Subtenant's use of the Subleased Premises or increase the obligations or decrease the rights of Subtenant hereunder, without the prior written consent of Subtenant, which may be granted or withheld at Subtenant's sole discretion.
- (c) If Sublandlord fails to pay any sum of money to Master Landlord, or fails to perform any other act on its part to be performed under the Master Lease or this Sublease, then Subtenant may, but shall not be obligated to, make such payment or perform such act. All such sums paid, and all reasonable costs and expenses of performing any such act, shall be payable by Sublandlord to Subtenant upon demand.
- (d) In the event that Subtenant desires to make any alterations or improvements, or otherwise take any action that will require the consent of Master Landlord, then Subtenant shall process such consent with the Master Landlord. Sublandlord shall cooperate, at no cost or expense to Sublandlord in connection with Subtenant obtaining such consent of Master Landlord.

**10. Incorporation of Master Lease Terms.**

- (a) The applicable terms, covenants and conditions contained in the Master Lease are hereby incorporated herein and shall, as between Sublandlord and Subtenant, constitute additional terms, covenants and conditions of this Sublease, except to the extent set forth below. Except as provided in this Paragraph 10, all references in the Master Lease to “Landlord” “Tenant” “Lease” “Premises” “Commencement Date” and “Rent” shall, for purposes of incorporation thereof into this Sublease, mean and refer to “Sublandlord”, “Subtenant”, “Sublease”, “Sublease Premises”, “Sublease Commencement Date” and “Subtenant’s Rent”, respectively. Subtenant agrees to be bound by the provisions of the Master Lease incorporated herein and to keep, observe and perform for the benefit of the Master Landlord and Sublandlord each off the terms, covenants and conditions on its part to be kept, observed and performed hereunder as well as those applicable terms, covenants and conditions to be observed and performed by Sublandlord as Tenant under the Master Lease with respect to the Sublease Premises. Without limiting the foregoing, Subtenant shall not commit or permit to be committed on the Sublease Premises any act or omission which shall violate any term, covenant or condition of the Master Lease. Subtenant shall under no circumstances have any rights with respect to the Sublease Premises greater than Sublandlord’s rights under the Master Lease.
- (b) In the event of conflict between any provision of the Master Lease which is incorporated herein as described above in this Paragraph 10 and any provision of this Sublease, the provisions of this Sublease shall control.
- (c) The following Sections and provisions of the Mater Lease do not apply to, shall not be a part of, and are not incorporated into this Sublease.

<u>Section</u>	<u>Subject Matter</u>	<u>Specific Section Excluded If not entire Section)</u>
Section 1	Basic Lease Terms	1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.11, 1.12
Section 2	The Premises	
Section 3	Lease Term	
Section 4	Rent	Section 4.1 (Minimum Monthly Rent)
Section 5	Security Deposit	
Section 6	Operating Expenses	6.1, 6.2, 6.5
Section 8	Real Property Taxes	8.1, 8.2
Section 16	Damage and Destruction	
Section 17	Condemnation	

Section	Subject Matter	Specific Section Excluded If not entire Section)
Section 18	Assignment and Subletting	18.2(c)
Section 20	Surrender	20.4
Section 21	Default by Tenant	Section 21(d)(v)
Section 23	Default by Landlord	23.3(a)
Section 24	General Provisions	24.6

Exhibits B “ **Rules and Regulations** ” to the Master Lease shall be incorporated into this Sublease but all other exhibits and references thereto shall be excluded.

- (d) References in the following sections of the Master Lease to “Landlord” shall be deemed to refer to Master Landlord only: 7.2, 9.1, 9.4, 9.7, 11.5, and 24.24.
- (e) The reference to “Avanir Pharmaceuticals” in Section 14.2 shall be deemed to refer to Halozyme, Inc.
- (f) Sublandlord and Subtenant agree that Sublandlord shall not be responsible or liable to Subtenant for the performance or non-performance of any obligations of Master Landlord under the Master Lease, and in furtherance thereof agree as follows:
  - (i) Notwithstanding anything to the contrary contained in this Sublease, Sublandlord shall not be required to (A) provide or perform any insurance and services or any alterations, improvements, improvement allowances or other construction obligations as to the Sublease Premises, (B) perform any maintenance or make any of the repairs to the Sublease Premises, Building or the Center, (C) comply with any laws or requirements of governmental authorities regarding the maintenance or operation of the Sublease Premises after Subtenant takes possession of the Premises or prior thereto the extent required to be complied with by Master Landlord under the Master Lease, (D) take any other action relating to the operation, maintenance, repair, alteration or servicing of the Sublease Premises that Master Landlord may have agreed to provide, furnish, make, comply with, or take, or cause to be provided, furnished, made, complied with or taken under the Master Lease, or (E) provide Subtenant with any rebate, credit, allowance or other concession required of Master Landlord for any reason pursuant to the Master Lease unless Sublandlord receives a rent abatement with respect to the Sublease Premises and Subtenant is not in default of its obligations under the Sublease, beyond all applicable notice and cure periods. Sublandlord makes no representation or warranty of quiet enjoyment as to any persons claiming by, through or under Master Landlord, but Sublandlord represents and warrants quiet enjoyment as against any person claiming by, through or under Sublandlord.

- (ii) Sublandlord agrees, upon request of Subtenant, to use reasonable efforts, at Subtenant's sole cost and expense, to cause Master Landlord to provide, furnish, or comply with any of Master Landlord's obligations under the Master Lease or to provide any required consents or approvals; provided, however, that Sublandlord shall not be obligated to use such efforts or take any action which, in Sublandlord's reasonable judgment, might give rise to a default by Sublandlord under the Master Lease. Such efforts shall include, without limitation, upon Subtenant's request, notifying Master Landlord within two (2) business days of its non-performance under the Master Lease and requesting that Master Landlord perform its obligations thereunder. If Master Landlord shall default in the performance of any of its obligations under the Master Lease or at law, Sublandlord shall, upon request and at the expense of Subtenant, cooperate with Subtenant in the prosecution of any reasonable action or proceeding, in order to have Master Landlord (A) make such repairs, furnish such electricity, provide such services or comply with any other obligation of Master Landlord under the Master Lease or as required by law, (B) compensate Subtenant for any earlier default by Master Landlord in the payment or performance of its liabilities and obligations under the Master Lease during the Sublease Term, and/or (C) assigning Sublandlord's rights under the Master Lease to Subtenant to the extent necessary to permit Subtenant to institute legal proceedings against Master Landlord to obtain the performance of Master Landlord's obligations under the Master Lease; provided, however, that if Subtenant commences a lawsuit or other action, Subtenant shall pay all costs and expenses incurred in connection therewith (with any matter affecting the Sublease Premises, or a proportionate share of such costs if the matter also effects the Master Premises), and Subtenant shall indemnify Sublandlord against, and hold Sublandlord harmless from, all costs and expenses incurred by Sublandlord in connection therewith.
- (iii) Subtenant shall not make any claim against Sublandlord for any damage which may arise by reason of: (i) the failure of Master Landlord to keep, observe or perform any of its obligations under the Master Lease; or (ii) the acts or omissions of Master Landlord or its employees, agents, licensees, contractors or invitees.
- (iv) Subtenant agrees that any waiver of liability, waiver of subrogation rights, or indemnification provisions in the Master Lease which are incorporated herein as waivers or obligations of Subtenant (including, but not limited to, in Sections 9.5, 12.2, 13 and 14.5 of the Master Lease, to the extent applicable to and incorporated in this Sublease), shall be deemed expanded so as to provide for Subtenant to make such waivers and provide such indemnities not only in favor of Sublandlord, but also in favor of Master Landlord, and the respective affiliated employees, agents and the

like of both Sublandlord and Master Landlord as enumerated in such provisions.

- (g) In the event that Sublandlord, as Tenant, is entitled to termination rights for all or a portion of the Sublease Premises, including, without limitation, as a result of (i) damage and destruction under Section 16 of the Master Lease, or (ii) a partial condemnation under Section 17 of the Master Lease, then Subtenant shall be entitled to similar termination rights with respect to the portion or all of the Sublease Premises affected, regardless of whether or not Sublandlord seeks to enforce such termination rights under the Master Lease.
- (h) In the event that Sublandlord, as Tenant, receives a rent abatement for all or a portion of the Sublease Premises, including, without limitation, as a result of (i) damage and destruction under Section 16 of the Master Lease, or (ii) a partial condemnation under Section 17 of the Master Lease, then Subtenant shall be entitled to similar abatement of Subtenant's Rent with respect to the portion or all of the Sublease Premises affected.
- (i) Notwithstanding the incorporation of Section 6 of the Master Lease, Subtenant shall only be responsible for its proportionate share of Operating Costs, Additional Operating Costs, Real Property Taxes and insurance costs incurred by the Master Landlord under the Master Lease and charged through to Sublandlord. Subject to the provisions of Section 8(b) above, under no circumstances shall Subtenant be liable for any such costs directly incurred by Sublandlord.

#### **11. Insurance.**

Subtenant shall comply at all times and in all respects with the provisions of Section 9 of the Master Lease with regard to the maintenance of insurance by "Tenant". Such insurance shall name, as additional insureds, Master Landlord, Sublandlord and any other parties required to be named under the terms of the Master Lease, and a policy or certificate thereof shall be provided to Sublandlord not later than two (2) business days prior to the Sublease Commencement Date. The maintenance of insurance coverage with respect to the Sublease Premises and any property of Subtenant shall be the sole obligation of Subtenant. All insurance required to be maintained by Subtenant shall provide for thirty (30) days prior written notice to Sublandlord and Master Landlord in the event of any termination or reduction in coverage of such insurance. All property insurance policies which either Party obtains affecting the Sublease Premises shall include a clause or endorsement denying the insurer any rights of subrogation against the other Party or Master Landlord. Sublandlord and Subtenant waive any rights of recovery against the other for any actually insured injury or loss including all amounts within any deductible or self-insured retention amount applicable to any such insured injury or loss.

#### **12. Surrender of Sublease Premises; Holding Over.**

- (a) As soon as its right to possession ends, Subtenant shall surrender the Sublease Premises to Sublandlord in as good repair and condition as when Subtenant first

occupied, except for reasonable wear and tear and those improvements that Sublandlord made to the Sublease Premises that were not otherwise acquired by Subtenant in connection with this Sublease, or as otherwise consented to by the Master Landlord in the consent. Subtenant will concurrently deliver to Sublandlord all keys to the Sublease Premises, and restore any locks that it has changed to the system that existed at the commencement of the Sublease Term. If possession is not immediately surrendered, Sublandlord may enter upon and take possession of the Sublease Premises and expel or remove Subtenant and any other person who may be occupying the Sublease Premises or any part thereof.

- (b) (b) At the expiration or termination of the Sublease Term, Sublandlord may require the removal of any or all furniture, personal property and equipment from the Sublease Premises, and the restoration of the Sublease Premises to its prior condition, except for reasonable wear and tear, at Subtenant's expense. All of Subtenant's furniture, personal property and equipment on or about the Sublease Premises, shall be removed from the Sublease Premises by Subtenant at the expiration or termination of the Sublease Term. All removals by Subtenant will be accomplished in a good and workmanlike manner so as not to damage any portion of the Center, Building or the Master Lease Premises and Subtenant will promptly repair and restore all damage done except for normal wear and tear. If Subtenant does not so remove any property which it has the right or duty to remove, Sublandlord may immediately either claim it as abandoned property, or remove, store and dispose of it in any manner Sublandlord may choose, at Subtenant's cost and without liability to Subtenant or any other party.
- (c) As a condition to this Sublease and to facilitate Sublandlord's performance of its obligations under the Master Lease, Subtenant agrees that Sublandlord shall be entitled to enter the Sublease Premises, upon two (2) business days' advance notice to Subtenant, at any time during the ten (10) days preceding the Sublease Expiration Date for the purpose of making any repairs or modifications or removing any alterations or other improvements required under the terms of the Master Lease to the extent the same will not materially interfere with Subtenant's continuous use of the Sublease Premises for the purposes of conducting its business therein. Sublandlord's right to enter the Sublease Premises under this Paragraph 12(c) shall not be exclusive of any other right of entry Sublandlord may have under the terms of this Sublease.
- (d) If Subtenant does not surrender the Sublease Premises as required and holds over after its right to possession ends, Subtenant shall become a tenant at sufferance only, at a monthly rental rate equal to the greater of (i) one hundred fifty percent (150%) of the total Subtenant's Rent payable in the last prior full month, or (ii) the amount payable by Sublandlord as "Tenant" under the Master Lease as a result of such holdover, without renewal, extension or expansion rights, and otherwise subject to the terms, covenants and conditions herein specified, so far as applicable. Nothing other than a fully executed written agreement of the Parties creates any other relationship. Subtenant will be liable for Sublandlord's loss,

costs and damage from such holding over, including, without limitation, those from Sublandlord's delay in delivering possession to other parties. These provisions are in addition to other rights of Sublandlord hereunder and as provided by law.

**13. Waiver and Indemnification.**

The provisions of the Master Lease relating to waiver of liability, waiver of subrogation and indemnification shall apply to this Sublease as incorporated by Paragraph 10 hereof.

**14. Hazardous Materials.**

- (a) The provisions of the Master Lease relating to Hazardous Materials shall apply to this Sublease as incorporated by Paragraph 10. Notwithstanding anything in this Sublease to the contrary, Subtenant shall have no liability or obligation whatsoever for any Hazardous Materials located in, on or about the Center, Building or Sublease Premises prior to the Sublease Commencement Date or that migrate onto the property on which the Center is located or appear within the Center, Building, or Sublease Premises, provided that neither Subtenant nor its employees, agents, licensees, contractors or invitees was the cause or source of such Hazardous Materials.
- (b) To the extent required by law or for Subtenant's use and occupancy of the Building and Sublease Premises, Sublandlord shall cause, at its sole cost and expense, any and all such Hazardous Materials discovered in, on or about the Building or Sublease Premises to be removed or otherwise remediated.

**15. Notices.**

In the event any notice from the Master Landlord or otherwise relating to this Sublease or the Master Lease is delivered to, or is otherwise received by, Sublandlord, then Sublandlord shall, as soon thereafter as possible, but in any event within forty-eight (48) hours, deliver such notice to Subtenant if such notice is written or advise Subtenant thereof by telephone if such notice is oral. All notices, demands, statements and other communications that may or are required to be given by either Party to the other hereunder shall be in writing and shall be (i) personally delivered to the address or addressee provided herein, or (ii) sent by certified mail, postage prepaid and return receipt requested or (iii) delivered by a reputable messenger or overnight courier service and, in any case, addressed as follows:

If to Sublandlord:

Avanir Pharmaceuticals  
c/o Chief Financial Officer  
101 Enterprise, Suite 300  
Aliso Viejo, CA 92656  
Attention: Michael J. Puntoriero  
Goodwin Procter LLP  
4370 La Jolla Village Drive, Suite 400

With a copy to:

San Diego, CA 92122  
Fax: (858) 232-0349  
Attention: Ryan Murr, Esq.

If to Subtenant prior to the Sublease Commencement Date:

Halozyme, Inc.  
11588 Sorrento Valley Rd, Suite 17  
San Diego, CA 92121  
Fax: (858) 259-2539  
Attention: Chief Financial Officer

If to Subtenant after the Sublease Commencement Date

Halozyme, Inc.  
11388 Sorrento Valley Rd  
San Diego, CA 92121  
Fax: TBD  
Attention: Chief Financial Officer

With a copy to:

Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105-2482  
Fax: (415) 268-7522  
Attention: Derek Boswell, Esq.

Any notice or document addressed to the Parties hereto at the respective addresses set forth on this Sublease or at such other address as they may specify from time to time by written notice delivered in accordance with this Paragraph 15 shall be considered delivered (w) in the case of personal delivery, at the time of delivery or refusal to accept delivery; (x) on the third day after deposit in the United States mail, certified mail, postage prepaid; (y) in the case of reputable messenger or overnight courier service, upon delivery or refusal to accept delivery; or (z) in the event of failure of delivery by reason of changed address of which no notice was delivered or refusal to accept delivery, as of the date of such failure or refusal. If any such day of delivery is not a business day, the notice or document will be considered delivered on the next business day.

#### **16. Security Deposit.**

Within one business day of the Effective Date, Subtenant shall provide Sublandlord with a letter of credit for the full initial amount of the Security Deposit listed in Paragraph 1(b) (the "**Letter of Credit**"). Such Letter of Credit shall be in a form and substance reasonably acceptable to Sublandlord (with the form attached hereto as Exhibit "C" deemed acceptable). The Letter of Credit shall have an original term of no less than one year with provisions for extensions unless sixty (60) days prior notice is given to Sublandlord by the issuing bank. Subtenant shall keep the Letter of Credit in force throughout the Sublease Term and for sixty days after (i) the Sublease Expiration Date of the Sublease Term or (ii) the earlier termination of the Sublease Term, except that if such earlier termination is based on Subtenant's default, Subtenant shall keep the Letter of Credit in force until sixty days after the date when the Sublease Term would have expired had it not been earlier terminated. Subtenant shall deliver to Sublandlord a renewal Letter of Credit no later than thirty days prior to the expiration date of any

Letter of Credit issued under this Paragraph 16, and if Subtenant fails to do so, Sublandlord may draw the entire amount of the expiring Letter of Credit and hold the proceeds in cash for the same purposes as the Letter of Credit. The Letter of Credit shall be issued by Silicon Valley Bank (or other bank satisfactory to and approved in advance by Sublandlord). The Letter of Credit shall be reduced to \$300,000 on July 1, 2008.

**17. Assignment and Subletting.**

Subject to the prior written consent of both Sublandlord (which shall not be unreasonably withheld, conditioned or delayed) and Master Landlord, Subtenant shall have the same rights as Sublandlord enjoys as Tenant under such portions of Section 18 of the Master Lease as are incorporated herein, to assign this Sublease or sub-sublease the Sublease Premises. Except in connection with a Permitted Transfer (as defined below), Sublandlord shall have the right to fifty percent (50%) of all subrent or other consideration (net of Subtenant's reasonable expenses in connection with such assignment or sub sublease, including, without limitation, brokerage commissions, legal costs, and tenant improvement costs or allowances) to be paid to Subtenant under the terms of any assignment or sub sublease in excess of the total Subtenant's Rent due hereunder. Notwithstanding anything in this Sublease to the contrary, Subtenant may assign the Sublease or sublet the Sublease Premises, or any portion thereof, without Sublandlord's consent, to any entity which controls, is controlled by, or is under common control with Subtenant; to any entity which results from a merger of, reorganization of, or consolidation with Subtenant; to any entity which acquires substantially all of the stock or assets of Subtenant, as a going concern, with respect to the business that is being conducted in the Sublease Premises (hereinafter each a "**Permitted Transfer**"). In addition, a sale or transfer of the majority capital stock of Subtenant shall be deemed a Permitted Transfer if (1) such sale or transfer occurs in connection with any *bona fide* financing or capitalization for the benefit of Subtenant, or (2) Subtenant is or becomes a publicly traded corporation. Sublandlord shall have no right to terminate the Lease in connection with, and shall have no right to any sums or other economic consideration resulting from any Permitted Transfer.

**18. Interest on Subtenant's Obligations.**

Any Subtenant's Rent or other charge, expense or other sum due from Subtenant to Sublandlord under this Sublease which is not paid on the date due, shall bear interest from the date such payment is due until paid (computed on the basis of a 365-day-year) at the lesser of (a) the maximum lawful rate per annum or (b) twelve percent (12%) per annum. The payment of such interest shall not excuse or cure a default by Subtenant hereunder.

**19. Authority.**

By delivering this Sublease, each Party hereby represents and warrants to the other that such execution and delivery has been duly authorized by all necessary corporate or partnership action and that the person(s) executing same have been duly authorized to do so.

**20. Signage and Access.**

Subject to Master Landlord's approval, Subtenant shall have the right to install signage at the Center, Building and Sublease Premises, at its sole cost and expense, subject to, and in compliance with, the provisions of the Master Lease. In addition, subject to Master Landlord's approval, Subtenant shall have the right, at its sole cost and expense, to install signage that is visible from Sorrento Valley Road, subject to the provisions of the Master Lease. At its cost, Subtenant shall remove any such signage at the expiration of the Sublease Term and repair any damage caused thereby.

**21. Commissions.**

Sublandlord has entered into certain listing agreements with Grubb & Ellis/BRE Commercial, pursuant to which Sublandlord shall pay any commission payable in connection with this Sublease. Sublandlord hereby represents and warrants to Subtenant, and Subtenant hereby represents and warrants to Subtenant, that no other broker or finder has been engaged by it, respectively, in connection with any of the transactions contemplated by this Sublease or to its knowledge is in any way connected with any such transactions. In the event of any other claims for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Sublease, then Subtenant shall indemnify, save harmless and defend Sublandlord from and against such claims if they shall be based upon any statement, representation or agreement by Subtenant, and Sublandlord shall indemnify, save harmless and defend Subtenant from and against such claims if they shall be based upon any statement, representation or agreement by Sublandlord.

**22. Captions.**

The captions in this Sublease are used for convenience and reference only and are not to be taken as part of this Sublease or to be used in determining the intent of the Parties or otherwise interpreting this Sublease.

**23. Successors and Assigns.**

Subject to the restrictions on assignment set forth in this Sublease and the Master Lease, this Sublease shall be binding upon and inure to the benefit of Sublandlord and Subtenant and their respective successors and assigns.

**24. Parking.**

Subtenant shall have the non-exclusive right to use all parking areas available to Sublandlord under the Master Lease.

**25. Master Landlord Consent.**

This Sublease shall not become effective and shall not be deemed to be an offer to sublease or create any rights or obligations between Subtenant or Sublandlord unless and until Sublandlord and Subtenant have executed and delivered the same, and Master Landlord has

executed and delivered a consent to this Sublease in the form attached hereto as Exhibit D, with such changes as may reasonably be accepted by Subtenant and Sublandlord as long as Master Landlord does not change the non-disturbance language of paragraph 4 of the consent set forth in Exhibit D. Subtenant shall use commercially reasonable efforts to obtain the consent of Master Landlord promptly following mutual execution hereon. If no such consent to this Sublease is given by Master Landlord within thirty (30) days after the delivery of a copy of the fully executed Sublease to Master Landlord, then either Sublandlord or Subtenant shall have the right, by written notice to the other, to terminate this Sublease at any time prior to such consent from Master Landlord being given. By delivering this Sublease, each Party hereby represents and warrants to the other that such execution and delivery has been duly authorized by all necessary corporate or partnership action and that the person(s) executing same have been duly authorized to do so.

In the event the Master Lease is terminated prior to the expiration of the Sublease Term, whether as a result of a voluntary termination by Sublandlord or a default on the part of Sublandlord, this Sublease shall, upon notice from Master Landlord to Subtenant, remain in full force and effect as a direct lease between Subtenant and Master Landlord (in which event Subtenant shall attorn to Master Landlord).

**26. Financial Statements.**

Subtenant represents, warrants and covenants that any financial statements heretofore furnished to Sublandlord, in connection with this Sublease, are accurate and are not materially misleading.

**27. Parent Guaranty.**

Concurrent with the execution of this Sublease, Parent covenants and agrees to execute a guaranty substantially in the form attached hereto as Exhibit E.

**28. Miscellaneous.**

- (a) Time is of the essence of each and every term of this Sublease.
- (b) Subtenant waives any right it may now or hereafter have (i) for exemption of property from liability for debt or for distress for rent or (ii) relating to notice or delay in levy of execution in case of eviction for nonpayment of rent.
- (c) If there is more than one party constituting Subtenant, their obligations are joint and several, and Sublandlord need not first proceed against all of them before proceeding against any or all of the others.
- (d) Subtenant acquires no rights by implication from this Sublease, and is not a beneficiary of any past, current or future agreements between Sublandlord and third parties.

- (e) California law governs this Sublease. Neither Party may record this Sublease or a copy or memorandum thereof. Submission of this Sublease to Subtenant is not an offer, and Subtenant will have no rights hereunder until each Party executes a counterpart and delivers it to the other Party.
- (f) This Sublease cannot be changed or terminated orally. All informal understandings and agreements, representation or warranties heretofore made between the Parties are merged in this Sublease, which alone fully and completely expresses the agreement between Sublandlord and Subtenant as to the subleasing of the Sublease Premises.
- (g) Each and every indemnification obligation set forth in this Sublease, or incorporated into this Sublease from the Master Lease, shall survive the expiration or earlier termination of the term of this Sublease.
- (h) If, for any reason, any suit be initiated between Sublandlord and Subtenant to interpret or enforce any provision of this Sublease, the prevailing Party shall be entitled to recover from the other Party its legal costs, expert witness expenses, and reasonable attorneys' fees, as fixed by the court.
- (i) The Parties mutually acknowledge that this Sublease has been negotiated at arm's length. The provisions of this Sublease shall be deemed to have been drafted by all of the Parties and this Sublease shall not be interpreted or constructed against any Party solely by virtue of the fact that such Party or its counsel was responsible for its preparation.
- (j) This Sublease may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, this Sublease has been executed as of the day and year first above written.

“SUBLANDLORD”:

AVANIR PHARMACEUTICALS,  
a California corporation

By: /s/ Michael J. Puntoriero  
Name: Michael J. Puntoriero  
Title: Chief Financial Officer

“SUBTENANT”:

HALOZYME, INC.,  
a California corporation

By: /s/ Jonathan Lim  
Name: Jonathan Lim  
Title: President and Chief Executive Officer

The undersigned “Parent” has executed this Sublease for the purpose of affirming its obligation under Section 28.

“PARENT”:

HALOZYME THERAPEUTICS, INC.,  
a Nevada corporation

By: /s/ Jonathan Lim  
Name: Jonathan Lim  
Title: President and Chief Executive Officer



**STANDARD INDUSTRIAL NET LEASE**

**BUILDING NAME:** BC SORRENTO

**LANDLORD:** BC SORRENTO, LLC,  
a California limited liability company

**TENANT:** HALOZYME, INC.,  
a California corporation

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## STANDARD INDUSTRIAL NET LEASE

This STANDARD INDUSTRIAL NET LEASE ("Lease"), dated for reference purposes only July 24, 2007, is entered into by BC SORRENTO, LLC, a California limited liability company ("Landlord"), and HALOZYME, INC., a California corporation ("Tenant").

### 1. BASIC LEASE TERMS

The basic terms of the Lease set forth in this Article 1 shall be read in conjunction with the other Articles of this Lease, which define and explain the basic terms.

#### 1.1 Address for Notice (see Section 24.19):

Landlord: BC Sorrento, LLC  
505 Lomas Santa Fe, Suite 100  
Solana Beach, CA 92075  
Attention: Mr. William R. Beckman

Tenant: At the Premises

#### 1.2 Description of Premises:

Building Name: BC Sorrento

Address: 11388 Sorrento Valley Road  
San Diego, CA 92121

Suite/Unit: All of the second floor, a portion of the first floor and a portion of the Utility Yard (as defined below).

Approximate square footage of the Premises (see Exhibit "A"): 27,575

#### 1.3 Commencement Date: September 1, 2008 (the "Commencement Date").

1.4 **Lease Term** (see Article 3): Fifty-one and one-half months, beginning on the Commencement Date and ending on January 14, 2013 (the "Expiration Date").

#### 1.5 Minimum Monthly Rent: Minimum Monthly Rent shall be the following amount during the following periods:

September 1, 2008 through August 30, 2009	\$73,075, subject to partial abatement. See Section 4.2.
September 1, 2009 through August 30, 2010	\$75,005
September 1, 2010 through August 30, 2011	\$78,038
September 1, 2011 through August 30, 2012	\$81,071
September 1, 2012 through January 14, 2013	\$84,380

1.6 **Security Deposit:** A letter of credit in the full amount of Three Hundred Seventy-Five Thousand Dollars (\$375,000) subject to reduction on certain terms and conditions, all as set forth in Article 5 and Exhibits "D-1" and "D-2".

#### 1.7 Tenant's Percentage (see Article 6): 75.26%.

1.8 **Permitted Use** (see Article 11): Life science and biotechnology laboratory and related office use, and for no other use.

1.9 **Intentionally Omitted** .

1.10 **Tenant's Parking Spaces** (Unassigned) (see Section 11.6): 90 spaces, subject to proportionate adjustment if Tenant's percentage occupancy of the Building changes (based on adjustments in the square footage of the Premises).

1.11 **Landlord's Broker** (If none, so state): None.

**Tenant's Broker** (If none, so state): Grubb & Ellis/BRE Commercial.

1.12 **Tenant Improvement Allowance** : Landlord shall provide a Tenant Improvement Allowance of \$10.00 per square foot of the Premises (or \$275,750), in accordance with Exhibit "C".

1.13 **Exhibits**: The following Exhibits are attached to and made a part of this Lease:

Exhibit "A" - Description of Premises

Exhibit "B" - Rules and Regulations

Exhibit "C" - Tenant Improvement Allowance

Exhibit "D-1" - Approved form of Letter of Credit

Exhibit "D-2" - Provisions Related to Letter of Credit

Exhibit "E" - List of Items Tenant is Prohibited from Removing at End of Term

## 2. LEASE OF PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the premises (the "Premises") described in Section 1.2, which Premises are indicated on the site/floor plan attached as Exhibit "A". The Premises are part of the Building (including surrounding parking lots, landscape areas and common facilities described in Section 6.5) (the "Building").

## 3. LEASE TERM

The term of this Lease (the "Lease Term") shall commence on the Commencement Date stated in Section 1.3 and shall continue for the period stated in Section 1.4, unless sooner terminated pursuant to any provision of this Lease. The parties understand that Tenant will already be in possession of the Premises on the Commencement Date pursuant to that certain Sublease Agreement, dated as of July 2, 2007, by and between Tenant, as sublessee and Avanir Pharmaceuticals, a California corporation ("Avanir"), as sublessor (the "Avanir Sublease"). The Avanir Sublease is a sublease under that certain Standard Industrial Net Lease dated March 20, 2000, by and between Landlord and Avanir (the "Avanir Lease"). Landlord and Tenant acknowledge and agree that (i) Tenant's right to possess the property prior to the Commencement Date arises, if at all, pursuant to the Avanir Sublease and the Avanir Lease, and exists only during the effectiveness of such sublease, and (ii) in the event the Avanir Lease terminates prior to September 1, 2008, due to casualty, condemnation or otherwise, then this Lease shall terminate concurrently therewith (subject, however, to any right of Tenant to a new lease under the terms and conditions set forth in a separate agreement between Landlord and Tenant concerning the Avanir Sublease).

## 4. RENT

4.1 **Minimum Monthly Rent** . Tenant shall pay minimum monthly rent ("Minimum Monthly Rent") in the initial amount stated in Section 1.5. The Minimum Monthly Rent shall be increased as set forth in Section 1.5 and/or elsewhere in this Lease. Tenant shall pay the Minimum Monthly Rent on or before the first day of each calendar month, in advance, at the office of Landlord or at such other place designated by Landlord, without deduction, offset or prior demand. If the Commencement Date is not the first day of a calendar month, the rent for the partial month at the beginning of the Lease Term shall be prorated on a per diem basis and shall be due on the first day of such partial month.

4.2 **Abated Rent; Recovery of Rent Concession.** One-half of the Minimum Monthly Rent for the six (6) calendar months September 2008 through February 2009 shall be abated so long as Tenant is not in default under any of the terms of this Lease. During such partial rent abatement period, Tenant shall pay its full Share of Additional Rent in accordance with this Lease.

4.3 **Lease Year** . As used in this Lease, the term "Lease Year" means (i) the first period of twelve (12) full calendar months following the Commencement Date (including, if the Commencement Date is not the first day of a calendar month, the period between the Commencement Date and the next first day of the month), (ii) each period of twelve (12) full calendar months thereafter, and (iii) any remaining period at the end of the Lease Term of less than twelve (12) full calendar months.

**4.4 Additional Rent** . All charges payable by Tenant for Operating Costs (Article 6), Maintenance and Repairs (Article 7), Real Property Taxes (Article 8), Insurance Costs (Article 9), and Utilities (Article 10) are hereinafter referred to herein as “Additional Rent.” All Minimum Monthly Rent, Additional Rent, and all other charges and monetary amounts due Landlord from Tenant under this Lease or otherwise shall constitute “rent.” Unless this Lease provides otherwise, all Additional Rent shall be paid by Tenant, without limitation or offset, within fifteen (15) days after Tenant’s receipt of a statement from Landlord. If any Minimum Monthly Rent is abated or waived pursuant to another specific term of this Lease or in any separate agreement, it is understood that such abatement or waiver shall apply only to the Minimum Monthly Rent, and Tenant shall be obligated to pay all Additional Rent and other charges (including the applicable impounds thereof) during such periods of abatement or waiver of Minimum Monthly Rent.

**4.5 Impounds** . Landlord shall have the right, but not the obligation, to collect and impound, in advance, any or all components of Additional Rent based upon Landlord’s reasonable estimate of Tenant’s future liability for such amounts under this Lease. Landlord shall initially establish the monthly amount of such impound (“Monthly Impound Payments”), based upon its estimate of one-twelfth of Tenant’s annual liability therefor. Landlord shall have the right at any time to adjust the amount of the Monthly Impound Payment upon notice to Tenant in the exercise of its reasonable discretion. The Monthly Impound Payment shall be due and payable on the first day of each month throughout the Lease Term. Any failure to pay the Monthly Impound Payment when due shall be considered a failure to pay rent when due under Section 21.1 and other relevant provisions of this Lease, and shall entitle Landlord to exercise any or all of its remedies available in the same manner as for the failure to pay rent. Upon the occurrence of any Event of Default by Tenant hereunder, Landlord shall have the right to apply all unapplied amounts of Monthly Impound Payments to Tenant’s default. Within ninety (90) days after the end of each calendar year, Landlord shall deliver to Tenant an accounting of Tenant’s actual Share of Additional Rent and the estimated amounts previously paid by Tenant. Any overpayment by Tenant shall be credited against next Monthly Impound Payments due hereunder, or, if the Term has expired, shall be remitted to Tenant. Tenant shall pay the amount of any underpayment within fifteen (15) days after receipt of the accounting. Tenant acknowledges that the Monthly Impound Payments are estimates only and not a representation of the amount of Tenant’s ultimate liability for Additional Rent.

**4.6 Payment by EFT or ACH** . At Landlord’s election, and upon at least thirty (30) days’ notice to Tenant, Landlord may require that all payments of Minimum Monthly Rent, Additional Rent and other amounts due hereunder be made in immediately available funds or by wire transfer by electronic fund transfer through the Automated Clearing House network or any similar system designated by Landlord (“ACH”). Such payments shall be initiated by Tenant or Landlord, at Landlord’s election, to an account designated from time to time by Landlord at an ACH member bank for settlement not later than 12:00 o’clock noon, San Diego, California time, on the dates such sums or payments are respectively due. Any payment received after such time shall be deemed to have been made after the due date.

**4.7 Audit Rights**. Within 90 days after receipt of the Statement, Tenant shall have the right to audit at Landlord’s local offices, at Tenant’s expense, Landlord’s accounts and records relating to Additional Rent. Such audit shall be conducted by a certified public accountant approved by Landlord, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, no accountant whose compensation is contingent in any way upon the existence of any or the amount of any discrepancy shall be utilized for such audit. If such audit reveals that Landlord has overcharged Tenant, the amount overcharged shall be paid to Tenant within 30 days after the audit is concluded, together with interest thereon at the rate of 10% per annum, from the date the Statement was delivered to Tenant until payment of the overcharge is made to Tenant.

## 5. SECURITY DEPOSIT

**5.1 Letter of Credit** . No later than ten (10) business days prior to the Commencement Date, Tenant shall deliver to Landlord a letter of credit in the amount specified in Section 1.6 (the “Security Deposit”) conforming to the requirements set forth on Exhibit “D-1” and “D-2”) (the “Letter of Credit”) to be held by Landlord, without liability for interest, as security for Tenant’s performance of its obligations under this Lease. Landlord may draw upon the Letter of Credit any unpaid rent (including unpaid Additional Rent or Monthly Impound Payments) to any other monetary payments due from Tenant, to the damages sustained by Landlord under Section 22.1(c), to cure any other default of Tenant hereunder, and/or to compensate Landlord for all damage and expense sustained as a result of such default. If all or any portion of the Security Deposit is so applied, Tenant shall restore the Letter of Credit to its full original amount within fifteen (15) days after receipt of Landlord’s written demand. Provided Tenant is not then in default hereunder, the Letter of Credit shall be returned to Tenant within thirty (30) days of the later of the expiration or earlier termination of this Lease or the vacation of the Premises by Tenant. At Landlord’s request, Tenant shall accompany Landlord or Landlord’s representative on a “walk-through” of the Premises prior to Landlord’s return of the Security Deposit. Tenant waives the provision of California Civil Code Section 1950.7, and all other provisions of law now in force or that become in force after the date of execution of this Lease, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy any defaults in the payment of Rent, to repair damage caused by Tenant, or to clean the Premises. Landlord and Tenant agree that Landlord, in addition, may claim those sums reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the acts or omissions of Tenant or Tenant’s officers, agents, employees, independent contractors, or invitees.

**5.2 Reduction of Security Deposit Amount** . The required amount of the Letter of Credit shall be reduced at the end of the first Lease Year and the end of each Lease Year thereafter by the amount of \$75,000, provided that (i) during the twelve (12) month period prior to the time of the reduction no Event of Default has occurred and that at the time of reduction no condition exists that, with the passage of time or the giving of notice or both would

constitute an Event of Default, and (ii) the verifiable net worth of Tenant at the time of the scheduled reduction, determined in accordance with generally accepted accounting principles consistently applied, is more than Twenty-Five Million Dollars (\$25,000,000). Provided, however, that the amount of such letter of credit shall never be reduced below \$150,000.

## 6. OPERATING COSTS

**6.1 Payment of Operating Costs by Tenant** . Tenant shall pay its Share of Operating Costs to Landlord on a monthly or other periodic basis selected by Landlord. Tenant shall pay the amount of such Share to Landlord, to the extent such obligation exceeds any amount thereof impounded under Section 4.5, within fifteen (15) days after receipt of a statement from Landlord.

**6.2 Tenant's Share** . Tenant's "Share" (sometimes referred to as "Pro Rata Share") is the percentage or proportion of the various components of Additional Rent and certain other charges for which Tenant is responsible under this Lease. Tenant's Share for each such component shall be Tenant's Percentage as stated in Section 1.7, unless Landlord reasonably determines that another percentage or proportion would be equitable based on factors such as Tenant's use of such in excess of its Percentage, Tenant's use of the Licensed Common Areas, that such component of Additional Rent applies to some but not all of the Building, or factors set forth elsewhere in this Lease. Tenant's Percentage represents the approximate current ratio of the square footage of the Premises (identified in Section 1.2) to the total square footage of the Building, as reasonably determined by Landlord from time to time. Changes in square footage shall be effective on the first day of the first calendar month following the change. In the event the Building is not fully occupied during any year then an adjustment shall be made by Landlord in computing those Operating Costs that vary with occupancy for such year so that such Operating Costs shall be computed as though 95% of the Building had been occupied during such year (or such Operating Costs shall be computed in accordance with actual occupancy if such amount shall exceed 95%); provided, however, that in no event shall the aggregate amount of Operating Costs collected by Landlord from all tenants in the Building exceed the actual Operating Costs for said year. Additionally, if any substantial item of the Common Facilities exclusively serves the Premises (such as the elevators for so long as Tenant is the sole occupant of the second floor of the Building) or the premises leased by another tenant of the building, then the tenant receiving such exclusive service (including Tenant, if applicable) shall be responsible for 100% of Operating Costs relating to the same.

**6.3 Operating Costs** . "Operating Costs" includes all costs of operating, managing, repairing and maintaining the Common Facilities, including without limitation: gardening and landscaping; the cost of public liability, property damage and other insurance applicable to the Common Facilities, including any reasonable deductibles thereunder; Real Property Taxes applicable to the Common Facilities; utilities; line painting and parking lot repairs; roof repairs; lighting; trash and refuse removal; supplies; equipment; exterior painting; capital improvements (including without limitation the costs of roof, parking lot and underground utilities replacements); the costs of altering, improving, renovating, upgrading or retrofitting any portion of the Common Facilities to comply with all laws, regulations and governmental requirements applicable to the Building (including without limitation those related to disabled persons, hazardous materials, lighting upgrades, sprinkler and energy-saving retrofits); security service; property management costs and administrative fees; bookkeeping services; labor; the cost of personnel to implement such services and to direct parking; and the includable amount of Capital Costs (as provided in Section 6.4). Notwithstanding anything to the contrary contained in this Lease, the following shall not be included within Operating Costs: Leasing commissions, attorneys' fees, costs, disbursements, and other expenses incurred in connection with negotiations or disputes with other tenants, or in connection with leasing, renovating, or improving space for tenants or other occupants or prospective tenants or other occupants of the Building; The cost of any service sold to any tenant (including Tenant) or other occupant for which Landlord is entitled to be reimbursed separately as an additional charge or rental over and above the basic rent and escalations payable under the lease with that tenant; Any depreciation on the Building or Property; Costs incurred due to Landlord's violation of any terms or conditions of this Lease or any other lease relating to the Building or Property; Overhead profit increments paid to Landlord's subsidiaries or affiliates for management or other services on or to the building or for supplies or other materials to the extent that the cost of the services, supplies, or materials exceeds the cost that would have been paid had the services, supplies, or materials been provided by unaffiliated parties on a competitive basis; All interest, loan fees, and other carrying costs related to any mortgage or deed of trust or related to any capital item, and all rental and other payable due under any ground or underlying lease, or any lease for any equipment ordinarily considered to be of a capital nature (except as provided in Section 6.4 and except janitorial and other equipment which is not affixed to the Building); Any compensation paid to clerks, attendants, or other persons in commercial concessions operated by Landlord; Advertising and promotional expenditures; Costs of repairs and other work occasioned by fire, windstorm, or other casualty to the extent reimbursed by insurance; Any costs, fines, or penalties incurred due to violations by Landlord of any governmental rule or authority; Costs for sculpture, paintings, or other objects of art (nor insurance thereon or extraordinary security in connection therewith); Wages, salaries, or other compensation paid to any executive employees above the grade of building manager; or Costs of Hazardous Materials Remediation of the Common Areas not arising out of any act or omission of Tenant, or any assignee or subtenant of Tenant, or their respective agents, contractors, employees, licensees, or invitees.

**6.4 Capital Costs** . As used herein, "Capital Costs" shall mean any cost or expense for any furniture, fixture, equipment or other physical improvement alterations, replacements and repairs the amount of which exceeds \$25,000 and that is properly treated as a capitalized expense under generally accepted accounting principles. Landlord may only include in Operating Costs the amortized amount of any such Capital Cost, as the same is

amortized over the useful life of the asset. Capital Costs shall not include items that do not reasonably serve the Premises or the Building, and shall not include any improvement that results in additional space from which Landlord will derive rental income.

**6.5 Common Facilities** . Common Facilities” (sometimes referred to herein as “Common Areas”) means all areas, facilities, utilities, equipment and services provided by Landlord for the common use or benefit of the occupants of the Building and their employees, agents, customers and other invitees, including without limitation: building lobbies, common corridors and hallways, restrooms, pedestrian walkways, utility yard, driveways and access roads, access facilities for disabled persons (including elevators), truck serviceways, loading docks, garages, driveways, parking lots, landscaped areas, stairways, elevators, retaining walls, all areas required to be maintained under the conditions of governmental approvals for the Building, and other generally understood public or common areas. All Common Facilities shall at all times be subject to the exclusive control and management of Landlord. Landlord reserves the right to relocate, alter, improve, or adjust the size and location of any Common Facilities from time to time without liability to Tenant. Landlord shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to the Common Facilities. Landlord shall have the right to construct, maintain and operate lighting facilities on the Common Facilities; to police the same; from time to time to change the area, level, location and arrangement of parking areas and other facilities; to restrict parking by tenants, their officers, agents and employees to employee parking areas; to close all or any portion of the Common Facilities to such extent; to close temporarily all or any portion of the Common Facilities for any reason, including for the purpose of preventing a dedication thereof or the accrual of any rights to any person or the public therein; and to do and perform such other acts in and to the Common Facilities which Landlord shall determine, using good business judgment, to be advisable to improve the convenience and use thereof by tenants, their officers, agents, employees and customers. Subject to the foregoing, all Common Facilities not within the Premises, which Tenant may use under a revocable license, on a nonexclusive basis in common with other tenants, and if any such license is revoked, or if the amount of such areas is diminished, Landlord shall not be subject to any liability and Tenant shall not be entitled to any compensation or abatement of rent, nor shall such revocation or diminution be deemed constructive or actual eviction, so long as Tenant retains sufficient access to the Premises and that Tenant’s use of the Common Areas remains reasonably equivalent. Landlord’s right pursuant to this Section 6.5, including without limitation the rights to construct, maintain, relocate, alter, improve, or adjust the Common Facilities shall be subject to the condition that (i) the exercise of any of such rights shall not unreasonably interfere with Tenant’s use of the Premises, or decrease the number of Tenant’s parking spaces, (ii) Landlord shall provide reasonable prior notice to Tenant before exercising any such rights which may interfere with Tenant’s business, and (ii) Landlord shall use its best efforts to minimize to the extent possible any interference with Tenant’s business, including without limitation scheduling such work after business hours or on weekends.

**6.6 Licensed Common Areas** . From time to time, at the sole discretion of Landlord, and at the request of Tenant, Landlord may license certain portions of the Common Areas to Tenant on a primary (although not necessarily exclusive) use basis. The areas so licensed to Tenant are referred to herein as the “Licensed Common Areas.” All of Tenant’s obligations with respect to indemnity (Section 13), insurance (Article 9), Use (Article 11) and other applicable provisions shall apply to Tenant’s use and occupancy of the Licensed Common Areas. Such license may be revoked by Landlord upon 10 business days notice in Landlord’s sole discretion. Landlord may impose additional conditions upon such license and the use of the Licensed Common Areas, upon 10 days written notice to Tenant in its sole discretion. Tenant shall pay all costs attributable to such use of the Licensed Common Areas either directly or through an increase in Tenant’s Share as provided in Section 6.2.

## **7. MAINTENANCE AND REPAIRS**

**7.1 Tenant’s Obligations** . Except as provided in Section 7.2, Tenant, at its sole cost, shall keep the Premises and the Licensed Common Areas in good order, condition and repair during the Lease Term, including without limitation: all nonstructural, interior areas; all heating, ventilating and air conditioning systems and equipment; all glass, glazing, windows, window moldings, partitions, doors and door hardware; all interior painting; all fixtures and appurtenances in the Premises or exclusively serving the Premises including electrical, lighting and plumbing fixtures; and all other portions of the Premises seen or unseen. If any portion or element of the Premises, or the other systems or equipment for which Tenant is responsible hereunder cannot be fully repaired, Tenant shall promptly replace the same at its sole cost and expense regardless of whether the benefit of such replacement extends beyond the Lease Term. It is the intention of Landlord and Tenant that Tenant shall maintain the Premises, at all times during the Lease Term, in an attractive, first-class and fully operative condition, at Tenant’s expense. If any heating, ventilating and air conditioning system or equipment exclusively serves the Premises, Tenant shall additionally obtain and keep in force a preventive maintenance contract providing for the regular (at least quarterly) inspection and maintenance of the heating, ventilating and air conditioning system (including leaks around ducts, pipes, vents, and other parts of the air conditioning) by a reputable licensed heating, ventilating and air conditioning contractor acceptable to Landlord. Prior to April 1 of each calendar year, Tenant shall deliver Landlord written confirmation from such contractor verifying that such a contract has been entered into and that the required service will be provided. Notwithstanding the foregoing, Landlord shall have the right, upon written notice to Tenant, to undertake the responsibility for preventive maintenance and repair of the heating, ventilating and air conditioning system, at Tenant’s sole cost and expense, so long as such services are provided at market rates.

**7.2 Landlord’s Obligations** . Landlord shall repair and maintain the Common Facilities, the roof (structure and membrane), the foundations, exterior walls and structural portions of the Premises and the Building. Tenant shall

pay (a) subject to the terms and provisions of Section 6 above, its Share of the costs of such maintenance, (b) the full amount of any maintenance and repairs necessitated by any negligence or willful misconduct of, or breach of this Lease by, Tenant or any of Tenant's officers, agents, customers or invitees (plus ten percent (10%) of the cost thereof to reimburse Landlord for overhead); and (c) any maintenance and repairs necessitated by breaking and entering of the Premises. Subject to the terms and provisions of Section 6 above, Tenant shall pay its Share of such maintenance and repair costs incurred by Landlord, to the extent such obligation exceeds any amount thereof impounded under Section 4.5, within fifteen (15) days after receipt of a statement from Landlord. There shall be no abatement of rent, and no liability of Landlord, by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations, or improvements to any portion of the Premises or the Building, except to the extent caused by Landlord's gross negligence or willful misconduct. Tenant expressly waives all rights to make repairs at the expense of Landlord or deduct any amounts from rent as provided in any statute or ordinance now or hereafter in effect, including its rights under the provisions of California Civil Code Sections 1941 and 1942. Landlord's obligations under this Section are not intended to alter or modify in any way the provisions of Article 12.

**7.3 Performance By Landlord** . If Tenant refuses or neglects to perform its maintenance obligations hereunder to the reasonable satisfaction of Landlord, Landlord shall have the right (but not the obligation), upon ten (10) days' prior notice to Tenant (except in case of emergency, in which case only notice that is reasonable under the circumstances shall be required), to enter the Premises and perform such repairs and maintenance on behalf of Tenant. Landlord shall also have the right (but not the obligation), without prior notice to Tenant, to correct or remove any dangerous or hazardous condition, to repair the heating, ventilating, air conditioning or plumbing systems, to correct, repair or bring into legal compliance any fire or other life safety systems of the Premises, and to repair or replace any broken glass or glazing, if Tenant fails to correct or repair the same within twenty-four (24) hours after the need arises. Landlord shall not be liable to Tenant for any loss or damage to Tenant's merchandise, fixtures, or other property or to Tenant's business in connection with Landlord's performance hereunder, and Tenant shall pay Landlord's costs plus fifteen percent (15%) of such amount for overhead, upon presentation of a statement therefor. Tenant shall also pay interest at the rate provided in Section 22.4 from the date of completion of repairs by Landlord to the date paid by Tenant.

## **8. REAL PROPERTY TAXES**

**8.1 Payment of Real Property Taxes by Tenant** . Tenant shall pay all Real Property Taxes applicable to the Premises during the Lease Term. If the Premises are not separately assessed, Tenant shall pay its Share thereof as equitably determined by Landlord based upon the square footage of the Premises compared to the total square footage covered by the tax bill, the respective valuations assigned in the assessor's worksheet, and/or other reasonably available information. Tenant shall pay its Share of Real Property Taxes to Landlord, to the extent such obligation exceeds any amount thereof impounded under Section 4.5, within fifteen (15) days after receipt of a statement from Landlord.

**8.2 Real Property Taxes Defined** . "Real Property Taxes" means all taxes, assessments, levies, fees and other governmental charges levied on or attributable to the Premises or any part thereof, including without limitation: (a) real property taxes and assessments levied with respect to all or a portion of the Premises, (b) assessments, charges and fees charged by governmental agencies or districts for services or facilities provided to the Premises, (c) transfer, transaction, rental, gross receipts, license or similar taxes or charges measured by rent received by Landlord, excluding any federal or state income, franchise, estate or inheritance taxes of Landlord, (d) taxes based upon a reassessment of the Premises due to a transfer or change of ownership, and (e) any assessment, charge or fee that is a substitute in whole or in part for any tax now or previously included within the definition of Real Property Taxes. If Landlord elects to contest an assessment of any Real Property Taxes, Landlord shall have the right to recover its actual costs of such contest (including attorneys' fees and costs) as part of Real Property Taxes, but only to the extent such contest has resulted in a reduction of Real Property Taxes. Tenant shall not be entitled to the benefit of any reduction, refund, rebate or credit accruing or payable to Landlord prior to the commencement of or after the expiration or other termination of the Lease Term. Notwithstanding anything herein to the contrary, "Real Property Taxes" shall not include any franchise, estate, gift, inheritance, net income, or excess profits tax imposed upon Landlord, or any penalties or fees. Additionally, Tenant's obligation to pay any assessments included within Real Property Taxes shall be calculated on the basis of the amount due if Landlord had allowed the assessment to go to bond and the same were to be paid over the longest period available.

**8.3 Personal Property Taxes** . Tenant shall pay prior to delinquency all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant. Tenant shall attempt to have such personal property taxed separately from the Premises. If any such taxes on Tenant's personal property are levied against Landlord or the Premises, or if the assessed value of the Premises is increased by inclusion of a value placed upon such personal property of Tenant, then: (a) Landlord, after written notice to Tenant, shall have the right to pay the taxes levied against Landlord, or the taxes based upon such increased valuation, but under protest if so requested by Tenant in writing, and (b) Tenant shall pay to Landlord the taxes levied against Landlord, or the taxes resulting from such increased valuation, within fifteen (15) days after Tenant's receipt of a written statement from Landlord.

## **9. INSURANCE**

**9.1 Landlord's Insurance** . During the Lease Term, Landlord shall maintain insurance covering loss or damage to the Premises (excluding Tenant's Alterations, fixtures, equipment and personal property), insuring against any or all risks of physical loss (and including, at Landlord's option, flood and earthquake coverage), with the scope

and amounts of such coverage as determined by Landlord. Said insurance shall provide for payment of loss thereunder to Landlord or to the holder of a first mortgage or deed of trust on the Premises. Landlord shall also maintain during the Lease Term, as part of its casualty insurance, a policy of rental income insurance covering a period of one (1) year, with loss payable to Landlord. Landlord may also maintain (but shall not be required to maintain) liability and other insurance (including environmental insurance) as Landlord, at its sole option, may elect to maintain.

## **9.2 Tenant's Insurance .**

(a) Tenant shall carry, at Tenant's sole expense, insurance against any or all risks of physical loss in an amount adequate to cover the cost of replacement of all of Tenant's Alterations, trade fixtures, equipment and personal property. If Tenant's insurance does not otherwise cover losses caused by breakage or other malfunction of any of Tenant's machinery or equipment used by Tenant in the Premises, then Tenant shall carry equipment breakdown insurance (so called boiler and machinery insurance) covering Tenant's equipment and machinery (including any heating, ventilating and air conditioning systems, electrical equipment, and the like). Tenant acknowledges that Landlord's insurance is not intended to cover Tenant's Alterations, trade fixtures, equipment, and personal property. If the Premises contains any plate glass, Tenant shall carry plate-glass insurance covering all plate glass on the Premises at full replacement cost. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 16, whereupon any insurance proceeds covering any of Tenant's Alterations, fixtures, equipment and personal property that Tenant is required to leave in the Premises at the expiration or earlier termination of the Lease Term under Article 20 shall be payable to Landlord. Provided, however, that in the event Tenant fails to carry any required insurance, at Landlord's sole election, Landlord may obtain at Tenant's expense any or all of the insurance described in this Section.

(b) Tenant shall carry, at Tenant's sole expense, comprehensive or commercial general liability insurance, fully covering any and all claims arising from personal injury, death, and/or property damage occurring in or about the Premises or the Building. Such liability insurance shall include without limitation bodily injury (including wrongful death), property damage, advertising injury, personal injury and contractual liability coverages (including Tenant's indemnification obligations under Article 13), independent contractors, owned, nonowned, and hired vehicle liability and, if alcoholic beverages are served, sold, consumed or obtained in the Premises, liquor-law liability. The initial limit of such insurance shall be at least \$5,000,000 combined single liability limit. Such liability insurance limit shall be subject to periodic increase, at Landlord's election, based upon inflation, increased liability awards, lender requirements, the recommendations of Landlord's professional insurance advisors, and other relevant factors. Tenant shall also, at its sole cost and expense, obtain worker's compensation coverage in an amount adequate to comply with law, and employer's liability coverage with a limit of not less than \$2,000,000. If Tenant's use of the Premises involves any use, generation, manufacturing, storage or disposal of any Hazardous Materials, or if any of Tenant's activities increases any risk of any liability to Tenant or Landlord under Hazardous Materials Laws, Tenant shall carry such environmental insurance as may be required by Landlord's lender or as otherwise reasonably required by Landlord. Tenant shall, at Tenant's sole expense, maintain such other liability insurance as Tenant deems necessary to protect Tenant.

(c) Each policy of insurance required to be carried by Tenant hereunder shall (i) name Landlord, Landlord's lender and Landlord's property manager (if any) as additional insureds, (ii) contain cross-liability and contractual liability provisions, (iii) provide that no cancellation or reduction in coverage shall be effective until thirty (30) days after written notice to Landlord and Landlord's lender, (iii) be issued by an insurer licensed in California and reasonably approved by Landlord, (iv) include coverage for acts of terrorism, and (v) be primary and noncontributory to any insurance carried by Landlord, regardless of the absence of negligence or other fault of Tenant for alleged injury, death and/or property damage. The deductible or self-insured retention on any insurance required to be carried by Tenant hereunder shall not exceed, without the prior written consent of Landlord, Five Thousand Dollars (\$5,000) per occurrence. Tenant shall be responsible for the payment of the full amount of any deductible or self-insured retention on its insurance. No insurance carried or required to be carried by Tenant, nor the amount or limits thereof, shall limit Tenant's liability nor relieve Tenant of any obligation under this Lease.

(d) Each policy of insurance required to be carried by Tenant hereunder shall be obtained by Tenant and maintained in full force and effect throughout the Lease Term and any other period of Tenant's actual or constructive possession of the Premises. Prior to the Commencement Date or any earlier taking of possession of any part of the Premises, Tenant shall deliver to Landlord (i) an ACORD Form 27 certificate (or such other certificate providing the greatest protection to Landlord reasonably available) evidencing all insurance required to be maintained by Tenant and identifying all additional insureds required to be so designated under the terms of this Lease, and (ii) all additional insured endorsements provided by the insurer in favor of Landlord, Landlord's property manager and Landlord's lender as required by this Lease. Tenant shall deliver evidence of a renewal of each required policy, together with all required endorsements, at least thirty (30) days prior to expiration thereof. Tenant shall permit Landlord at all reasonable times to inspect the policies of insurance, and shall deliver copies thereof to Landlord within ten (10) days after Landlord's request therefor. Tenant shall be in material breach of this Lease if Tenant fails to obtain the insurance required under this Section, or if Tenant obtains insurance with terms, conditions and/or exclusions that are inconsistent with the requirements and terms of this Lease.

**9.3 Payment of Insurance Costs .** Tenant shall pay directly all premiums for its liability insurance required under Section 9.2 and for all other insurance Tenant elects to carry. Tenant shall pay its Share of the

premiums for the insurance policies carried by Landlord described in this Article or elsewhere in this Lease (“Insurance Costs”) subject to and in accordance with Section 6 above. If the Lease Term expires before the expiration of any such insurance policy, Tenant’s liability for premiums shall be prorated on an annual basis. Tenant shall pay its Share of Insurance Costs to Landlord, to the extent such obligation exceeds any amount thereof impounded under Section 4.5, within fifteen (15) days after receipt of a statement from Landlord. If any insurance policy maintained by Landlord covers property other than the Building (under a so-called “blanket” policy or otherwise), Landlord shall reasonably apportion the premium therefor among the properties so covered. In addition, subject to and in accordance with Section 6 above, Tenant shall pay its Share of any reasonable deductible amount under Landlord’s insurance policies within fifteen (15) days after receipt of a statement from Landlord. Subject to Section 6 above, Tenant’s Share of any such reasonable deductible shall be equitably determined by Landlord based upon, among other factors, the square footage of the Premises affected compared to the square footage of all other affected areas in the Building, and the Replacement Cost (as defined in Section 16.1) applicable to the damage to the Premises compared to that applicable to all other affected areas.

**9.4 Waiver of Subrogation** . Landlord and Tenant each hereby waive any and all claims against the other party and its officers, directors, shareholders, partners, members, principals, employees, agents, representatives, and other related entities and individuals, and their respective successors and assigns, for any and all loss of or damage to the Premises, Building or other tangible property, or any resulting loss of income, or losses under worker’s compensation laws and benefits, which loss or damage arises out of any peril that is or would be covered by any physical damage insurance policy actually carried or required to be carried pursuant to this Lease. The foregoing waiver shall apply regardless of whether the party suffering the loss or damage actually carries such insurance, recovers under such insurance, or self-insures the loss or damage. Inasmuch as the foregoing waiver will preclude the assignment of any such claim by subrogation (or otherwise) to an insurance company (or any other person), Landlord and Tenant each agree to give to each insurance company issuing to it any policy of physical damage insurance written notice of the terms of this mutual waiver, and to have each such insurance policy properly endorsed, if necessary, to prevent the invalidation of such insurance coverage by reason of such waiver. The waiver set forth herein shall apply to any deductible amount under any insurance policy, is not limited by the amount of insurance carried or required to be carried, and is in addition to any other waiver or release contained in this Lease. If Landlord has contracted with a third party for the management of the Building, the waiver of subrogation by Tenant herein shall also run in favor of such third party.

**9.5 Tenant’s Use Not to Increase Premium** . Tenant shall not keep, use, manufacture, assemble, sell or offer for sale in or upon the Premises any article that may be prohibited by, or that might invalidate, in whole or in part, the coverage afforded by, a standard form of fire or all risk insurance policy. Tenant shall pay the entire amount of any increase in premiums that may be charged during the Lease Term for the insurance that may be maintained by Landlord on the Premises or the Building resulting from the type of materials or products stored, manufactured, assembled or sold by Tenant in the Premises, whether or not Landlord has consented to the same. In determining whether increased premiums are the result of Tenant’s use of the Premises, a schedule issued by the entity making the insurance rate on the Premises showing the various components of such rate shall be conclusive evidence of the items and charges that make up the fire insurance rate on the Premises.

## 10. UTILITIES

Tenant shall pay the cost of all water, gas, heat, light, power, sewer, telephone, refuse disposal, and all other utilities and services supplied to the Premises. Tenant shall make payments for all separately metered utilities, when due, directly to the appropriate supplier. In the event Landlord reasonably determines that Tenant is using more than its Share of any utilities that are not separately metered, then Landlord shall have the right to require Tenant to install, at Tenant’s sole expense, separate meters (or other submeter, device or monitor for the measurement of utility usage) for any utility for which a separate meter is not installed as of the Commencement Date. ||Electricity and gas are separately metered – water is not.|| If any utilities or services are not separately metered or monitored with respect to the Premises, Tenant shall pay its Share thereof to Landlord, to the extent such obligation exceeds any amount thereof impounded under Section 4.5, within fifteen (15) days after receipt of a statement from Landlord. Landlord shall in no way be liable or responsible for any loss, damage or expense that Tenant may sustain or incur by reason of any change, failure, interruption, interference or defect in the supply or character of the electricity or other utilities supplied to the Premises. Landlord makes no representation or warranty as the suitability of the utility service for Tenant’s requirements, and no such change, failure, defect, unavailability or unsuitability shall constitute any actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant of any of its obligations under the Lease. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service, and no such failure or interruption shall entitle Tenant to terminate this Lease or abate the rent due hereunder.

## 11. USE

**11.1 Permitted Use** . The Premises shall be used and occupied only for the permitted uses specified in Section 1.8, and shall not be used or occupied for any other purposes without the prior written consent of Landlord. Should Tenant desire to change its use, Tenant shall request Landlord’s prior consent to such change in writing, and shall provide in writing such reasonably detailed information about the proposed new use as may be requested by Landlord. Landlord shall not unreasonably withhold its consent to any requested change of use, and shall have the right to impose reasonable restrictions on such new use. Factors that Landlord may take into account in granting or

withholding its consent shall include, without limitation: (i) whether the proposed use is compatible with the character and tenant mix of the Building, (ii) whether the proposed use poses any increased risk to Landlord or any other occupant of the Building, (iii) whether any proposed Alterations to accommodate such proposed use might decrease the rental or sale value of the Premises or the Building, and (iv) whether Tenant has the requisite expertise and financial ability to successfully operate in the Premises with the proposed new use.

**11.2 Compliance with Legal Requirements** . Tenant shall at all times and at its sole expense comply with all federal, state, local and other laws, ordinances, rules, regulations, orders, requirements, and recorded covenants and restrictions applicable to the Building, whether now in force or hereafter in effect (including without limitation those related to disabled persons, access, hazardous materials, lighting upgrades, energy saving, and sprinkler and seismic retrofits, and those required because of Tenant's occupancy or the conduct of Tenant's business) (collectively, "Legal Requirements"). Tenant shall not do or permit anything to be done in or about the Premises in conflict with any Legal Requirement. Without limiting the generality of the foregoing, Tenant shall at its sole cost take all actions, make all alterations, install all additional facilities, and perform all work required to cause the Premises (and any and all other areas of the Building under the control of Tenant or that Tenant is required to maintain) to comply with all Legal Requirements. Anything to the contrary contained in this Lease notwithstanding, Tenant shall not be responsible for compliance with any Legal Requirements where such compliance would require physical changes to the Premises or Building and is not related specifically to Tenant's use and occupancy of the Premises. For example, if any governmental authority should require the Building or the Premises to be structurally strengthened against earthquake, or should require the removal of asbestos from the Premises and such measures are imposed as a general requirement applicable to all tenants rather than as a condition to Tenant's specific use or occupancy of the Premises, then Tenant shall have no obligation to perform such work.

**11.3 Waste, Quiet Conduct** . Tenant shall not use or permit the use of the Premises in any manner that tends to create waste or a nuisance, that will cause objectionable noise or odors, or that may disturb the quiet enjoyment of any other tenant in the Building.

**11.4 Rules and Regulations** . Tenant shall comply with the Rules and Regulations for the Building attached as Exhibit "B", as the same may be amended by Landlord from time to time, upon notice to Tenant.

**11.5 Signs** . Tenant may, at Tenant's sole cost, install signage at the Building. All signs must be fabricated by a contractor reasonably approved by Landlord. Prior to construction of any such sign, a detailed drawing of the proposed sign shall be prepared by Landlord's contractor, at the sole expense of Tenant, and submitted to Landlord for written approval, which approval Landlord shall not unreasonably withhold. All signs must comply in all respects with all governmental laws rules and regulations in effect from time to time. No sign, placard, pennant, flag, awning, canopy, or advertising matter of any kind shall be placed or maintained on any exterior door, wall or window of the Premises or in any area outside the Premises, and no decoration, lettering or advertising matter shall be placed or maintained on the glass of any window or door, or that can be seen through the glass, of the Premises without first obtaining Landlord's written approval. All signs and sign cases shall be considered fixtures and improvements and shall become the property of Landlord upon expiration or termination of the Lease. Landlord shall have the right at any time to establish a sign criteria for the Building, and to revise the same from time to time, which shall be applicable to any signage thereafter installed.

**11.6 Parking** . Tenant shall have the nonexclusive right, in common with others, to use the parking areas of the Building; provided, however, that Tenant shall not use more than the number of parking spaces designated in Section 1.10, or if no number of such spaces is so indicated, Tenant shall not use more than its reasonable share of parking spaces, as Landlord shall determine. Landlord reserves the right, without liability to Tenant, to modify the parking areas, to designate the specific location of the parking for Tenant and Tenant's customers and employees, and to adopt reasonable rules and regulations for use of the parking areas.

**11.7 Entry by Landlord** . Subject to Tenant's reasonable security requirements, Tenant shall permit Landlord and Landlord's agents to enter the Premises at all reasonable times for any of the following purposes: (a) to inspect the Premises, (b) to supply any services or to perform any maintenance obligations of Landlord, including the erection and maintenance of such scaffolding, canopies, fences, and props as may be required, (c) to make such improvements, replacements or additions to the Premises or the Building as Landlord deems necessary or desirable, (d) to post notices of nonresponsibility, (e) to place any usual or ordinary "for sale" signs, or (f) within six (6) months prior to the expiration of this Lease, to place any usual or ordinary "for lease" signs. No such entry shall result in any rebate of rent or any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises, provided, however, that in connection with any such entry Landlord shall use reasonable efforts to minimize interference with Tenant's business. Landlord shall give reasonable notice to Tenant prior to any entry except in an emergency or unless Tenant consents at the time of entry. If Tenant is not personally present to open and permit an entry into the Premises, at any time when for any reason an entry therein shall be necessary or permissible, Landlord or Landlord's agents may enter the same by a master key, or may forcibly enter the same without rendering Landlord or such agents liable therefor, and without in any manner affecting the obligations and covenants of this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever for the care, maintenance or repair of the Premises or any part thereof, except as otherwise specifically provided herein.

**11.8 Utility Yard** . Throughout the Lease Term Tenant shall have a non-exclusive license to a portion of the Utility Yard depicted on the attached Exhibit "A" (the "Utility Yard") solely for the purpose of installing, maintaining and

operating thereon (all at Tenant's sole cost) certain equipment necessary for Tenant's use of the Premises. Prior to the installation of any equipment in the Utility Yard, Tenant shall provide to Landlord a detailed listing and description of the equipment, together with a plat showing the proposed location thereof. Tenant shall also describe in detail whether such equipment emits any noise, vibrations, fumes, or other substances, or would otherwise cause any nuisance or disturbance to Landlord or any other tenant. The types and locations of the equipment to be installed shall be subject to Landlord's reasonable approval. Tenant shall screen, fence or otherwise enclose Tenant's approved equipment at its sole cost in accordance with any requirements of governmental agencies and/or the reasonable requirements of Landlord. The portion of the Utility Yard used by tenant shall form a part of the Premises (except that such area shall not be included for calculation of the square footage of the Premises) and shall be governed and subject to all of the restrictions, indemnification obligations, use requirements and other terms and provisions of the Lease applicable to the Premises. Under no circumstances shall Tenant install any underground storage tanks or other equipment utilizing Hazardous Materials without Landlord's prior written consent, and otherwise on the terms and conditions set forth in Article 14. Tenant acknowledges and agrees that a portion of the Utility Yard may be needed by other tenants of the Building, and therefore agrees to cooperate with Landlord in allowing the use of and access to the Utility Yard by such other tenants. Tenant additionally agrees to relocate, consolidate or otherwise adjust its usage of the Utility Yard to accommodate the needs of Landlord and other tenants of the Building from time to time upon reasonable notice from Landlord. Under no circumstances shall Tenant's use of the Utility Yard interfere with any operations of Landlord or any other tenant of the Building

## **12. ACCEPTANCE OF PREMISES; NONLIABILITY OF LANDLORD; DISCLAIMER**

**12.1 Acceptance of Premises .** By taking possession hereunder, Tenant acknowledges that it has examined the Premises and accepts the condition thereof. Tenant acknowledges and agrees that Landlord has no obligation to improve the Premises other than as set forth specifically in this Lease, if at all. In particular, Tenant acknowledges that any additional improvements or alterations needed to accommodate Tenant's intended use shall be made solely at Tenant's sole cost and expense, and strictly in accordance with the requirements of this Lease (including the requirement to obtain Landlord's consent thereto), unless such improvements and alterations are specifically required of Landlord. Landlord shall have no responsibility to do any work required under any building codes or other governmental requirements not in effect or applicable at the time the Premises were constructed, including without limitation any requirements related to sprinkler retrofitting, seismic structural requirements, accommodation of disabled persons, or hazardous materials. Landlord shall be under no obligation to provide utility, telephone or other service or access beyond that which exists at the Premises as of the date of this Lease, unless Landlord specifically agrees in writing to provide the same. If it is anticipated that Tenant will be doing any Alterations or installations prior to taking occupancy, any delays encountered by Tenant in accomplishing such work or obtaining any required permits therefor shall not delay the Commencement Date or the date that Tenant becomes liable to pay rent, or the date that Landlord may effectively deliver possession of the Premises to Tenant. By taking possession hereunder, Tenant acknowledges that it accepts the square footage of the Premises as delivered and as stated in this Lease. No discovery or alleged discovery after such acceptance of any variance in such square footage as set forth in this Lease (or in any proposal, advertisement or other description thereof) shall be grounds for any adjustment in any element of the rent payable hereunder, unless such adjustment is initiated by and implemented by Landlord in writing.

**12.2 Landlord's Exemption From Liability .** Landlord shall not be liable for injury to Tenant's business or loss of income therefrom, or for personal injury or property damage that may be sustained by Tenant or any subtenant of Tenant, or their respective employees, invitees, customers, agents or contractors or any other person in or about the Premises, caused by or resulting from fire, flood, earthquake or other natural disaster, or from steam, electricity, gas, water or rain, or dampness of any origin, that may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air-conditioning, lighting fixtures or computer equipment or software, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Building, or from other sources, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any damages to property or for personal injury or loss of life arising from any use, act or failure to act of any third parties (including other occupants of the Building) occurring in, or about the Premises or in or about the Building (including without limitation the criminal acts of any third parties). Landlord shall not be liable for any latent defect in the Premises or in the Building. All property of Tenant kept or stored on the Premises shall be so kept or stored at the risk of Tenant only, and Tenant shall indemnify, protect, hold harmless and defend Landlord and Landlord's officers, directors, shareholders, partners, members, principals, employees, agents, representatives, and other related entities and individuals, and their respective successors and assigns, from and against any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers. The indemnifications and waivers of Tenant set forth in this Section shall apply notwithstanding Landlord's negligence, but shall not apply to damage and liability caused by the gross negligence or willful misconduct of Landlord, and through no fault of Tenant, its assignees or subtenants, or their respective agents, contractors, employees, customers, invitees or licensees.

### **12.3 No Warranties or Representations .**

(a) Neither Landlord nor Landlord's agents make any warranty or representation with respect to the suitability or fitness of the space for the conduct of Tenant's business, or for any other purpose.

(b) Neither Landlord nor Landlord's agents make any warranty or representation with respect to any other tenants or users that may or may not construct improvements, occupy space or conduct business within the

Building, and Tenant hereby acknowledges and agrees that it is not relying on any warranty or representation relating thereto in entering into this Lease.

(c) Landlord specifically disavows any oral representations made by or on behalf of its employees, agents and independent contractors, and Tenant hereby acknowledges and agrees that it is not relying and has not relied on any oral representations in entering into this Lease.

(d) Landlord has not made any promises or representations, expressed or implied, that it will renew, extend or modify this Lease in favor of Tenant or any permitted transferee of Tenant, except as may be specifically set forth herein or in a written instrument signed by both parties amending this Lease in the future.

(e) Notwithstanding that the rent payable to Landlord hereunder may at times include the cost of guard service or other security measures, it is specifically understood that Landlord does not represent, guarantee or assume responsibility that Tenant will be secure from any damage, injury or loss of life because of such guard service. Landlord shall have no obligation to hire, maintain or provide such services, which may be withdrawn or changed at any time with or without notice to Tenant or any other person and without liability to Landlord. To induce Landlord to provide such service if Landlord elects in its sole discretion to do so, Tenant agrees that (i) Landlord shall not be liable for any damage, injury or loss of life related to the provision or nonprovision of such service, and (ii) Landlord shall have no responsibility to protect Tenant, or its employees or agents, from the acts of any third parties (including other occupants of the Building) occurring in or about the Premises or in or about the Building (including without limitation the criminal acts of any third parties), whether or not the same could have been prevented by any such guard service or other security measures.

**12.4 Tenant's Prior Occupancy of Premises** . Landlord and Tenant acknowledge that Tenant was the occupant of the Premises immediately prior to the Commencement Date pursuant to a sublease of the Premises with the prior tenant thereof. Accordingly, any timeframe set forth herein or pursuant to law that is to run from the occupancy of the Premises shall commence on the date Tenant took occupancy of the Premises pursuant to such sublease, and not from the Commencement Date of this Lease. Additionally, Tenant acknowledges and agrees that it has had a full and fair opportunity to examine the Building and the Premises during such sublease period, and accepts the Premises in their "as-is, with all its faults" condition. In particular, Tenant acknowledges that the occupant of the Premises prior to Tenant's occupancy thereof used, stored, generated and transported significant Hazardous Materials at, to and from the Premises, and has satisfied itself with respect to such prior occupant's proper handling, disposal, clean-up and remediation of Hazardous Materials.

### 13. INDEMNIFICATION

Tenant shall indemnify, defend and hold Landlord and Landlord's officers, directors, shareholders, partners, members, principals, employees, agents, representatives, and other related entities and individuals (collectively, "Landlord's Related Entities"), harmless from and against any and all claims, actions, damages, liability, costs, and expenses, including attorneys' fees and costs, arising from personal injury, death, and/or property damage and arising from: (a) Tenant's use or occupation of the Premises or any work or activity done or permitted by Tenant in or about the Premises (including without limitation any storage or display of materials or merchandise, or other activity by Tenant in the Common Facilities), (b) any activity, condition or occurrence in the Premises or other area under the control of Tenant, (c) any breach or failure to perform any obligation imposed on Tenant under this Lease, or (d) any other negligent act or omission of Tenant or its assignees or subtenants or their respective agents, contractors, employees, customers, invitees or licensees. Tenant's obligation to defend and indemnify shall include, but not be limited to, claims based on duties, obligations, or liabilities imposed on Landlord or Landlord's Related Entities by statute, ordinance, regulation, or other law, such as claims based on theories of peculiar risk and nondelegable duty, and to any and all other claims based on the negligent act or omission of Landlord or Landlord's Related Entities. The parties intend that this provision be interpreted as the broadest Type I indemnity provision as defined in *McDonald & Kruse, Inc. v. San Jose Steel Co.*, 29 Cal. App. 3rd 413 (1972), and as allowed by law between a landlord and a tenant. Upon notice from Landlord, Tenant shall, at Tenant's sole expense and by counsel satisfactory to Landlord, defend any action or proceeding brought against Landlord or Landlord's Related Entities by reason of any such claim. If Landlord or any of Landlord's Related Entities is made a party to any litigation commenced by or against Tenant (other than a suit by Tenant against Landlord or any of Landlord's Related Entities), then Tenant shall indemnify, defend and hold Landlord and Landlord's Related Entities harmless from, and shall pay all costs, expenses and attorneys' fees and costs incurred or paid in connection with, such litigation. Tenant, as a material part of the consideration to Landlord hereunder, assumes all risk of, and waives all claims against Landlord for, personal injury or property damage in, upon or about the Premises, from any cause whatsoever. Provided, however, that the indemnifications and waivers of Tenant set forth in this Section shall not apply to damage and liability caused (i) by the gross negligence or willful misconduct of Landlord, and (ii) through no fault of Tenant, its assignees or subtenants, or their respective agents, contractors, employees, customers, invitees or licensees.

### 14. HAZARDOUS MATERIALS

**14.1 Definitions** . "Hazardous Materials Laws" means any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. ' 9601, *et seq.* , the Resource Conservation and Recovery Act, 42 U.S.C. ' 6901, *et seq.* , the Hazardous Materials Transportation Act, 49 U.S.C. ' 1801, *et seq.* , the California Hazardous Waste

Control Act, Cal. Health and Safety Code ' 25100, *et seq.* , the Carpenter-Presley-Tanner Hazardous Substances Account Act, Cal. Health and Safety Code ' 25300, *et seq.* , the Safe Drinking Water and Toxic Enforcement Act, Cal. Health and Safety Code ' 25249.5, *et seq.* , the Porter-Cologne Water Quality Control Act, Cal. Water Code ' 13000, *et seq.* , any amendments to the foregoing, and any similar federal, state or local laws, ordinances, rules, decrees, orders or regulations. "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is defined as a hazardous substance, hazardous material, hazardous waste or toxic substance under any Hazardous Materials Law, (b) is controlled or governed by any Hazardous Materials Law or gives rise to any reporting, notice or publication requirements hereunder, or gives rise to any liability, responsibility or duty on the part of Tenant or Landlord with respect to any third person hereunder; or (c) is flammable or explosive material, oil, asbestos, urea formaldehyde, radioactive material, nuclear medicine material, drug, vaccine, bacteria, virus, mold, hazardous waste, toxic substance, or related injurious or potentially injurious material (by itself or in combination with other materials).

**14.2 Use of Hazardous Materials** . Tenant shall not allow any Hazardous Material to be used, generated, manufactured, released, stored or disposed of on, under or about, or transported from, the Premises, unless: (a) such use is specifically disclosed to and approved by Landlord in writing prior to such use, and (b) such use is conducted in compliance with the provisions of this Article. Landlord's consent may be withheld in Landlord's sole discretion and, if granted, may be revoked at any time upon reasonable cause. Landlord may approve such use subject to reasonable conditions to protect the Premises and Landlord's interests. Landlord may withhold approval if Landlord in good faith determines that such proposed use involves a material risk of a release or discharge of Hazardous Materials or a violation of any Hazardous Materials Laws or that Tenant has not provided reasonably sufficient assurances of its ability to remedy such a violation and fulfill its obligations under this Article. Notwithstanding the foregoing or anything in this Lease to the contrary, Landlord hereby consents to the use, storage or disposal of Hazardous Materials necessary for the conduct of the business of Halozyme, Inc., in its capacity as Tenant hereunder, so long as Tenant handles, uses, stores and disposes of the same in compliance with all Hazardous Materials Laws, including, without limitation, (x) products containing small amounts of Hazardous Materials that are of a type customarily found in offices and households (such as aerosol cans containing insecticides, toner for copies, paints, paint remover and similar items); (y) small quantities of radioactive material used in the life science research activities of Tenant, but only to the extent necessary for such activities; and (z) animal-related supplies used in the life science research activities of Tenant, but only to the extent necessary for such activities.

**14.3 Compliance With Laws; Handling Hazardous Materials** . Tenant shall strictly comply with, and shall maintain the Premises in compliance with, all Hazardous Materials Laws. Tenant shall obtain, maintain in effect and comply with the conditions of all permits, licenses and other governmental approvals required for Tenant's operations on the Premises under any Hazardous Materials Laws, including, but not limited to, the discharge of appropriately treated Hazardous Materials into or through any sanitary sewer serving the Premises. At Landlord's request, Tenant shall deliver copies of, or allow Landlord to inspect, all such permits, licenses and approvals. All Hazardous Materials removed from the Premises shall be removed and transported by duly licensed haulers to duly licensed disposal facilities, in compliance with all Hazardous Materials Laws. Tenant shall perform any monitoring, testing, investigation, clean-up, removal, detoxification, preparation of closure or other required plans and any other remedial work required by any governmental agency or lender, or recommended by Landlord's environmental consultants, as a result of any release or discharge or potential release or discharge of Hazardous Materials affecting the Premises or the Building or any violation or potential violation of Hazardous Materials Laws by Tenant or any assignee or subtenant of Tenant or their respective agents, contractors, employees, licensees or invitees (collectively, "Remedial Work"). Landlord shall have the right to intervene in any governmental action or proceeding involving any Remedial Work, and to approve performance of the work, in order to protect Landlord's interests. Tenant shall not enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to Hazardous Materials without notifying Landlord and providing ample opportunity for Landlord to intervene. Tenant shall additionally comply with the recommendations of Landlord's and Tenant's insurers based upon National Fire Protection Association standards or other applicable guidelines regarding the management and handling of Hazardous Materials. If any present or future law imposes any requirement of reporting, survey, investigation or other compliance upon Landlord, Tenant, or the Premises, and if such requirement is precipitated by a transaction involving the Lease (other than the natural expiration thereof at the end of this Lease Term), including without limitation the assignment or sublease, in whole or in part of Tenant's interest in the Lease, or the change in the ownership of Tenant, then Tenant shall fully comply with and pay all costs of compliance with such requirement, including Landlord's attorneys' fees and costs.

**14.4 Notice; Reporting; Notice Under Health and Safety Code Section 25359.7** . Tenant shall notify Landlord, in writing, within three (3) days after any of the following: (a) Tenant has knowledge, or has reasonable cause to believe, that any Hazardous Material has been released, discharged or is located on, under or about the Premises, whether or not the release or discharge is in quantities that would otherwise be reportable to a public agency, (b) Tenant receives any order of a governmental agency requiring any Remedial Work pursuant to any Hazardous Materials Laws, (c) Tenant receives any warning, notice of inspection, notice of violation or alleged violation or Tenant receives notice or knowledge of any proceeding, investigation or enforcement action, pursuant to any Hazardous Materials Laws; or (d) Tenant receives notice or knowledge of any claims made or threatened by any third party against Tenant or the Premises relating to any loss or injury resulting from Hazardous Materials. If the potential risk of any of the foregoing events is material, Tenant shall deliver immediate verbal notice to Landlord, in addition to written notice as set forth above. Tenant shall deliver to Landlord copies of all test results, reports and business or

management plans required to be filed with any governmental agency pursuant to any Hazardous Materials Laws. Landlord hereby notifies Tenant, and Tenant hereby acknowledges that, prior to the leasing of the Premises pursuant to this Lease, Tenant has been notified, pursuant to California Health and Safety Code Section 25359.7 (or any successor statute), that Landlord knows, or has reasonable cause to believe, that certain hazardous substances (as such term is used in such Section 25359.7) may have come to be located in, on or beneath the Premises.

**14.5 Indemnity** . Tenant shall indemnify, protect, hold harmless and defend Landlord and Landlord's officers, directors, shareholders, partners, members, principals, employees, agents, representatives, and other related entities and individuals, and their respective successors and assigns, from and against any and all liabilities, claims, suits, judgments, actions, investigations, proceedings, costs and expenses (including attorneys' fees and costs) arising out of or in connection with any breach of any provisions of this Article or directly or indirectly arising out of the use, generation, storage, release, disposal or transportation of Hazardous Materials by Tenant, or any assignee or subtenant of Tenant, or their respective agents, contractors, employees, licensees, or invitees, on, under or about the Premises during the Lease Term or any other period of Tenant's actual or constructive occupancy of the Premises, including, but not limited to, all foreseeable and unforeseeable consequential damages and the cost of any Remedial Work. Any defense of Landlord pursuant to this Section shall be by counsel acceptable to Landlord. Neither the consent by Landlord to the use, generation, storage, release, disposal or transportation of Hazardous Materials nor the strict compliance with all Hazardous Materials Laws shall excuse Tenant from Tenant's indemnification obligations pursuant to this Article. The foregoing indemnity shall be in addition to and not a limitation of the indemnification provisions of Article 13 of this Lease. Tenant's obligations pursuant to this Article shall survive the termination or expiration of this Lease.

**14.6 Entry and Inspection; Cure** . Landlord and its agents, employees and contractors, shall have the right (but not the obligation) to enter the Premises at all reasonable times to inspect the Premises and Tenant's compliance with the terms and conditions of this Article, or to conduct investigations and tests. No prior notice to Tenant shall be required in the event of an emergency, or if Landlord has reasonable cause to believe that violations of this Article have occurred, or if Tenant consents at the time of entry. In all other cases, Landlord shall give at least twenty-four (24) hours' prior notice to Tenant. Landlord shall have the right (but not the obligation) to remedy any violation by Tenant of the provisions of this Article pursuant to Section 22.3 of this Lease or to perform any Remedial Work. Tenant shall pay, upon demand, all costs incurred by Landlord in investigating any such violations or potential violations or performing Remedial Work, plus interest thereon at the rate specified in this Lease from the date of demand until the date paid by Tenant.

**14.7 Termination; Expiration** . Upon termination or expiration of this Lease, Tenant shall, at Tenant's cost, remove any equipment, improvements or storage facilities installed by Tenant in connection with its use of Hazardous Materials and shall clean up, detoxify, repair and otherwise restore the Premises to a condition free of Hazardous Materials, to the extent such condition is caused by Tenant or any assignee or subtenant of Tenant or their respective agents, contractors, employees, licensees or invitees.

**14.8 Exit Assessment** . No later than ten (10) days after the expiration or earlier termination of this Lease, Tenant shall cause to be performed, at its sole expense, an environmental assessment (the "Exit Assessment") of the Premises. Landlord agrees to allow Tenant access to the Premises for such purpose. The Exit Assessment must be performed by a qualified environmental consultant acceptable to Landlord, and shall include without limitation the following, as applicable to the Premises and Tenant's activities: (a) inspection of all floors, walls, ceiling tiles, benches, cabinet interiors, sinks, the roof and other surfaces for signs of contamination and/or deterioration related to Hazardous Materials, (b) inspection of any and all ducts, hoods and exhaust systems for signs of contamination, deterioration and/or leakage related or potentially related to Hazardous Materials, (c) inspection of all readily accessible drain lines and other discharge piping for signs of deterioration, loss of integrity and leakage, (d) Tenant interviews and review of appropriate Tenant records to determine the uses to which Tenant has put the Premises that involve or may have involved Hazardous Materials, and to determine if any known discharges to the Premises or ground or soils from Tenant's activities have occurred, (e) documentation in detail of all observations, including dated photographs, (f) if applicable a certification that all areas inspected are clean and free of any Hazardous Materials and that the investigation conducted by the consultant does indicate that any release of any Hazardous Materials has occurred in the Premises or the Building as a result of Tenant's activities, (g) if applicable, a detailed description of Hazardous Materials remaining in the Premises and of any contamination, deterioration and/or leakage observed, together with detailed recommendations for the removal, repair or abatement of the same, and (h) if applicable, a detailed description of evidence of possible or past releases of Hazardous Materials, together with detailed recommendations for the prevention of the same in the future. Landlord shall have the right to require additional evaluations or work in connection with the Exit Assessment based upon Tenant's use of the Premises, any actual or suspected Hazardous Materials issues, or other reasonable factors. The original of the Exit Assessment shall be addressed to Landlord and shall be provided to Landlord within twenty (20) days of the expiration or earlier termination of this Lease. In addition to Tenant's obligations under Section 14.7, Tenant agrees to fully implement and address all recommended actions contained in the Exit Assessment, at its sole cost, within thirty (30) days of the date thereof.

**14.9 Event of Default** . The release or discharge of any Hazardous Material or the violation of any Hazardous Materials Law by Tenant or any assignee or subtenant of Tenant shall be a material default by Tenant under this Lease subject to the provisions of Section 21.2 below. In addition to or in lieu of the remedies available under this Lease as a result of such Event of Default, Landlord shall have the right, without terminating this Lease, to

require Tenant to suspend its operations and activities on the Premises until Landlord is satisfied that appropriate Remedial Work has been or is being adequately performed; Landlord's election of this remedy shall not constitute a waiver of Landlord's right thereafter to declare an Event of Default and pursue any other available remedy.

## 15. ALTERATIONS; LIENS

**15.1 Alterations by Tenant** . Tenant shall not make any alterations, additions or improvements ("Alterations") to the Premises without Landlord's prior written consent, except for nonstructural Alterations that cost \$5,000 or less and are not visible from the exterior of the Premises. All Alterations installed by Tenant shall be new or completely reconditioned. Landlord shall have the right to approve the contractor, the method of payment of the contractor, and the plans and specifications for all proposed Alterations, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall obtain Landlord's consent to all proposed Alterations requiring Landlord's consent prior to the commencement of any such Alterations. Tenant's request for consent shall be accompanied by information identifying the contractor and method of payment and two (2) copies of the proposed plans and specifications. All Alterations of whatever kind and nature shall become at once a part of the realty and shall be surrendered with the Premises upon expiration or earlier termination of the Lease Term, unless Landlord requires Tenant to remove the same as provided in Article 20. If Tenant demolishes or removes any then-existing tenant improvements or other portions of the Premises or the Building (including without limitation any previously-installed Alterations), Tenant shall promptly commence and diligently pursue to completion all Alterations then underway; provided, however, that if Tenant fails to do so, at the election of Landlord, Tenant shall restore the Premises and the Building to its condition and state of improvement prior to such demolition or removal. During the Lease Term, Tenant agrees to provide, at Tenant's expense, a policy of insurance covering loss or damage to Alterations made by Tenant, in an amount adequate to repair or replace the same, naming Landlord and Landlord's property manager (if any) as additional insureds. Notwithstanding anything herein to the contrary, Tenant may install movable furniture, trade fixtures, machinery or equipment in conformance with applicable governmental rules or ordinances and remove the same upon expiration or earlier termination of this Lease as provided in Article 20.

**15.2 Permits and Governmental Requirements** . Tenant shall obtain, at Tenant's sole cost and expense, all building permits and other permits of every kind and nature required by any governmental agency having jurisdiction in connection with the Alterations. Tenant shall indemnify, protect, hold harmless and defend Landlord and Landlord's officers, directors, shareholders, partners, members, principals, employees, agents, representatives, and other related entities and individuals, and their respective successors and assigns, from and against any and all claims, actions, damages, liability, costs, and expenses, including attorneys' fees and costs, arising out of any failure by Tenant or Tenant's contractor or agents to obtain all required permits, regardless of when such failure is discovered. Tenant shall do any and all additional construction, alterations, improvements and retrofittings required to be made to the Premises and/or the Building, or any other property of Landlord as a result of, or as may be triggered by, Tenant's Alterations. Landlord shall have the right to do such construction itself; but in all instances Tenant shall pay all costs directly or indirectly related to such work and shall indemnify, protect, hold harmless and defend Landlord and Landlord's officers, directors, shareholders, partners, members, principals, employees, agents, representatives, and other related entities and individuals, and their respective successors and assigns, from and against any and all claims, actions, damages, liability, costs, and expenses, including attorneys' fees and costs, arising out of any such additionally required work. All payment and indemnification obligations under this Section shall survive the expiration or earlier termination of the Lease Term.

**15.3 Liens** . Tenant shall pay when due all claims for any work performed, materials furnished or obligations incurred by or for Tenant, and Tenant shall keep the Premises free from any liens arising with respect thereto. If Tenant fails to cause any such lien to be released within fifteen (15) days after obtaining notice or knowledge of the same, by payment or posting of a proper bond, Landlord shall have the right (but not the obligation) to cause such release by such means as Landlord deems proper. Tenant shall pay Landlord upon demand for all costs incurred by Landlord in connection therewith (including attorneys' fees and costs), with interest at the rate specified in Section 22.4 from the date of payment by Landlord to the date of payment by Tenant. Tenant will notify Landlord in writing thirty (30) days prior to commencing any alterations, additions, improvements or repairs in order to allow Landlord time to file a notice of nonresponsibility.

## 16. DAMAGE AND DESTRUCTION

**16.1 Partial Damage** . If, during the Lease Term, the Premises are damaged or destroyed by fire or other casualty, or if the Building is damaged or destroyed by fire or other casualty and such damage or destruction affects Tenant's use of the Premises (collectively, "Premises Damage"), Landlord shall perform the necessary repairs (other than to Tenant's Alterations, trade fixtures, equipment, and personal property, the repair of which Tenant shall be solely responsible), and this Lease shall continue in full force and effect. Provided, however, that Landlord may, at its option, elect to terminate this Lease if (i) Landlord's repairs cannot reasonably be completed within sixty (60) days after the date of the Premises Damage in accordance with applicable laws and regulations, or (ii) the Replacement Cost (defined below) exceeds six (6) months' Minimum Monthly Rent, or (iii) Landlord does not receive sufficient insurance proceeds to pay the full Replacement Cost and the shortfall exceeds one (1) month's Minimum Monthly Rent. As used herein, "Replacement Cost" shall mean the cost to repair or rebuild the Premises, Building (other than Tenant's Alterations, equipment, trade fixtures, and personal property) at the time of the damage or destruction to their condition existing immediately prior thereto, including without limitation all costs of demolition, debris removal, permits, fees and

other governmental requirements, and upgrading the Premises, Building as required by law or other requirements, without deduction for depreciation.

**16.2 Total Destruction** . Notwithstanding any other provisions of this Lease, a total destruction (including any destruction required by any authorized public authority) of either the Premises or the Building shall, at the election of Landlord, terminate this Lease as of the date of such destruction.

**16.3 Partial Destruction of Building** . Notwithstanding any other provision of this Lease, if fifty percent (50%) or more of the square footage of the Building or the Building is damaged or destroyed, notwithstanding that the Premises may be unaffected, Landlord shall have the right to terminate this Lease.

**16.4 Insurance Deductible** . If Landlord is required or elects to repair any Premises Damage caused by an insured casualty as provided in Section 16.1, Tenant shall, within fifteen (15) days after receipt of written notice from Landlord, pay the amount of any deductible (or its Share thereof) under any insurance policy covering such Premises Damage, subject to the limitations set forth in Section 6, and otherwise in accordance with Section 9.3 above.

**16.5 Damage Near End of Term** . If at any time during the last twelve (12) months of the Lease Term there is Premises Damage for which Replacement Cost exceeds one (1) month's Minimum Monthly Rent, Landlord may, at its option, elect to terminate this Lease; provided, however, that if Tenant has any valid, unexercised option to extend the term of this Lease, Tenant may prevent Landlord's termination under this Section by exercising such option within five (5) business days of receipt of Landlord's election to terminate.

**16.6 Landlord's Termination Notice; Effective Date; Relocation** . If Landlord elects to terminate this Lease under any applicable provision of this Article 16, Landlord shall give notice of such election within forty-five (45) days of the date of the damage or destruction. In the case of a total destruction (Section 16.2) or Premises Damage that prevents Tenant from occupying the Premises for its permitted use, the effective date of such termination shall be the date of such Premises Damage; otherwise the effective date of termination shall be a date selected by Landlord not earlier than thirty (30) days from the date of Landlord's notice.

**16.7 Rent Abatement** . If Landlord repairs the Premises or the Building after a Premises Damage as described in this Article 16, Minimum Monthly Rent and Additional Rent shall be equitably reduced from the date of the Premises Damage until the repairs are completed, based upon the extent to which such damage and/or repairs interfere with the business carried on by Tenant in the Premises, but only to the extent such rental loss is covered by (or would have been covered by) the rental income insurance required pursuant to Section 9.1. Landlord agrees to take reasonable steps to make a claim for and collect any rental income insurance proceeds that might be available.

**16.8 Tenant's Obligations** . Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any restoration or replacement of, any of Alterations, equipment, trade fixtures, and personal property owned, placed or installed in or about the Premises by or on behalf of Tenant. Unless this Lease is terminated pursuant to this Article, Tenant shall promptly repair, restore or replace the same in the event of any damage thereto. If all or any portion of the Premises, Building is damaged or destroyed by reason of any act or omission of Tenant, except as provided in Section 9.4 (Waiver of Subrogation), Tenant shall either make the necessary repairs at Tenant's expense or pay to Landlord the Replacement Cost arising therefrom, regardless of whether this Lease is terminated. Nothing contained in this Article shall be construed as a limitation on Tenant's liability for any damage or destruction if such liability otherwise exists.

**16.9 Tenant's Rights**. Notwithstanding anything to the contrary contained herein: (i) if Tenant's use of the Premises is substantially impaired for a period of more than nine (9) months after the date of such Premises Damage, or during the last six (6) months of the Term, then Tenant shall have the right to terminate this Lease by written notice to Landlord at any time thereafter until Tenant's use of the Premises is substantially restored, and (ii) if this Lease is terminated by either Landlord or Tenant due to a casualty, then Tenant shall not be required to pay for any insurance deductibles as part of Landlord's insurance cost or otherwise.

**16.10 Waiver of Inconsistent Statutes** . The parties' rights and obligations in the event of damage or destruction shall be governed by the provisions of this Lease; accordingly, Tenant waives the provisions of California Civil Code Sections 1932(2) and 1933(4), and any other statute, code or judicial decisions that grants a tenant a right to terminate a lease in the event of damage or destruction of a leased premises.

## 17. CONDEMNATION

**17.1 Effect on Lease** . If all of the Premises, or so much thereof that the remaining portion of the Premises cannot be used by Tenant for the conduct of its business, is taken under the power of eminent domain or sold under the threat of the exercise of such power (collectively "Condemnation"), this Lease shall terminate as of the earlier of the date title vests in the condemnor or the date the condemnor is entitled to possession of the interest condemned (the "Condemnation Date"). In all other cases, Landlord may terminate this Lease as of the Condemnation Date if (i) the Condemnation affects any material portion of the Premises or the Building, (ii) Landlord receives insufficient funds from the condemnor to complete the restoration of the Premises required under this Section, or (iii) if the Condemnation affects such a substantial portion of the Building (including the Common Facilities, parking lots or access to the Building) that it is no longer economically appropriate in Landlord's business judgment to lease the Premises on the terms and conditions of this Lease. If such Condemnation affects the Premises and this Lease remains in effect, (a) this Lease shall terminate as to the portion of the Premises taken as of the Condemnation Date, (b) the Minimum Monthly Rent shall be equitably adjusted based upon the rental value of the Premises remaining after the Condemnation compared to the rental value of the Premises prior to Condemnation, (c) Tenant's Share shall be adjusted based on any changes in the square footage of the Premises and/or the Building, and (d) Landlord shall,

within a reasonable period of time, undertake such construction or restoration as may be reasonably necessary to place the remaining Premises in a useable condition (provided that the cost of such construction or restoration does not exceed the amount awarded to Landlord by the condemnor for such purpose). Landlord shall not be responsible to restore or replace any of Tenant's Alterations, fixtures, equipment or personal property.

**17.2 Condemnation Award** . All compensation, damages and other items of value awarded, paid or received in settlement or otherwise ("Award") upon any partial or total Condemnation shall be paid to Landlord, and Tenant shall have no claim thereto. Tenant hereby irrevocably assigns and transfers to Landlord, and fully waives, releases and relinquishes any and all claims to or interest in the Award, including, without limitation, any amount attributable to the amount, if any, by which rental value of the Premises exceeds the rent payable for the remainder of the Lease Term, to the value of any unexercised options to extend the term or expand the Premises, or to Tenant's goodwill. Notwithstanding the foregoing, Tenant shall have the right to make a separate claim and to recover from the condemning authority, but not from Landlord, so long as the Award payable to Landlord is not reduced thereby, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of (a) the taking of the unamortized or undepreciated value of any Alterations or any leasehold improvements owned by Tenant that Tenant has the right to remove at the end of the Lease Term and Tenant elects not to remove; (b) reasonable removal and relocation costs for any Alterations or any leasehold improvements that Tenant has the right to remove and elects to remove (if the condemning authority approves of the removal); and (c) relocation costs under Government Code Section 7262, the claim for which Tenant may pursue by separate action independent of this Lease.

**17.3 Waiver of Inconsistent Statutes** . The parties' rights and obligations in the event of Condemnation shall be governed by the provisions of this Lease; accordingly, Tenant waives the provisions of California Code of Civil Procedure Sections 1265.110 through 1265.150, and any other statute, code or judicial decisions that grants a tenant a right to terminate a lease in the event of the Condemnation of a leased premises.

## 18. ASSIGNMENT AND SUBLETTING

**18.1 Landlord's Consent Required** . Tenant shall not voluntarily or involuntarily assign, sublease, mortgage, encumber, or otherwise transfer all or any portion of the Premises or its interest in this Lease (collectively, "Transfer") without Landlord's prior written consent, which consent Landlord shall not unreasonably withhold. Landlord may withhold its consent until Tenant has complied with the provisions of Sections 18.2 and 18.3. Any attempted Transfer without Landlord's written consent shall be void and shall constitute a noncurable Event of Default under this Lease. If Tenant is a corporation, any cumulative Transfer of more than twenty percent (20%) of the voting stock of such corporation shall constitute a Transfer requiring Landlord's consent hereunder; provided, however, that this sentence shall not apply to any corporation whose stock is publicly traded. If Tenant is a partnership, limited liability company, trust or other entity, any cumulative Transfer of more than twenty percent (20%) of the partnership, membership, beneficial or other ownership interests therein shall constitute a Transfer requiring Landlord's consent hereunder. Tenant shall not have the right to consummate a Transfer or to request Landlord's consent to any Transfer if any Event of Default has occurred and is continuing or if Tenant or any affiliate of Tenant is in default under any lease of any other real property owned or managed (in whole or in part) by Landlord or any affiliate of Landlord.

**18.2 Landlord's Election** . Tenant's request for consent to any Transfer shall be accompanied by a written statement setting forth the details of the proposed Transfer, including the name, business and financial condition of the prospective Transferee, financial details of the proposed Transfer (e.g., the term and the rent and security deposit payable), and any other related information that Landlord may reasonably require. Landlord shall have the right: (a) to withhold consent to the Transfer, if reasonable, (b) to grant consent, (c) to terminate this Lease in connection with any Transfer for substantially the remainder of the Lease Term, but only as to the portion of the Premises affected by any proposed Transfer, in which event Landlord may enter into a lease directly with the proposed Transferee (which election to terminate shall not be construed to be a consent to the proposed Transfer), or (d) to consent on the condition that Landlord be paid fifty percent (50%) of all subrent or other consideration to be paid to Tenant under the terms of the Transfer in excess of the total rent due hereunder, as offset by any costs incurred in connection with such Transfer. Landlord may require any permitted subtenant to make rental payments directly to Landlord, in the amount of rent due under the sublease. The grounds on which Landlord may reasonably withhold its consent to any requested Transfer include, without limitation, that: (i) the proposed Transferee's contemplated use of the Premises following the proposed Transfer is not reasonably similar to the use of the Premises permitted hereunder, (ii) in Landlord's reasonable business judgment, the proposed Transferee lacks sufficient business reputation or experience to operate a successful business of the type and quality permitted under this Lease, (iii) in Landlord's reasonable business judgment, the proposed Transferee lacks sufficient net worth, working capital, anticipated cash flow and other indications of financial strength to meet all of its obligations under this Lease, (iv) the proposed Transfer would breach any covenant of Landlord respecting a radius restriction, location, use or exclusivity in any other lease, financing agreement, or other agreement relating to the Building, and (v) in Landlord's reasonable business judgment, the possibility of a release of Hazardous Materials is materially increased as a result of the Transfer or if Landlord does not receive sufficient assurances that the proposed Transferee has the experience and financial ability to remedy a violation of Hazardous Materials and to fulfill its obligations under Articles 13 and 14. In connection with any such Transfer, Landlord shall have the right to require Tenant, at Tenant's sole cost, to cause environmental testing meeting the requirements of an Exit Assessment described in Section 14.8 to be performed. Landlord need only respond to any request by Tenant hereunder within a reasonable time of not less than ten (10) business days after receipt of all information and other submission required in connection with such request.

**18.3 Costs; Transfer Fee** . Tenant shall pay all costs and expenses in connection with any permitted Transfer, including any real estate brokerage commissions due with respect to the Transfer. Tenant shall reimburse all attorneys' fees and costs reasonably incurred by Landlord and a fee of \$500 to reimburse Landlord for costs and expenses incurred in connection with any request by Tenant for Landlord's consent to a Transfer. Such fee shall be delivered to Landlord concurrently with Tenant's request for consent. Such payment obligations shall apply regardless of whether Landlord ultimately grants or denies Tenant's request.

**18.4 Assumption; No Release of Tenant** . Any permitted assignee shall assume in writing all obligations of Tenant under this Lease, utilizing a form of assumption agreement provided or approved by Landlord, and an executed copy of such assumption agreement shall be delivered to Landlord within fifteen (15) days after the effective date of the Transfer. The taking of possession of all or any part of the Premises by any such permitted assignee or subtenant shall constitute an agreement by such person or entity to assume without limitation or qualification all of the obligations of Tenant under this Lease, notwithstanding any failure by such person to execute the assumption agreement required in the immediately preceding sentence. No permitted Transfer shall release or change Tenant's primary liability to pay the rent and to perform all other obligations of Tenant under this Lease. Landlord's acceptance of rent from any other person is not a waiver of any provision of this Article nor a consent to any Transfer. Consent to one Transfer shall not constitute a consent to any subsequent Transfer. If any transferee defaults under this Lease, Landlord may proceed directly against Tenant without pursuing remedies against the transferee. Landlord may consent to subsequent Transfers or modifications of this Lease by Tenant's transferee, without notifying Tenant or obtaining its consent, and such action shall not relieve Tenant of its liability under this Lease.

**18.5 Permitted Transfers** . Notwithstanding anything to the contrary contained in this Lease, Tenant may assign this Lease or sublet the Premises, or any portion thereof, without Landlord's prior consent, to any entity which controls, is controlled by, or is under common control with Tenant; to any entity which results from a merger of, reorganization of, or consolidation with Tenant; to any entity engaged in a joint venture with Tenant; or to any entity which acquires substantially all of the stock or assets of Tenant, as a going concern, with respect to the business that is being conducted in the Premises (hereinafter each a "Permitted Transfer"), so long as (A) the overall net worth of the resulting Tenant is not materially less than the overall net worth of Tenant prior to such Permitted Transfer, (B) the liquid assets forming a portion of such net worth of the resulting Tenant are not materially less than the liquid assets forming a portion of the net worth of Tenant prior to such Permitted Transfer, and (C) Landlord receives notice of such Permitted Transfer, together with satisfactory evidence of the satisfaction of such net worth tests set forth in the preceding phrases (A) and (B) within five (5) business days of the date of such Permitted Transfer. In addition, a sale or transfer of the capital stock of Tenant shall be deemed a Permitted Transfer if (1) such sale or transfer occurs in connection with any *bona fide* financing or capitalization for the benefit of Tenant, or (2) Tenant is or becomes a publicly traded corporation. Landlord shall have no right to terminate the Lease in connection with, and shall have no right to any sums or other economic consideration resulting from any Permitted Transfer. Additionally, any rights that are personal to Tenant shall also accrue to any Permitted Transferee.

**18.6 No Merger** . No merger shall result from any Transfer pursuant to this Article, any surrender by Tenant of its interest under this Lease, or any termination hereof in any other manner. In any such event, Landlord may either terminate any or all subleases or succeed to the interest of Tenant thereunder.

**18.7 Reasonable Restriction** . Tenant acknowledges that the restrictions on Transfer contained herein are reasonable restrictions for purposes of Section 22.2 of this Lease and California Civil Code Section 1951.4.

## **19. SUBORDINATION; ATTORNMENT; ESTOPPEL CERTIFICATE**

**19.1 Subordination** . The lien and terms of this Lease are and shall be unconditionally junior and subordinate to the lien and terms of all ground leases, mortgages, deeds of trust, and other security instruments now or hereafter affecting the real property of which the Premises are a part, and to all advances made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof. If any mortgagee, beneficiary under deed of trust or ground lessor shall elect to have this Lease prior to its mortgage, deed of trust or ground lease, and gives written notice thereof to Tenant, this Lease shall be deemed prior thereto. Tenant agrees to execute any documents required to effectuate such subordination or to make this Lease prior to the lien of any such mortgage, deed of trust or ground lease, as the case may be. If Tenant fails to deliver such agreement within ten (10) days after written demand, (a) Tenant does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead, to do so, and (b) an Event of Default shall be deemed to have occurred and, in addition to all other liability, Tenant shall be liable for the immediate payment of all foreseeable and unforeseeable damages, penalties and attorneys' fees and costs incurred by Landlord as a result of such failure. Notwithstanding the foregoing, or anything in this Lease to the contrary, Tenant shall not be required to subordinate its interest under this Lease unless Landlord first obtains from the holder of the mortgage, deed of trust, or other instrument of security to which this Lease is to become subordinated a written agreement that provides substantially that Tenant's right of possession shall not be disturbed if at the time of foreclosure no Event of Default has occurred.

**19.2 Attornment** . If Landlord sells, transfers, or conveys its interest in the Premises or this Lease, or if the same is foreclosed judicially or nonjudicially, or is otherwise acquired, by a mortgagee, beneficiary under deed of trust or ground lessor, upon the request and at the sole election of Landlord's lawful successor, Tenant shall attorn to said successor, provided said successor accepts the Premises subject to this Lease. Tenant shall, upon request of Landlord or any such mortgagee, beneficiary under deed of trust or ground lessor execute an attornment agreement conforming the same, in form and substance acceptable to Landlord. Such agreement shall provide among other

things, that such successor shall not be (a) bound by any prepayment of more than one (1) month's rent, (b) liable for the return of any Security Deposit or other sums not actually received by said successor, (c) bound by any act or omission of Landlord arising prior to the succession of such successor to the Landlord's interest in this Lease, or be subject to any offset, defense or counter-claim that Tenant may have previously accrued against Landlord, or (d) be bound by any material amendment of this Lease made after the later of the initial effective date of this Lease, or the date that such successor's lien or interest first arose, unless said successor shall have consented to such amendment in writing.

**19.3 Estoppel Certificates** . Within fifteen (15) days after written request from Landlord, Tenant at Tenant's sole cost shall execute, acknowledge and deliver to Landlord a written certificate in favor of Landlord and any prospective lender on or purchaser of the Building or any part thereof, (a) that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modifications and certifying that this Lease is in full force and effect as so modified), (b) the amount of any rent paid in advance, and (c) that there are no uncured defaults on the part of Landlord, or specifying the nature of such defaults if any are claimed. In addition to the foregoing, such certificate shall include Tenant's certification to such other matters of fact, and be on such form, as Landlord or such prospective lender or purchaser shall reasonably require. If Tenant fails to deliver such certificate within said 15-day period, an Event of Default shall be deemed to have occurred and, in addition to all other liability, Tenant shall be liable for the immediate payment of all foreseeable and unforeseeable damages, penalties and attorneys' fees and costs incurred by Landlord as a result of such failure. Tenant's failure to deliver such certificate within said 15-day period shall constitute a conclusive acknowledgment by Tenant: (i) that this Lease is in full force and effect without modification except as may be represented by Landlord, (ii) that not more than one month's rent has been paid in advance, and (iii) that there are no uncured defaults in Landlord's performance.

## 20. SURRENDER OF PREMISES

**20.1 Condition of Premises** . Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord, broom clean and in the same condition and state of repair as at the commencement of the Lease Term, except for ordinary wear and tear that Tenant is not otherwise obligated to remedy under the provisions of this Lease. Tenant shall deliver all keys to the Premises and the Building to Landlord. Upon expiration of the Lease, Tenant shall remove all portable furniture, trade fixtures, machinery, equipment, signs and other items of personal property (unless prohibited from doing the same under Section 20.2), and shall remove any Alterations (whether or not made with Landlord's consent) that Landlord may require Tenant to remove; provided, Tenant shall not be required to remove any Alterations for which Tenant has previously obtained Landlord's written agreement that such removal would not be required at the end of the Lease term. Tenant shall repair all damage to the Premises caused by such removal and shall restore the Premises to its prior condition, all at Tenant's expense. Such repairs shall be performed in a manner satisfactory to Landlord and shall include, but are not limited to, the following: capping all plumbing, capping all electrical wiring, repairing all holes in walls, restoring damaged floor and/or ceiling tiles, and thorough cleaning of the Premises. If Tenant fails to remove any items that Tenant has an obligation to remove under this Section when required by Landlord or otherwise, such items shall, at Landlord's option, become the property of Landlord and Landlord shall have the right to remove and retain or dispose of the same in any manner, without any obligation to account to Tenant for the proceeds thereof. Tenant waives all claims against Landlord for any damages to Tenant resulting from Landlord's retention or disposition of such Alterations or personal property. Tenant shall be liable to Landlord for Landlord's costs of removing, storing and disposing of such items.

**20.2 Removal of Certain Alterations, Fixtures and Equipment Prohibited** . All Alterations, fixtures (whether or not trade fixtures), machinery, equipment, signs that Landlord has not required Tenant to remove under Section 20.1 shall become Landlord's property and shall be surrendered to Landlord with the Premises, regardless of who paid for the same. In particular and without limiting the foregoing, Tenant shall not remove any of the following materials or equipment without Landlord's prior written consent, regardless of who paid for the same and regardless of whether the same are permanently attached to the Premises: power wiring and power panels; piping for industrial gasses or liquids; laboratory benches, sinks, cabinets and casework; fume hoods or specialized air-handling and evacuation systems; drains or other equipment for the handling of waste water or hazardous materials; computer, telephone and telecommunications wiring, panels and equipment; lighting and lighting fixtures; wall coverings; drapes, blinds and other window coverings; carpets and other floor coverings; heaters, air conditioners and other heating or air conditioning equipment; fencing; security gates and systems; and other building operating equipment and decorations; provided, however, that following modifications and clarifications shall govern this Section 20.2 notwithstanding anything in this Section 20.2 to the contrary:

(a) Landlord has no ownership interest in the furniture, fixtures and equipment listed on the attached Exhibit "E-1" and Tenant may remove or transfer the same in its discretion;

(b) Tenant shall not be required to remove or restore at the expiration of the Term or otherwise any Alterations, fixtures (whether or not trade fixtures), machinery or equipment made to or installed in the Premises prior to the date of this Lease;

(c) The laboratory benches, sinks, cabinets, casework, counters, desktops, working surfaces, file cabinets, fume hoods, cage washers, and other fixtures and improvements indicated on the drawings attached hereto as Exhibit "E-2" shall not be to be removed at the end of the Term, and Tenant shall have no duty to remove the same at the end of the Term;

(d) Tenant shall retain ownership of all of its fixtures, machinery, equipment, and other items of personal property installed by Tenant (pursuant to the Avansir Sublease or otherwise) and may remove the same from the Premises so long as such items do not appear in the attached Exhibit E-2 and if such removal can be accomplished (and is accomplished) without material physical damage to the Building or material impairment of the operation thereof;

(e) In the event of any ambiguity as to whether a particular item is covered by Exhibit "E-1" or Exhibit "E-2", the parties agree that the provisions of Exhibit "E-1" shall control.

**20.3 Surrender Plan** . At least sixty (60) days prior to the expiration of the Term (or such earlier time that Tenant intends to remove any furnishings, fixtures or equipment from the Premises), Tenant shall provide to Landlord a detailed list and narrative description of its plan of surrender ("Surrender Plan") that implements the terms of Sections 20.1, 20.2, and 20.3 including a detailed listing and description of the items

in the Premises that Tenant intends to remove. Landlord shall have the right to make reasonable objections to or modifications of such Surrender Plan, and Tenant shall satisfy Landlord's reasonable objections prior to the expiration of the Term (or any earlier date that Tenant intends to begin removing items). Tenant's surrender of the Premises and removal and repair thereof shall

follow in all respects the Surrender Plan, as the same may have been modified to reasonably satisfy Landlord, and on all of the other terms and conditions of this Lease. Landlord shall have the right to have a representative observe all aspects of Tenant's vacation of the Premises to ensure compliance with this Lease and the Surrender Plan.

**20.4 Holding Over** . Tenant shall vacate the Premises upon the expiration or earlier termination of this Lease, and Tenant shall indemnify, protect, hold harmless and defend Landlord against all liabilities, damages and expenses incurred by Landlord as a result of any delay by Tenant in vacating the Premises. If Tenant remains in possession of the Premises or any part thereof after the expiration of the Lease Term with Landlord's written permission, Tenant's occupancy shall be a tenancy from month-to-month only, and not a renewal or extension hereof. All provisions of this Lease (other than those relating to the term) shall apply to such month-to-month tenancy, except that the Minimum Monthly Rent shall be increased to 150% of the Minimum Monthly Rent in effect during the last month of the Lease Term. No acceptance of rent, negotiation of rent checks or other act or omission of Landlord or its agents shall extend the Expiration Date of this Lease other than a writing executed by Landlord giving Tenant permission to remain in occupancy beyond the Expiration Date under the terms of the immediately preceding sentence.

## 21. DEFAULT BY TENANT

The occurrence of any of the following shall constitute an "Event of Default" under this Lease by Tenant:

21.1 Failure to pay when due any Minimum Monthly Rent, Additional Rent or any other monetary sums required to be paid by Tenant under the terms of this Lease.

21.2 Failure to perform any other agreement or obligation of Tenant hereunder, if such failure continues for thirty (30) days after written notice by Landlord to Tenant (except as to those Events of Default that are noncurable, in which case no such grace period shall apply); provided, however that if any curable failure cannot reasonably be cured within such 30 day period, Tenant shall have an additional reasonable period of time within which to cure such failure, not to exceed ninety (90) days from Landlord's notice, so long as Tenant commences to cure such failure within said 30 days and thereafter diligently prosecute such cure to completion. Landlord's notice described herein is intended to satisfy, and is not in addition to, any and all legal notices required prior to commencement of an unlawful detainer action, including without limitation the notice requirements of California Code of Civil Procedure Sections 1161 *et seq* .

21.3 Abandonment of the Premises by Tenant.

21.4 If any of the following occurs: (i) a petition is filed for an order of relief under the federal Bankruptcy Code or for an order or decree of insolvency or reorganization or rearrangement under any state or federal law, and such petition is not dismissed within thirty (30) days after the filing thereof; (ii) Tenant makes a general assignment for the benefit of creditors; (iii) a receiver or trustee is appointed to take possession of any substantial part of Tenant's assets, unless such appointment is vacated within thirty (30) days after the date thereof; or (iv) Tenant consents to or suffers an attachment, execution or other judicial seizure of any substantial part of its assets or its interest under this Lease, unless such process is released or satisfied within thirty (30) days after the occurrence thereof. If a court of competent jurisdiction determines that any of the foregoing events is not a default under this Lease, and a trustee is appointed to take possession (or if Tenant remains a debtor in possession), and such trustee or Tenant transfers Tenant's interest hereunder, then Landlord shall receive the difference between the rent (or other consideration) paid in connection with such transfer and the rent payable by Tenant hereunder. Any assignee pursuant to the provisions of any bankruptcy law shall be deemed without further act to have assumed all of the obligations of Tenant hereunder arising on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assumption.

## 22. REMEDIES

Upon the occurrence of any Event of Default by Tenant, Landlord shall have the following remedies, each of which shall be cumulative and in addition to any other remedies now or hereafter available at law or in equity:

**22.1 Termination of Lease** . Landlord can terminate this Lease and Tenant's right to possession of the Premises by giving written notice of termination, and then re-enter the Premises and take possession thereof. No act by Landlord other than giving written notice to Tenant of such termination shall terminate this Lease. Upon termination, Landlord has the right to recover all damages incurred by Landlord as a result of Tenant's default, including:

(a) The worth at the time of award of any unpaid rent that had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid rent that would have been earned after the date of termination until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's default, including, but not limited to (i) expenses for cleaning, repairing or restoring the Premises, (ii) expenses for altering, remodeling or otherwise improving the Premises for the purpose of reletting, (iii) brokers' fees and commissions, advertising costs and other expenses of reletting the Premises, (iv) costs of carrying the Premises, such as taxes, insurance premiums, utilities and security precautions, (v) expenses in retaking possession of the Premises, (vi) attorneys' fees and costs, (vii) any unearned brokerage commissions paid in connection with this Lease, and (viii) reimbursement of any previously waived or abated Minimum Monthly Rent, Additional Rent or other charges; plus



(e) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time under applicable law. As used in paragraphs (a) and (b) above, the "worth at the time of award" shall be computed by allowing interest at the maximum permissible legal rate. As used in paragraph (c) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

**22.2 Continuation of Lease** . Landlord has the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations), as follows:

(a) Landlord can continue this Lease in full force and effect without terminating Tenant's right of possession, and Landlord shall have the right to collect rent and other monetary charges when due and to enforce all other obligations of Tenant hereunder. Landlord shall have the right to enter the Premises to do acts of maintenance and preservation of the Premises, to make alterations and repairs in order to relet the Premises, and/or to undertake other efforts to relet the Premises. Landlord may also remove personal property from the Premises and store the same in a public warehouse at Tenant's expense and risk. No act by Landlord permitted under this paragraph shall terminate this Lease unless a written notice of termination is given by Landlord to Tenant or unless the termination is decreed by a court of competent jurisdiction.

(b) In furtherance of the remedy set forth in this Section, Landlord may relet the Premises or any part thereof for Tenant's account, for such term (which may extend beyond the Lease Term), at such rent, and on such other terms and conditions as Landlord may deem advisable in its sole discretion. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises. Any rents received by Landlord from such reletting shall be applied to the payment of: (i) any indebtedness other than rent due hereunder from Tenant to Landlord, (ii) the costs of such reletting, including brokerage and attorneys' fees and costs, and the cost of any alterations and repairs to the Premises, and (iii) the payment of rent due and unpaid hereunder, including any previously waived or abated rent. Any remainder shall be held by Landlord and applied in payment of future amounts as the same become due and payable hereunder. In no event shall Tenant be entitled to any excess rent received by Landlord after an Event of Default by Tenant and the exercise of Landlord's remedies hereunder. If the rent from such reletting during any month is less than the rent payable hereunder, Tenant shall pay such deficiency to Landlord upon demand.

(c) Landlord shall not, by any re-entry or other act, be deemed to have accepted any surrender by Tenant of the Premises or Tenant's interest therein, or be deemed to have terminated this Lease or Tenant's right to possession of the Premises or the liability of Tenant to pay rent accruing thereafter or Tenant's liability for damages under any of the provisions hereof, unless Landlord shall have given Tenant notice in writing that it has so elected to terminate this Lease.

(d) Tenant acknowledges and agrees that the restrictions on the Transfer of this Lease set forth in Article 18 of this Lease constitute reasonable restrictions on such transfer for purposes of this Section and California Civil Code Section 1951.4.

**22.3 Performance By Landlord** . If Tenant fails to pay any sum of money or perform any other act to be performed by Tenant hereunder, and such failure continues for fifteen (15) days after notice by Landlord, Landlord shall have the right (but not the obligation) to make such payment or perform such other act without waiving or releasing Tenant from its obligations. All sums so paid by Landlord and all necessary incidental costs, together with interest thereon at the rate specified in Section 22.4, shall be payable to Landlord on demand. Landlord shall have the same rights and remedies in the event of nonpayment by Tenant as in the case of default by Tenant in the payment of the rent.

**22.4 Late Charge; Interest on Overdue Payments** . The parties acknowledge that late payment by Tenant of Minimum Monthly Rent, Additional Rent or other charges hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult and impractical to determine, including, but not limited to, processing and accounting charges, administrative expenses, and additional interest expenses or late charges that Landlord may be required to pay as a result of late payment on Landlord's obligations. Therefore, if any installment of Minimum Monthly Rent, Additional Rent or other charges is not received by Landlord by the date which is five days following the date due, and without regard to whether Landlord gives Tenant notice of such failure or exercises any of its remedies upon an Event of Default, Tenant shall pay a late charge equal to the greater of five percent (5%) of the overdue amount or One Hundred Dollars (\$100). The parties hereby agree that such late charge represents a fair and reasonable estimate of the damages Landlord will incur by reason of late payment by Tenant. In addition, any amount due from Tenant that is not paid when due shall bear interest at a rate equal to two percent (2%) over the then current Bank of America prime or reference rate or ten percent (10%) per annum, whichever is greater, but not in excess of the maximum permissible legal rate, from the date such payment is due until the date paid by Tenant. Landlord's acceptance of any interest or late charge shall not constitute a waiver of Tenant's default or prevent Landlord from exercising any other rights or remedies available to Landlord.

**22.5 Landlord's Right to Require Advance Payment of Rent; Cashier's Checks** . If Tenant is late in paying any component of rent more than two (2) times in any consecutive 24 month period, Landlord shall have the right, upon notice to Tenant, to require that all rent be paid three (3) months in advance. Additionally, if any of Tenant's checks are returned for nonsufficient funds, Landlord may, at its option, require that all future rent (including any sums demanded in any subsequent three (3) day notice) be paid exclusively by money order or cashier's check.

## 23. DEFAULT BY LANDLORD

23.1 **Notice to Landlord** . Landlord shall not be in default under this Lease unless Landlord fails to perform an obligation required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to each Mortgagee as provided in Section 23.2, specifying the nature of the alleged default; provided, however, that if the nature of the obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

23.2 **Notice to Mortgagees** . Tenant agrees to give each mortgagee or trust deed holder on the Premises or the Building (“Mortgagee”), by certified mail, a copy of any notice of default served upon Landlord, provided that Tenant has been previously notified in writing of the address of such Mortgagee. Tenant further agrees that if Landlord fails to cure such default within the time provided for in this Lease, then the Mortgagees shall have an additional thirty (30) days after Tenant’s notice within which to cure such default, or if such default cannot reasonably be cured within that time, then such additional time as may be necessary if, within said 30-day period, any Mortgagee has commenced and is diligently pursuing the remedies necessary to cure the default (including but not limited to commencement of foreclosure proceedings if necessary to affect such cure), in which event this Lease shall not be terminated while such remedies are being so diligently pursued.

23.3 **Limitations on Remedies Against Landlord** . In the event Tenant has any claim or cause of action against Landlord: (a) Tenant’s sole and exclusive remedy shall be against Landlord’s interest in the Building, and neither Landlord nor any of Landlord’s officers, directors, shareholders, partners, members, principals, employees, agents, representatives, or other related entities or individuals, or their respective successors and assigns (collectively, “Landlord’s Related Entities”), nor any other property of Landlord or Landlord’s Related Entities shall be liable for any deficiency, (b) none of Landlord’s Related Entities shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction over Landlord), (c) no service of process shall be made against any of Landlord’s Related Entities (except as may be necessary to secure jurisdiction), and none of Landlord’s Related Entities shall be required to answer or otherwise plead to any service of process, (d) no judgment shall be taken against any of Landlord’s Related Entities and any judgment taken against any of Landlord’s Related Entities may be vacated and set aside at any time, and (e) no writ of execution will ever be levied against the assets of any of Landlord’s Related Entities. The covenants and agreements set forth in this Section shall be enforceable by Landlord and/or by any of Landlord’s Related Entities. If Landlord fails to give any consent that a court later holds Landlord was required to give under the terms of this Lease, Tenant shall be entitled solely to specific performance and such other remedies as may be specifically reserved to Tenant under this Lease, but in no event shall Landlord be responsible for monetary damages (including incidental and consequential damages) for such failure to give consent.

## 24. GENERAL PROVISIONS

24.1 **Action or Defense by Tenant** . Any claim, demand or right of defense of any kind by Tenant that is based upon or arises in any connection with this Lease or negotiations prior to its execution shall be barred unless Tenant commences an action thereon or initiates a legal proceeding or defense by reason thereof within six (6) months after the date of the occurrence of the event, act or omission to which the claim, demand or right of defense relates. Tenant acknowledges and understands that, after having had an opportunity to consult with legal counsel, the purpose of this paragraph is to shorten the time period within which Tenant would otherwise have to raise such claims, demands or rights of defense.

24.2 **Arbitration and Mediation; Waiver of Jury Trial** . Except as provided in this Section, if any dispute ensues between Landlord and Tenant arising out of or concerning this Lease, and if said dispute cannot be settled through direct discussions between the parties, the parties shall first attempt to settle the dispute through mediation before a mutually acceptable mediator. The cost of mediation shall be divided equally between the parties. Thereafter, any remaining, unresolved disputes or claims shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The prevailing party in any such arbitration shall be entitled to recover reasonable costs and attorneys’ fees and costs as determined by the arbitrator; provided, however, that the foregoing provisions regarding mediation and arbitration shall not apply to (a) any issue or claim that might properly be adjudicated in an unlawful detainer proceeding, or (b) to any issue or claim that Landlord elects not to have resolved through arbitration and with respect to which Landlord commences an action in law or equity to determine the same. Without limiting the foregoing, Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim (including any claim of injury or damage and any emergency and other statutory remedy in respect thereof) brought by either against the other on any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant’s use or occupancy of the Premises.

24.3 **Attorneys’ Fees** . If Landlord brings any legal action or proceeding, declaratory or otherwise, arising out of this Lease, including any suit by Landlord to recover rent or possession of the Premises or otherwise to enforce this Lease, Tenant shall pay Landlord’s costs and attorneys’ fees and costs incurred in such proceeding. As used herein, “attorneys’ fees and costs” include without limitation attorneys’ fees and costs, printing, photocopying, duplicating and other expenses, air freight charges, fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney, experts’ fees, appraisers’ fees, accountants’ fees, court costs, the fees of other professionals, costs incurred in connection with any and all arbitrations, mediations, post-judgment motions, contempt proceedings, garnishments, levies, debtor and third party

examination, discovery and bankruptcy litigation. If Landlord issues notice(s) to pay rent, notice(s) to perform covenant, notice(s) of abandonment or similar documents as a result of Tenant's default under this Lease, and if Tenant cures such default, Tenant shall pay to Landlord within fifteen (15) days of demand, the reasonable costs incurred by Landlord in preparing and delivering the same, including Landlord's attorneys' fees and costs.

**24.4 Authority of Tenant** . Tenant represents and warrants that it has full power and authority to execute and fully perform its obligations under this Lease pursuant to its governing instruments, without the need for any further action, and that the person(s) executing this Agreement on behalf of Tenant are the duly designated agents of Tenant and are authorized to do so. Prior to execution of this Lease, Tenant shall supply Landlord with such evidence as Landlord may request regarding the authority of Tenant to enter into this Lease. Any actual or constructive taking of possession of the Premises by Tenant shall constitute a ratification of this Lease by Tenant.

**24.5 Binding Effect; Parties Benefited** . Subject to the provisions of Article 18 restricting transfers by Tenant and subject to Section 24.26 regarding transfer of Landlord's interest, all of the provisions of this Lease shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Except for Landlord's employees and agents (including without limitation any property manager or property management firm engaged by Landlord with respect to the Premises), each of whom shall be entitled to the benefits of and shall be third party beneficiaries of the provisions of Articles 12 and 13, no third person shall be entitled to enforce or be entitled to any rights hereunder or be a third party beneficiary of any term or provision this Lease.

**24.6 Brokers** . Tenant warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this transaction except only the broker(s) set forth in Section 1.11 of the Basic Lease Provisions, and it knows of no other real estate broker or agent who is entitled to a commission in connection with this transaction. Tenant agrees to indemnify, protect, hold harmless and defend Landlord from and against any obligation or liability to pay any commission or compensation to any other party arising from the act or agreement of Tenant.

**24.7 Construction** . The headings and captions used in this Lease are for convenience only and are not a part of the terms and provisions of this Lease. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant, its subtenants and assigns and their respective agents, employees, contractors, and invitees, and any others using the Premises with Tenant's express or implied permission.

**24.8 Counterparts** . This Lease may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one Lease binding on all parties after all parties have signed such a counterpart.

**24.9 Covenants and Conditions** . Each provision to be performed by Tenant shall be deemed to be both a covenant and a condition.

**24.10 Entire Agreement** . This Lease, together with any and all exhibits, schedules, riders and addenda attached or referred to herein, constitutes the entire agreement between the parties with respect to the subject matter hereof. There are no oral or written agreements or representations between the parties hereto affecting this Lease, and this Lease supersedes, cancels and merges any and all previous verbal or written negotiations, arrangements, representations, brochures, displays, models, photographs, renderings, floor plans, elevations, projections, estimates, agreements and understandings if any, made by or between Landlord and Tenant and their agents, with respect to the subject matter, and none thereof shall be used to interpret, construe, supplement or contradict this Lease. This Lease and all amendments thereto is and shall be considered to be the only agreement between the parties hereto and their representatives and agents. There are no other representations or warranties between the parties, and all reliance with respect to representations is solely based upon the representations and agreements contained in this Lease.

**24.11 Exhibits** . Any and all exhibits, schedules, riders and addenda attached or referred to herein are hereby incorporated herein by reference.

**24.12 Financial Statements** . Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord its then current financial statements, or if applicable the financial statements of any assignee, subtenant, or guarantor of Tenant. In addition, Tenant shall deliver to any proposed or actual lender or purchaser of the Premises designated by Landlord any such financial statements as required by such party to facilitate the sale, financing or refinancing of the Premises, including the past three (3) years' financial statements. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement as of the date of such statement. All such financial statements shall be received in confidence and shall be used only for the purposes set forth herein. Tenant hereby irrevocably authorizes Landlord to conduct credit checks and other investigations into Tenant's financial affairs.

**24.13 Force Majeure** . If Landlord is delayed in or prevented from the performance of any act required under this Lease by reason of strikes, lock-outs, labor troubles, inability to procure standard materials, failure of power, restrictive governmental laws, regulations or orders, governmental action or inaction (including failure, refusal or delay in issuing permits, approvals and/or authorizations), riots, civil unrest or insurrection, war, terrorism, bioterrorism, fire, earthquake, flood or other natural disaster, unusual and unforeseeable delay that results from an interruption of any public utilities, or other unusual and unforeseeable delay not within the reasonable control of Landlord, then performance of such act will be excused for the period of the delay and the period for the performance of any such act will be extended for a period equivalent to the period of such delay.

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

**24.15 Joint and Several Liability** . If more than one person or entity executes this Lease as Tenant, each of them is jointly and severally liable for all of the obligations of Tenant hereunder.



**24.16 Modification** . The provisions of this Lease may not be modified or amended, except by a written instrument signed by all parties.

**24.17 Modification for Lender** . If, in connection with obtaining financing or refinancing for the Premises or the Building, Landlord's lender requests reasonable modifications to this Lease, Tenant will not unreasonably withhold or delay its consent thereto, provided that such modifications do not increase the obligations of Tenant hereunder or adversely affect Tenant's rights hereunder.

**24.18 Intentionally Omitted** .

**24.19 Notice** . Any and all notices to either party shall be personally delivered, sent by recognized courier service (such as Federal Express or United Parcel Service), or sent by certified mail, return receipt requested, postage prepaid, addressed to the party to be notified at the address specified in Section 1.1, or at such other address as such party may from time to time designate in writing. Notice shall be deemed delivered on the date of personal delivery, on the date scheduled for delivery by such courier service, or three (3) business days after deposit in the U.S. Mail, certified, return receipt requested. Provided, however, that any notice required pursuant to California Code of Civil Procedure Sections 1161 *et seq.* may be given as provided in such sections. Any and all notices provided herein that Landlord may give setting forth or alleging any default or breach of this Lease, or of any failure of Tenant to perform its obligations hereunder shall be deemed to satisfy, and shall not be in addition to, any and all legal notices required prior to the commencement of an unlawful detainer action, including without limitation the notices required pursuant to California Code of Civil Procedure Sections 1161 *et seq.*

**24.20 Partial Invalidity** . If any provision of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

**24.21 Quiet Enjoyment** . Landlord agrees that Tenant, upon paying the rent and performing the terms, covenants and conditions of this Lease, may quietly have the right to use and occupy the Premises as against Landlord during the Lease Term, subject, however, to the lien and provisions of any mortgage or deed of trust to which this Lease is or becomes subordinate.

**24.22 Recording; Non-Disclosure** . Tenant shall not record this Lease or any memorandum hereof without Landlord's prior written consent. Tenant shall not, without the express written consent of Landlord, disclose the terms or provisions of this Lease to any person, except for Tenant's employees, agents, attorneys, officers and directors whose duties require such persons to be informed of such matters, or except as required by law.

**24.23 Relationship of the Parties** . Nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, principal-agent, or employer-employee relationship between Landlord and any other person or entity (including, without limitation, Tenant) or as causing Landlord to be responsible in any way for the debts or obligations of such other person or entity.

**24.24 Intentionally Omitted** .

**24.25 Time of the Essence** . Time is of the essence of each and every provision of this Lease.

**24.26 Transfer of Landlord's Interest** . In the event of a sale, assignment, exchange or other disposition of Landlord's interest in the Premises, other than a transfer for security purposes only, Landlord shall be relieved of all obligations and liabilities accruing hereunder after the effective date of said sale, assignment, exchange or other disposition, provided that any Security Deposit or other funds then held by Landlord in which Tenant has an interest are delivered to Landlord's successor. The obligations to be performed by Landlord hereunder shall be binding on Landlord's successors and assigns only during their respective periods of ownership.

**24.27 Waiver** . No provision of this Lease or the breach thereof shall be deemed waived, except by written consent of Landlord. A waiver of any such breach shall not be deemed a waiver of any preceding or succeeding breach of the same or any other provision. No delay or omission by Landlord in exercising any of its remedies shall impair or be construed as a waiver thereof, unless such waiver is expressly set forth in a writing signed by Landlord. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any previous breach by Tenant, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such previous breach at the time of acceptance of such rent.

**24.28 OFAC Certification.** Tenant and each Guarantor hereby jointly and severally certify, warrant, represent and covenant to and for the benefit of Landlord as follows: (a) Tenant and each of its subsidiaries, predecessors, agents, direct and indirect owners and their respective affiliates has at all applicable times been, is now and will in the future be, in compliance with U.S. Executive Order 13224 and no action, proceeding, investigation, charge, claim, report or notice has been filed, commenced or threatened against any of them alleging any failure to so comply; (b) neither Tenant nor any Guarantor or any of their respective agents, subsidiaries or other affiliates has, after due investigation and inquiry, knowledge or notice of any fact, event, circumstance, situation or condition which could reasonably be expected to result in any action, proceeding, investigation, charge, claim, report or notice being filed, commenced or threatened against any of them alleging any failure to comply with the Order, or the imposition of any civil or criminal penalty against any of them for any failure to so comply; (c) prior to any changes in direct or indirect ownership of Tenant or any Guarantor, Tenant shall give a written notice to Landlord signed by Tenant and each Guarantor advising Landlord in reasonable detail as to the proposed ownership change, and reaffirming that the representations and warranties herein contained will remain true and correct; and (d) Tenant hereby agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

**THE SUBMISSION OF THIS LEASE FOR EXAMINATION AND/OR SIGNATURE BY TENANT IS NOT A COMMITMENT BY LANDLORD OR ITS AGENTS TO RESERVE THE PREMISES OR TO LEASE THE PREMISES TO TENANT. THIS LEASE SHALL BECOME EFFECTIVE AND LEGALLY BINDING ONLY UPON FULL EXECUTION AND DELIVERY BY BOTH LANDLORD AND TENANT. UNTIL LANDLORD DELIVERS A FULLY EXECUTED COUNTERPART HEREOF TO TENANT, LANDLORD HAS THE RIGHT TO OFFER AND TO LEASE THE PREMISES TO ANY OTHER PERSON TO THE EXCLUSION OF TENANT.**

**EXECUTED** , by Landlord and Tenant as of the date first written above.

TENANT:

HALOZYME, INC.,  
a California corporation

By: /s/ Jonathan Lim

Title: President and Chief Executive Officer

LANDLORD:

BC SORRENTO, LLC, a California limited liability  
company

By: /s/ William Beckman

Title: Managing Member