GROWING PAINS: LEASE STRUCTURE, EXIT STRATEGIES, AND CREATING LEVERAGE WITH YOUR LANDLORD AS YOUR BUSINESS EVOLVES

May 28, 2015
Growing Pains: Lease Structure, Exit Strategies, and Creating Leverage with Your Landlord as Your Business Evolves

Presentation to Association of Corporate Counsel

May 28, 2015
Redwood City, CA

In this booming economy, companies are growing and growing fast! Often the space tenants initially lease does not keep up with the growth of their companies and they need new space or different space. For these tenants, getting out of a lease can be as important as getting into a lease. This panel discussion will provide guidance to in-house counsel on how to negotiate a termination of a lease and/or how to position its clients to move out of space that no longer works. Topics to be covered will include negotiation of early termination of leases, assignment and subletting provisions in leases and bankruptcy considerations.

Introduction

1. Brief market overview
2. Reasons for needing an exit strategy
3. Identify the key decision makers in the lease exiting process
4. Surrender condition
5. Negotiation of early termination
6. Sublease & Assignment
7. Bankruptcy – when all else fails
LISA STALTERI
DIRECTOR
CO-PRESIDENT, CO-CHAIR OF REAL ESTATE PRACTICE

For over 25 years, Lisa Stalteri has counseled public and private companies and high net worth individuals in the acquisition, disposition, financing, construction and leasing of real estate.

Lisa has a broad network of key professionals and service providers in the real estate industry including lenders, real estate and mortgage brokers, environmental consultants, accountants, architects and contractors that allows Lisa to assist her clients in putting together an effective integrated team to close their deal.

To provide relevant, valuable and unique service to each client, Lisa knows the market and the law and tracks the trends and factors affecting them. She brings a deal-oriented, hands-on approach to appropriately manage her clients’ risk and to develop creative solutions to her clients’ real estate needs.

REPRESENTATIVE MATTERS
› Represented public pharmaceutical company on the purchase of hundreds of acres of land and hundreds of thousands of square feet of office, R&D and lab space in Foster City, California, and Southern California.
› Represented life science and pharmaceutical companies in the construction of hundreds of thousands of square feet of office, lab, manufacturing and pilot plants throughout California.
› Negotiated settlement of the restoration obligation for hundreds of thousands square feet of R&D, lab and pilot plants throughout California involving environmental closures from multiple regulatory agencies.
› Represented Bay Area candy and chocolate manufacturers in the sale, or sale and lease-back, of manufacturing plants.
› Represented multiple food distributors in the lease and development of cold storage facilities in the Bay Area, including facilities with Global Food Safety Initiative certifications.
› Assisted multiple grocers in the ground lease and development of grocery stores throughout California.
› Represented multiple restaurateurs in the lease and development of restaurants throughout Northern California.

KEY AREAS
Acquisitions and dispositions
Exchanges
Leases
Finance
Construction
Environmental
Business formation

INDUSTRY FOCUS
Life Science
Food & Beverage

PRACTICE AREAS
Real Estate

ACADEMIC CREDENTIALS
J.D., cum laude, University of California, Hastings College of the Law
Editor, Hastings Constitutional Law Quarterly
B.A., cum laude, Claremont McKenna College
LEED® Green Associate Accredited
PROFESSIONAL AFFILIATIONS
› US Green Building Council, Silicon Valley Chapter, Former Co-Chair, Membership Committee
› San Mateo County Bar Association, Real Estate Section, Former Chair
› State Bar of California; Real Property Law and Environmental Law Sections

CIVIC AFFILIATIONS
› Riley’s Place, Animal Assisted Therapy, Former Board Member
› Peninsula Humane Society, Pet Therapy Team Member
› Child Care Coordinating Council of San Mateo County, Former Vice-President
› Peninsula Partnership for Children, Youth and Families, Former Council Member
› San Mateo County, Former Court Appointed Special Advocate
My approach to practicing law always starts with my client’s goals. Then I find a way to achieve those goals through the law.”

For years, clients have come to Jennifer Johnson to seek counsel from one of the most sophisticated and effective real estate and bankruptcy attorneys in the Bay Area. Her clients appreciate how she brings an efficient, responsive and business-oriented approach to resolving their problems. With a personal touch and commitment to client service, Jennifer makes each of her clients feel like they are her only client.

Jennifer is privileged to enjoy long-term business relationships with her clients, who include Fortune 100 and Fortune 500 companies, investment funds, established non-profit corporations, developers, local businesses, entrepreneurs and investors.

Jennifer is an expert in leasing and has represented both landlords and tenants in office, industrial, mixed-use, grocery store, retail, medical and shopping center leases. She is one of few leasing lawyers who have an international leasing expertise, and she has helped her clients lease space and expand their presence around the world, including in Australia, Canada, England, Poland, South Africa and Turkey.

With a sub-specialty in insolvency law, Jennifer offers her clients a one-of-a-kind bankruptcy and workout perspective to her real estate transactions. This background informs her real estate transactions, specifically leasing transactions. In addition, she represents creditors and trustees in bankruptcy cases and related adversary proceedings.

**REPRESENTATIVE MATTERS**

› Served as primary real estate counsel to Fortune 500 company in multi-million dollar Class A office leasing and subleasing both domestically (in all states such as California, Florida, Utah, New
York and New Jersey) and internationally (in countries such as England, Poland, Australia, Canada, Turkey and South Africa)

- Represented multi-state bank with over 700 branches to sell over $100 million in commercial properties in the last two years. Properties included vacant land, office properties, apartment buildings, retail space, industrial facilities and medical condominiums.
- Represented Bay Area investment fund in acquiring and financing over $40 million of properties throughout the United States, including the purchases of retail malls and an office building in Seattle.
- Represented local grocery store and multi-state grocery chain in leasing and subleasing of its stores, including licenses for use of space within the stores.
- Consummated over $100 million of 1031 exchanges for high net-worth individuals. The purchase and sale of these properties are located all throughout the US, from California to Utah, Florida and beyond.
- Served as bankruptcy advisor and strategist for local public authority in developing high-profile property in the Bay Area.
- Represented landlord of a ground lease in the Borders bankruptcy case to prosecute and settle a dispute concerning a contingent proof claim and achieve expeditious rejection of lease.
- Successfully defended multi-million dollar adversary proceedings on behalf of creditors (such as a Fortune 100 telecommunications company), including fraudulent transfer and preference actions, resulting in settlements for pennies on the demand or a full dismissal of all claims.

PROFESSIONAL ORGANIZATIONS
- California Women Lawyers, Board of Directors
- Santa Clara Bar Association, member of the Executive Committee of the Women Lawyers’ Section

COURTS AND FORUMS
All California State Courts

PUBLICATIONS
- Top Five Leasing Tips for Technology Companies (05/05/14)
- The “Google Effect:” How High-Tech Companies Are Impacting Building, Architecture and Design (04/30/13)
- Liquidated Damages In Residential Real Estate Transactions: A Trap For The Unwary (06/01/11)
Jo Ann is an experienced commercial real estate leasing lawyer who undertakes complex real estate lease transactions for large institutional landlords as well as for retail, life science and high-tech tenants. Her clients include large institutional landlords, high tech companies and small retail tenants. Jo Ann routinely prepares a wide range of lease documents including industrial, office and retail leases, form leases, amendments, lease modifications, assignments, subleases, estoppel certificates, landlord lien waivers and SNDAs.

REPRESENTATIVE MATTERS

› Drafted and negotiated leases and related lease documentation for institutional landlords controlling over 2,000,000 square feet of industrial, office and retail space throughout California
› Negotiated lease (on behalf of Landlord) with a national retailer in downtown Berkeley
› Negotiated lease for an extended warranty service provider for consumer electronics for its new headquarters located in the SOMA district of San Francisco
› Headed complex sublease negotiations for new Mission Bay headquarters (over 100,000 square feet of space) for a large life sciences company
› Negotiated multiple leases for artisan coffee roaster and retailer throughout California and in New York City
› Handled all aspects of initial leasing of Ford Point, Richmond, CA (former Ford Motor Company factory).

PROFESSIONAL ORGANIZATIONS

› International Council of Shopping Centers
› Queen’s Bench
› The Club: An Incubator of Women Leaders
› Crew (Commercial Real Estate Women)
› National Association of Women Lawyers
› California Women Lawyers

MAY 28, 2015
PUBLICATIONS
› Contributing Author, Retail Leasing: Drafting and Negotiating the Lease (CEB August 2012 Update)

RECENT SPEAKING ENGAGEMENTS
› “Off on the Right Foot – Seven Steps to a Successful Office Lease”, March 26, 2015, Association of Corporate Counsel, Bay Area Chapter, Redwood City, CA, provided for MCLE credit
› “Movin’ On Up’: Paths to Success for Women Lawyers”, March 12, 2015, Leasing Legal Ladies of The Club Silicon Valley: an Incubator for Women Leaders, San Francisco, CA, provided for MCLE credit

ADMISSIONS
› California Bar
Marilyn Beardsley is Senior Corporate Counsel in the Real Estate Law Department of Safeway Inc./Albertson's LLC. She spent several years handling real estate matters for Safeway’s East Coast Division, and she presently oversees the merged company’s real estate portfolio in Northern California. Marilyn received her undergraduate degree from the University of Wisconsin-Madison, and her J.D. from the University of California-Berkeley School of Law (Boalt Hall).
CARR MCCLELLAN

STATE OF THE MARKET
HANDOUT 1
SAN FRANCISCO  
Office Market Snapshot  
First Quarter • 2015

It's All About Supply

The San Francisco office market ended Q1 2015 with a vacancy rate of 5.8%. This is down from the 6.0% rate in place three months ago and reflects 280,000 square feet (SF) of occupancy growth. While the market remains firmly in growth mode, it must be noted that these numbers reflect a decrease from last year’s robust metrics. Office occupancy grew last year by an average of 849,000 SF per quarter. Deal activity is partly to blame; we tracked just 2.9 MSF of total deal activity in Q1 (compared to 3.6 MSF of gross absorption per quarter in 2014). Also, most of the deals that closed in Q1 were renewals that didn’t translate into growth. Among the top deals were Uber’s 173,000 SF lease at 555 Market Street, Advent Software’s downsize/renewal to 130,000 SF at 600 Townsend Street and First Republic Bank’s 103,000 SF renewal at 388 Market Street. Of the top five deals, four (415,000 SF) were renewals.

Following almost five years of robust growth it is only natural to ask; “Is the San Francisco boom finally going bust?” And the answer is no space. Occupancy growth slowed in Q1 because there is little in the way of quality space remaining available. Our tracking’s of tenant requirements indicate that there is currently 5.6 MSF of potential deals in the market. This number is roughly consistent with what we were tracking a year ago when the market recorded the third strongest growth totals in its history. The problem isn’t demand. It is supply, as in there just isn’t much left. No new construction came online this quarter, though there is now 5.1 MSF of new office space currently under construction. The majority of these projects have been completely preleased by companies like Salesforce, Dropbox and LinkedIn. Little in the way of available speculative space will hit the market before mid-2016 and based on current leasing trends, it is highly unlikely that buildings will be delivered with any vacant space.

San Francisco has seen the largest jump in rents for any major U.S. city over the past five years. The current average asking rent of $64.11 per square foot (PSF) has increased 6.8% over just the past three months. It has climbed 16.1% in the past year and is up 103.6% from the post-recession low of $31.49 PSF
posted in Q1 2010. Rent peaked in the first dot.com boom at $70.94 in Q3 2000. The market is on track to surpass that record by Q3 of this year. Growth in San Francisco continues to be driven by tech companies with a higher tolerance for steep rents. The Bay Area now commands half of the VC funding in the United States and San Francisco has emerged as the hub of that activity. This continues to drive office demand in the region. A prime example is Uber, which has raised more than $2.8 billion and continues to be on a growth tear; Uber has

The Bay Area now commands half of the VC funding in the United States and San Francisco has emerged as the hub of that activity.

leased 330,000 SF in the CBD in addition to their 420,000 SF build-to-suit headquarters in Mission Bay. But the combination of high rents and scarcity of space in San Francisco is increasingly pushing tenants out of the market. The East Bay (Oakland, in particular) has seen an unprecedented surge in demand over the past few months, driven largely by tenants priced out of the city. With little available supply on the way these trends will only accelerate in 2015 as neighboring markets increasingly act as pressure valves for a white hot market that runs the risk of overheating.

**Outlook**

- Office vacancy now stands at just 5.8% and has now fallen in 18 of the past 19 quarters. If current occupancy growth trends persist, vacancy will fall below the 5.0% mark before winter.
- South of Market remains tight with Mission Bay fully leased and both the West End and CalTrain markets have vacancy of less than 2.0%.
- Average asking rates will continue to increase across all markets and climb by as much as 20% over the next 12 months.
### SAN FRANCISCO

**Office Market Snapshot**

First Quarter • 2015

<table>
<thead>
<tr>
<th>Submarket</th>
<th>TOTAL BLGS</th>
<th>INVENTORY</th>
<th>SUBLET VACANT</th>
<th>DIRECT VACANT</th>
<th>VACANCY RATE</th>
<th>CURRENT NET ABSORPTION</th>
<th>YTD NET ABSORPTION</th>
<th>UNDER CONSTRUCTION</th>
<th>AVERAGE ASKING RENT (ALL Classes)</th>
<th>AVERAGE ASKING RENT (CLASS A)</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Financial District</td>
<td>128</td>
<td>28,298,868</td>
<td>500,879</td>
<td>1,738,821</td>
<td>7.9%</td>
<td>168,564</td>
<td>168,564</td>
<td>428,000</td>
<td>$65.78</td>
<td>$67.24</td>
</tr>
<tr>
<td>South Financial District</td>
<td>118</td>
<td>26,463,078</td>
<td>232,358</td>
<td>1,241,982</td>
<td>5.6%</td>
<td>108,208</td>
<td>108,208</td>
<td>2,739,710</td>
<td>$64.31</td>
<td>$65.17</td>
</tr>
<tr>
<td>Jackson Sq./N. Waterfront</td>
<td>94</td>
<td>6,309,703</td>
<td>30,561</td>
<td>303,770</td>
<td>3.5%</td>
<td>53,807</td>
<td>53,807</td>
<td>0</td>
<td>$55.29</td>
<td>$58.48</td>
</tr>
<tr>
<td>Union Square</td>
<td>70</td>
<td>4,946,047</td>
<td>15,087</td>
<td>159,256</td>
<td>3.5%</td>
<td>1,816</td>
<td>1,816</td>
<td>0</td>
<td>$56.16</td>
<td>$60.00</td>
</tr>
<tr>
<td>Rincon Hill</td>
<td>17</td>
<td>2,784,009</td>
<td>15,226</td>
<td>108,191</td>
<td>4.4%</td>
<td>39,943</td>
<td>39,943</td>
<td>529,232</td>
<td>$59.11</td>
<td>$59.11</td>
</tr>
<tr>
<td>Yerba Buena</td>
<td>54</td>
<td>4,605,124</td>
<td>64,364</td>
<td>138,293</td>
<td>4.4%</td>
<td>44,139</td>
<td>44,139</td>
<td>0</td>
<td>$59.71</td>
<td>$57.46</td>
</tr>
<tr>
<td>West End</td>
<td>34</td>
<td>4,197,970</td>
<td>34,438</td>
<td>45,027</td>
<td>1.9%</td>
<td>(37,625)</td>
<td>(37,625)</td>
<td>0</td>
<td>$63.65</td>
<td>$67.97</td>
</tr>
<tr>
<td>Ball Park</td>
<td>55</td>
<td>4,621,533</td>
<td>22,207</td>
<td>228,732</td>
<td>5.4%</td>
<td>(56,493)</td>
<td>(56,493)</td>
<td>479,000</td>
<td>$73.61</td>
<td>$83.35</td>
</tr>
<tr>
<td>CalTrain</td>
<td>17</td>
<td>848,720</td>
<td>12,658</td>
<td>4,329</td>
<td>2.0%</td>
<td>(5,853)</td>
<td>(5,853)</td>
<td>56,845</td>
<td>$64.30</td>
<td>$0.00</td>
</tr>
<tr>
<td>Showplace Square</td>
<td>38</td>
<td>3,929,185</td>
<td>63,669</td>
<td>162,037</td>
<td>5.7%</td>
<td>(37,054)</td>
<td>(37,054)</td>
<td>0</td>
<td>$61.75</td>
<td>$57.55</td>
</tr>
<tr>
<td>Mission Bay</td>
<td>9</td>
<td>2,011,929</td>
<td>0</td>
<td>0</td>
<td>0.0%</td>
<td>0</td>
<td>0</td>
<td>862,000</td>
<td>$77.61</td>
<td>$77.61</td>
</tr>
</tbody>
</table>

**Office Class Breakdown**

| Class A                             | 156        | 53,921,484 | 881,641      | 2,920,644     | 7.1%         | (49,691)              | (49,691)          | 0                 | $66.02                          |
| Class B                             | 276        | 25,838,546 | 97,019       | 929,072       | 4.0%         | 303,912               | 303,912           | 0                 | $57.96                          |

**TOTAL**

| 634 | 89,016,166 | 991,447 | 4,130,438 | 5.8% | 279,452 | 279,452 | 5,094,787 | $64.11 |

*Office asking rents converted to Full Service*

### Key Lease Transactions Q1 2015

<table>
<thead>
<tr>
<th>PROPERTY</th>
<th>SF</th>
<th>TENANT</th>
<th>LANDLORD</th>
<th>TRANSACTION TYPE</th>
<th>SUBMARKET</th>
</tr>
</thead>
<tbody>
<tr>
<td>555 Market St</td>
<td>172,838</td>
<td>Uber</td>
<td>John Hancock Real Estate</td>
<td>Relocation</td>
<td>South Financial</td>
</tr>
<tr>
<td>600 Townsend St</td>
<td>129,491</td>
<td>Advent Software</td>
<td>Toda America</td>
<td>Downsize / Renewal</td>
<td>CalTrain</td>
</tr>
<tr>
<td>388 Market St</td>
<td>103,000</td>
<td>First Republic Bank</td>
<td>Honorway Investment Corp</td>
<td>Renewal</td>
<td>North Financial</td>
</tr>
<tr>
<td>101 California St</td>
<td>100,765</td>
<td>Cooley Godward</td>
<td>GIC Real Estate</td>
<td>Renewal</td>
<td>North Financial</td>
</tr>
<tr>
<td>425 Market St</td>
<td>81,905</td>
<td>Hanson Bridgett Marcus</td>
<td>Metlife</td>
<td>Renewal</td>
<td>South Financial</td>
</tr>
<tr>
<td>995 Market St</td>
<td>65,524</td>
<td>WeWork</td>
<td>Long Market Property Partners</td>
<td>Expansion</td>
<td>Yerba Buena</td>
</tr>
<tr>
<td>405 Howard</td>
<td>60,593</td>
<td>Mixpanel</td>
<td>TIAA-CREF</td>
<td>Relocation</td>
<td>South Financial</td>
</tr>
<tr>
<td>99 Rhode Island</td>
<td>60,000</td>
<td>Jawbone</td>
<td>Cresco Properties</td>
<td>Renewal</td>
<td>Showplace Square</td>
</tr>
</tbody>
</table>

### Key Sale Transactions Q1 2015

<table>
<thead>
<tr>
<th>PROPERTY</th>
<th>SF</th>
<th>BUYER</th>
<th>SELLER</th>
<th>SALE PRICE</th>
<th>SUBMARKET</th>
</tr>
</thead>
<tbody>
<tr>
<td>50 Fremont St</td>
<td>817,412</td>
<td>Salesforce</td>
<td>TIAA-CREF</td>
<td>$640,000,000,000</td>
<td>South Financial</td>
</tr>
<tr>
<td>1455 Market St</td>
<td>1,012,012</td>
<td>Canada Pension Plan</td>
<td>Hudson Pacific</td>
<td>$219,150,000</td>
<td>West End</td>
</tr>
<tr>
<td>301 Howard St</td>
<td>307,395</td>
<td>Emmes Group of Companies</td>
<td>Embarcadero Capital Partners</td>
<td>$200,000,000</td>
<td>South Financial</td>
</tr>
<tr>
<td>42-50 1st St</td>
<td>134,000</td>
<td>Oceanwide Holdings</td>
<td>Northwood Investors / TMG Partners</td>
<td>$159,000,000</td>
<td>South Financial</td>
</tr>
</tbody>
</table>

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SAN FRANCISCO
Office Market Snapshot
First Quarter • 2015

Office Submarkets
San Francisco

About DTZ
DTZ is a global leader in commercial real estate services providing occupiers, tenants and investors around the world with a full spectrum of property solutions. Our core capabilities include agency leasing, tenant representation, corporate and global occupier services, property management, facilities management, facilities services, capital markets, investment and asset management, valuation, building consultancy, research, consulting, and project and development management. DTZ manages 3.3 billion square feet and $63 billion in transaction volume globally on behalf of institutional, corporate, government and private clients. Our more than 28,000 employees operate across more than 260 offices in more than 50 countries and proudly represent DTZ’s culture of excellence, client advocacy, integrity and collaboration. For further information, visit: www.dtz.com or follow us on Twitter @DTZ.

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Valley’s office market grows, but at the cost of industrial product

Industrial inventory has declined by **6.1 percent** since the beginning of 2010, equating to a **loss of approximately 4.4 MSF**. In comparison, only **1.4 MSF** of new industrial space has been built since 2010.

Over the past 24 months, at least **2.8 MSF** of industrial product has been demolished, replaced by new Class office campuses and high-density residential housing.

The lack of available product in core submarkets is pushing tenants into other areas of the Bay. There is approximately **3.3 MSF of tenant demand for industrial space**, focused primarily on Fremont, South San Jose and the East Bay.

*Source: JLL Research. Inventory includes properties 35,000 s.f. and greater. Development activity excludes owner-user sites.*
AIR Form Lease

7.4 Ownership; Removal; Surrender; and Restoration.

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

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

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

Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in a safe, clean and neat condition, ordinary wear and tear, Casualty, Taking, Hazardous Materials (other than those introduced, released or emitted by Tenant) excepted (the “**Required Surrender Condition**”). Tenant shall remove from the Premises all trade fixtures, furnishings and other personal property of Tenant and all computer and phone cabling and wiring (including all low voltage wiring and corresponding hardware such as security, white noise systems and the like) installed by or on behalf of Tenant and shall repair all damage caused by such removal, and shall surrender the Premises in the Required Surrender Condition. In addition to all other rights Landlord may have, in the event Tenant does not so remove any such fixtures, furnishings or personal property, Tenant shall be deemed to have abandoned the same, in which case Landlord may store or dispose of the same at Tenant’s expense, appropriate the same for itself, and/or sell the same in its discretion.

Upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 15, quit and surrender possession of the Premises to Landlord in broom clean condition, reasonable wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted.
Before surrendering the Premises, Tenant shall remove all of its personal property and trade fixtures and such alterations or additions to the Premises made by Tenant as may be specified in this Addendum for removal. If Tenant fails to remove its personal property and fixtures upon the expiration or earlier termination of this Lease, the same shall be deemed abandoned and shall become the property of the Landlord. The following list is designed to assist Tenant in the move-out procedures but is not intended to be all inclusive:
<table>
<thead>
<tr>
<th>Lights</th>
<th>Office, warehouse, emergency and exit lights will be accepted by Landlord in as-is condition, and Tenant shall have no repair obligations with respect thereto.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Laboratory</td>
<td>Tenant may remove anything it wishes from the laboratory, and no repair or restoration will be required.</td>
</tr>
<tr>
<td>Warehouse Floor</td>
<td>Swept; warehouse floor will be accepted by Landlord in as-is condition, and Tenant shall have no repair obligations with respect thereto.</td>
</tr>
<tr>
<td>Tenant-Installed Equipment and Wiring</td>
<td>All existing network wiring and security systems to remain in place.</td>
</tr>
<tr>
<td>Walls</td>
<td>Holes in sheetrock (drywall) damage must be patched.</td>
</tr>
<tr>
<td>Carpet and Tile</td>
<td>The carpet and vinyl tiles should be in a clean condition but no repair or replacement will be required if there are damaged portions.</td>
</tr>
<tr>
<td>Signs</td>
<td>All exterior signs must be removed but no holes need be patched nor paint touched-up. All window signs should likewise be removed.</td>
</tr>
<tr>
<td>Heating and Air Conditioning System:</td>
<td>Heating/air conditioning systems exclusively serving the Premises, and all warehouse heaters and exhaust fans, will be accepted by Landlord in as-is condition, and Tenant shall have no repair obligations with respect thereto.</td>
</tr>
<tr>
<td>Electrical &amp; Plumbing:</td>
<td>All electrical and plumbing equipment for which Tenant is responsible under the Lease will be accepted by Landlord in as-is condition, and Tenant shall have no repair obligations with respect thereto.</td>
</tr>
<tr>
<td>Overall Cleanliness, Furniture Removal:</td>
<td>Clean windows, sanitize bathroom(s), vacuum carpet, and remove any and all debris from office and warehouse. Remove all pallets and debris from exterior of Premises. All furniture, and cubicles, trade fixtures (except wiring and security systems which shall remain), dumpsters, racking, trash, vending machines and other personal property to be removed.</td>
</tr>
<tr>
<td>Upon Completion:</td>
<td>Contact Landlord’s property manager to coordinate turning in of keys, utility changeover and obtaining of final Landlord inspection of Premises which, in turn, will facilitate refund of Security Deposit.</td>
</tr>
</tbody>
</table>
It is Tenant’s obligation to surrender the Premises in good, clean condition with all of the Building’s Systems in good working order and repair. In addition to any other items deemed reasonably appropriate by Landlord, the following items will be inspected by Landlord at such time as Landlord deems inspection thereof to be appropriate at or near the expiration date of the Term to confirm that they are in good working order and repair:

1. All HVAC equipment, exhaust fans and hot water heaters. Tenant shall provide Landlord’s office with a copy of an inspection and service report detailing the condition of said equipment, which report shall be provided by a California licensed mechanical contractor, within three (3) days after Tenant vacates the Premises. If Landlord terminates Tenant’s right to possession of the Premises, Landlord shall have the report prepared at Tenant’s cost and expense.
2. All lights in the office and warehouse must be working. Tenant is obligated to relamp and/or reballast the fixtures as necessary.
3. All overhead doors must be serviced and repaired.
4. All exterior metal doors, including hardware, must be serviced or replaced as necessary.
5. All damaged sheetrock in the office area and in the warehouse along the demising walls shall be repaired.
6. All office and warehouse floors must be left in good, clean condition.
7. Any and all exterior signage must be removed, with Tenant having the obligation to repair and repaint the fascia as necessary.
8. Unless directed otherwise by Landlord, Tenant shall remove all data, telecommunication and other cabling installed by Tenant or Tenant’s contractors within the Premises. Unless directed otherwise by Landlord, conduit and all other raceways are to remain in place. Tenant must use caution not to damage ceiling tiles, ceiling grid, walls and all other improvements within the Premises when removing any such cabling. Tenant must restore ceiling tiles, ceiling grid, walls and all other improvements within the Premises so it is surrendered in good condition and repair.

If Tenant elects not to complete any of the above within three (3) days of written notice from Landlord, Landlord shall have the right to have the necessary repairs and/or servicing performed and to deduct the cost thereof from the Security Deposit, or if the Security Deposit is insufficient, to invoice Tenant for the balance due, in which case Tenant shall pay the balance due within ten (10) days of receipt of Landlord’s invoice therefor.
Non-disturbance at Master Landlord's Option: In the event that Tenant defaults in its obligations under the Master Lease or in the event that the Master Lease is otherwise terminated prior to its natural expiration, Landlord, upon prior written notice to Subtenant and Tenant (the “Landlord Notice”) shall elect, at its option and without being obligated to do so, either (a) to require Subtenant to attorn to Landlord with respect to the Subleased Premises or (b) to terminate the Sublease. Upon Landlord’s delivery of the Landlord Notice to Subtenant (with a copy to Tenant), if Landlord has elected to require Subtenant to attorn to Landlord with respect to the Sublease Premises, then (y) Subtenant shall thereafter make all payments otherwise due Tenant directly to Landlord, which payments shall be received by Landlord without any liability being incurred by Landlord, except to credit such payment against amounts due by Tenant under the Master Lease, and (z) Landlord shall undertake the obligations of Tenant under the Sublease with respect to the Subleased Premises from the time of the exercise of Landlord's option under this Section until termination of the Sublease; provided, however, that Landlord shall not be liable for any prepaid rents or any security deposit paid by Subtenant to Tenant, nor shall Landlord be liable for any other defaults of Tenant under the Sublease.
This consent, estoppel and non-disturbance agreement (the “Agreement”) is executed as of ______________, 2015 by ________________ (“Landlord”) and ________________ (“Subtenant”).

RECITALS

1. Landlord, as landlord, and __________ (“Tenant”), as tenant, entered into that certain lease dated _____________ (as amended, the “Prime Lease”), pursuant to which Tenant leases from Landlord certain premises (the “Premises”) in that certain building (the “Building”) located at _____________, San Francisco, California. The term of the Prime Lease is presently scheduled to expire on _____________, 20__. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Prime Lease.

2. Tenant, as sublandlord, and Subtenant, as subtenant, are parties to that certain Sublease Agreement (the “Sublease”), dated as of __________, pursuant to which Subtenant is subleasing from Tenant the entirety of the premises under the Prime Lease (the “Subleased Premises”). Tenant and Subtenant have requested that Landlord consent to the Sublease and agree to enter into a direct lease with Subtenant if the Prime Lease is terminated early, and Landlord has agreed thereto, subject to the terms and conditions of this Agreement.

ACCORDINGLY, LANDLORD AND SUBTENANT HEREBY AGREE AS FOLLOWS:

1. Consent; No Release. Landlord hereby consents to the Sublease subject to the terms and conditions of this Agreement. Nothing contained in the Sublease or this Agreement shall be construed as relieving or releasing Tenant from any of its obligations under the Prime Lease, it being expressly understood and agreed that Tenant shall remain liable for such obligations notwithstanding anything contained in the Sublease or this Agreement.

2. Landlord’s Estoppel and Consents. Landlord hereby certifies to Subtenant and agrees as follows:
   a. The Prime Lease is in full force and effect without amendment or modification except as described in Section 2 of the Sublease.
   b. The commencement date of the Prime Lease was_______, 200_ and the Term of the Prime Lease is presently scheduled to expire on__________, 20__.
   c. Landlord has not delivered to Tenant any notice that Tenant has failed to pay or perform any of its obligations under the Prime Lease.
   d. To the best of Landlord’s knowledge: no event has occurred which constitutes or which, with the giving of notice or passage of time, or both, would result in, a default by Tenant under the Prime Lease, and Landlord has no existing defenses or presently exercisable offsets against the enforcement of the Prime Lease by Tenant.
   e. Except as provided for in the Prime Lease or as may arise under applicable law, Landlord has no right to cancel or terminate the Prime Lease. Landlord has no presently exercisable right to cancel or terminate the Prime Lease and to the best of Landlord’s knowledge no event has occurred which, with the giving of notice or passage of time, or
both, would result in Landlord having a right under the Prime Lease or applicable law to cancel or terminate the Prime Lease.

f. No other lease, or, to the best of Landlord’s knowledge, sublease or other right to occupy all or any portion of the Subleased Premises exists, except for the Prime Lease and the Sublease.

g. Landlord hereby approves the Subtenant Work described on Exhibit __ attached to the Sublease.

h. Landlord agrees that in no event will Subtenant be liable for any provision of the Prime Lease which has been “redacted” from the Prime Lease in the form attached as Exhibit A to the Sublease.

i. Subtenant shall have the benefit of the following provisions of the Prime Lease:

   › Landlord agrees that Subtenant can perform Cosmetic Alterations in the Subleased Premises in accordance with Section ___ of the Prime Lease so long as the cost does not exceed $100,000 in the aggregate per calendar year;
   › Subtenant shall be permitted to assign the Sublease to its affiliates without Landlord’s consent in accordance with the provisions of the second grammatical paragraph of Section ____ of the Prime Lease;
   › Subtenant shall have all signage rights granted to Tenant in Section ____ of the Prime Lease; and
   › The benefits of Section ____ of the Prime Lease shall apply to Subtenant, i.e., Landlord agrees that Subtenant may install an antenna or satellite dish on the roof of the Building.

3. Landlord’s Recognition, Non-Disturbance and Attornment Agreement.

a. Non-Disturbance. Landlord hereby agrees for the benefit of Subtenant that upon termination of the Prime Lease, Landlord shall recognize Subtenant under the Sublease as the direct tenant of Landlord on all terms and conditions contained in the Sublease (except as otherwise provided herein); provided that at the time of the termination of the Prime Lease, no default shall exist under the Sublease which at such time would then permit the sublessor thereunder to terminate the Sublease or to exercise any dispossession remedy provided for therein. The provisions contained in this Section 3(a) are to be effective and self-operative, without the execution or delivery of any other instruments on the part of Landlord or Subtenant.

b. Attornment. Landlord and Subtenant agree that in the event that the Prime Lease is terminated for any reason or Landlord or any successors in interest shall succeed to the rights of Tenant under the Sublease, Subtenant hereby covenants and agrees to make full and complete attornment to Landlord for the balance of the term of the Sublease upon the same terms, covenants and conditions as therein and herein provided, and the effect of the agreement set forth in this Section 3(b) shall be to establish direct privity of estate and contract as between Landlord and Subtenant, and with the same force and effect as though the Sublease were originally made directly from Landlord to Subtenant, on identical terms to the Sublease, except as otherwise expressly provided in this Agreement, for the balance of the unexpired term of the Sublease, and Subtenant will thereafter make all rent payments and any other payments under the Sublease thereafter as directed by Landlord. The provisions contained in this Section 3(b) are to be effective and self-operative, without the execution or delivery of any other instruments on the part of Landlord or Subtenant.
c. Limitation on Landlord Liability. Subtenant agrees that Landlord shall not be (i) liable for any act or omission of Tenant or any other party who may become ‘Sublessor’ under the Sublease prior to any termination of the Prime Lease (a “Prior Sublessor”), (ii) subject to any offsets or defenses which Subtenant might have against Prior Sublessor, or (iii) bound by any amendment or modification of the Sublease made without Landlord’s express written consent when such consent is required under the Prime Lease.

4. Cure Rights. Should any Event of Default by Tenant occur under the Prime Lease and remain uncured beyond the expiration of any applicable notice and cure periods, Landlord shall so notify Subtenant in writing, and Subtenant shall have an additional period of thirty (30) days from the date of receipt of such written notice to remedy such Event of Default or cause it to be remedied. In such event, Subtenant, without prejudice to its rights against Tenant, shall have the right but not the obligation to fully cure such Event of Default within such thirty (30) day period whether such default consists of the failure to pay Rent to Landlord or the failure to perform any other matter or thing which Tenant is required to do or perform under the Prime Lease, and Landlord shall accept such performance on the part of Subtenant as though the same had been done or performed by Tenant.

5. Notices. Subtenant agrees to promptly deliver a copy to Landlord of all notices of default sent to Tenant under the Sublease, and Landlord agrees to deliver a copy to Subtenant of all notices of default sent to Tenant under the Prime Lease. All copies of any such notices shall be delivered personally or sent by United States registered or certified mail, postage prepaid, return receipt requested, or by nationally recognized overnight courier to the Subleased Premises, if to Subtenant, or to the address for notices to Landlord under the Prime Lease, or to such other place or persons as Landlord or its agent may from time to time designate, if to Landlord.

6. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which together will constitute the same instrument.

7. Conflicts. As between Landlord and Subtenant, in the event of any conflict between the terms of this Agreement and the terms of the Sublease, the terms of this Agreement shall control.

8. Governing Law. This Agreement is made subject to and shall be construed under the laws of the State of California, without giving effect to its principles or rules regarding conflicts of laws. In the event of any litigation hereunder, the prevailing party shall be entitled to costs and reasonable attorney’s fees.

9. Entire Agreement. This Agreement represents the entire understanding and agreement of the parties and supersedes all prior communications, agreements and understandings between the parties relating to the subject matter hereof.
IN WITNESS WHEREOF, the undersigned has executed this Agreement and effective as of the date specified above.

Landlord:

________________________

By  ________________________
Name  ________________________
Title  ________________________

Subtenant:

________________________

By  ________________________
Name  ________________________
Title  ________________________

Agreed to and acknowledged by:

________________________ [Sublandlord]

By  ________________________
Name  ________________________
Title  ________________________
STANDARD LANDLORD PROVISION

Permitted Transfers. Notwithstanding Section 10(a), Tenant may Transfer its interest in this Lease (a “Permitted Transfer”) to the following types of entities (a “Permitted Transferee”) without the written consent of Landlord:

1. an Affiliate of Tenant;
2. any corporation, limited partnership, limited liability partnership, limited liability company or other business entity in which or with which Tenant, or its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions governing merger and consolidation of business entities, so long as (A) Tenant’s obligations hereunder are assumed by the entity surviving such merger or created by such consolidation; and (B) the Tangible Net Worth of the surviving or created entity is not less than the Tangible Net Worth of Tenant as of the date of execution of this Lease; or
3. any corporation, limited partnership, limited liability partnership, limited liability company or other business entity acquiring all or substantially all of Tenant’s assets if such entity’s Tangible Net Worth after such acquisition is not less than the Tangible Net Worth of Tenant as of the date of execution of this Lease.

Tenant shall promptly notify Landlord of any such Permitted Transfer. Tenant shall remain liable for the performance of all of the obligations of Tenant hereunder, or if Tenant no longer exists because of a merger, consolidation or acquisition, the surviving or acquiring entity shall expressly assume in writing the obligations of Tenant hereunder. Additionally, the Permitted Transferee shall comply with all of the terms and conditions of this Lease, including the Permitted Use, and the use of the Premises by the Permitted Transferee may not violate any other agreements affecting the Premises, the Building or the Complex, Landlord or other tenants of the Complex. No later than five (5) Business Days prior to the effective date of any Permitted Transfer, Tenant agrees to furnish Landlord with (A) a copy of the instrument effecting such Permitted Transfer, (B) documentation establishing Tenant’s satisfaction of the requirements set forth above applicable to any such Transfer, and (C) evidence of insurance as required under this Lease with respect to the Permitted Transferee. The occurrence of a Permitted Transfer shall not waive Landlord’s rights as to any subsequent Transfers. “Tangible Net Worth” means the excess of total assets over total liabilities, in each case as determined in accordance with generally accepted accounting principles consistently applied (“GAAP”), excluding, however, from the determination of total assets all assets which would be classified as intangible assets under GAAP including goodwill, licenses, patents, trademarks, trade names, copyrights and franchises. Any subsequent Transfer by a Permitted Transferee shall be subject to the terms of this Section 10.
Additional Landlord Protection: Notwithstanding Tenant’s right to make a Permitted Transfer pursuant to the provisions of this Section 15.1(B), Tenant may not, through use of its rights under this Section 15.1(B) in two or more transactions (whether separate transactions or steps or phases of a single transaction), at one time or over time, whether by first assigning this Lease to a subsidiary and then merging the subsidiary into another entity or selling the stock of the subsidiary or by other means, assign this Lease, or transfer control of Tenant, to any person or entity that is not a subsidiary, affiliate or controlling corporation of the original Tenant, as then constituted, existing prior to the commencement of such transactions, without first obtaining Landlord’s prior written consent and complying with all other applicable provisions of this Article 15.

Sale of Stock: For the purpose of this Lease, any sale or transfer of Tenant’s capital stock, redemption or issuance of any additional stock of any class or the trading of any of Tenant’s stock if Tenant is a publicly traded company shall not be deemed an assignment, subletting or any other transfer of this Lease or the Premises.

Tenant-Friendly Version: Notwithstanding anything to the contrary contained herein provided Tenant gives Landlord five (5) days’ prior written notice with respect to any assignment or sublease to any affiliate of Tenant (as defined below), (i) Tenant shall be entitled to assign this Lease or sublet the Premises to an entity resulting from the merger of Tenant with, consolidation of, or acquisition (including all or substantially all of the stock or assets) by or of, another company, provided such entity shall have a tangible net worth immediately following such assignment not less than the tangible net worth of Tenant immediately prior to such assignment, and (ii) Tenant shall be entitled to assign this Lease or sublease all or any portion of the Premises to any company that is and remains throughout the Lease Term an affiliate of Tenant. As used herein: (i) “Controlled Tenant” means any entity described in the immediately preceding sentence; and (ii) an “affiliate” is a company that controls Tenant, is controlled by Tenant or which is controlled by a company that commonly controls Tenant (each, a “Permitted Transfer”). Tenant shall not be required to provide advance written notice of any such Permitted Transfer if such advance notice is not permitted by applicable Laws. In connection with any such transfer to a Controlled Tenant, Tenant shall cause the Controlled Tenant to execute and deliver to Landlord an agreement whereby the Controlled Tenant agrees to be bound by all the covenants and agreements in this Lease which Tenant has agreed to keep, observe or perform, and whereby the Controlled Tenant agrees that the provisions of this Paragraph shall be binding upon it as if it were the original Tenant hereunder. Together with its required notice to Landlord regarding the proposed transfer to a Controlled Tenant, Tenant shall provide Landlord with supporting documentation confirming to Landlord’s reasonable satisfaction that the transferee is, in fact, a Controlled Tenant. Notwithstanding the foregoing, in no event shall Tenant be released from liability for the obligations under the Lease upon a transfer to a Controlled Tenant.