# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION
**WASHINGTON, DC 20549**

# FORM 10-K

**(Mark One)**

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

**For the fiscal year ended December 31, 2019**

**OR**

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

**For the transition period from to**

**Commission file number 001-36385**

# BIOLASE, INC.

**(Exact Name of Registrant as Specified in Its Charter)**

| **Delaware** | **87-0442441** |
|---|---|
| **(State or Other Jurisdiction of Incorporation or Organization)** | **(I.R.S. Employer Identification No.)** |

**4 Cromwell**
**Irvine, California 92618**
***(Address of Principal Executive Offices) (Zip code)***

**(949) 361-1200**
***(Registrant's Telephone Number, including Area Code)***

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

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

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

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

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

| | | | |
|---|---|---|---|
| Large accelerated filer | ☐ | Accelerated filer | ☐ |
| Non-accelerated filer | ☒ | Smaller reporting company | ☒ |
| | | Emerging growth company | ☐ |

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

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

The aggregate market value of the Registrant's common stock held by non-affiliates was $11,936,958 based on the last sale price of common stock on June 28, 2019.

| **Title of each class** | **Trading Symbol(s)** | **Name of each exchange on which registered** |
|---|---|---|
| Common stock at par value $0.001 per share | BIOL | The NASDAQ Stock Market LLC (NASDAQ Capital Market) |

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

As of March 20, 2020, there were 31,577,470 shares of the registrant's common stock, par value $0.001 per share, and 69,565 shares of the registrant's Series E Convertible Preferred Stock, par value $.001 per share, outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's definitive proxy statement related to its 2020 Annual Meeting of Stockholders, to be filed with the Securities and Exchange Commission pursuant to Regulation 14A within 120 days after the registrant's fiscal year ended December 31, 2019, are incorporated by reference into Part III of this Annual Report on Form 10-K.

**BIOLASE, INC.**

**ANNUAL REPORT ON FORM 10-K**
**FOR THE FISCAL YEAR ENDED DECEMBER 31, 2019**

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## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K ("Form 10-K"), particularly in Item 1, "Business," and Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," and the documents that we incorporate herein by reference, contain "forward-looking statements." Such forward-looking statements include statements, predictions, or expectations regarding market opportunities, our plans for future products and services and enhancements of existing products and services, future market growth and our anticipated growth strategies, future demand for improved dental care and dental laser equipment, expansion of our international operations, compliance with laws and regulatory requirements, the impact of cost-saving measures and future decreases in expenses, statements regarding the effects of seasonality on revenue, anticipated cash needs, capital requirements and capital expenditures, needs for additional financing, anticipated use of proceeds from debt or equity financing, use of working capital, plans to explore potential collaborations, potential acquisitions of products and technologies, effects of engineering and development efforts, plans to expand our field sales force, the development of distributor relationships, our ability to attract customers, the adequacy of our facilities, products and solutions from competitors, our ability to maintain product quality standards, protection of patents and other technology, the ability of third party payers to pay for costs of our products, limitations on capital expenditures, critical accounting policies and the impact of recent accounting pronouncements, recording tax benefits or other financial items in the future, plans, strategies, expectations, or objectives of management for future operations, our financial condition or prospects, and any other statement that is not historical fact. Forward-looking statements are identified by the use of words such as "may," "might," "will," "intend," "should," "could," "can," "would," "continue," "expect," "believe," "anticipate," "estimate," "predict," "outlook," "potential," "plan," "seek" and similar expressions and variations or the negatives of these terms or other comparable terminology.

Forward-looking statements are based on the expectations, estimates, projections, beliefs and assumptions of our management based on information available to management as of the date on which this Form 10-K was filed with the Securities and Exchange Commission (the "SEC") or as of the date on which the information incorporated by reference was filed with the SEC, as applicable, all of which are subject to change. Forward-looking statements are subject to risks, uncertainties and other factors that are difficult to predict and could cause actual results to differ materially from those stated or implied by our forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to:

- doubt about our ability to continue as a going concern as of December 31, 2019;
- the coronavirus outbreak, the effects of the COVID-19 pandemic and the actions taken to contain it;
- losses that we have experienced for each of the past three years;
- global economic uncertainty and volatility in financial markets;
- inability to raise additional capital on terms acceptable to us;
- our relationships with, and the efforts of, third-party distributors;
- failure in our efforts to train dental practitioners or to overcome the hesitation of dentists and patients to adopt laser technologies;
- inconsistencies between future data and our clinical results;
- competition from other companies, including those with greater resources;
- our inability to successfully develop and commercialize enhanced or new products that remain competitive with products or alternative technologies developed by others;
- the inability of our customers to obtain third-party reimbursement for their use of our products;
- limitations on our ability to use net operating loss carryforwards;
- problems in manufacturing our products;
- warranty obligations if our products are defective;
- adverse publicity regarding our technology or products;
- adverse events to our patients during the use of our products, regardless of whether caused by our products;

- issues with our suppliers, including the failure of our suppliers to supply us with a sufficient amount or adequate quality of materials;
- rapidly changing standards and competing technologies;
- our inability to effectively manage and implement our growth strategies;
- risks associated with operating in international markets, including potential liabilities under the Foreign Corrupt Practices Act ("FCPA");
- breaches of our information technology systems;
- seasonality;
- litigation, including the failure of our insurance policies to cover certain expenses relating to litigation and our inability to reach a final settlement related to certain litigation;
- disruptions to our operations at our primary facility;
- loss of our key management personnel or our inability to attract or retain qualified personnel;
- risks and uncertainties relating to acquisitions, including difficulties integrating acquired businesses successfully into our existing operations and risks of discovering previously undisclosed liabilities;
- continued failure to meet covenants in the Credit Agreement, dated as of November 9, 2018, (as amended from time to time, the "Credit Agreement"), by and between BIOLASE and SWK Funding, LLC;
- interest rate risk, which could result in higher expense in the event of interest rate increases;
- obligations to make debt payments under the Credit Agreement;
- risks of foreclosure triggered by an event of default under the Credit Agreement;
- failure to comply with the reporting obligations of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Section 404 of the Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act") or maintain adequate internal control over financial reporting;
- climate change initiatives;
- failure of our intellectual property rights to adequately protect our technologies and potential third-party claims that our products infringe their intellectual property rights;
- changes in government regulation or the inability to obtain or maintain necessary governmental approvals;
- our failure to comply with existing or new laws and regulations, including fraud and abuse and health information privacy and securities laws;
- changes in the regulatory requirements of the Food and Drug Administration ("FDA") applicable to laser products, dental devices, or both;
- recall or other regulatory action concerning our products after receiving FDA clearance or approval;
- our failure to comply with continued listing requirements of the NASDAQ Capital Market; and
- risks relating to ownership of our common stock, including low liquidity, low trading volume, high volatility and dilution.

Further information about factors that could materially affect the Company, including our results of operations, financial condition and stock price, is contained under the heading "Risk Factors" in Item 1A in this Form 10-K. Except as required by law, we undertake no obligation to revise or update any forward-looking statements to reflect changed assumptions, the occurrence of anticipated or unanticipated events, new information, or changes to future results over time or otherwise.

## PART I

### Item 1. *Business*

**Overview**

BIOLASE, Inc. ("BIOLASE" and, together with its consolidated subsidiaries, the "Company," "we," "our" or "us") is a leading provider of advanced laser systems for the dental industry. We develop, manufacture, market, and sell laser systems that provide significant benefits for dental practitioners and their patients. Our proprietary systems allow dentists, periodontists, endodontists, oral surgeons, and other dental specialists to perform a broad range of minimally invasive dental procedures, including cosmetic, restorative, and complex surgical applications. Our laser systems are designed to provide clinically superior results for many types of dental procedures compared to those achieved with drills, scalpels, and other conventional instruments. Potential patient benefits include less pain, fewer shots, faster healing, decreased fear and anxiety, and fewer appointments. Potential practitioner benefits include improved patient care and the ability to perform a higher volume and wider variety of procedures and generate more patient referrals.

We offer two categories of laser system products: Waterlase (all-tissue) systems and diode (soft-tissue) systems. Our flagship brand, the Waterlase, uses a patented combination of water and laser energy and is FDA cleared for over 80 clinical indications to perform most procedures currently performed using drills, scalpels, and other traditional dental instruments for cutting soft and hard tissue. For example, Waterlase safely debrides implants without damaging or significantly affecting surface temperature and is the only effective, safe solution to preserving sick implants. In addition, Waterlase disinfects root canals more efficiently than some traditional chemical methods. We also offer our diode laser systems to perform soft tissue, pain therapy, and cosmetic procedures, including teeth whitening. We have approximately 208 issued and 56 pending United States and international patents, the majority of which are related to Waterlase technology. From 1998 through December 31, 2019, we sold over 41,000 laser systems in over 80 countries around the world, and we believe that Waterlase iPlus is the world's best-selling all-tissue dental laser. We were originally formed as Societe Endo Technic, SA ("SET") in 1984 in Marseilles, France, to develop and market various endodontic and laser products. In 1987, SET merged into Pamplona Capital Corp., a public holding company incorporated in Delaware. In 1994, we changed our name to BIOLASE Technology, Inc. and in 2012, we changed our name to BIOLASE, Inc. Since 1998, we have been the global leading innovator, manufacturer, and marketer of dental laser systems.

We also manufacture and sell consumable products and accessories for our laser systems. Our Waterlase and diode systems use disposable laser tips of differing sizes and shapes depending on the procedure being performed. We also market flexible fibers and hand pieces that dental practitioners replace after initially purchasing laser systems. For our Epic systems, we sell teeth whitening gel kits. During the year ended December 31, 2019, the sale of lasers accounted for approximately 60% of our total sales, and consumables, accessories, and services accounted for approximately 40% of our total sales.

We currently operate in a single reportable business segment. We had net revenues of $37.8 million, $46.2 million, and $46.9 million, in 2019, 2018, and 2017, respectively, and we had net losses of $17.9 million, $21.5 million, and $16.9 million for the same periods, respectively. We had total assets of $31.7 million and $38.5 million as of December 31, 2019 and 2018, respectively. As discussed below, our business in 2020 has been materially adversely affected by the novel coronavirus outbreak and the COVID-19 pandemic.

**Recent Developments**

*Impact of Coronavirus (COVID-19) on Our Operations*

In December 2019, a novel strain of coronavirus was reported to have surfaced in Wuhan, China. The novel coronavirus has since spread to over 100 countries, including every state in the United States. On March 11, 2020, the World Health Organization declared COVID-19, the disease caused by the novel coronavirus, a pandemic, and on March 13, 2020, the United States declared a national emergency with respect to the coronavirus outbreak. This outbreak has severely impacted global economic activity, and many countries and many states in the United States have reacted to the outbreak by instituting quarantines, mandating business and school closures and restricting travel. These mandated business closures have included dental office closures in Europe and the United States for all but emergency procedures. Our salespeople have been unable to call on dental customers during these closures. In addition, most dental shows and workshops scheduled in the first and second quarters of 2020 have been canceled. More than half of our sales each quarter typically occur in the last three weeks of the quarter. Given the dental office closures in Europe and the United States during the last three weeks of the first quarter of 2020, management anticipates a substantial decrease in sales for the quarter. As a result of reduced sales due to the COVID-19 pandemic and actions taken to contain it, cash generated from our operations during the

first quarter of 2020 will be less than we anticipated. Moreover, there is no assurance that sales will return to normal levels during the second quarter of 2020 or at any time thereafter. As of the date of the filing of this annual report on Form 10-K, management is evaluating all options to conserve cash and to obtain additional debt or equity financing and/or enter into a collaborative arrangement or sale of assets, to permit the Company to continue operations. See Item 1A — "Risk Factors" for additional information regarding the potential impact of the COVID-19 pandemic on our business, results of operations and financial condition.

*Launch of Epic Hygiene*

On December 9, 2019, the Company launched its new Epic Hygiene laser. The laser was granted Food and Drug Administration (FDA) clearance in December 2019.

Epic Hygiene is the Company's latest innovation in proven Epic laser technology, which is designed to manage non-surgical periodontitis and increase clinical production. The system includes proven step-by-step clinical protocols, including pocket therapy and perio debridement, for implementation.

Epic Hygiene now gives dental hygienists the ability to offer dental laser technology to their patients, including minimally invasive and less painful treatments that are designed to allow for quicker procedures and faster recovery times. Each system includes hygiene specific training, turnkey practice guidebooks with step-by-step practice integration tips, as well as access to exclusive on-call Epic expert support, with clinicians to provide peer to peer support.

*Deficiency Letter from NASDAQ*

On December 3, 2019, BIOLASE received a deficiency letter from the Listing Qualifications Department (the "Staff") of the NASDAQ Stock Market, LLC ("NASDAQ") notifying BIOLASE that it violated the continued listing requirements of NASDAQ listing rule 5550(a)(2). In accordance with NASDAQ rules, BIOLASE has been provided an initial period of 180 calendar days, or until June 1, 2020 (the "Compliance Date"), to submit a plan to regain compliance.

If BIOLASE does not regain compliance by the Compliance Date and is not eligible for an additional compliance period at that time, the Staff will provide written notification to BIOLASE that its common stock may be delisted. BIOLASE intends to monitor the closing bid price of its common stock and may, if appropriate, consider available options to regain compliance with the Bid Price Rule.

*Election of Additional Board Member*

On November 14, 2019, BIOLASE's board of directors elected Michael DiTolla to the Board.

*Public Offering of Common Shares and Private Placement of Unregistered Preferred Shares*

On October 29, 2019, BIOLASE consummated the sale of 7,820,000 shares of its common stock at a price to the public of $0.5750 per share in a public offering and in addition, granted the underwriters a 30-day over-allotment option to purchase up to an additional 1,173,000 shares of common stock at the public offering price, less the underwriting discount.

On October 29, 2019, BIOLASE also sold to existing to investors affiliated with Jack W. Schuler and Oracle Investment Management, Inc., 69,565 unregistered shares of BIOLASE Series E Participating Convertible Preferred Stock ("Series E Preferred Stock") at a price of $57.50 per share in a concurrent private placement. At the closing, BIOLASE received approximately $4.2 million in net proceeds from the common stock offering, after deducting the underwriting discount, and approximately $4.0 million in gross proceeds from the concurrent private placement, resulting in total net proceeds from the offering and private placement of approximately $8.2 million.

On November 5, 2019, the underwriters exercised their over-allotment option to purchase an additional 1,173,000 shares of BIOLASE common stock at a share price of $0.5750 per share for approximately $0.6 million in net proceeds, after deducting the underwriting discount.

*Revolving Credit Facility*

On October 28, 2019, BIOLASE entered into a loan and security agreement (the "Loan Agreement") with Pacific Mercantile Bank, as lender (the "Lender"), which provides for a revolving line of credit (the "PMB Loan") secured by substantially all of the Company's assets, with a maximum principal amount of $3.0 million. Borrowings under the PMB Loan may be used for working capital. The PMB Loan matures on October 28, 2021, unless earlier terminated. For more information, see "Management's Discussion and Analysis of Financial Condition and Results of Operation – Liquidity and Capital Resources – Revolving Credit Facility."

*Term Loan*

On November 9, 2018, the Company initially entered into the Credit Agreement with SWK Funding LLC ("SWK"), pursuant to which the Company has borrowed $12.5 million (the "SWK Loan"). The Company's obligations under the Credit Agreement are secured by substantially all of the Company's assets. The Company subsequently amended the Credit Agreement (the "First Amendment") to increase the total commitment under the Credit Agreement from $12.5 million to $15.0 million and to revise certain of the financial covenants.

On September 30, 2019, the Company agreed to further amend the Credit Agreement (the "Second Amendment"). The Second Amendment provides for a revolving loan facility, secured by a first lien security interest in the Company's inventory and accounts receivable, with a maximum principal amount of $5 million. In addition, SWK agreed to waive the effect of the Company's non-compliance with certain unencumbered liquid assets financial operating covenants as set forth in the Credit Agreement, and SWK agreed to forbear from exercising rights and remedies otherwise available to it in the event of such non-compliance through October 31, 2019, or earlier in the event that an additional equity or subordinated debt financing is consummated with gross proceeds of not less than $5 million, or in the event of a default under the Credit Agreement.

On November 6, 2019, the Company agreed to further amend the Credit Agreement. Pursuant to the Third Amendment, SWK granted the Company a waiver of the Company's non-compliance with certain financial covenants in the Credit Agreement. Also pursuant to the Third Amendment, the Company and SWK agreed to (i) revise financial covenants to adjust minimum revenue and EBITDA levels and (ii) remove the automatic increase of the minimum liquidity requirement based on certain aggregate minimum revenue and EBITDA levels as of September 30, 2019 (which was added pursuant to the First Amendment). In connection with the Third Amendment, the Company consolidated the warrants issued to SWK on November 9, 2018 and May 7, 2019. The terms of the warrants issued to SWK were consolidated and the price adjusted to $1.00. For more information, see "Management's Discussion and Analysis of Financial Condition and Results of Operation – Liquidity and Capital Resources – Term Loan."

As of December 31, 2019, the Company was not in compliance with debt covenants and obtained a waiver as part of a Fourth Amendment to Credit Agreement ("Fourth Amendment") in March 2020. We do not anticipate that we will regain compliance by March 31, 2020, therefore we reclassified the Term Loan from a long-term liability to a current liability in the consolidated balance sheets. For more information, see "Management's Discussion and Analysis of Financial Condition and Results of Operation – Liquidity and Capital Resources – Term Loan."

**Industry Background**

***General***

Dental procedures, including medical and cosmetic treatment, are performed on hard tissue, such as bone and teeth, and soft tissue, such as gum and other oral tissue.

An estimated one-third of the worldwide population avoids going to the dentist because of "dental anxiety or fear," according to DentaVox. Such anxiety causes dental conditions, such as gum disease, to go under-diagnosed, under-treated, and under-managed. Due to the limitations associated with traditional and alternative dental instruments, we believe there is a large market opportunity for all-tissue dental laser systems that provide superior clinical outcomes, reduce the need to use anesthesia, help reduce trauma, pain, and discomfort associated with dental procedures, and increase patient acceptance for treatment protocols. We also believe there is a growing awareness among consumers globally of the value and importance of oral health and its connections to overall systemic health and wellness. The American Academy of Periodontology estimates that over 60 million people in the U.S. alone have periodontitis, and studies indicate a link between periodontitis and other health conditions such as heart disease, diabetes, and stroke.

As of 2018, according to the American Dental Association, there were 199,486 active private dental practitioners in the U.S. An April 2019 study published by Grandview Research estimated the global dental equipment market to be $7.7 billion in 2018 and projected it to grow at a compound annual rate of 4.5% through 2025. Factors cited contributing to the growth include rising demand for dental procedures, prevalence of dental disorders, a rising geriatric population, and demand for preventive, restorative, and surgical services. The study also highlighted that dental laser equipment is expected to be the fastest growing segment with compound annual growth of 6.8% over the forecast period. We believe that all-tissue laser systems have penetrated only 7% of U.S. dental practices and 1.4% worldwide, and we estimate a market opportunity in excess of $50 billion.

As of 2017, according to the ADA, there were 198,517 active private practitioners in the U.S. According to the World Health Organization, there were 1.8 million dentists worldwide in 2012. As many developing nations continue to experience fiscal growth, we believe those nations will also experience higher demand for improved dental care. Corresponding growth resulting from dental practices competing for patients could create further demand for clinical solutions that enable dentists to perform minimally invasive dental procedures with less trauma, less anesthesia, improved patient acceptance, and clinically superior results. We believe our product offerings align with this trend.

***Traditional Dental Instruments***

Dentists and other specialists utilize a variety of instruments depending on the tissue involved and the type of procedure. Most procedures require the use of multiple instruments to achieve desired results. Many of the instruments available today are based on decades-old practices. Examples are as follows:

*High-Speed Drills.* Most dentists use conventional high-speed drills for hard tissue procedures, such as preparing cavities for filling, gaining access for performing root canals, and shaving or contouring oral bone tissue. Potentially adverse effects associated with drills include thermal heat transfer, vibration, pressure and noise. The cutting and grinding action of high-speed drills can cause damage, such as microfractures, to the patient's teeth. The trauma can lead to longer recovery times and the need for future crowns and root canals. Additionally, this grinding action of high-speed drills may weaken the tooth's underlying structure, leading to fractures and broken cusps. Procedures involving high-speed drills typically require anesthesia and are often the source of patient anxiety and fear. Because many dentists do not recommend anesthetizing more than one or two sections of the mouth in a single appointment, patients may need to return several times to complete their treatment plan.

*Cutting Instruments.* Soft tissue procedures are typically performed by oral surgeons or periodontists using scalpels, scissors, and other surgical tools. Due to the pain, bleeding, post-operative swelling, and discomfort associated with these instruments, most soft tissue procedures require the use of local anesthetic which may result in numbness and longer recovery time, and often require stitches. Bleeding can impair the practitioner's visibility during the procedure, thereby reducing efficiency and is a particular problem for patients with immune deficiencies or blood disorders and for patients taking blood-thinning medications.

*Film Radiography Equipment*. Dentists have traditionally relied on radiographic images produced by exposing photographic film to X-ray radiation as part of the examination and diagnosis of patients. These X-ray images can help reveal tooth decay, periodontal disease, bone loss, infections, hidden dental structures, abscesses or cysts, developmental abnormalities, some types of tumors, and other issues that might not be detected during a visual examination or upon probing with a handheld instrument. Due to the chemical development process required for film, however, this process is time-consuming, inefficient, costly for dental offices, and not environmentally friendly. Mistakes in the development process can require retakes which expose patients to additional radiation. Film X-rays also restrict the ability of doctors to enhance or further manipulate images for easier and more accurate analysis and treatment planning. Furthermore, one of the most critical limitations of film is that it is restricted to two-dimensional images, which can potentially lead to misdiagnosis.

***Alternative Dental Instruments***

Alternative technologies have been developed over the years to address the problems associated with traditional methods used in dentistry. However, most alternatives have addressed either hard or soft tissue applications but not both, or have other limitations.

*Electrosurge Systems.* Electrosurge systems use an electrical current to heat a shaped tip that simultaneously cuts and cauterizes soft tissue, resulting in less bleeding than occurs with scalpels. However, electrosurge systems are generally less precise than lasers and can damage surrounding tissue. Electrosurge systems are also not suitable for hard tissue procedures and, due to the depth of penetration, generally require anesthesia and a lengthy healing process. Electrosurge systems generally cannot be used in areas near metal fillings and dental implants. Finally, electrosurge systems generally cannot be used to treat patients with implanted pacemakers and defibrillators.

*Traditional Laser Systems.* More recently, lasers have gained acceptance for use in general and cosmetic dentistry. Most lasers used in dentistry have been adapted from other medical applications, such as dermatology, but are not optimally designed to perform common dental procedures. Most dental lasers use thermal energy to cut tissue and are used primarily for soft tissue procedures.

**Our Products**

Our laser systems can provide dental professionals with enhanced capabilities for minimally invasive treatment. Our product offering consists of the following:

*Waterlase all-tissue laser systems.* Our all-tissue Waterlase dental laser systems currently consist of the new Waterlase Express, our flagship Waterlase iPlus, and the Waterlase MD and MDX. Each of these systems features proprietary laser crystal technology that produces energy with specific absorption and tissue interaction characteristics specifically designed for dental procedures. It is minimally invasive and can precisely cut hard tissue, such as bone and teeth, and soft tissue, such as gums and skin, without the heat, vibration, bleeding, or pressure associated with traditional dental treatments. By combining the laser light and water, our Waterlase systems can eliminate the need for anesthesia in most cases and result in faster healing times compared to traditional methods of treatment, both of which could lead to improved patient-reported outcomes.

The Waterlase systems incorporate an ergonomic hand-piece and a user-friendly digital interface with clinical applications to control the mix of laser energy, air, and water, as well as the pulse rate. Each system also has been designed to be easily moved from operatory to operatory within a practice. We developed the Wate rlase systems using internally developed intellectual property, as well as intellectual property obtained through various acquisitions. The Waterlase systems are FDA-cleared in the United States, CE mark-approved in Europe, and approved for sale in more than 80 other countries for dental uses. In the United States, we also have regulatory clearance for dermatological, aesthetic, and other general surgery uses.

*Diode soft-tissue laser systems.* Our diode soft tissue laser systems currently consist of the Epic Hygiene, Epic Pro, Epic X, Epic 10 and iLase diode lasers that perform soft tissue, hygiene, cosmetic procedures, teeth whitening, and provide temporary pain relief. Epic X, Epic 10, and iLase systems feature our proprietary 940nm wavelength and Epic Pro features our proprietary 940nm plus 980nm wavelength with patented pulse technology called ComfortPulse, which is designed for added patient comfort. iLase was the first “personal” laser with no wires, footswitch, or cumbersome cables to manage. Epic 10 is a portable, powerful diode laser that facilitates clinical versatility with surgical, pain therapy, and whitening capabilities and provides an exceptional laser with an attractive value proposition. In December 2014, we introduced the Epic X diode laser, an enhanced soft tissue laser system featuring upgrades and improvements from our Epic 10. Epic Pro, released in 2016, is a soft-tissue diode laser with Super Thermal Pulse and Automatic Power Control features for enhanced patient comfort and clinical outcomes. The iLase, Epic X, Epic10, and Epic Pro are FDA-cleared in the United States, CE mark-approved in Europe, and approved for sale in more than 80 other countries for dental uses. In the United States, we also have regulatory clearance for dermatological, aesthetic, and other general surgery uses.

Our Epic Hygiene, which we introduced on December 9, 2019, is designed tomanage non-surgical periodontitis and increase clinical production. The system includes proven step-by-step clinical protocols, including pocket therapy and perio debridement, for easy implementation.

**Related Accessories and Consumable Products**

We also manufacture and sell consumable products and accessories for our laser systems. Our Waterlase and diode systems use disposable laser tips of differing sizes and shapes depending on the procedure being performed. We also market flexible fibers and hand pieces that dental practitioners replace at some point after initially purchasing laser systems. For our Epic systems, we sell teeth whitening gel kits.

**Our Laser Solutions**

Due to the limitations associated with traditional and alternative dental instruments, we believe there is a large market opportunity for all-tissue dental laser systems that provide superior clinical outcomes, reduce the need to use anesthesia, help reduce trauma, pain, and discomfort associated with dental procedures, and increase patient acceptance for treatment protocols.

Our Waterlase systems precisely cut hard tissue, bone, and soft tissue with minimal or no damage to surrounding tissue and dental structures. Our diode systems are designed to complement our Waterlase systems, and are used only in soft tissue procedures, pain therapy, hygiene, and cosmetic applications, including teeth whitening. The diode systems, together with our Waterlase systems, offer practitioners a broad product line with a range of features and price points.

***Benefits to Dental Professionals***

- *Expanded range of procedures and revenue opportunities.* Our laser systems allow general dentists to perform surgical and cosmetic procedures that they are unable or unwilling to perform using conventional methods and that would typically be referred to a specialist. Our laser systems allow dentists to perform these procedures easily and efficiently, increasing their range of skills, professional and patient satisfaction levels, patient retention rates, new patient attraction rates, and revenues.

- *Additional procedures through increased information and efficiency.* Our laser systems can shorten and reduce the number of patient visits, providing dental professionals with the ability to service more patients. For hard tissue procedures, our Waterlase systems can reduce the need for anesthesia, which enables the dental practitioner to perform multiple procedures in one visit. The Waterlase and diode systems cut soft tissue more precisely and with minimal bleeding when compared to traditional tools such as scalpels and electrosurge systems. We have FDA clearance for treatment indications for use that comprise our REPAIR Perio and REPAIR Implant, our proprietary periodontal protocols for subgingival calculus removal and debridement of root surfaces and implant surfaces using the Waterlase system and patented Radial and Side Firing Perio Tips. This is a minimally invasive treatment for moderate to advanced gum and peri-implant diseases, which are among the leading causes of dental health conditions for adults over age 35 and conditions that impact more than half of Americans over the age of 55. In addition, our Epic system can be used to quickly perform in-office teeth whitening with our proprietary whitening gel and to provide temporary pain relief. Our digital imaging systems allow dentists to diagnose and discover cases that they might not be able to detect with film images or other two-dimensional images, thereby giving them the ability to offer more treatment options for patients.

- *Increased loyalty and expanded patient base.* We believe the improved patient comfort and convenience offered by our laser systems, the reduction in chair time and radiation exposure of our digital imaging systems, and the benefits of in-office, chair-side milling helps improve patient retention rates, attract new patients, and increase revenue per patient, demand for elective procedures, acceptance of treatment plans, and word-of-mouth referrals.

- *Improved clinical outcomes.* Our laser systems can be used for dozens of clinical indications with reduced trauma, swelling, and general discomfort of the patient, resulting in improved clinical outcomes and less follow-up treatment. In parallel, our digital imaging systems provide greater clarity and information, making it possible for the doctor to determine the optimal diagnosis and treatment plan. Our products collectively improve clinical outcomes, making it possible for practitioners to devote time to new cases, rather than managing or treating complications.

***Benefits to Patients***

- *Comfort.* Our Waterlase systems allow dentists to perform minimally invasive dental procedures without anesthesia in many cases, and patients recover more comfortably, faster, and with less pain than when treated with conventional instruments. The heat, vibration, microfractures, trauma, or pressure associated with traditional dental methods are largely avoided.

- *Convenience and efficiency*. Procedures utilizing our Waterlase systems do not require anesthesia in many cases, which allows dental practitioners to perform multiple procedures in one appointment, which saves patients time. Digital images are available almost immediately, so patients do not have to spend extra time in the dental chair waiting for film to be developed.

- *Reduced trauma*. Waterlase systems allow for a faster and more pleasant patient recovery with less swelling, bleeding, and general discomfort than when treated with conventional instruments.

- *Broader range of available procedures.* Due to the comfort and convenience of procedures utilizing our Waterlase system, patients may be more likely to consider cosmetic and other elective procedures resulting in better smiles and oral health. Our Waterlase system received expanded clearance from the FDA for dermatological, aesthetic, and general surgery uses, as well as dental procedures. Since digital images are displayed on computer monitors, doctors can make treatment planning a more personal experience for patients. We believe that these factors will lead to greater patient case acceptance.

**Business Strategy**

Our business strategy includes the following key elements:

- *Increasing awareness of and demand for our products among dental practitioners.* We intend to increase demand for our products by educating dental practitioners and patients about the clinical benefits of our product suite. We plan to continue participation in key industry trade shows, the World Clinical Laser Institute ("WCLI") (which we founded in 2002), dental schools, and other educational forums. Our products are also used for clinical research, which often leads to published articles that can garner attention from dental practitioners.

- *Increasing awareness and education in laser dentistry.* We added local specialists to our staff in southern California and northern Texas to offer dentists more support in maximizing the use of their lasers. In addition, we plan to offer more educational courses, informational events and community activities to help ensure that dentists and their patients are provided with the latest information in laser dentistry. We have developed a local advisory board of dentistry veterans whose collective expertise should serve as an excellent resource that will help propel these local markets forward.

- *Increasing awareness of and demand for our laser systems among patients.* We also intend to increase demand for our products by educating patients about the clinical benefits of the Waterlase and diode systems. We believe that patients will understand the clinical benefits and seek out dental practitioners that offer the Waterlase and diode systems, which, in turn, will result in increased demand for our systems from dental practitioners.

- *Strengthening customer training and clinical education.* We provide introductory, advanced, and specialized training for dental practitioners to increase their proficiency and to certify them. Our goal is to provide our customers world class training that is accessible and can be executed with a practical technique.

- *Strengthening sales and distribution capabilities.* In the U.S. and Canada, we have primarily distributed our products directly to dental practitioners via our field sales force. During 2016, we augmented our field sales force efforts with outbound, phone-based sales support initiatives. These initiatives are driven from our corporate headquarters and are comprised of sales representatives and lead generators working in partnership with the field sales team to maximize effectiveness in engaging and servicing customers. In addition to our field sales force in North America, we also use various independent distributors to sell and support our products throughout Europe, the Middle East, Latin America, and Asia-Pacific regions. We plan to continue to build out the infrastructure to support our customers and to drive revenue and profit growth, both domestically and internationally. This includes expanding our sales presence with respect to the rapidly growing group practices, group purchasing organizations, and government channels.

- *Improving product quality.* We plan to achieve the industry's highest rate of defect-free delivery of products, maintain high quality standards, and address and timely resolve customer complaints. In the U.S., we provide maintenance and support services to customers through our support hotline and dedicated staff of in-house and field service personnel. Outside the U.S., we maintain a network of factory-certified service technicians to provide maintenance and support services to customers.

- *Strengthening and defending technology leadership.* We plan to continue protecting our intellectual property rights by expanding our existing patent portfolio in the United States and internationally. We strategically enforce our intellectual property rights worldwide.

- *Expanding our product portfolio to dental practitioners.* We plan to continue to evaluate how to optimize the manner in which we market and sell additional products to supplement our core Waterlase and Epic franchises.

- *Creating value through innovation and leveraging existing technologies into adjacent medical applications.* We plan to expand our product line and clinical applications by developing enhancements and transformational innovations, including new clinical solutions for dental applications and for other adjacent medical applications. In particular, we believe that our existing technologies can provide significant improvements over existing standards of care in fields, including ophthalmology, otolaryngology, orthopedics, podiatry, pain management, aesthetics/dermatology, veterinary, and consumer products. We plan to continue to explore potential collaborations to bring our proprietary laser technologies with expanded FDA-cleared indications for other medical applications in the future. In addition, we may acquire complementary products and technologies. We also aim to increase our consumables revenue by selling more single-use accessories used by dental practitioners when performing procedures using our dental laser systems.

**Warranties**

Our Waterlase laser systems sold domestically are covered by a warranty against defects in material and workmanship for a period of up to one year from the date of sale to the end-user by us or a distributor. Our diode systems sold domestically are covered by a warranty against defects in material and workmanship for a period of up to two years from the date of sale to the end-user by us or a distributor. Waterlase systems and diode systems sold internationally are covered by a warranty against defects in material and workmanship for a period of up to 28 months from date of sale to the international distributor. Our laser systems warranty covers parts and service for sales in our North American territories and parts only for international distributor sales. In North America and select international locations, we sell extended warranty contracts to our laser systems end users that cover the period after the expiration of our standard warranty coverage for our laser systems. Extended warranty coverage provided under our service contracts varies by the type of system and the level of service desired by the customer. Products or accessories remanufactured, refurbished, or sold by unauthorized parties, voids all warranties in place for such products and exempts us from liability issues relating to the use of such products. We distribute extended warranties on certain imaging products, including our digital radiography products. However, all imaging products that we distribute are initially covered by manufacturer's warranties.

**Manufacturing**

Our strategy is to manufacture products in-house when it is efficient for us to do so. We currently manufacture, assemble, and test all of our laser systems at our corporate headquarters facility in Irvine, California. The 57,000 square foot facility has approximately 20,000 square feet dedicated to manufacturing and warehousing. The facility is ISO 13485 certified. ISO 13485 certification provides guidelines for our quality management system associated with the design, manufacture, installation, and servicing of our products. In addition, our U.S. facility is registered with the FDA and complies in all material respects with the FDA's Quality System Regulation.

We use an integrated approach to manufacturing, including the assembly of tips, laser hand pieces, fiber assemblies, laser heads, electro-mechanical subassembly, final assembly, and testing. We obtain components and subassemblies for our products from third-party suppliers, the majority of which are located in the United States. We generally purchase components and subassemblies from a limited group of suppliers through purchase orders. In general, we rely on these purchase orders and do not have written supply contracts with many of our key suppliers. Three key components used in our Waterlase system (power suppliers, laser crystals, and fiber components) are each supplied by separate single-source suppliers. In recent years, we have not experienced material delays from the suppliers of these three key components. However, an unexpected interruption from a single-source supplier could cause manufacturing delays, re-engineering, significant costs, and sales disruptions, any of which could have a material adverse effect on our operations. We regularly seek to identify and qualify alternate source suppliers for our key components, including but not limited to those noted above. There can be no assurance, however, that we will successfully identify and qualify an alternate source supplier for any of our key components or that we could enter into an agreement with any such alternate source supplier on terms acceptable to us.

As discussed below, we are subject to periodic inspections by the FDA as a manufacturer of medical devices. Such inspections can cover manufacturing, design, production, reporting, recordkeeping, and other processes and can lead to FDA observations requiring corrective action, which can disrupt normal processes.

**Marketing and Sales**

***Marketing***

We market our laser systems worldwide. Our marketing efforts are focused on driving brand awareness and demand for our laser solutions with dental practitioners. We also continue to test methods to increase awareness of our brands' benefits by marketing directly to patients.

*Dental Practitioners.* We market our laser systems to dental practitioners through regional, national, and international educational events, seminars, industry tradeshows, trade publications, digital/social media, field sales forces, and agents and distributors. We also use brochures, direct communications, public relations, and other promotional tools and materials.

Our primary marketing message to dental practitioners focuses on the ability of our lasers to resolve dental challengesand deliver improved cash flow and return on investment ("ROI"), which can be realized with improved patient-reported outcomes. Our WCLI is a leader in educating and training dental practitioners in laser dentistry. We believe that, as the community of dental practitioners that use our products expands, the WCLI will continue to deliver fresh and exciting laser educational opportunities utilizing the latest in learning methodologies and platforms. The WCLI conducts and sponsors educational programs domestically and internationally for dental practitioners, researchers, and academicians, including one, two, and three-day seminars and training sessions involving in-depth presentations on the use of lasers in dentistry. In addition, we have developed relationships with research institutions, dental schools, and dental laboratories that use our products for clinical research and in-clinical training. We believe these relationships will continue to increase awareness of and demand for our products.

*Patients.* We plan to continue to test ways to effectively market the benefits of our laser systems directly to patients through marketing and advertising programs, including the internet, search engine optimization, social media, print and broadcast media, and point-of-sale materials in dental practitioners' offices. We believe that making patients aware of our laser systems and their benefits will motivate them to request from dental practitioners laser procedures and their outcomes thereby increasing demand for our brands. We can be found online at www.biolase.com, and on Facebook, Twitter, LinkedIn, YouTube, and Instagram. Unless specifically stated otherwise, none of the information contained on any of these sites online is incorporated in this Form 10-K by reference.

***Sales***

We sell our products primarily to dentists in general practice through our field sales force and our distributor network. We expect our laser systems to continue to gain acceptance among periodontists, endodontists, oral surgeons, pediatric dentists, and other dental specialists as they become aware of the clinical benefits and minimally invasive treatment options available by using our laser systems.

The following table summarizes our net revenues by category for the years ended December 31, 2019, 2018, and 2017 (dollars in thousands):

| | Years Ended December 31, | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2019 | | | 2018 | | | 2017 | | |
| Laser systems | $ 22,842 | 60.4 | % | $ 29,733 | 64.4 | % | $ 29,121 | 67.9 | % |
| Imaging systems | 619 | 1.6 | % | 1,694 | 3.7 | % | 3,685 | 5.9 | % |
| Consumables and other | 7,164 | 19.0 | % | 8,287 | 18.0 | % | 7,332 | 13.3 | % |
| Services | 7,162 | 19.0 | % | 6,429 | 13.9 | % | 6,660 | 12.6 | % |
| Total products and services | 37,787 | 100.0 | % | 46,143 | 100.0 | % | 46,798 | 99.7 | % |
| License fees and royalty | 12 | — | % | 12 | 0 | % | 128 | 0.3 | % |
| Net revenue | $ 37,799 | 100.0 | % | $ 46,155 | 100.0 | % | $ 46,926 | 100.0 | % |

Net revenue by geographic location based on the location of customers was as follows (in thousands):

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2019 | 2018 | 2017 |
| United States | $ 22,814 | $ 28,661 | $ 29,296 |
| International | $ 14,985 | 17,494 | 17,630 |
| | $ 37,799 | $ 46,155 | $ 46,926 |

International revenue accounts for a significant portion of our total revenue and accounted for approximately 40%, 38%, and 38% of our net revenue in 2019, 2018, and 2017, respectively. No individual country outside the United States represented more than 10% of our net revenue during the years ended December 31, 2019, 2018, and 2017.

For financial information about our long-lived assets, see Notes 3, 4, and 9 to the consolidated financial statements.

*United States Sales.* In the United States, we primarily sell our products directly to dental practitioners utilizing a field sales force consisting of laser sales representatives and regional managers. We also have an in-house sales force, which is located at our corporate headquarters and is comprised of sales representatives and lead generators who work in partnership with the field sales team to maximize sales by leveraging the existing installed customer base.

*International Sales*. Our distributors purchase laser systems and disposables from us at wholesale dealer prices and resell them to dentists in their sales territories. All sales to distributors are final, and we can terminate our arrangements with dealers, agents, and distributors for cause or non-performance. We have granted certain distributors the right to be our exclusive distributor in select territories. These distributors are generally required to satisfy certain minimum purchase requirements to maintain their exclusivity. We have sold our products directly to end users in Germany since 2011 and directly to end users in India and neighboring countries since 2012.

*Customer Concentration*. We sell our products through our field sales force, agents, and distributors. For the years ended December 31, 2019, 2018, and 2017, sales to our largest distributor worldwide accounted for approximately 4%, 4%, and 4%, respectively, of our net revenue. We had no customers that represented over 10% of our total outstanding accounts receivable as of December 31, 2019, and we had one customer that represented more than 10% of our total outstanding accounts receivable as of December 31, 2018.

*Customer Service.* We provide high quality maintenance and support services in the United States through our support hotline and dedicated staff of in-house and field service personnel. Outside the United States, we maintain a network of factory-certified service technicians to provide maintenance and support services to customers. Our international distributors are responsible for providing maintenance and support services for products sold by them. We provide parts to distributors at no additional charge for products covered under warranty.

*Financing Options.* Most customers (other than distributors) finance their purchases through several third-party financial institutions with which we have established good relationships. In the United States, third-party customers enter into a financing agreement with one of the financial institutions that purchases the product from us or one of our distributors. We are not party to these financing agreements. Thus, if the customer agrees to pay the financial institution in installments, we do not bear the credit risk. The financial institutions do not have recourse to us for a customer's failure to make payments, nor do we have any obligation to take back the product.

*Seasonality*. Typically, we experience fluctuations in revenue from quarter to quarter due to seasonality. Revenue in the first quarter typically is lower than average and revenue in the fourth quarter typically is higher than average due to the buying patterns of dental practitioners. We believe that this trend exists because a significant number of dentists purchase their capital equipment towards the end of the calendar year to maximize their practice earnings while seeking to minimize their taxes. They often use certain tax incentives, such as accelerated depreciation methods for purchasing capital equipment, as part of their year-end tax planning. In addition, revenue in the third quarter may be affected by vacation patterns which can cause revenue to be flat or lower than in the second quarter of the year. Our historical seasonal fluctuations may also be impacted by sales promotions used by large dental distributors that encourage end-of-quarter and end-of-year buying in our industry. Because of these seasonal fluctuations, historically we have often used less cash in operations for the six months ended December 31 as compared to the six months ended June 30.

**Engineering and Product Development**

Engineering and product development activities are essential to maintaining and enhancing our business. We believe our engineering and product development team has demonstrated its ability to develop innovative products that meet evolving market needs. As of December 31, 2019, our engineering and product development group consists of 10 individuals with medical device or laser development experience, including one Ph.D. During the years ended December 31, 2019, 2018, and 2017, our engineering and product development expenses totaled approximately $4.8 million, $5.2 million, and $6.2 million, respectively. Our current engineering and product development activities are focused on developing new product platforms, improving our existing products and technology and extending our product range in order to provide dental practitioners and patients with new and improved protocols or procedures that are less painful and have clinically superior results. Some examples of the improvements we are pursuing for our laser systems include faster cutting speed, improved ease of use, less need for anesthesia, interconnectivity, and an expanded portfolio of consumable products for use with our laser systems. Our engineering and product development activities encompass both fundamental and applied fields. We seek to improve methods to perform clinical procedures through the use of new laser wavelengths, laser operation modes and accessories.

We also devote engineering and product development resources toward markets outside of dentistry in which we might exploit our technology platform and capabilities. We believe our laser technology and development capabilities could address unmet needs in several other medical applications, including ophthalmology, otolaryngology, orthopedics, podiatry, pain management, aesthetics/dermatology, veterinary, and consumer products. We have already started to enter the otolaryngology, pain management, and veterinary markets to varying degrees.

To further our development efforts, we have entered into a development and distribution agreement with IPG Medical. The development and distribution agreement between the Company and IPG Medical covers several projects in various stages of development, with the expectation that these projects will culminate in commercialized joint dental laser products, accessories, or integral system components. The parties will collaborate in the design and development of these new products and applications, with each party contributing its technological expertise, know-how, and development resources. We will be responsible for U.S. and international registrations of all dental products resulting from the agreement, and we will have exclusive worldwide commercial distribution rights for certain products over a multi-year initial term after completion of development.

**Intellectual Property and Proprietary Rights**

We believe that to maintain a competitive advantage in the marketplace, we must develop and maintain protection of the proprietary aspects of our technology. We rely on a combination of patents, trademarks, trade secrets, copyrights and other intellectual property rights to protect our intellectual property. We have developed a patent portfolio internally, and to a lesser extent through acquisitions and licensing, that covers many aspects of our product offerings. As of December 31, 2019, we had approximately 208 issued patents and 56 pending patent applications in the United States, Europe and other countries. While we hold a variety of patents that cover a broad range of technologies and methods, the majority of these patents provide market protection for our core technologies incorporated in our laser systems and related accessories. Existing patents related to our core technology, which are at various stages of being incorporated into our products, are scheduled to expire as follows: 4 in 2020, with the majority of the remaining patents having expiration dates ranging from 2025 to 2036. With approximately 56 patent applications pending, we expect the number of new grants to exceed the number of patents expiring. We do not expect the expiration of the expired or soon-to-expire patents to have a material adverse effect on our business, financial condition, or results of operations.

There are risks related to our intellectual property rights. For further details on these risks, see Item 1A — “Risk Factors.”

**Competition**

We operate under relatively competitive market conditions. We believe that the principal competitive factors for companies that market technologies in dental and other medical applications include acceptance by leading dental and medical practitioners, product performance, product pricing, intellectual property protection, customer education and support, timing of new product research, and development of successful national and international distribution channels.

Our competitors vary by product and location. There are companies that market some, but not all, of the same types of products as ours. Our laser systems compete with other lasers, mostly with other wavelengths, patient outcomes, and benefit profiles, as well as with drills, scalpels, scissors, air abrasion systems, and a variety of other tools that are used to perform dental and medical procedures. We believe our products have key differentiating performance features. For example, we market diode lasers which also have FDA clearance for use in both pain management therapy and teeth whitening and our Waterlase systems have been FDA-cleared for a wide range of uses beyond dentistry, including dermatological, aesthetics, and other general surgery uses. Our teeth whitening technology competes with other in-office whitening products and high intensity lights used by dentists, as well as teeth whitening strips, and other over-the-counter products. Our pain management technology competes with a variety of traditional, advanced, and pharmaceutical pain management products and services. The dental imaging equipment and in-office milling machines that we offer compete with traditional dental laboratories, imaging centers and products and services.

Traditional tools are generally less expensive than our laser systems for performing similar procedures. For example, a high-speed drill or an electrosurge device can be purchased for less than $2,500. In addition, though our systems are superior to traditional tools in many ways, they are not intended to replace all of the applications of traditional tools, such as removing metal fillings and certain polishing and grinding functions.

Some of our competitors have significantly greater financial, marketing, and/or technical resources than we do. In addition, some competitors have developed, and others may attempt to develop, products with applications similar to those performed by our products. Because of the large size of the potential market for our products, it is possible that new or existing competitors may develop competing products, procedures, or clinical solutions that could prove to be more effective, safer, or less costly than procedures using our laser systems. The introduction of new products, procedures, or clinical solutions by competitors may result in price reductions, reduced margins, or loss of market share, or may render our products obsolete.

**Government Regulations**

***FDA and Related Regulatory Requirements***

Our products are subject to extensive regulation particularly as to safety, efficacy, and adherence to FDA Quality System Regulation and related manufacturing standards. Medical device products are subject to rigorous FDA and other governmental agency regulations in the United States and similar regulations of foreign agencies abroad. The FDA regulates the design, development, research, preclinical and clinical testing, introduction, manufacture, advertising, labeling, packaging, marketing, distribution, import and export, and record keeping for such products, in order to ensure that medical products distributed in the United States are safe and effective for their intended use. In addition, the FDA is authorized to establish special controls to provide reasonable assurance of the safety and effectiveness of most devices. Non-compliance with applicable requirements can result in import detentions, fines, civil and administrative penalties, injunctions, suspensions or losses of regulatory approvals, recall or seizure of products, operating restrictions, refusal of the government to approve product export applications or allow us to enter into supply contracts, and criminal prosecution.

Unless an exemption applies, the FDA requires that a manufacturer introducing a new medical device or a new indication for use of an existing medical device obtain either a Section 510(k) premarket notification clearance or a premarket approval ("PMA") before introducing it into the U.S. market. The type of marketing authorization is generally linked to the classification of the device. The FDA classifies medical devices into one of three classes (Class I, II, or III) based on the degree of risk the FDA determines to be associated with a device and the level of regulatory control deemed necessary to ensure the device's safety and effectiveness.

Our products currently marketed in the United States are marketed pursuant to 510(k) pre-marketing clearances and are either Class I, Class II, or Class III devices. The process of obtaining a Section 510(k) clearance generally requires the submission of performance data and often clinical data, which in some cases can be extensive, to demonstrate that the device is "substantially equivalent" to a device that was on the market before 1976 or to a device that has been found by the FDA to be "substantially equivalent" to such a pre-1976 device (referred to as "predicate device"). As a result, FDA clearance requirements may extend the development process for a considerable length of time. In addition, in some cases, the FDA may require additional review by an advisory panel, which can further lengthen the process. The PMA process, which is reserved for new devices that are not substantially equivalent to any predicate device and for high-risk devices or those that are used to support or sustain human life, may take several years and requires the submission of extensive performance and clinical information.

Medical devices can be marketed only for the indications for which they are cleared or approved. After a device has received 510(k) clearance for a specific intended use, any change or modification that significantly affects its safety or effectiveness, such as a significant change in the design, materials, method of manufacture, or intended use, may require a new 510(k) clearance or PMA approval and payment of an FDA user fee. The determination as to whether or not a modification could significantly affect the device's safety or effectiveness is initially left to the manufacturer using available FDA guidance; however, the FDA may review this determination to evaluate the regulatory status of the modified product at any time and may require the manufacturer to cease marketing and recall the modified device until 510(k) clearance or PMA approval is obtained. The manufacturer may also be subject to significant regulatory fines or penalties.

Any devices we manufacture and distribute pursuant to clearance or approval by the FDA are subject to extensive and continuing regulation by the FDA and certain state agencies. These include product listing and establishment registration requirements, which help facilitate FDA inspections and other regulatory actions. As a medical device manufacturer, all of our manufacturing facilities are subject to inspection on a routine basis by the FDA. We are required to adhere to applicable regulations setting forth detailed current good manufacturing practice ("cGMP") requirements, as set forth in the FDA's Quality System Regulation ("QSR"), which require manufacturers, including third-party manufacturers, to follow stringent design, testing, control, documentation and other quality assurance procedures during all phases of the design and manufacturing process. Noncompliance with these standards can result in, among other things, fines, injunctions, civil penalties, recalls or seizures of products, total or partial suspension of production, refusal of the government to grant 510(k) clearance or PMA approval of devices, withdrawal of marketing approvals, and criminal prosecutions. We believe that our design, manufacturing, and quality control procedures are in compliance with the FDA's regulatory requirements.

We must also comply with post-market surveillance regulations, including medical device reporting requirements which require that we review and report to the FDA any incident in which our products may have caused or contributed to a death or serious injury. We must also report any incident in which any of our products has malfunctioned if that malfunction would likely cause or contribute to a death or serious injury if it were to recur.

Labeling and promotional activities are subject to scrutiny by the FDA and, in certain circumstances, by the Federal Trade Commission("FTC") and by state regulatory and enforcement authorities. Medical devices approved or cleared by the FDA may not be promoted for unapproved or uncleared uses, otherwise known as "off-label" promotion. The FDA and other agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted off-label uses may be subject to significant liability, including substantial monetary penalties and criminal prosecution.

Promotional activities for FDA-regulated products of other companies have also been the subject of enforcement actions brought under health care reimbursement laws and consumer protection statutes. In addition, under the federal Lanham Act and similar state laws, competitors and others can initiate litigation relating to advertising claims. If the FDA determines that our promotional materials or training constitutes promotion of an uncleared or unapproved use, the FDA could request that we modify our training or promotional materials or subject us to regulatory or enforcement actions, including the issuance of an untitled letter, a notice of violation, a warning letter, an injunction, a seizure, a civil fine, or criminal penalties. In that event, our reputation could be damaged and adoption of the products could be impaired.

We have registered with the FDA as a medical device manufacturer and we have obtained a manufacturing license from the California Department of Health Services. As a manufacturer, we are subject to announced and unannounced facility inspections by the FDA and the California Department of Health Services to determine our compliance with various regulations. Our subcontractors' manufacturing facilities are also subject to inspection.

***Foreign Regulation***

Sales of medical devices outside the United States are subject to regulatory requirements that vary widely from country to country. In the EU, placing our medical devices on the market must comply with the requirements of Council Directive 93/42/EEC concerning medical devices ("MDD"). Applicable requirements include compliance with the essential requirements of the MDD (the "Essential Requirements") and the CE marking process. Our devices are classified as Class I, Class IIa, Class IIb or Class III devices.

Medical devices marketed in the EU must meet all proper regulatory requirements and have a CE marking affixed to them. For devices falling within Class I (low risk), the manufacturer is responsible for ensuring that the product complies with the Essential Requirements and must draw up a written statement to this effect (a "Declaration of Conformity"). Class I devices without a measuring function and supplied in non-sterile condition do not require the involvement of an organization designated by an EU-competent authority to assess the conformity of certain products before being placed on the EU market (a "Notified Body"). Manufacturers of sterile products and devices with a measuring function must apply to a Notified Body for certification of the aspects of manufacture relating to sterility or metrology.

For devices falling within Class IIa (low – medium risk), in order to affix the CE marking and place the product on the EU market, the manufacturer must follow one of several authorization procedures involving the engagement of a Notified Body. For Class I devices, the manufacturer is responsible for declaring conformity with the provisions of the MDD and ensuring that the products comply with the Essential Requirements. This declaration must be supported by a conformity assessment by a Notified Body. Once the manufacturer has received certification from the Notified Body and issued a Declaration of Conformity, it may affix the CE marking to the relevant products and place them on the EU market.

For devices falling within Class IIb (medium – high risk) and Class III (high risk), in order to affix the CE marking and place the product on the EU market, the manufacturer must follow one of several authorization procedures. For Class IIa devices, this requires the engagement of a Notified Body. The procedure for placing Class III devices on the market is similar to that applicable for Class IIb devices. However, the manufacturer must also submit a design dossier to the Notified Body for approval under Annex II of the MDD, and some of the authorization procedures permitted for Class IIb devices are not permitted.

Once medical devices correctly have a CE marking and comply with other applicable regulatory requirements, they may be placed on the market in any member state of the European Economic Area ("EEA"). However, a CE marking does not indicate that the manufacturer's quality system or that a product's safety profile has been approved or assessed by competent authority.

In addition, other EU regulatory requirements may apply to our medical devices, including other types of CE markings having different requirements, where applicable. For example, Directive 2014/35/EU relating to the making available on the market of electrical equipment designed for use within certainvoltage limits, Directive 2014/30/EU on electromagnetic compatibility and Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment may apply to our electrical products. Moreover, we must ensure compliance with applicable EU chemical legislation such as Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment and Regulation 1907/2006 on the Registration, Evaluation, Authorization and Restriction of Chemicals. Additional EU requirements may also include safety, health, and environmental protection.

The European Association for the Co-ordination of Consumer Representation in Standardization has cautioned that, amongst other things, CE marking cannot be considered a "safety mark" for consumers.

In addition, CE marking is a self-certification program. Retailers sometimes refer to products as "CE approved," but the CE marking does not actually signify approval. As mentioned above, certain categories of products (such as Class IIa, Class IIb and Class III medical devices) require involvement of a Notified Body to ensure conformity with relevant technical standards, but CE marking by the manufacturer in itself does not certify that this has been done.

Our facilities manufacturing medical devices for the EEA market are EN ISO 13485 (Medical devices - Quality management systems - Requirements for regulatory purposes) Certified. Moreover, our Waterlase and diode laser systems have a CE marking. In addition, we have attained the proper licensing for Waterlase and diode laser systems for sale in Canada, meeting the Canadian Medical Device Regulation requirements as part of the ISO certification process.

***Other U.S. Regulation***

We and our subcontractors also must comply with numerous federal, state and local laws relating to matters such as safe working conditions, manufacturing practices, environmental protection, fire hazard control, and hazardous substance disposal. Furthermore, we are subject to various reporting requirements including those prescribed by the Affordable Care Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act. We cannot be sure that we will not be required to incur significant costs to comply with these laws and regulations in the future or that these laws or regulations will not adversely affect our business, financial condition, and results of operations. Unanticipated changes in existing regulatory requirements or the adoption of new requirements could adversely affect our business, financial condition, and results of operations.

***Environmental***

Our manufacturing processes involve the use, generation, and disposal of hazardous materials and wastes, including alcohol, adhesives, and cleaning materials. As such, we are subject to stringent federal, state, and local laws relating to the protection of the environment, including those governing the use, handling, and disposal of hazardous materials and wastes. Future environmental laws may require us to alter our manufacturing processes, thereby increasing our manufacturing costs. We believe that our products and manufacturing processes at our facilities comply in all material respects with applicable environmental laws and worker health and safety laws. However, the risk of environmental liabilities cannot be completely eliminated.

***Health Care Fraud and Abuse***

As a medical device manufacturer, our operations and interactions with health care providers, including dentists, are subject to extensive laws and regulations imposed at the federal, state, and local level in the U.S., including, but not limited to, those discussed in this Form 10-K. In the U.S., there are federal and state anti-kickback statutes that generally prohibit the payment or receipt of kickbacks, bribes, or other remuneration in exchange for the referral of patients or other health-related business. For example, the federal Anti-Kickback Statute is a criminal statute that prohibits anyone from, among other things, knowingly and willfully offering, paying, soliciting, or receiving any bribe, kickback, or other remuneration intended to induce a referral for the furnishing of, or the purchase, order, or recommendation of, any item or service reimbursable under the Federal health care programs ("FHCPs"), including Medicare, Medicaid, and TRICARE. Recognizing that the federal Anti-Kickback Statute is broad and potentially applicable to many commonplace arrangements, the U.S. Congress and the Office of Inspector General ("OIG") within the Department of Health and Human Services ("HHS") have created statutory "exceptions" and regulatory "safe harbors" to the federal Anti-Kickback Statute. Exceptions and safe harbors exist for a number of arrangements relevant to our business, including, among other things, certain payments to bona fide employees, certain discount and rebate arrangements, and certain payment arrangements with health care providers, assuming all elements of the relevant exception/safe harbor have been satisfied. Although an arrangement that fits squarely into one or more of these exceptions or safe harbors generally will not be subject to prosecution, OIG has also cautioned in various contexts that even where each component of an arrangement has been structured to satisfy a safe harbor, the components, as part of an overall arrangement, may still violate the federal Anti-Kickback Statute. However, arrangements that do not fit squarely within an exception or safe harbor do not necessarily violate the federal Anti-Kickback Statute. Rather, OIG and/or other government

enforcement authorities will examine the facts and circumstances relevant to the specific arrangement to determine whether it involves the sorts of abuses that the statute was designed to combat. Violations of this federal law constitute a felony offense punishable by imprisonment, criminal fines of up to $25,000, civil fines of up to $74,792 per violation (as adjusted for annual inflation) and three times the amount of the unlawful remuneration, and exclusion from Medicare, Medicaid, and other FHCPs. Exclusion of a manufacturer like us would preclude any FHCP from paying for the manufacturer's products. In addition, pursuant to the changes made by the Affordable Care Act, a claim resulting from a violation of the federal Anti-Kickback Statute may serve as the basis for a false claim under the federal Civil False Claims Act. Many states also have their own laws that parallel and implicate anti-kickback restrictions but may apply regardless of whether any FHCP business is involved. Federal and state anti-kickback laws may affect our sales, marketing and promotional activities, educational programs, pricing and discount practices and policies, and relationships with dental and medical providers by limiting the kinds of arrangements we may have with hospitals, alternate care market providers, physicians, dentists, and others in a position to purchase or recommend our products.

Federal and state false claims laws prohibit anyone from presenting, or causing to be presented, claims for payment to third-party payers that are false or fraudulent. For example, the federal Civil False Claims Act imposes liability on any person or entity that knowingly presents, or causes to be presented, a false or fraudulent claim for payment to the government, including FHCPs. Some suits filed under the Civil False Claims Act can be brought by a "whistleblower" or a "relator" on behalf of the government, and such individuals may share in any amounts paid by the entity to the government in fines or settlement. Manufacturers, like us, can be held liable under false claims laws, even if they do not submit claims to the government, where they are found to have caused submission of false claims by, among other things, providing incorrect coding or billing advice about their products to customers that file claims, or by engaging in kickback arrangements with customers that file claims. A violation of the Civil False Claims Act could result in fines of up to $21,916 (as adjusted for annual inflation) for each false claim, plus up to three times the amount of damages sustained by the government. A Civil False Claims Act violation may also provide the basis for the imposition of administrative penalties and exclusion from participation in FHCPs. In addition to the Civil False Claims Act, the federal government also can use several criminal statutes to prosecute persons who are alleged to have submitted false or fraudulent claims for payment to the federal government, or improperly retained funds received which were not due. Moreover, a number of states also have false claims laws, and some of these laws may apply to claims for items or services reimbursed under Medicaid and/or commercial insurance.

In addition to the general fraud statutes mentioned above, there are a variety of other fraud and abuse laws specific to health care. For example, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") created several new federal crimes, including health care fraud and false statements related to health care matters. The health care fraud statute prohibits, among other things, knowingly and willfully executing a scheme to defraud any health care benefit program, including private payers. A violation of this statute is a felony and may result in fines, up to ten years imprisonment (assuming no serious bodily injury or death results), or exclusion from FHCPs. The false statements statute prohibits, among other things, knowingly and willfully falsifying, concealing or covering up a material fact, or making any materially false, fictitious, or fraudulent statement in connection with the delivery of or payment for items or services under a health care benefit program . A violation of this statute is a felony and may result in fines and imprisonment and could potentially result in the government's pursuit of exclusion from FHCPs. Additionally, a person who offers or transfers to a Medicare or Medicaid beneficiary any remuneration that the person knows or should know is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier of items or services payable by Medicare or Medicaid may be liable for civil money penalties of up to $10,000 for each item or service and potential exclusion from FHCPs.

The Physician Payments Sunshine Act requires us to report annually to the Centers for Medicare and Medicaid Services ("CMS") certain payments and other transfers of value we make to U.S.-licensed physicians, dentists, and teaching hospitals. These annual reports are publicly available, which could impact the number of health care providers who are willing to work with us on the research and development of our products. In addition, several states have implemented similar transparency and disclosure laws applicable to medical device manufacturers, some of which require reporting of transfers of value made to a wider variety of health care professionals and institutions.

The federal physician self-referral prohibition (the "Stark Law") is a strict liability statute, which, in the absence of a statutory or regulatory exception, prohibits: (i) the referral of Medicare and Medicaid patients by a physician to an entity for the provision of designated health care services if the physician or a member of the physician's immediate family has a d irect or indirect financial relationship, including an ownership interest in, or a compensation arrangement with, the entity and (ii) the submission of a bill to Medicare or Medicaid for services rendered pursuant to a prohibited referral. Penalties for violations of the Stark Law include denial of payment for the service, required refund of payments received pursuant to the prohibited referral, and civil monetary penalties for knowing violations of up to $24,253 per claim (as adjusted for annual inflation), up to $161,692 for circumvention schemes, and up to $11,052 per day for failing to report information concerning the entity's ownership, investment, and compensation arrangements upon HHS' request. Stark Law violations also may lead to False Claims Act liability and possible exclusion from FHCPs.

The FCPA's anti-bribery provisions generally prohibit companies and their intermediaries from offering to pay, promising to pay, or authorizing the payment of money or anything of value to non-U.S. officials for the purpose of influencing any act or decision of the foreign official in his/her capacity or to secure any other improper advantage to obtain or retain business. Violation of the anti-bribery provisions of the FCPA by a corporation or business entity can result in criminal fines of up to $2 million and civil penalties of up to $16,000 for each violation. Individuals, including officers, directors, stockholders, and agents of companies, can be subject to a criminal fine of up to $250,000 and/or imprisonment, in addition to civil penalties of up to $16,000, per violation.

The FCPA's accounting provisions require that all issuers 1) make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect an issuer's transactions and dispositions of an issuer's assets; and 2) devise and maintain a system of internal accounting controls sufficient to ensure management's control, authority, and responsibility over the firm's assets. Violations of the accounting provisions by a corporation or other business entity can result in criminal fines of up to $25 million per violation and civil penalties of up to $725,000. Individuals can be subject to a criminal fine of up to $5 million per violation and/or imprisonment and civil penalties of up to $150,000.

Due to the breadth of some of these laws, it is possible that some of our current or future practices might be challenged under one or more of these laws. In addition, there can be no assurance that we would not be required to alter one or more of our practices to comply with these laws. Evolving interpretations of current laws or the adoption of new federal or state laws or regulations could adversely affect some of the arrangements we have with customers, physician s, and dentists. If our past or present operations are found to be in violation of any of these laws, we could be subject to civil and criminal penalties, which could hurt our business, financial condition, and results of operations.

***Privacy and Security of Health Information***

Numerous federal, state, and international laws and regulations govern the collection, use, and disclosure of patient-identifiable health information, including HIPAA. HIPAA applies to covered entities, which include, among other entities, a "health care provider" that transmits health information in electronic form in connection with certain transactions regulated under HIPAA. HIPAA also applies to "business associates," meaning persons or entities that create, receive, maintain, or transmit protected health information ("PHI") to perform a function on behalf of, or provide a service to, a covered entity. Although we are not a covered entity, most health care (including dental) facilities that purchase our products are covered entities under HIPAA. Due to activities that we perform for or on behalf of covered entities, we may sometimes act as a business associate, or our customers may ask us to enter Business Associate Agreements and assume business associate responsibilities.

Various implementing regulations have been promulgated under HIPAA. The HIPAA Security Rule requires implementation of certain administrative, physical, and technical safeguards to ensure the confidentiality, integrity, and availability of electronic PHI. The HIPAA Privacy Rule governs the use and disclosure of PHI and provides certain rights to individuals with respect to that information. For example, for most uses and disclosures of PHI, other than for treatment, payment, health care operations, and certain public policy purposes, the HIPAA Privacy Rule generally requires obtaining valid written authorization from the individual, including in the research context. With certain limited exceptions, the covered entity performing the research must obtain valid authorization from the research subject (or an appropriate waiver) before providing that subject's PHI to sponsors like us. Furthermore, in most cases, the HIPAA Privacy Rule requires that use or disclosure of PHI be limited to the minimum necessary to achieve the purpose of the use or disclosure.

The HIPAA Privacy and Security Rules require covered entities to contractually bind us, where we are acting as a business associate, to protect the privacy and security of individually identifiable health information that we may use, access, or disclose for purposes of services we may provide. Moreover, the Health Information Technology for Economic and Clinical Health Act ("HITECH") enacted in February 2009, made certain provisions of the HIPAA Privacy and Security Rules directly applicable to business associates.

HITECH also established new breach notification requirements, increased civil penalty amounts for HIPAA violations, and requires HHS to conduct periodic audits of covered entities and business associates to confirm compliance. In addition, HITECH authorizes state attorneys general to bring civil actions in response to HIPAA violations committed against residents of their respective states.

In 2013, the Office for Civil Rights ("OCR") of HHS released an omnibus final rule (the "Final Rule"), implementing HITECH. Among other provisions, the Final Rule made certain changes to the breach notification regulations, including requiring business associates to notify covered entities if a breach occurs at or by the business associate. Following a breach of unsecured PHI, covered entities must provide notification of the breach to affected individuals, the HHS Secretary, and, for breaches affecting more than 500 residents of a state or jurisdiction, prominent media outlets serving that state/jurisdiction. Breaches of health information can also give rise to class actions by affected individuals and result in significant reputational damage to the covered entity and/or business associates or other parties involved in the breach.

The Final Rule also provides for heightened governmental investigations of potential non-compliance. However, the Final Rule did not address accounting of disclosures, although such regulations are forthcoming. The proposed rule addressing accounting of disclosures, if finalized, could impose a significant burden on us, as it would require covered entities and their business associates to develop systems to monitor (1) which employees access an individual's electronic PHI contained in a designated record set, (2) the time and date such access occurs, and (3) the action taken during the access session (e.g., modification, deletion, viewing).

Failure to comply with HIPAA may result in civil and criminal penalties. Civil penalties for a single violation of the regulations occurring on or after February 18, 2009 range from $110 to more than $55,000 per violation, with a maximum penalty of $1,650,300 per year for violations of an identical provision of the regulations. Criminal penalties of up to $250,000 and imprisonment may also be imposed for certain knowing violations of HIPAA. We may be required to make costly system modifications, which may restrict our business operations, to comply with HIPAA, to the extent we act as a business associate. Our failure to comply may result in liability and adversely affect our business, financial condition, and results of operations.

Numerous other federal and state laws protect the confidentiality of patient information, including state medical privacy laws and federal and state consumer protection laws. These state laws may be similar to or possibly more stringent than the federal provisions. These laws in many cases are not preempted by the HIPAA rules and may be subject to varying interpretations by the courts and government agencies, creating complex compliance issues for us and our customers and potentially exposing us to additional expense, adverse publicity, and liability. Other countries also have, or are developing, laws governing the collection, use, and transmission of personal or patient information, which could create liability for us or increase our cost of doing business.

New health information standards, whether implemented pursuant to HIPAA, future Congressional action, or otherwise, could have a significant effect on the manner in which we handle health information, and the cost of complying with these standards could be significant. If we do not properly comply with existing or new laws and regulations related to patient health information, we could be subject to criminal or civil sanctions.

**Third-Party Reimbursement**

Dentists and other health care providers that purchase our products may rely on third-party payers, including Medicare, Medicaid, and private payers to cover and reimburse all or part of the cost of the clinical procedures performed using our products. As a result, demand for our products is dependent in part on the coverage and reimbursement policies of these payers. We believe that most of the procedures being performed with our current products generally are reimbursable, with the exception of cosmetic applications, such as teeth whitening.

No uniform coverage or reimbursement policy for dental and medical treatment exists among third-party payers, and coverage and reimbursement can differ significantly from payer to payer. Under Medicaid, for example, states are required to cover basic dental services for children, but retain discretion as to whether to provide coverage for dental services for adults. Under the Early Periodic Screening, Diagnostic, and Treatment benefit available to children, dental services determined to be "medically necessary" and provided at intervals that meet reasonable standards of dental practice (or at such other intervals, as indicated by medical necessity) are generally covered by Medicaid. Although not required to cover dental services for adults, most state Medicaid programs still provide a degree of coverage for at least emergency dental services.

Medicare covers dental services only in certain limited circumstances. For instance, Medicare will pay for certain dental services when provided in the inpatient hospital setting if the dental procedure itself made hospitalization necessary. Medicare will also pay for certain dental services that are an integral part of a covered procedure (e.g., jaw reconstruction following accidental injury), extractions done in preparation for certain radiation treatments, and oral examinations preceding kidney transplantation or heart valve replacement, under certain circumstances.

Future legislation, regulation or coverage and reimbursement policies of third-party payers may adversely affect the demand for our products. For example, the Affordable Care Act included various reforms impacting Medicare reimbursement and coverage, including revision to prospective payment systems, any of which may adversely impact any Medicare reimbursements received by our end-user customers. Moreover, the Budget Control Act of 2011, enacted on August 2, 2011, established a process to reduce federal budget deficits through an automatic "sequestration" process if deficit reductions targets are not otherwise reached. Under the terms of the Budget Control Act, sequestration imposes cuts to a wide range of federal programs, including Medicare, which is subject to a 2% cut. The Bipartisan Budget Act of 2015 extended the 2% sequestration cut for Medicare through fiscal year 2025 and realigned the fiscal year 2025 Medicare sequestration amounts so that there will be a 4% sequester for the first six months and a 0% sequester for the second six months, instead of a 2% sequester for the full 12-month period.

In addition, private payers and employer-sponsored health care plans became subject to various rules and potential penalties under the Affordable Care Act. For example, health plans in the individual and small group markets were required to begin providing a core package of health care services, known as "essential health benefits." Essential health benefits include ten general categories of care, including pediatric services, which requires coverage of dental and vision care, among other medical services, for children. The Affordable Care Act also required employers with 50 or more employees to offer health insurance coverage to full-time workers or pay a penalty, which could potentially increase the availability of third-party reimbursement for some medical procedures using our products, although we continue to assess the impact of the Affordable Care Act on our business.

We cannot be sure that government or private third-party payers will cover and reimburse the procedures using our products in whole or in part in the future or that payment rates will be adequate.

Because third-party payments may be less than a provider's actual costs in furnishing care, providers have incentives to lower their operating costs by utilizing products that will decrease labor or otherwise lower their costs. However, we cannot be certain that dental and medical service providers will purchase our products, despite the clinical benefits and opportunity for cost savings that we believe can be derived from their use. If providers cannot obtain adequate coverage and reimbursement for our products, or the procedures in which they are used, our business, financial condition, and results of operations could suffer.

**Employees**

At December 31, 2019, the Company employed approximately 157 people. Our employees are not represented by any collective bargaining agreement, and we believe our employee relations are good.

**Executive Officers of the Registrant**

The executive officers of the Company are elected each year at the meeting of our Board, which follows the annual meeting of stockholders, and at other Board meetings, as appropriate.

At March 18, 2020, the executive officers of the Company were as follows:

| Name | Age | Position |
|---|---|---|
| Todd A. Norbe | 52 | President and Chief Executive Officer |
| John R. Beaver | 58 | Executive Vice President and Chief Financial Officer |

*Todd A. Norbe* joined the Board in June 2018 and was named President and Chief Executive Officer in August 2018. Prior to joining the Company as a Director in June 2018, Mr. Norbe was the President, North America of KaVo Kerr, a subsidiary of the Danaher Corporation, where he held executive leadership positions from 2006 to 2018, including President of Kerr North America, and Vice President and General Manager, Metrex Medical – Sybron Dental Specialties. Mr. Norbe holds a Bachelor of Science degree in Marketing from Bloomsburg University and a Master of Business Administration in Management from Fairleigh Dickinson University.

*John R. Beaver* was named Senior Vice President and Chief Financial Officer in October 2017 and was promoted to Executive Vice President and Chief Financial Officer in August 2018. Prior to joining the Company, Mr. Beaver served as the Chief Financial Officer of Silicor Materials, Inc., a global leader in the production of solar silicon, from 2009 to 2013 and 2015 to 2017. Mr. Beaver also served on the Board of Directors of Silicor Materials, Inc. from 2013 to 2015. From 2013 to 2015, Mr. Beaver was Chief Financial Officer for Modumetal, Inc., a nano-laminated alloy coatings company focused on oil and gas applications. Prior to 2009, Mr. Beaver was Senior Vice President – Finance and Chief Financial Officer at Sterling Chemicals, a mid-sized public commodity chemical manufacturer. Mr. Beaver holds a Bachelor of Business Administration in Accounting from the University of Texas at Austin and is a Certified Public Accountant.

**Available Information**

Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Exchange Act, are available free of charge on our website at http://www.biolase.com, as soon as reasonably practicable after the Company electronically files such reports with, or furnishes those reports to, the SEC. We are providing our internet site solely for the information of investors. We do not intend the address to be an active link or to otherwise incorporate the contents of the website into this report.

**Additional Information**

BIOLASE®, ZipTip®, ezlase®, eztips®, ComfortPulse®, Waterlase®, Waterlase Dentistry®, Waterlase Express®, iLase®, iPlus®, Epic®, Epic Pro®, Epic Hygiene™, WCLI®, World Clinical Laser Institute®, Waterlase MD®, Waterlase Dentistry®, and EZLase® are registered trademarks of BIOLASE, and Pedolase™ is a trademark of BIOLASE. All other product and company names are registered trademarks or trademarks of their respective owners.

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

*Investing in our securities involves a high degree of risk. You should carefully consider the following risk factors together with all of the other information included in this Form 10-K. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we presently consider to be immaterial could also adversely affect us. If any of the following risks come to fruition, our business, financial condition, results of operations, cash flows, and future growth prospects could be materially and adversely affected. In these circumstances, the market price of our stock could decline, and you could lose all or part of your investment.*

## RISK FACTORS

*Investing in our common stock involves substantial risks. You should carefully consider the following risk factors before making an investment decision. Additional risks and uncertainties not presently known to us or that we presently consider to be immaterial could also adversely affect us. If any of those risks or uncertainties come to fruition, our business, financial condition, results of operations, cash flows, and future growth prospects could be materially and adversely affected. In these circumstances, the market price of our common stock could decline, and you could lose all or part of your investment.*

### Risks Related to Our Business and Operations

***Although our consolidated financial statements have been prepared on a going concern basis, our management believe that our recurring losses and negative cash flows from operations and other factors, including the ongoing impact of the COVID-19 pandemic on our business, have raised substantial doubt about our ability to continue as a going concern as of December 31, 2019.***

Our audited consolidated financial statements for the fiscal year ended December 31, 2019 were prepared on a going concern basis in accordance with generally accepted accounting principles in the United States. The going concern basis assumes that we will continue in operation for the next 12 months and will be able to realize our assets and discharge our liabilities and commitments in the normal course of business. Thus, our consolidated financial statements do not include any adjustments that might be necessary if we are unable to continue as a going concern. Our recurring losses, negative cash flow, need for additional capital and the uncertainties surrounding our ability to raise such capital, raise substantial doubt about our ability to continue as a going concern. As a result of reduced sales due to the COVID-19 pandemic and actions taken to contain it, cash generated from our operations during the first quarter of 2020 will be less than we anticipated. Moreover, there is no assurance that sales will return to normal levels during the second quarter of 2020 or at any time thereafter. As of the date of the filing of this annual report on Form 10-K, management is evaluating all options to conserve cash and to obtain additional debt or equity financing and/or enter into a collaborative arrangement or sale of assets, to permit the Company to continue operations. Furthermore, in order for us to continue operations beyond the next 12 months and be able to discharge our liabilities and commitments in the normal course of business, we must sell our products directly to end-users and through distributors, establish profitable operations through increased sales, decrease expenses, generate cash from operations or raise additional funds when needed. We intend to improve our financial condition and ultimately improve our financial results by increasing revenues through expansion of our product offerings, continuing to expand and develop our field sales force and distributor relationships both domestically and internationally, forming strategic arrangements within the dental and medical industries, educating dental and medical patients as to the benefits of our advanced medical technologies, and reducing expenses. If we are unable to raise additional capital, increase sales or reduce expenses we will be unable to continue to fund our operations, develop our products, realize value from our assets, or discharge our liabilities in the normal course of business. If we become unable to continue as a going concern, we could have to liquidate our assets, and potentially realize significantly less than the values at which they are carried on our financial statements, and stockholders could lose all or part of their investment in our common stock. In line with this, our independent registered public accounting firm included an explanatory paragraph in their report accompanying our consolidated financial statements for the year ended December 31, 2019.

***The novel coronavirus outbreak and COVID-19 pandemic have already materially adversely affected, and are likely to continue to materially adversely affect, our business, results of operations and financial condition. In addition, similar risks related to health epidemics and other outbreaks or pandemics may adversely affect our business, results of operations and financial condition.***

We face risks related to health epidemics and other outbreaks, including the global outbreak of the novel coronavirus and thedisease caused by it, COVID-19. In the first quarter of 2020, the spread of the novel coronavirus has led to disruption and volatility in the global capital markets, which could increase our cost of capital and adversely affect our ability to access the capital markets. In addition, efforts to contain the COVID-19 pandemic have led to travel restrictions, prohibitions on public gatherings and closures of dental offices and clinics throughout much of Europe and the United States. As a result, most dental shows and workshops scheduled in the first and second quarters of 2020 have been canceled, and our salespeople have been unable to call on dental customers during such closures. We rely on sales of our products to generate cash, and to the extent that we are unable to sell our products due to efforts to contain COVID-19 or otherwise, our liquidity and capital resources have been, and will continue to be, materially adversely affected. In particular, closures near the end of a quarter (like those that occurred during March 2020) have a material adverse impact, given that more than half of our sales for each quarter typically occur during the last three weeks of the quarter. As a result of reduced sales due to the COVID-19 pandemic and actions taken to contain it, cash generated from our operations during the first quarter of 2020 will be less than we anticipated. Moreover, there is no assurance that sales will return to normal levels during the second quarter of 2020 or at any time thereafter. As of the date of the filing of this annual report on Form 10-K, management is evaluating all options to conserve cash and to obtain additional debt or equity financing and/or enter into a collaborative arrangement or sale of assets, to permit the Company to continue operations.

***We have experienced net losses for each of the past three years and we could experience additional losses and have difficulty achieving profitability in the future.***

We had an accumulated deficit of approximately $234.5 million at December 31, 2019. We recorded net losses of approximately $17.9 million, $21.5 million, and $16.9 million for the years ended December 31, 2019, 2018, and 2017, respectively. In order to achieve profitability, we must increase net revenue through new sales and control our costs. Failure to increase our net revenue and decrease our costs could cause our stock price to decline and could have a material adverse effect on our business, financial condition, and results of operations.

***We are vulnerable to continued global economic uncertainty and volatility in financial markets.***

Our business is highly sensitive to changes in general economic conditions as a seller of capital equipment to end users in dental professional practices. Financial markets inside the United States and internationally have experienced extreme disruption in recent times, including, among other things, extreme volatility in security prices, severely diminished liquidity and credit availability, and declining valuations of investments. We believe these disruptions are likely to have an ongoing adverse effect on the world economy. A continuing economic downturn and financial market disruptions could have a material adverse effect on our business, financial condition, and results of operations, including by:

- reducing demand for our products and services, increasing order cancellations and resulting in longer sales cycles and slower adoption of new technologies;
- increasing the difficulty of collecting accounts receivable and the risk of excess and obsolete inventories;
- increasing price competition in our served markets; and
- resulting in supply interruptions, which could disrupt our ability to produce our products.

***We will need to raise additional capital in the future, and if we are unable to secure adequate funds on terms acceptable to us, we could be unable to execute our business plan.***

As a result of reduced sales due to the COVID-19 pandemic and actions taken to contain it, cash generated from our operations during the first quarter of 2020 will be insufficient to fund continuing operations. As a result, we will need to raise additional funds through the issuance of equity or debt securities in the public or private markets, or through a collaborative arrangement or sale of assets. Additional financing opportunities may not be available to us, or if available, may not be on favorable terms. The availability of financing opportunities will depend, in part, on market conditions, and the outlook for our business. Any future issuance of equity securities or securities convertible into equity securities could result in substantial dilution to our stockholders, and the securities issued in such a financing could have rights, preferences or privileges senior to those of our common stock. In addition, if we raise additional funds through debt financing, we could be subject to debt covenants that place limitations on our operations. We could not be able to raise additional capital on reasonable terms, or at all, or we could use capital more rapidly than anticipated. If we cannot raise the required capital when needed, we may not be able to satisfy the demands of existing and prospective customers, we could lose revenue and market share and we may have to curtail our capital expenditures. The following factors, among others, could affect our ability to obtain additional financing on favorable terms, or at all:

- our results of operations;
- general economic conditions and conditions in the dental or medical device industries, including as a result of the COVID-19 pandemic and efforts to contain it;
- the perception of our business in the capital markets;
- our ratio of debt to equity;
- our financial condition;
- our business prospects; and
- interest rates.

If we are unable to obtain sufficient capital in the future, we could have to curtail our capital expenditures. Any curtailment of our capital expenditures could result in a reduction in net revenue, reduced quality of our products, increased manufacturing costs for our products, harm to our reputation, or reduced manufacturing efficiencies and could have a material adverse effect on our business, financial condition, and results of operations.

***Our success depends, in part, on our relationships with, and the efforts of, third-party distributors.***

We rely on exclusive and non-exclusive third-party distributors for a portion of our sales in North America and a majority of our sales in countries outside of the U.S. For the fiscal years ended December 31, 2019, 2018, and 2017, revenue from distributors accounted for approximately 33%, 34%, and 32% of our total net revenue, respectively. Our distributors have significant discretion in determining the efforts and resources they apply to the sale of our products, and we face significant challenges and risks in expanding, training, and managing our third-party distributors, particularly given their geographically dispersed operations. Our distributors may not commit the necessary resources to market and sell our products to the level of our expectations, and, regardless of the resources they commit, they may not be successful. From time to time, we may face competition or pricing pressure from one or more of our non-exclusive distributors in certain geographic areas where those distributors are selling inventory to the same customer base as us. Additionally, most of our distributor agreements can be terminated with limited notice, and we may not be able to replace any terminating distributor in a timely manner or on terms agreeable to us, if at all. If we are not able to maintain our distribution network, if our distribution network is not successful in marketing and selling our products, or if we experience a significant reduction in, cancellation, or change in the size and timing of orders from our distributors, our revenues could decline significantly and lead to an inability to meet operating cash flow requirements, which would have a material adverse effect on our business, financial condition, and results of operations.

***Dentists and patients have been hesitant in adopting laser technologies, and our inability to overcome this hesitation could limit the market acceptance of our products and our market share.***

Our dental laser systems represent relatively new technologies in the dental market. Only a small percentage of dentists use lasers to perform dental procedures. Our future success will depend on our ability to increase demand for our products by demonstrating to a broad spectrum of dentists and patients the potential performance advantages of our laser systems over traditional methods of treatment and over competitive laser systems, and our inability to do so could have a material adverse effect on our business, financial condition, and results of operations. Historically, we have experienced long sales cycles because dentists have been, and could continue to be, slow to adopt new technologies on a widespread basis. As a result, we generally are required to invest a significant amount of time and resources to educate dentists about the benefits of our products in comparison to competing products and technologies before completing a sale, if any.

Factors that could inhibit adoption of laser technologies by dentists include cost and concerns about the safety, efficacy, and reliability of lasers. In order to invest in a Waterlase system, a dentist generally needs to invest time to understand the technology, consider how patients may respond to the new technology, assess the financial impact the investment could have on the dentist's practice and become comfortable performing procedures with our products. Absent an immediate competitive motivation, a dentist may not feel compelled to invest the time required to learn about the potential benefits of using a laser system. Dentists may not accept or adopt our products until they see additional clinical evidence supporting the safety and efficiency of our products or recommendations supporting our laser systems by influential dental practitioners. In addition, economic pressure, caused, for example, by an economic slowdown, changes in health care reimbursement or by competitive factors in a specific market, could make dentists reluctant to purchase substantial capital equipment or invest in new technologies. Patient acceptance will depend on the recommendations of dentists and specialists, as well as other factors, including the relative effectiveness, safety, reliability, and comfort of our systems as compared to other instruments and methods for performing dental procedures.

***Any failure in our efforts to train dental practitioners could result in the misuse of our products, reduce the market acceptance of our products and have a material adverse effect on our business, financial condition, and results of operations.***

There is a learning process involved for dental practitioners to become proficient users of our laser systems. It is critical to the success of our sales efforts to adequately train a sufficient number of dental practitioners. Following completion of training, we rely on the trained dental practitioners to advocate the benefits of our products in the broader marketplace. Convincing dental practitioners to dedicate the time and energy necessary for adequate training is challenging, and we cannot provide assurance that we will be successful in these efforts. If dental practitioners are not properly trained, they could misuse or ineffectively use our products, or could be less likely to appreciate our laser systems. This could also result in unsatisfactory patient outcomes, patient injury, negative publicity, FDA regulatory action, or lawsuits against us, any of which could negatively affect our reputation and sales of our laser systems.

***If future data proves to be inconsistent with our clinical results or if competitors' products present more favorable results our revenues could decline and our business, financial condition, and results of operations could be materially and adversely affected.***

If new studies or comparative studies generate results that are not as favorable as our clinical results, our revenues could decline. Additionally, if future studies indicate that our competitors' products are more effective or safer than ours, our revenues could decline. Furthermore, dental practitioners could choose not to purchase our laser systems until they receive additional published long-term clinical evidence and recommendations from prominent dental practitioners that indicate our laser systems are effective for dental applications.

***We face competition from other companies, many of which have substantially greater resources than we do. If we do not successfully develop and commercialize enhanced or new products that remain competitive with products or alternative technologies developed by others, we could lose revenue opportunities and customers and our ability to grow our business would be impaired.***

A number of competitors have substantially greater capital resources, larger customer bases, larger technical, sales and marketing forces and stronger reputations with target customers than ours. We compete with a number of domestic and foreign companies that market traditional dental products, such as dental drills, as well as companies that market laser technologies in the dental and medical markets. The marketplace is highly fragmented and very competitive. We expect that the rapid technological changes occurring in the health care industry could lead to the entry of new competitors, particularly if dental and medical lasers gain increasing market acceptance. If we do not compete successfully, our revenue and market share could decline, which would impact our ability to meet our operating cash flow requirements and our business, financial condition, and results of operations could be adversely affected.

Our long-term success depends upon our ability to (i) distinguish our products through improving our product performance and pricing, protecting our intellectual property, improving our customer support, accurately timing the introduction of new products, and developing sustainable distribution channels worldwide; and (ii) develop and successfully commercialize new products, new or improved technologies, and additional applications for our laser systems. We may not be able to distinguish our products and commercialize any new products, new or improved technologies, or additional applications for our laser systems.

***If our customers cannot obtain third-party reimbursement for their use of our products, they could be less inclined to purchase our products and our business, financial condition, and results of operations could be adversely affected.***

Our products are generally purchased by dental or medical professionals who have various billing practices and patient mixes. Such practices range from primarily private pay to those who rely heavily on third-party payers, such as private insurance or government programs. In the United States, third-party payers review and frequently challenge the prices charged for medical products and/or services. In many foreign countries, the prices for dental services are predetermined through government regulation. Payers could deny coverage and reimbursement on various grounds, including if they determine that the procedure was not medically necessary or that the device used in the procedure was investigational. Accordingly, both coverage and reimbursement can vary significantly from payer to payer. For the portion of dentists who rely heavily on third-party reimbursement, the inability to obtain reimbursement for services using our products could deter them from purchasing or using our products. We cannot predict the effect that future health care reforms or changes in financing for health and dental plans could have on our business. Any such changes could have an adverse effect on the ability of a dental or medical professional to generate a profit using our current or future products. In addition, such changes could act as disincentives for capital investments by dental and medical professionals.

***Our ability to use net operating loss carryforwards could be limited.***

Section 382 of the Internal Revenue Code of 1986 ("IRC") generally imposes an annual limitation on the amount of net operating loss carryforwards that may be used to offset taxable income when a corporation has undergone material changes in its stock ownership. In 2006, we completed an analysis to determine the applicability of the annual limitations imposed by IRC Section 382 caused by previous changes in our stock ownership and determined that such limitations should not be significant. Given our continued generation of losses since the completion of 2006 study, we have not updated the study. However, we plan to update the study if we expect to utilize net operating loss carryforwards in any future year. If we experience an ownership change as defined in IRC Section 382, utilization of the net operating loss carryforwards, research and development credit carryforwards, and other tax attributes, would be subject to an annual limitation under Section 382 of the IRC. In addition, our ability to utilize net operating loss carryforwards, research and development credit carryforwards, and other tax attributes may be limited by other changes outside our control, such as changes to applicable tax law. Any limitation may result in the expiration of a portion of the net operating loss or research and development credit carryforwards before utilization. If we lose our ability to use net operating loss carryforwards, any income we generate will be subject to tax earlier than it would be if we were able to use net operating loss carryforwards, resulting in lower profits which could have a material adverse effect on our business, financial condition, and results of operations.

***We could incur problems in manufacturing our products.***

In order to grow our business, we must expand our manufacturing capabilities to produce the systems and accessories necessary to meet any demand we may experience. We could encounter difficulties in increasing the production of our products, including problems involving production capacity and yields, quality control and assurance, component supply, and shortages of qualified personnel. In addition, before we can begin commercial manufacture of our products, we must ensure our manufacturing facilities, processes, and quality systems, and the manufacture of our laser systems, comply with FDA regulations governing facility compliance, quality control, and documentation policies and procedures. In addition, our manufacturing facilities are subject to periodic inspections by the FDA, as well as various state agencies and foreign regulatory agencies. From time to time, we could expend significant resources in obtaining, maintaining, and addressing our compliance with these requirements. Our success will depend in part upon our ability to manufacture our products in compliance with the FDA's Quality System Regulation and other regulatory requirements. We have experienced quality issues with components of our products supplied by third parties, and we could continue to do so. Our future success depends on our ability to manufacture our products on a timely basis with acceptable manufacturing costs, while at the same time maintaining good quality control and complying with applicable regulatory requirements, and an inability to do so could have a material adverse effect on our product sales, cash collections from customers, and our ability to meet operating cash flow requirements, which could have a material adverse effect on our business, financial condition, and results of operations.

***We could be subject to significant warranty obligations if our products are defective, which could have a material adverse effect on our business, financial condition, and results of operations.***

In manufacturing our products, we depend upon third parties for the supply of various components. Many of these components require a significant degree of technical expertise to design and produce. If we fail to adequately design, or if our suppliers fail to produce components to specification, or if the suppliers, or we, use defective materials or workmanship in the manufacturing process, the reliability and performance of our products will be compromised. We have experienced such non-compliance with manufacturing specifications in the past and could continue to experience such non-compliance in the future, which could lead to higher costs and reduced margins.

Our products could contain defects that cannot be repaired easily and inexpensively, and we have experienced in the past and could experience in the future some or all of the following:

- loss of customer orders and delay in order fulfillment;
- damage to our brand reputation;
- increased cost of our warranty program due to product repair or replacement;
- inability to attract new customers;
- diversion of resources from our manufacturing and engineering and development departments into our service department; and
- legal action.

***Adverse publicity regarding our technology or products could negatively impact us.***

Adverse publicity regarding any of our products or similar products marketed or sold by others could negatively affect us. If any studies raise or substantiate concerns regarding the efficacy or safety of our products or other concerns, our reputation could be harmed and demand for our products could diminish, which could have a material adverse effect on growth in new customers and sales of our product, leading to a decline in revenues, cash collections, and ultimately our ability to meet operating cash flow requirements.

Our products are used in minimally invasive surgical procedures, usually, though not always, without anesthesia. All surgical procedures carry some risk. Patients could experience adverse events or outcomes following a surgical procedure due to a multitude of different factors alone or in combination, including deficits in the skill, experience, and preparedness of the surgeon, the existence of underlying conditions or overall poor health of the patient, and defects, age, and misuse of medical products used in the procedure. Should an adverse patient event occur during the use of our products, there could be adverse publicity, increased scrutiny from regulatory agencies, and a loss of good will, even if it is ultimately shown to be caused by factors other than our product.

***Product liability claims against us could be costly and could harm our reputation.***

The sale of dental and medical devices involves the risk of product liability claims against us. Claims could exceed our product liability insurance coverage limits. Our insurance policies are subject to various standard coverage exclusions, including damage to the product itself, losses from recall of our product, and losses covered by other forms of insurance such as workers compensation. We cannot be certain that we will be able to successfully defend any claims against us, nor can we be certain that our insurance will cover all liabilities resulting from such claims. In addition, we cannot provide assurance that we will be able to obtain such insurance in the future on terms acceptable to us, or at all. Regardless of merit or eventual outcome, any product liability claim brought against us could result in harm to our reputation, decreased demand for our products, costs related to litigation, product recalls, loss of revenue, an increase in our product liability insurance rates, or the inability to secure coverage in the future, and could have a material adverse effect on our business by reducing cash collections from customers and limiting our ability to meet our operating cash flow requirements.

***Our suppliers may not supply us with a sufficient amount or adequate quality of materials, which could have a material adverse effect on our business, financial condition, and results of operations.***

Our business depends on our ability to obtain timely deliveries of materials, components, and subassemblies of acceptable quality and in acceptable quantities from third-party suppliers. We generally purchase components and subassemblies from a limited group of suppliers through purchase orders, rather than written supply contracts. Consequently, many of our suppliers have no obligation to continue to supply us on a long-term basis. In addition, our suppliers manufacture products for a range of customers, and fluctuations in demand for the products those suppliers manufacture for others could affect their ability to deliver components for us in a timely manner. Moreover, our suppliers could encounter financial hardships, be acquired, or experience other business events unrelated to our demand for components, which could inhibit or prevent their ability to fulfill our orders and satisfy our requirements.

Certain components of our products, particularly specialized components used in our laser systems, are currently available only from a single source or limited sources. For example, the crystal, fiber, and hand pieces used in our Waterlase systems are each supplied by a separate single supplier. Our dependence on single-source suppliers involves several risks, including limited control over pricing, availability, quality, and delivery schedules.

If any of our suppliers cease to provide us with sufficient quantities of our components in a timely manner or on terms acceptable to us, or ceases to manufacture components of acceptable quality, we could incur manufacturing delays and sales disruptions while we locate and engage alternative qualified suppliers, and we might be unable to engage acceptable alternative suppliers on favorable terms. In addition, we could need to reengineer our components, which could require product redesign and submission to the FDA of a 510(k) application, which could significantly delay production. Any interruption or delay in the supply of components or materials, or our inability to obtain components or materials from alternate sources at acceptable prices in a timely manner, could impair our ability to meet the demand of our customers and cause them to cancel orders or switch to competitive procedures. We are continually in the process of identifying and qualifying alternate source suppliers for our key components. There can be no assurance, however, that we will successfully identify and qualify an alternate source supplier for any of our key components or that we could enter into an agreement with any such alternate source supplier on terms acceptable to us, or at all.

***Rapidly changing standards and competing technologies could harm demand for our products, result in significant additional costs, and have a material adverse effect on our business, financial condition, and results of operations.***

The markets in which our products compete are subject to rapid technological change, evolving industry standards, changes in the regulatory environment, and frequent introductions of new devices and evolving dental and surgical techniques. Competing products could emerge that render our products uncompetitive or obsolete. The process of developing new medical devices is inherently complex and requires regulatory approvals or clearances that can be expensive, time-consuming, and uncertain. We cannot guarantee that we will successfully identify new product opportunities, identify new and innovative applications of our technology, or be financially or otherwise capable of completing the research and development required to bring new products to market in a timely manner. An inability to expand our product offerings or the application of our technology could limit our growth. In addition, we could incur higher manufacturing costs if manufacturing processes or standards change, and we could need to replace, modify, design, or build and install equipment, all of which would require additional capital expenditures.

***We could be unable to effectively manage and implement our growth strategies, which could have a material adverse effect on our business, financial condition, and results of operations.***

Our growth strategy includes expanding our product line and clinical applications by developing enhancements and transformational innovations, including new clinical solutions for dental applications and for other adjacent medical applications. Expansion of our existing product line and entry into new medical applications divert the use of our resources and systems, require additional resources that might not be available (or available on acceptable terms), require additional country-specific regulatory approvals, result in new or increasing competition, could require longer implementation times or greater start-up expenditures than anticipated, and could otherwise fail to achieve the desired results in a timely fashion, if at all. These efforts could also require that we successfully commercialize new technologies in a timely manner, price them competitively and cost-effectively, and manufacture and deliver sufficient volumes of new products of appropriate quality on time. We could be unable to increase our sales and earnings by expanding our product offerings in a cost-effective manner, and we could fail to accurately predict future customer needs and preferences or to produce viable technologies. In addition, we could invest heavily in research and development of products that do not lead to significant revenue. Even if we successfully innovate and develop new products and product enhancements, we could incur substantial costs in doing so. In addition, promising new products could fail to reach the market or realize only limited commercial success because of efficacy or safety concerns, failure to achieve positive clinical outcomes, or uncertainty over third-party reimbursement.

***We have significant international sales and are subject to risks associated with operating in international markets.***

International sales comprise a significant portion of our net revenue, and we intend to continue to pursue and expand our international business activities. For the fiscal years ended December 31, 2019, 2018, and 2017, international sales accounted for approximately 40%, 38%, and 38% of our net revenue, respectively. Political, economic, and health conditions outside the United States, could make it difficult for us to increase our international revenue or to operate abroad. For example, efforts to contain the outbreak of COVID-19 in Asia and Europe included travel restrictions and closures of dental offices and clinics, significantly adversely impacting our international sales in the first quarter of 2020.

In addition, international operations are subject to many inherent risks, which could have a material adverse effect on our revenues and operating cash flow, including among others:

- adverse changes in tariffs and trade restrictions;
- political, social, and economic instability and increased security concerns;
- fluctuations in foreign currency exchange rates;
- longer collection periods and difficulties in collecting receivables from foreign entities;
- exposure to different legal standards;
- transportation delays and difficulties of managing international distribution channels;
- reduced protection for our intellectual property in some countries;
- difficulties in obtaining domestic and foreign export, import, and other governmental approvals, permits, and licenses, and compliance with foreign laws;
- the imposition of governmental controls;
- unexpected changes in regulatory or certification requirements;
- difficulties in staffing and managing foreign operations; and
- potentially adverse tax consequences and the complexities of foreign value-added tax systems.

We believe that international sales will continue to represent a significant portion of our net revenue, and we intend to expand our international operations further. In international markets where our sales are denominated in U.S. dollars, an increase in the relative value of the dollar against the currency in such markets could indirectly increase the price of our products in those markets and result in a decrease in sales. We do not currently engage in any transactions as a hedge against risks of loss due to foreign currency fluctuations. However, we could do so in the future.

***We could be subject to breaches of our information technology systems, which could damage our reputation and customer relationships. Such breaches could subject us to significant reputational, financial, legal, and operational consequences.***

We rely on information systems ("IS") in our business to obtain, rapidly process, analyze and manage data to, among other things:

- facilitate the purchase and distribution of thousands of inventory items through numerous distributors;
- receive, process and ship orders on a timely basis;
- accurately bill and collect from thousands of customers;

- process payments to suppliers; and
- provide technical support to our customers.

A cyber-attack that bypasses our IS security, or employee error, malfeasance or other disruptions that cause an IS security breach could lead to a material disruption of our IS and/or the loss of business information. Such an attack could result in, among other things:

- the theft, destruction, loss, misappropriation or release of confidential data and intellectual property;
- operational or business delays;
- liability for a breach of personal financial and health information belonging to our customers and their patients or to our employees; and
- damage to our reputation.

Any of these results could have a material adverse effect on our business due to the time and expense to respond to such an attack, recover data, and remediate IS weaknesses, which would disrupt our daily business operations. Further, in the event of an attack, we would be exposed to a risk of loss or litigation and possible liability, including under laws that protect the privacy of personal information.

***Our revenue and operating results fluctuate due to seasonality and other factors, so you should not rely on quarter-to-quarter comparisons of our operating results as an indication of our future performance.***

Our revenue typically fluctuates from quarter to quarter due to a number of factors, many of which are beyond our control. Revenue in the first quarter typically is lower than average, and revenue in the fourth quarter typically is stronger than average due to the buying patterns of dental practitioners. We believe that this trend exists because a significant number of dentists purchase their capital equipment towards the end of the calendar year in order to maximize their practice earnings while seeking to minimize their taxes. They often use certain tax incentives, such as accelerated depreciation methods for purchasing capital equipment, as part of their year-end tax planning. In addition, revenue in the third quarter could be affected by vacation patterns, which can cause revenue to be flat or lower than in the second quarter of the year. Our historical seasonal fluctuations could also be impacted by sales promotions used by large dental distributors that encourage end-of-quarter and end-of-year buying in our industry. Other factors that might cause quarterly fluctuations in our revenue and operating results include the following:

- variation in demand for our products;
- our ability to research, develop, market, and sell new products and product enhancements in a timely manner;
- our ability to control costs;
- our ability to control quality issues with our products;
- regulatory actions that impact our manufacturing processes;
- the size, timing, rescheduling, or cancellation of orders from distributors;
- the introduction of new products by competitors;
- the length of and fluctuations in sales cycles;
- the availability and reliability of components used to manufacture our products;
- changes in our pricing policies or those of our suppliers and competitors, as well as increased price competition in general;
- legal expenses, particularly related to litigation matters;
- general economic conditions including the availability of credit for our existing and potential customer base to finance purchases;
- the mix of our domestic and international sales and the risks and uncertainties associated with international business;

- costs associated with any future acquisitions of technologies and businesses;
- limitations on our ability to use net operating loss carryforwards under the provisions of IRC Section 382 and similar state laws;
- developments concerning the protection of our intellectual property rights;
- catastrophic events such as hurricanes, floods, and earthquakes, which can affect our ability to advertise, sell, and distribute our products, including through national conferences held in regions in which these disasters strike; and
- global economic, political, and social events, including international conflicts and acts of terrorism, including the recent outbreak of COVID-19.

The expenses we incur are based, in large part, on our expectations regarding future net revenue. Since many of our costs are fixed in the short term, we could be unable to reduce expenses quickly enough to avoid losses if we experience a decrease in expected net revenue. Accordingly, you should not rely on quarter-to-quarter comparisons of our operating results as an indication of our future performance.

***Litigation against us could be costly and time-consuming to defend and could materially and adversely affect our business, financial condition, and results of operations.***

We are from time to time involved in various claims, litigation matters and regulatory proceedings incidental to our business, including claims for damages arising out of the use of our products or services and claims relating to intellectual property matters, employment matters, commercial disputes, competition, sales and trading practices, environmental matters, personal injury, and insurance coverage. Some of these lawsuits include claims for punitive as well as compensatory damages. The defense of these lawsuits could divert our management's attention, and we could incur significant expenses in defending these lawsuits. In addition, we could be required to pay damage awards or settlements or become subject to unfavorable equitable remedies. Moreover, any insurance or indemnification rights that we could have may be insufficient or unavailable to protect us against potential loss exposures.

***Our operations are consolidated primarily in one facility. A disruption at this facility could result in a prolonged interruption of our business and have a material adverse effect on our business, financial condition, and results of operations.***

Substantially all of our administrative operations and our manufacturing operations are located at our facility in Irvine, California, which is near known earthquake fault zones. Although we have taken precautions to safeguard our facilities including disaster recovery planning and off-site backup of computer data, a natural disaster such as an earthquake, fire, or flood, could seriously harm our facility and significantly disrupt our operations. Additionally, labor disputes, maintenance requirements, power outages, equipment failures, civil unrest, or terrorist attacks affecting our Irvine, California facility could significantly disrupt our operations. Our business interruption insurance coverage may not cover all or any of our losses from natural disasters or other disruptions.

***If we lose our key management personnel, or are unable to attract or retain qualified personnel, it could adversely affect our ability to execute our growth strategy.***

Our success is dependent, in part, upon our ability to hire and retain management, engineers, marketing and sales personnel, and technical, research and other personnel who are in high demand and are often subject to competing employment opportunities. Our success will depend on our ability to retain our current personnel and to attract and retain qualified like personnel in the future. Competition for senior management, engineers, marketing and sales personnel, and other specialized technicians is intense and we may not be able to retain our personnel. If we lose the services of any executive officers or key employees, our ability to achieve our business objectives could be harmed or delayed, which could have a material adverse effect on our daily operations, operating cash flows, results of operations, and ultimately share price. In general, our officers could terminate their employment at any time without notice for any reason.

***Acquisitions involve risks and uncertainties, including difficulties integrating acquired businesses successfully into our existing operations and risks of discovering previously undisclosed liabilities.***

Successful acquisitions depend upon our ability to identify, negotiate, complete, and integrate suitable acquisitions and to obtain any necessary financing. We expect to continue to consider opportunities to acquire or make investments in other technologies, products and businesses that could enhance our capabilities, complement our current products, or expand the breadth of our markets or customer base. We have limited experience in acquiring other businesses and technologies. Even if we complete acquisitions, we could experience:

- difficulties in integrating any acquired companies, personnel, products, and other assets into our existing business;
- delays in realizing the benefits of the acquired company, product, or other assets;
- diversion of our management's time and attention from other business concerns;
- limited or no direct prior experience in new markets or countries we could enter;
- higher costs of integration than we anticipated; and
- difficulties in retaining key employees of the acquired business.

In addition, an acquisition could cause us to incur debt or issue shares, resulting in dilution to existing stockholders. We could also discover deficiencies in internal controls, data adequacy and integrity, product quality, regulatory compliance, and product liabilities that we did not uncover prior to our acquisition of such businesses, which could result in us becoming subject to penalties or other liabilities. Any difficulties in the integration of acquired businesses or unexpected penalties or liabilities in connection with such businesses could have a material adverse effect on our business, financial condition, and results of operations.

***Continued failure to meet covenants in the Credit Agreements with our debt agreements could result in acceleration of our payment obligations thereunder, and we may not be able to find alternative financing.***

Under the Credit Agreement dated November 9, 2018 (as amended from time to time, the "Credit Agreement"), between BIOLASE, Inc. and SWK Funding, LLC ("SWK"), we are required to maintain a specified amount of consolidated unencumbered liquid assets as of the end of each fiscal quarter, generate minimum levels of revenue as of the end of each period specified in the Credit Agreement and maintain specified levels of consolidated EBITDA as of the end of each period specified in the Credit Agreement. Our ability to comply with these covenants may be affected by factors beyond our control. Pursuant to the terms and conditions of the Second Amendment to the Credit Agreement, dated as of September 30, 2019, between BIOLASE and SWK, SWK agreed to waive the BIOLASE's non-compliance with the consolidated unencumbered liquid assets requirement for the quarter ended September 30, 2019, subject to the satisfaction of certain conditions prior to October 31, 2019. In connection with such amendment, SWK agreed that we could enter into a revolving loan facility in an amount up to $5,000,000 that would be secured by our inventory and accounts receivable, subject to the terms and conditions set forth in that amendment. On October 28, 2019, the Company entered into a loan and security agreement with Pacific Mercantile Bank ("PMB Loan"), which provides a revolving line of credit. The PMB Loan In addition, the Loan and Security Agreement dated October 28, 2019 ("PMB Loan"), between BIOLASE and Pacific Mercantile Bank requires the Company to maintain certain levels of liquidity and to raise at least $5.0 million through the sale of equity securities before December 31, 2019. In the fourth quarter of 2019, the Company consummated the sale of approximately 9.0 million shares of its common stock for gross proceeds of $5.2 million and the sale of approximately 70 shares of our Series E Convertible Preferred Stock for gross proceeds of approximately $4.0 million. Our ability to comply with the covenants in our debt agreements may be affected by factors beyond our control, including, without limitation, the impact of the COVID-19 pandemic and efforts taken to contain it. Pursuant to four separate amendments to the Credit Agreement, SWK has agreed to waive BIOLASE's non-compliance with certain financial covenants in the Credit Agreement as of March 31, 2019, September 30, 2019, December 31, 2019 and March 31, 2020. We were not in compliance with the financial covenants in the Credit Agreement as of December 31, 2019, and we do not anticipate that we will regain compliance by March 31, 2020. In light of the recent uncertainty of the COVID-19 pandemic and its impact on our financial results, we reclassified the Term Loan from a long-term liability to a current liability in the consolidated balance sheets. There is no assurance that we will be able to obtain similar waivers of non-compliance in the future.

If we fail to comply with the covenants contained in the Credit Agreement or if the Required Lenders (as defined in the Credit Agreement) contend that we have failed to comply with these covenants or any other restrictions, it could result in an event of default under the Credit Agreement, which would permit or, in certain events, require SWK to declare all amounts outstanding thereunder to be immediately due and payable. There can be no assurances that we will be able to repay all such amounts or able to find alternative financing in an event of a default. Even if alternative financing is available in an event of a default under the Credit Agreement, it may be on unfavorable terms, and the interest rate charged on any new borrowings could be substantially higher than the interest rate under the Credit Agreement, thus adversely affecting cash flows, results of operations, and ultimately, our ability to meet operating cash flow requirements.

***Our variable rate indebtedness under the Credit Agreement subjects us to interest rate risk, which could result in higher expense in the event of increases in interest rates and adversely affect our business, financial condition, and results of operations.***

Borrowings under the Credit Agreement bear interest at a rate that varies depending on the London Interbank Offered Rate ("LIBOR") or a replacement index that approximates LIBOR should LIBOR no longer be available. As a result, we are exposed to interest rate risk. If LIBOR rises, the interest rate on outstanding borrowings under the Credit Agreement will increase. Therefore, an increase in LIBOR will increase our interest payment obligations under the Credit Agreement and have a negative effect on our cash flow and possibly our ability to meet operating cash flow requirements.

***The restrictive covenants in the Credit Agreement and the PMB Loan and BIOLASE's obligation to make debt payments under these loans may limit our operating and financial flexibility and may adversely affect the Company's business, financial condition, and results of operations.***

The Credit Agreement imposes operating and financial restrictions and covenants, which may limit or prohibit our ability to, among other things:

- incur additional indebtedness;
- make investments, including acquisitions;
- create liens;
- make dividends, distributions or other restricted payments;
- effect affiliate transactions;
- enter into mergers, divisions, consolidations or sales of substantially all of our or our subsidiaries' assets;
- change business activities and issue equity interests; or
- sell material assets (without using the proceeds thereof to repay the obligations under the Credit Agreement).

In addition, we are required to comply with certain financial covenants under the Credit Agreement as described above.

Such restrictive covenants in the Credit Agreement and the PMB Loan and our repayment obligations under the Credit Agreement could have adverse consequences to us, including:

- limiting our ability to use cash;
- limiting our flexibility in operating our business and planning for, or reacting to, changes in our business and our industry;
- requiring the dedication of a substantial portion of any cash flow from operations to the payment of principal of, and interests on, the indebtedness, thereby reducing the availability of such cash flow to fund our operations, working capital, capital expenditures, future business opportunities and other general corporate purposes;
- restricting us from making strategic acquisitions or causing us to make non-strategic divestitures;
- limiting our ability to obtain additional financing;

- limiting our ability to adjust to changing market conditions; and
- placing us at a competitive disadvantage relative to our competitors who are less highly leveraged.

***If we fail to comply with the terms of the Credit Agreement and there is an event of default, the creditor(s) may foreclose upon the assets securing our obligations thereunder.***

To secure the performance of our obligations under the Credit Agreement, we granted SWK security interests in substantially all of the assets of BIOLASE and certain of our foreign and domestic subsidiaries. In addition, the PMB Loan is secured by substantially all of the Company's assets. We were not in compliance with the financial covenants in the Credit Agreement as of December 31, 2019, and we do not anticipate that we will regain compliance by March 31, 2020. Pursuant to four separate amendments to the Credit Agreement, SWK has agreed to waive BIOLASE's non-compliance with certain financial covenants in the Credit Agreement as of March 31, 2019, September 30, 2019, December 31, 2019 and March 31, 2020. However, there is no assurance that we will be able to obtain similar waivers of non-compliance in the future. Our failure to comply with the terms of the Credit Agreement could result in an event of default thereunder. In that event, SWK will have the option to (and, in certain circumstances, will have the obligation to) foreclose on the assets of BIOLASE and certain of our subsidiaries pledged as collateral under the Credit Agreement or the other documents executed in connection with the Credit Agreement. The foreclosure on the Company's assets could severely and negatively impact our business, financial condition, and results of operations.

***If certain individuals (or permitted replacements thereof) no longer serve as our Chairman, Chief Executive Officer or Chief Financial Officer, we may be obligated to pay all outstanding obligations and certain fees under the Credit Agreement.***

The Credit Agreement provides that, unless such actions are consented to in advance in writing by SWK, if two or more of the three of Jonathan Lord, Todd Norbe and John Beaver (or, in each case, his approved successor) at any one time no longer serves in their current positions with the Company and we do not find individuals to replace such individuals within 150 days (or in certain circumstances 210 days), with individuals of appropriate qualification and experience approved in writing by SWK (which approval may not be unreasonably withheld or delayed), there is a "Key Person Event" and all outstanding obligations and certain fees under the Credit Agreement become immediately due and payable. Whether Mr. Lord, Mr. Norbe and Mr. Beaver remain our Chairman, Chief Executive Officer and Chief Financial Officer, respectively, is not entirely under our control. Although we intend to find an appropriate replacement satisfactory to SWK if any of Mr. Lord, Mr. Norbe or Mr. Beaver leaves his current position, there is no assurance that we will be able find such a replacement within the time period permitted under the Credit Agreement, if at all. If there is a Key Person Event, there can be no assurance that we will be able to repay all outstanding obligations and fees payable or able to find alternative financing. Even if alternative financing is available, it may be on unfavorable terms, and the interest rate charged on any new borrowings could be substantially higher than the interest rate under the Credit Agreement, thus adversely affecting our business, financial condition, and results of operations.

***If we fail to comply with the reporting obligations of the Exchange Act and Section 404 of the Sarbanes-Oxley Act, or if we fail to maintain adequate internal control over financial reporting, our business, financial condition, and results of operations, and investors' confidence in us, could be materially and adversely affected.***

As a public company, we are required to comply with the periodic reporting obligations of the Exchange Act, including preparing annual reports, quarterly reports, and current reports. Our failure to prepare and disclose this information in a timely manner and meet our reporting obligations in their entirety could subject us to penalties under federal securities laws and regulations of the NASDAQ, expose us to lawsuits, and restrict our ability to access financing on favorable terms, or at all.

In addition, pursuant to Section 404 of the Sarbanes-Oxley Act, we are required to evaluate and provide a management report of our systems of internal control over financial reporting. During the course of the evaluation of our internal control over financial reporting, we could identify areas requiring improvement and could be required to design enhanced processes and controls to address issues identified through this review. This could result in significant delays and costs to us and require us to divert substantial resources, including management time, from other activities.

In 2019, we identified a material weakness in our internal control over financial reporting, specifically, our controls relating to the accounting for our Series E Convertible Preferred Stock. During our review of the consolidated financial statements as of December 31, 2019, we determined that the classification of the Series E Convertible Preferred Stock on the consolidated balance sheet was incorrect and that due to the fact that the Series E Convertible Preferred Stock is redeemable at the control of the stockholder, it should have been classified as mezzanine equity pursuant to the accounting guidance in Accounting Standards Codification Topic 480 – "*Distinguishing Liabilities from Equity,"* and not a component of permanent equity. We believe that these control deficiencies were a result of and misinterpretation of the terms and conditions of the Preferred Stock Agreement which led to the misclassification. The error was corrected and the material weakness did not result in any identified misstatements to the financial statements, and there were no changes to previously released financial results. Based on this material weakness, the Company's management concluded that at December 31, 2019, the Company's internal control over financial reporting was not effective.

If we fail to remediate the material weakness in a timely manner or any failure to maintain compliance with the requirements of Section 404 on a timely basis could result in the loss of investor confidence in the reliability of our financial statements, which in turn could, negatively impact the trading price of our stock, and adversely affect investors' confidence in the Company and our ability to access capital markets for financing.

***Climate change initiatives could materially and adversely affect our business, financial condition, and results of operations.***

Our manufacturing processes require that we purchase significant quantities of energy from third parties, which results in the generation of greenhouse gases, either directly on-site or indirectly at electric utilities. Both domestic and international legislation to address climate change by reducing greenhouse gas emissions and establishing a price on carbon could create increases in energy costs and price volatility. Considerable international attention is now focused on development of an international policy framework to address climate change. Proposed and existing legislative efforts to control or limit greenhouse gas emissions could affect our energy source and supply choices as well as increase the cost of energy and raw materials derived from sources that generate greenhouse gas emissions. If our suppliers are unable to obtain energy at a reasonable cost in the future, the cost of our raw materials could be negatively impacted which could result in increased manufacturing costs.

**Risks Related to Our Intellectual Property**

***If the patents that we own or license, or our other intellectual property rights, do not adequately protect our technologies, we could lose market share to our competitors and be unable to operate our business profitably.***

Our future success depends, in part, on our ability to obtain and maintain patent protection for our products and technology, to preserve our trade secrets and to operate without infringing the intellectual property of others. We rely on patents to establish and maintain proprietary rights in our technology and products. We currently possess a number of issued patents and patent applications with respect to our products and technology. However, we cannot ensure that any additional patents will be issued, that the scope of any patent protection will be effective in helping us address our competition, or that any of our patents will be held valid if subsequently challenged. It is also possible that our competitors could independently develop similar or more desirable products, duplicate our products, or design products that circumvent our patents. The laws of foreign countries may not protect our products or intellectual property rights to the same extent as the laws of the United States. In addition, there have been recent changes in the patent laws and rules of the U.S. Patent and Trademark Office, and there could be future proposed changes that, if enacted, have a significant impact on our ability to protect our technology and enforce our intellectual property rights. If we fail to protect our intellectual property rights adequately, our competitive position could be adversely affected, and there could be a material adverse effect on sales, cash collections, and our ability to meet operating cash flow requirements.

***If third parties claim that we infringe their intellectual property rights, we could incur liabilities and costs and have to redesign or discontinue selling certain products, which could have a material adverse effect on our business, financial condition, and results of operations.***

We face substantial uncertainty regarding the impact that other parties' intellectual property positions will have on dental and other medical laser applications. The medical technology industry has in the past been characterized by a substantial amount of litigation and related administrative proceedings regarding patents and intellectual property rights. From time to time, we have received, and we expect to continue to receive, notices of claims of infringement, misappropriation, or misuse of other parties' proprietary rights. Some of these claims could lead to litigation. We may not prevail in any future intellectual property infringement litigation given the complex technical issues and inherent uncertainties in litigation. Any claims, with or without merit, could be time-consuming and distracting to management, result in costly litigation, or cause product shipment delays. Adverse determinations in litigation could subject us to significant liability and could result in the loss of proprietary rights. A successful lawsuit against us could also force us to cease selling or redesign products that incorporate the infringed intellectual property. Additionally, we could be required to seek a license from the holder of the intellectual property to use the infringed technology, and we may not be able to obtain a license on acceptable terms, or at all.

## Risks Related to Our Regulatory Environment

***Changes in government regulation or the inability to obtain or maintain necessary government approvals could have a material adverse effect on our business, financial condition, and results of operations.***

Our products are subject to extensive government regulation, both in the United States and in other countries. To clinically test, manufacture, and market products for human use, we must comply with regulations and safety standards set by the FDA and comparable state and foreign agencies. Regulations adopted by the FDA are wide-ranging and govern, among other things, product design, development, manufacture and control testing, labeling control, storage, advertising, and sales. Generally, products must meet regulatory standards as safe and effective for their intended use before being marketed for human applications. The clearance process is expensive, time-consuming, and uncertain. Failure to comply with applicable regulatory requirements of the FDA can result in an enforcement action, which could include a variety of sanctions, including fines, injunctions, civil penalties, recall or seizure of our products, operating restrictions, partial suspension, or total shutdown of production and criminal prosecution. The failure to receive or maintain requisite approvals for the use of our products or processes, or significant delays in obtaining such approvals, could prevent us from developing, manufacturing, and marketing products and services necessary for us to remain competitive.

If we develop new products and applications or make any significant modifications to our existing products or labeling, we will need to obtain additional regulatory clearances or approvals. Any modification that could significantly affect a product's safety or effectiveness, or that would constitute a change in its intended use, will require a new FDA 510(k) clearance, or could require a premarket approval ("PMA") application. The FDA requires each manufacturer to make this determination initially, but the FDA can review any such decision and can disagree with a manufacturer's determination. If the FDA disagrees with a manufacturer's determination, the FDA can require the manufacturer to cease marketing and/or recall the modified device until 510(k) clearance or PMA is obtained. If 510(k) clearance is denied and a PMA application is required, we could be required to submit substantially more data and conduct human clinical testing and would very likely be subject to a significantly longer review period.

Products sold in international markets are also subject to the regulatory requirements of each respective country or region. The regulations of the European Union require that a device have a CE Mark, indicating conformance with European Union laws and regulations before it can be sold in the European Union. The regulatory international review process varies from country to country. We rely on our distributors and sales representatives in the foreign countries in which we market our products to comply with the regulatory laws of such countries. Failure to comply with the laws of such countries could prevent us from continuing to sell products in such countries. In addition, unanticipated changes in existing regulatory requirements or the adoption of new requirements could impose significant costs and burdens on us, which could increase our operating expenses.

Changes in health care regulations in the U.S. and elsewhere could adversely affect the demand for our products as well as the way in which we conduct our business. For example, in 2010, President Obama signed the Affordable Care Act into law, which included various reforms impacting Medicare coverage and reimbursement, including revision to prospective payment systems, any of which could adversely impact any Medicare reimbursements received by our end-user customers. New legislation may be enacted as President Trump and Congress consider further reform. In addition, as a result of the focus on health care reform, there is risk that Congress could implement changes in laws and regulations governing health care service providers, including measures to control costs, and reductions in reimbursement levels. We cannot be sure that government or private third-party payers will cover and reimburse the procedures using our products, in whole or in part, in the future, or that payment rates will be adequate. If providers cannot obtain adequate coverage and reimbursement for our products, or the procedures in which they are used, our business, results of operations, and financial condition could suffer.

***We could be subject to or otherwise affected by federal and state health care laws, including fraud and abuse and health information privacy and security laws, and we could face substantial penalties if we are unable to fully comply with such regulations.***

We are directly or indirectly, through our customers, subject to extensive regulation by both the federal government and the states and foreign countries in which we conduct our business. The laws that directly or indirectly affect our ability to operate our business include, but are not limited to, the following:

- the Federal Food, Drug, and Cosmetic Act, which regulates the design, testing, manufacture, labeling, marketing, distribution, and sale of prescription drugs and medical devices and which includes the Radiation Control for Health and Safety Act, under which the FDA has established reporting, recordkeeping, and performance requirements for laser products;
- state food and drug laws;
- the federal Anti-Kickback Statute, which prohibits persons from knowingly and willfully soliciting, offering, receiving, or providing remuneration, directly or indirectly, to induce the referral for the furnishing of, or the purchase, order, or recommendation of, a good or service, for which payment could be made under FHCPs such as Medicare, Medicaid, and TRICARE;
- state law equivalents to the federal Anti-Kickback Statute, which may not be limited to government reimbursed items;
- state laws that prohibit fee-splitting arrangements;
- the federal Civil False Claims Act, which imposes liability on any person or entity that knowingly presents, or causes to be presented, a false or fraudulent claim for payment to the government, including FHCPs;
- state false claims laws that prohibit anyone from presenting, or causing to be presented, claims for payment to third-party payers that are false or fraudulent;

- federal crimes for knowingly and willfully executing a scheme to defraud any health care benefit program or making false statements in connection with the delivery of or payment for items or services under a health care benefit program;

- federal law prohibiting offering remuneration to a Medicare or Medicaid beneficiary to influence the beneficiary's selection of a particular provider, practitioner, or supplier;

- the federal Stark Law, which, in the absence of a statutory or regulatory exception, prohibits: (i) the referral of Medicare or Medicaid patients by a physician to an entity for the provision of designated health care services, if the physician or a member of the physician's immediate family has a direct or indirect financial relationship, including an ownership interest in, or a compensation arrangement with, the entity and (ii) submitting a bill to Medicare or Medicaid for services rendered pursuant to a prohibited referral;

- state law equivalents to the Stark Law, which may not be limited to government reimbursed items;

- the Physician Payments Sunshine Act, which requires us to report annually to the CMS certain payments and other transfers of value we make to U.S.-licensed physicians, dentists, and teaching hospitals;

- the Foreign Corrupt Practices Act ("FCPA"), which generally prohibits companies and their intermediaries from paying anything of value to foreign officials to influence any decision of the foreign official in his/her official capacity or to secure any other improper advantage to obtain or retain business;

- HIPAA and HITECH implementing regulations, which govern the use, disclosure, and safeguarding of PHI;

- state privacy laws that protect the confidentiality of patient information;

- Medicare and Medicaid laws and regulations that prescribe the requirements for coverage and payment, including the amount of such payment; state laws that prohibit the practice of medicine by non-physicians; and

- the Federal Trade Commission Act and similar laws regulating advertising and consumer protection.

If our past or present operations are found to be in violation of any of the laws described above or the other governmental laws or regulations to which we or our customers are subject, we could be subject to the applicable penalty associated with the violation, which could include civil and criminal penalties, damages, fines, exclusion from FHCPs, and the curtailment or restructuring of our operations. If we are required to obtain permits or licensure under these laws that we do not already possess, we could become subject to substantial additional regulation or incur significant expense. Any penalties, damages, fines, or curtailment or restructuring of our operations could be significant. The risk of potential non-compliance is increased by the fact that many of these laws have not been fully interpreted by applicable regulatory authorities or the courts, and their provisions are open to a variety of interpretations and additional legal or regulatory change. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses, divert our management's attention from the operation of our business, damage our reputation, and cause a material adverse effect on sales, cash collections, and our ability to meet operating cash flow requirements.

***We could be exposed to liabilities under the FCPA, and any determination that we violated the FCPA could have a material adverse effect on our business, financial condition, and results of operations.***

In light of our operations outside the United States, we are subject to the FCPA, which generally prohibits companies and their intermediaries from offering to pay, promising to pay, or authorizing the payment of money or anything of value to non-U.S. officials for the purpose of influencing any act or decision of the foreign official in his/her capacity or to secure any other improper advantage to obtain or retain business. Violation of the anti-bribery provisions of the FCPA can result in criminal fines of up to $2 million and civil penalties of up to $16,000 for each violation. Individuals, including officers, directors, stockholders, and agents of companies, can be subject to a criminal fine of up to $250,000 and imprisonment, in addition to civil penalties of up to $16,000, per violation. We could be held liable for actions taken by our distributors in violation of the FCPA, even though such partners are foreign companies that may not be subject to the FCPA. Any determination that we violated the FCPA could result in sanctions that could have a material adverse effect on our business, financial condition, and results of operations.

***Product sales or introductions could be delayed or canceled as a result of the FDA regulatory requirements applicable to laser products, dental devices, or both, which could cause our sales or profitability to decline and have a material adverse effect on our business, financial condition, and results of operations.***

The process of obtaining and maintaining regulatory approvals and clearances to market a medical device from the FDA and similar regulatory authorities abroad can be costly and time-consuming, and we cannot provide assurance that such approvals and clearances will be granted. Pursuant to FDA regulations, unless exempt, the FDA permits commercial distribution of a new medical device only after the device has received 510(k) clearance or is the subject of an approved PMA. The FDA will clear marketing of a medical device through the 510(k) process if it is demonstrated that the new product is substantially equivalent to other 510(k)-cleared products. The PMA process is more costly, lengthy and uncertain than the 510(k) process, and must be supported by extensive data, including data from preclinical studies, and human clinical trials. Because we cannot provide assurance that any new products, or any product enhancements, that we develop will be subject to the shorter 510(k) clearance process, significant delays in the introduction of any new products or product enhancement could occur. We cannot provide assurance that the FDA will not require a new product or product enhancement to go through the lengthy and expensive PMA process. Delays in obtaining regulatory clearances and approvals could:

- delay or eliminate commercialization of products we develop;
- require us to perform costly procedures;
- diminish any competitive advantages that we may attain; and
- reduce our ability to collect revenues or royalties.

Although we have obtained 510(k) clearance from the FDA to market our dental laser systems, we cannot provide assurance that we will not be required to obtain new clearances or approvals for modifications or improvements to our products.

***Our products are subject to recalls and other regulatory actions after receiving FDA clearance or approval.***

The FDA and similar governmental bodies in other countries have the authority to require the recall of our products in the event of material deficiencies or defects in design or manufacture. A government mandated or voluntary recall by us could occur as a result of component failures, manufacturing errors, or design defects, including defects in labeling. Any recall would divert management’s attention and financial resources and harm our reputation with customers. Any recall involving our laser systems would be particularly harmful to us, because our laser systems comprise such an important part of our portfolio of products. However, any recall could have a material adverse effect on our business, financial condition, and results of operations.

## Risks Related to Our Stock

***Failure to meet NASDAQ's continued listing requirements could result in the delisting of our common stock, negatively impact the price of our common stock and negatively impact our ability to raise additional capital.***

On December 3, 2019, we received a deficiency letter from the Listing Qualifications Department of The NASDAQ stating that, for the preceding 30 consecutive business days, the bid price for the Company's common stock had closed below the minimum $1.00 per share requirement for continued inclusion on the NASDAQ pursuant to NASDAQ Listing Rule 5550(a)(2) (the "Bid Price Rule"). In accordance with NASDAQ rules, we have been provided an initial period of 180 calendar days, or until June 1, 2020 (the "Compliance Date"), to regain compliance with the Bid Price Rule. If, at any time before the Compliance Date, the bid price for our common stock closes at $1.00 or more for a minimum of 10 consecutive business days, the Staff will provide written notification to us that it complies with the Bid Price Rule.

If we do not regain compliance with the Bid Price Rule by the Compliance Date, we may be eligible for an additional 180 calendar day compliance period. To qualify, we would need to provide written notice of our intention to cure the deficiency during the additional compliance period, by effecting a reverse stock split, if necessary, provided that it meets the continued listing requirement for the market value of publicly held shares and all other initial listing standards, with the exception of the bid price requirement.

If we do not regain compliance with the Bid Price Rule by the Compliance Date and are not eligible for an additional compliance period at that time, the Staff will provide written notification to us that our common stock may be delisted. At that time, we may appeal the Staff's delisting determination to a NASDAQ Listing Qualifications Panel.

We intend to monitor the closing bid price of our common stock and may, if appropriate, consider available options to regain compliance with the Bid Price Rule. However, we may not regain compliance with the Bid Price Rule or any of the other NASDAQ continued listing requirements in the future.

If, in the future, we fail to comply with NASDAQ's continued listing requirements, our common stock will be subject to delisting. If that were to occur, our common stock would be subject to rules that impose additional sales practice requirements on broker-dealers who sell our securities. The additional burdens imposed upon broker-dealers by these requirements could discourage broker-dealers from effecting transactions in our common stock. This would adversely affect the ability of investors to trade our common stock and would adversely affect the value of our common stock. These factors could contribute to lower prices and larger spreads in the bid and ask prices for our common stock. If we seek to implement a further reverse stock split in order to remain listed on NASDAQ, the announcement or implementation of such a reverse stock split could negatively affect the price of our common stock.

***The liquidity and trading volume of our common stock could be low, and our ownership is concentrated.***

The liquidity and trading volume of our common stock has at times been low in the past and could again be low in the future. If the liquidity and trading volume of our common stock is low, this could adversely impact the trading price of our shares, our ability to issue stock and our stockholders' ability to obtain liquidity in their shares. The issuance of common stock by us in 2013, 2014, 2016, 2017 and 2019 involved a significant issuance of stock to a limited number of investors, significantly increasing the concentration of our share ownership in a few holders.

Two of our stockholders hold approximately 62% of our outstanding common stock, in the aggregate, as of December 31, 2019. Such stockholders also purchased Series E Preferred Stock in a private placement concurrent with our public offering of common stock. As a result, these stockholders will be able to affect the outcome of, or exert significant influence over, all matters requiring stockholder approval, including the election and removal of directors and any change in control. In particular, this concentration of ownership of our common stock could have the effect of delaying or preventing a change in control of us or otherwise discouraging or preventing a potential acquirer from attempting to obtain control of us. This, in turn, could have a negative effect on the market price of our common stock. It could also prevent our stockholders from realizing a premium over the market prices for their shares of common stock. Moreover, the interests of this concentration of ownership may not always coincide with our interests or the interests of other stockholders. The concentration of ownership also contributes to the low trading volume and volatility of our common stock.

***Our stock price has been, and could continue to be, volatile.***

There has been significant volatility in the market price and trading volume of equity securities, which may be unrelated to the financial performance of the companies issuing the securities. These broad market fluctuations could negatively affect the market price of our stock. The market price and volume of our common stock could fluctuate, and in the past has fluctuated, more dramatically than the stock market in general. During the 12 months ended December 31, 2019, the market price of our common stock has ranged from a high of $2.78 per share to a low of $0.47 per share. You may not be able to resell your shares at or above the price you paid for them due to fluctuations in the market price of our stock caused by changes in our operating performance or prospects or other factors. Some factors, in addition to the other risk factors identified above, that could have a significant effect on our stock market price include but are not limited to the following:

- actual or anticipated fluctuations in our operating results or future prospects;
- our announcements or our competitors' announcements of new products;
- the public's reaction to our press releases, our other public announcements, and our filings with the SEC;
- strategic actions by us or our competitors, such as acquisitions or restructurings;
- new laws or regulations or new interpretations of existing laws or regulations applicable to our business;
- changes in accounting standards, policies, guidance, interpretations, or principles;
- changes in our growth rates or our competitors' growth rates;
- developments regarding our patents or proprietary rights or those of our competitors;
- our inability to raise additional capital as needed;
- concerns or allegations as to the safety or efficacy of our products;
- changes in financial markets or general economic conditions;
- sales of stock by us or members of our management team, our Board, our significant stockholders, or certain institutional stockholders; and
- changes in stock market analyst recommendations or earnings estimates regarding our stock, other comparable companies or our industry generally.

***You could experience substantial dilution of your investment as a result of future sales of our equity, subsequent exercises of our outstanding warrants and options, or the future grant of equity by us.***

As a result of reduced sales due to the COVID-19 pandemic and actions taken to contain it, cash generated from our operations during the first quarter of 2020 will be less than we anticipated. Moreover, there is no assurance that sales will return to normal levels during the second quarter of 2020 or at any time thereafter. As of the date of the filing of this annual report on Form 10-K, management is evaluating all options to conserve cash and to obtain additional debt or equity financing and/or enter into a collaborative arrangement or sale of assets, to permit the Company to continue operations. Moreover, we may choose to raise additional capital from time to time, even if we believe we have sufficient funds for our current or future operating plans. During 2019 we consummated an underwritten public offering of approximately 9.0 million shares of BIOLASE common stock and a private placement of 69,565 shares of our Series E Preferred Stock, resulting in net proceeds of approximately $7.8 million after deducting underwriter discounts and other fees and expenses. During 2017, we sold approximately 6.9 million shares of common stock in a rights offering and private placement with gross proceeds totaling approximately $22.5 million. During 2016, we sold approximately 1.8 million shares of common stock in private placements with gross proceeds totaling approximately $10.0 million. During 2014, we sold approximately 4.5 million shares of common stock in private placements with gross proceeds totaling approximately $52.0 million. To the extent that we raise additional funds through the future sale of equity or convertible securities, the issuance of such securities will result in dilution to our stockholders. The price per share at which we sell additional shares of our common stock, or securities convertible or exchangeable into common stock, in future transactions may be higher or lower than the price per share paid by investors in the offering. Investors purchasing shares or other securities in the future could have rights superior to existing stockholders.

In addition, you could experience substantial dilution of your investment as a result of subsequent exercises of outstanding warrants and outstanding options and vesting of restricted stock units issued as compensation for services performed by employees, directors, consultants, and others, warrants issued in past sales of our equity, or the grant of future equity-based awards. As of December 31, 2019, an aggregate of 6,613,000 shares of common stock were reserved for issuance under our equity incentive plans, 1,287,000 of which were subject to options outstanding as of that date at a weighted-average exercise price of $5.77 per share and 3,679,000 of which were subject to restricted stock units outstanding or expected to be issued under our leadership bonus program as of that date. Of the 4,966,000 stock options and restricted stock units outstanding, 1,033,000 stock options were vested and exercisable. In addition, as of December 31, 2019, 2,083,000 shares of our common stock were subject to warrants at a weighted-average exercise price of $6.30 per share and 500,000 shares were expected to be issued under our restricted stock agreement with CAO Group, Inc., relating to the Confidential Settlement Agreement, dated January 25, 2019, by and between BIOLASE and CAO Group, Inc Additionally, the 69,565 shares of Series E Convertible Preferred Stock are convertible into 6,956,500 shares of our common stock if converted. To the extent that outstanding warrants or options are exercised or the convertible preferred stock is converted, our existing stockholders could experience dilution. We rely heavily on equity awards to motivate current employees and to attract new employees. The grant of future equity awards by us to our employees and other service providers could further dilute our stockholders' interests in the Company.

***Because we do not intend to pay dividends, our stockholders will benefit from an investment in our common stock only if it appreciates in value.***

We intend to retain our future earnings, if any, to finance the expansion of our business and do not expect to pay any cash dividends in the foreseeable future. As a result, the success of an investment in our common stock will depend entirely upon any future appreciation. There is no guarantee that our common stock will appreciate in value or even maintain the price at which our stockholders purchased their shares.

**Item 1B.** ***Unresolved Staff Comments***

None.

**Item 2.** ***Properties***

As of December 31, 2019, we owned or leased a total of approximately 60,000 square feet of space worldwide. We lease our corporate headquarters and manufacturing facility, which consists of approximately 57,000 square feet in Irvine, California. Our lease expires on June 30, 2020. For additional information, see Note 7 to the consolidated financial statements.

We believe that our current facilities are sufficient for the current operations of our business, and we believe that suitable additional space in various applicable local markets is available to accommodate any needs that may arise.

**Item 3.** ***Legal Proceedings***

From time to time, we are involved in legal proceedings and regulatory proceedings arising out of our operations. We establish reserves for specific liabilities in connection with legal actions that we deem to be probable and estimable. The ability to predict the ultimate outcome of such matters involves judgments, estimates, and inherent uncertainties. The actual outcome of such matters could differ materially from management's estimates.

*Intellectual Property Litigation*

On April 24, 2012, CAO Group, Inc. ("CAO")filed a lawsuit against BIOLASE in the District of Utah alleging that BIOLASE's ezlase dental laser infringes on U.S. Patent No. 7,485,116 (the "116 Patent"). On September 9, 2012, CAO amended its complaint, adding claims for (1) business disparagement/injurious falsehood under common law and (2) unfair competition under 15 U.S.C. Section 1125(a). The additional claims stem from a press release that BIOLASE issued on April 30, 2012, which CAO claims contained false statements that are disparaging to CAO and its diode product. The amended complaint sought injunctive relief, treble damages, attorneys' fees, punitive damages, and interest. Until January 24, 2018, this lawsuit was stayed in connection with the USPTO proceedings relating to the 116 Patent, which proceedings ultimately culminated in a January 27, 2017 decision by the United States Court of Appeals for the Federal Circuit, affirming the findings of the Patent Trial and Appeal Board, which were generally favorable to the Company. On January 25, 2018, CAO moved for leave to file a second amended complaint to add certain claims, which filing the Company is not opposing. This matter was transferred to the Central District of California and consolidated with the matter described below.

On January 23, 2018, CAO filed a lawsuit against BIOLASE in the Central District of California alleging that BIOLASE's diode lasers infringe on U.S. Patent Nos. 8,337,097, 8,834,497, 8,961,040 and 8,967,883. The complaint sought injunctive relief, treble damages, attorneys' fees, punitive damages, and interest.

On January 25, 2019 BIOLASE entered into a confidential settlement agreement with CAO, which provided that the lawsuits and claims (described above) were dismissed with prejudice with each party to bear its own costs and attorneys' fees. See Note 7 to the consolidated financial statements for additional information.

**Item 4.** ***Mine Safety Disclosures***

Not applicable.

## PART II

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

**Market Information**

Our common stock is traded on the NASDAQ Capital Market under the symbol "BIOL."

As of March 18, 2020, the closing price of our common stock on the NASDAQ Capital Market was $0.41 per share, and the number of stockholders of record was 72. We believe that the number of beneficial owners is substantially greater than the number of record holders because a large portion of our stock is held of record through brokerage firms in "street name."

**Dividend Policy**

We intend to retain our available funds from earnings and other sources for future growth and, therefore, do not anticipate paying any cash dividends in the foreseeable future. Additionally, we are prohibited from declaring and paying dividends under our Credit Agreement with SWK. As a result, we do not anticipate paying any stock dividends in 2020. Our dividend policy may be changed at any time, and from time to time, by our Board. We did not pay or declare any dividends in 2019, 2018, or 2017.

**Equity Compensation Plan Information**

At our annual meeting of stockholders held on May 9, 2018, the Company's stockholders approved the BIOLASE, Inc. 2018 Long-Term Incentive Plan (the "2018 Plan"), which was amended by Amendment No. 1 to the 2018 Plan, approved by the Company's stockholders on September 21, 2018 and Amendment No. 2 to the 2018 Plan, approved by the Company's stockholders on May 15, 2019. The purposes of the 2018 Plan are (i) to align the interests of the Company's stockholders and recipients of awards under the 2018 Plan by increasing the proprietary interest of such recipients in the Company's growth and success; (ii) to advance the interests of the Company by attracting and retaining non-employee directors, officers, other employees, consultants, independent contractors and agents; and (iii) to motivate such persons to act in the long-term best interests of the Company and its stockholders. The 2018 Plan replaced the BIOLASE, Inc. 2002 Stock Incentive Plan, (as amended, the "2002 Plan"), with respect to future awards.

The 2002 Plan and the 2018 Plan are designed to attract and retain the services of individuals essential to the Company's long-term growth and success. The following table summarizes information as of December 31, 2019 with respect to the shares of our common stock that may be issued upon exercise of options, warrants or rights under the 2002 Plan and the 2018 Plan.

| Plan Category | Number of Securities to be Issued Upon Exercise of Outstanding Options and release of Restricted Stock Units | Weighted Average Exercise Price of Outstanding Options | Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (excluding securities reflected in column)* |
|---|---|---|---|
| Equity Compensation Plan Approved by Stockholders | 4,597,000 | 5.94 | 424,101 |
| Equity Compensation Plan Not Approved by Stockholders | — | — | — |
| Total | 4,597,000 | $ 5.94 | 424,101 |

### Item 6. *Selected Financial Data*

As a smaller reporting company, the Company is not required to provide the information called for under this Item.

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

*The following information should be read in conjunction with our consolidated financial statements and related notes included elsewhere in this Form 10-K. In addition to historical information, this discussion and analysis contains forward-looking statements that involve risks, uncertainties, and assumptions, which could cause actual results to differ materially from management's expectations. Please see the "Cautionary Statement Regarding Forward-Looking Statements" section immediately preceding Part I, Item 1 of this Form 10-K and the "Risk Factors" section in Part I, Item 1A of this Form 10-K.*

**Overview**

We are a leading provider of advanced laser systems for the dental industry. We develop, manufacture, market, and sell laser systems that provide significant benefits for dental practitioners and their patients. Our proprietary systems allow dentists, periodontists, endodontists, oral surgeons, and other dental specialists to perform a broad range of minimally invasive dental procedures, including cosmetic, restorative, and complex surgical applications. Our laser systems are designed to provide clinically superior results for many types of dental procedures compared to those achieved with drills, scalpels, and other conventional instruments. Potential patient benefits include less pain, fewer shots, faster healing, decreased fear and anxiety, and fewer appointments. Potential practitioner benefits include improved patient care and the ability to perform a higher volume and wider variety of procedures and generate more patient referrals.

We offer two categories of laser system products: Waterlase (all-tissue) systems and diode (soft-tissue) systems. Our flagship brand, the Waterlase, uses a patented combination of water and laser energy and is FDA cleared for over 80 clinical indications to perform most procedures currently performed using drills, scalpels, and other traditional dental instruments for cutting soft and hard tissue. For example, Waterlase safely debrides implants without damaging or significantly affecting surface temperature and is the only effective, safe solution to preserving sick implants. In addition, Waterlase disinfects root canals more efficiently than some traditional chemical methods. We also offer our diode laser systems to perform soft tissue, pain therapy, and cosmetic procedures, including teeth whitening. We have approximately 208 issued and 56 pending United States and international patents, the majority of which are related to Waterlase technology. From 1998 through December 31, 2019, we sold over 41,000 laser systems in over 80 countries around the world. Contained in this total are approximately 13,400 Waterlase systems, including over 8,900 Waterlase MD, MDX, Express and iPlus systems.

Consistent with our goal to focus our energies on strengthening our leadership, and worldwide competitiveness and increasing the amount of attention we pay to our professional customers and their patients, we have made strategic personnel additions to our senior management team.

**Recent Developments**

*Impact of Coronavirus (COVID-19) on Our Operations*

In December 2019, a novel strain of coronavirus was reported to have surfaced in Wuhan, China. The novel coronavirus has since spread to over 100 countries, including every state in the United States. On March 11, 2020, the World Health Organization declared COVID-19, the disease caused by the novel coronavirus, a pandemic, and on March 13, 2020, the United States declared a national emergency with respect to the coronavirus outbreak. This outbreak has severely impacted global economic activity, and many countries and many states in the United States have reacted to the outbreak by instituting quarantines, mandating business and school closures and restricting travel. These mandated business closures have included dental office closures worldwide for all but emergency procedures, for the most part. The ability of our salespeople to call on dental customers during these closures has been greatly limited. In addition, most dental shows and workshops scheduled in the first and second quarters of 2020 have been canceled. More than half of our sales each quarter typically occur in the last three weeks of the quarter. As a result of reduced sales due to the COVID-19 pandemic and actions taken to contain it, cash generated from our operations during the first quarter of 2020 will be less than we anticipated. Moreover, there is no assurance that sales will return to normal levels during the second quarter of 2020 or at any time thereafter. As of the date of the filing of this annual report on Form 10-K, management is evaluating all options to conserve cash and to obtain additional debt or equity financing and/or enter into a collaborative arrangement or sale of assets, to permit the Company to continue operations. See Item 1A — "Risk Factors" for additional information regarding the potential impact of the COVID-19 pandemic on our business, results of operations and financial condition.

*Launch of Epic Hygiene*

On December 9, 2019, we launched its new Epic Hygiene laser. The laser was granted Food and Drug Administration ("FDA")clearance in December 2019.

Epic Hygiene is our latest innovation in proven Epic laser technology, which is designed to manage non-surgical periodontitis and increase clinical production. The system includes proven step-by-step clinical protocols, including pocket therapy and perio debridement, for implementation.

Epic Hygiene gives dental hygienists the ability to offer dental laser technology to their patients, including minimally invasive and less painful treatments that are designed to allow for quicker procedures and faster recovery times. Each system includes hygiene specific training, turnkey practice guidebooks with step-by-step practice integration tips, as well as access to exclusive on-call Epic expert support, with clinicians to provide peer to peer support.

*Election of Additional Board Member*

On November 14, 2019, BIOLASE's board of directors (the "Board") elected Michael DiTolla to the Board. Pursuant to the terms of the 2018 Plan, upon his election to our Board, Dr. DiTolla received an automatic award of 98,378 restricted stock units, which fully vest on May 15, 2020. Upon vesting, each unit will be settled with one share of BIOLASE common stock.

*Public Offering of Common Shares and Private Placement of Unregistered Preferred Shares*

On October 29, 2019, we consummated the sale of 7,820,000 shares of its common stock at a price to the public of $0.5750 per share in a public offering and in addition, granted the underwriters a 30-day over-allotment option to purchase up to an additional 1,173,000 shares of common stock at the public offering price, less the underwriting discount.

On October 29, 2019, BIOLASE also sold to existing investors affiliated with Jack W. Schuler and Oracle Investment Management, Inc., 69,565 unregistered shares of BIOLASE Series E Participating Convertible Preferred Stock ("Series E Preferred Stock") at a price of $57.50 per share in a concurrent private placement. At the closing, BIOLASE received approximately $4.2 million in net proceeds from the common stock offering, after deducting the underwriting discount, and approximately $4.0 million in gross proceeds from the concurrent private placement, resulting in total net proceeds from the offering and private placement of approximately $8.2 million.

On November 5, 2019, the underwriters exercised their over-allotment option to purchase an additional 1,173,000 shares of common stock at a share price of $0.5750 per share for approximately $0.6 million in net proceeds, after deducting the underwriting discount.

*Term Loan*

On November 9, 2018, the we initially entered into the Credit Agreement with SWK Funding LLC ("SWK"), pursuant to which we borrowed $12.5 million (the "SWK Loan"). Our obligations under the Credit Agreement are secured by substantially all of our assets. We subsequently amended the Credit Agreement (the "First Amendment") to increase the total commitment under the Credit Agreement from $12.5 million to $15.0 million and to revise certain of the financial covenants. In connection with the Credit Agreement, we issued warrants to SWK (the "SWK Warrants") on November 9, 2018 to purchase up to 372,023 shares of BIOLASE common stock and on May 7, 2019, to purchase up to 115,175 shares of BIOLASE common stock. The SWK Warrants were immediately exercisable and expire 7 years after the applicable issuance date . The exercise price of the SWK Warrants issued on November 9, 2018 is $1.34, and the exercise price of the SWK Warrant s issued on May 7, 2019 is $2.17, both of which were based on the average closing price of BIOLASE common stock for the ten trading days immediately preceding the applicable issuance date.

On September 30, 2019, we agreed to further amend the Credit Agreement (the "Second Amendment"). The Second Amendment provides for a revolving loan facility, secured by a first lien security interest in the our inventory and accounts receivable, with a maximum principal amount of $5 million. In addition, SWK agreed to waive the effect of the our non-compliance with certain unencumbered liquid assets financial operating covenants as set forth in the Credit Agreement, and SWK agreed to forbear from exercising rights and remedies otherwise available to it in the event of such non-compliance through October 31, 2019, or earlier in the event that an additional equity or subordinated debt financing is consummated with gross proceeds of not less than $5 million, or in the event of a default under the Credit Agreement. In connection with the amendment, we paid to SWK loan origination and other fees of approximately $0.1 million payable in cash and approximately $0.2 million in additional SWK Warrants to purchase BIOLASE common stock.

On November 6, 2019, the we agreed to further amend the Credit Agreement ("Third Amendment"). Pursuant to the Third Amendment, SWK grantedus a waiver of our non-compliance with certain financial covenants in the Credit Agreement. Also pursuant to the Third Amendment,we and SWK agreed to (i) revise financial covenants to adjust minimum revenue and EBITDA levels and (ii) remove the automatic increase of the minimum liquidity requirement based on certain aggregate minimum revenue and EBITDA levels as of September 30, 2019 (which was added pursuant to the First Amendment). In connection with the Third Amendment,we consolidated the SWK Warrants and adjusted the price to $1.00 per share issued to SWK on November 9, 2018 and May 7, 2019.

As of December 31, 2019, we were not in compliance with debt covenants and obtained a waiver as part of a Fourth Amendment to Credit Agreement ("Fourth Amendment") in March 2020. We do not anticipate that we will regain compliance by March 31, 2020, we reclassified the term loan balance to a current liability in the consolidated balance sheets. Additionally, there was uncertainty surrounding the impact of COVID-19 on our business. See "Management's Discussion and Analysis of Financial Condition and Results of Operation – Liquidity and Capital Resources – Term Loan."

*Revolving Credit Facility*

On October 28, 2019, we entered into a loan and security agreement (the "Loan Agreement") with Pacific Mercantile Bank, as lender (the "Lender"), which provides for a revolving line of credit (the "PMB Loan"). Borrowings under the PMB Loan may be used for working capital. The PMB Loan matures on October 28, 2021, unless earlier terminated. For more information, see "Management's Discussion and Analysis of Financial Condition and Results of Operation – Liquidity and Capital Resources – Revolving Credit Facility."

*Deficiency Letter from NASDAQ*

On December 3, 2019, we received a deficiency letter from the Listing Qualifications Department (the "Staff") of the NASDAQ Stock Market, LLC ("NASDAQ") notifying BIOLASE that it violated the continued listing requirements of NASDAQ listing rule 5550(a)(2). In accordance with NASDAQ rules, BIOLASE has been provided an initial period of 180 calendar days, or until June 1, 2020 (the "Compliance Date"), to submit a plan to regain compliance.

If BIOLASE does not regain compliance by the Compliance Date and is not eligible for an additional compliance period at that time, the Staff will provide written notification to BIOLASE that its common stock may be delisted. BIOLASE intends to monitor the closing bid price of its common stock and may, if appropriate, consider available options to regain compliance.

*Ability to Continue as a Going Concern*

2019 was a year of continued transformation for us, positioning ourselves to further execute on our strategic goals of returning BIOLASE to a successful growing company and continuing as the clear worldwide industry leader in the dental laser segment. Although we made improvements throughout the year, it will take time for the financial statements to reflect the changes and as such, for the three years ended December 31, 2019 we have reported recurring losses from operations and have not generated cash from operations. Our level of cash used in operations, the potential need for additional capital, and the uncertainties surrounding our ability to raise additional capital or to service our existing debt, raise substantial doubt about our ability to continue as a going concern. As a result, the opinion we have received from our independent registered public accounting firm, on our consolidated financial statements, contains an explanatory paragraph stating that there is a substantial doubt regarding our ability to continue as a going concern.

The accompanying consolidated financial statements have been prepared on a going concern basis, which assumes that we will continue in operation for the next 12 months and will be able to realize our assets and discharge our liabilities and commitments in the normal course of business. The consolidated financial statements do not include any adjustments that might be necessary if we are unable to continue as a going concern.

As a result of reduced sales due to the COVID-19 pandemic and actions taken to contain it, cash generated from our operations during the first quarter of 2020 will be less than we anticipated. Moreover, there is no assurance that sales will return to normal levels during the second quarter of 2020 or at any time thereafter. As of the date of the filing of this annual report on Form 10-K, management is evaluating all options to conserve cash and to obtain additional debt or equity financing and/or enter into a collaborative arrangement or sale of assets, to permit the Company to continue operations. If we become unable to continue as a going concern, we may have to liquidate our assets, and potentially realize significantly less than the values at which they are carried on our financial statements, and stockholders could lose all or part of their investment in our common stock.

**Critical Accounting Policies**

The preparation of consolidated financial statements and related disclosures in conformity with generally accepted accounting principles in the United States ("GAAP") requires us to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and the accompanying notes. The following is a summary of those accounting policies that we believe are necessary to understand and evaluate our reported financial results.

*Revenue Recognition.* Revenue for sales of products and services is derived from contracts with customers. The products and services promised in customer contracts include delivery of laser systems, imaging systems, and consumables as well as certain ancillary services such as product training and support for extended warranties. Contracts with each customer generally state the terms of the sale, including the description, quantity and price of each product or service. Payment terms are stated in the contract and vary according to the arrangement. Because the customer typically agrees to a stated rate and price in the contract that does not vary over the life of the contract, our contracts do not contain variable consideration. We establish a provision for estimated warranty expense. For further information on warranty, see the discussion under "Warranty Cost" below.

At contract inception, we assess the products and services promised in our contracts with customers. We then identify performance obligations to transfer distinct products or services to the customers. In order to identify performance obligations, we consider all of the products or services promised in the contract regardless of whether they are explicitly stated or are implied by customary business practices.

Revenue from products and services transferred to customers at a single point in time accounted for 81%, 86% and 85% of net revenue for the years ended December 31, 2019, 2018, and 2017, respectively. The majority of the revenue recognized at a point in time is for the sale of laser systems, imaging systems, and consumables. Revenue from these contracts is recognized when the customer is able to direct the use of and obtain substantially all of the benefits from the product which generally coincides with title transfer during the shipping process.

Revenue from services transferred to customers over time accounted for 19%, 14%, and 15% of net revenue for the years ended December 31, 2019, 2018, and 2017, respectively. The majority of our revenue that is recognized over time relates to training and extended warranties.

The transaction price for a contract is allocated to each distinct performance obligation and recognized as revenue when, or as, each performance obligation is satisfied. For contracts with multiple performance obligations, we allocate the contract's transaction price to each performance obligation using the best estimate of the standalone selling price of each distinct good or service in a contract. The primary method used to estimate standalone selling price is the observable price when the good or service is sold separately in similar circumstances and to similar customers.

Revenue is recorded for extended warranties over time as the customer benefits from the warranty coverage. This revenue will be recognized equally throughout the contract period as the customer receives benefits from our promise to provide such services. Revenue is recorded for product training as the customer attends a training program or upon the expiration of the obligation.

We also have contracts that include both the product sales and product training as performance obligations. In those cases, we record revenue for product sales at the point in time when the product has been shipped. The customer obtains control of the product when it is shipped, as all shipments are made FOB shipping point, and after the customer selects its shipping method and pays all shipping costs and insurance. We have concluded that control is transferred to the customer upon shipment.

We perform our obligations under a contract with a customer by transferring products and/or services in exchange for consideration from the customer. We invoice our customers as soon as control of an asset is transferred and a receivable due to us is established. We recognize a contract liability when a customer prepays for goods and/or services and we have not transferred control of the goods and/or services.

Accounts receivable are stated at estimated net realizable value. The allowance for doubtful accounts is based on an analysis of customer accounts and our historical experience with accounts receivable write-offs.

*Accounting for Stock-Based Payments.* Stock-based compensation expense is estimated at the grant date of the award, is based on the fair value of the award and is recognized ratably over the requisite service period of the award. For restricted stock units we estimate the fair value of the award based on the number of awards and the fair value of our common stock on the grant date and apply an estimated forfeiture rate. For stock options, we estimate the fair value of the option award using the Black-Scholes option pricing model. This option-pricing model requires us to make several assumptions regarding the key variables used to calculate the fair value of its stock options. The risk-free interest rate used is based on the U.S. Treasury yield curve in effect for the expected lives of the options at their grant dates. Since July 1, 2005, we have used a dividend yield of zero, as we do not intend to pay cash dividends on our common stock in the foreseeable future. The most critical assumptions used in calculating the fair value of stock options are the expected life of the option and the expected volatility ofour common stock. The expected life is calculated in accordance with the simplified method, whereby for service-based awards, the expected life is calculated as a midpoint between the vesting date and expiration date. We use the simplified method, as there is not a sufficient history of share option exercises. We believe the historic volatility of our common stock is a reliable indicator of future volatility, and accordingly, a stock volatility factor based on the historical volatility of our common stock over a lookback period of the expected life is used in approximating the estimated volatility of new stock options. Compensation expense is recognized using the straight-line method for all service-based employee awards and graded amortization for all performance-based awards. Compensation expense is recognized only for those options expected to vest, with forfeitures estimated at the date of grant based on historical experience and future expectations. Forfeitures are estimated at the time of the grant and revised in subsequent periods as actual forfeitures differ from those estimates. During the year ended December 31, 2019, we applied a forfeiture rate of 10.0% and 48.73% to awards granted to executives and employees, respectively,

*Valuation of Inventory.* Inventory is valued at the lower of cost or net realizable value, with cost determined using the first-in, first-out method. We periodically evaluate the carrying value of inventory and maintain an allowance for excess and obsolete inventory to adjust the carrying value as necessary to the lower of cost or net realizable value . We evaluate quantities on hand, physical condition, and technical functionality, as these characteristics may be impacted by anticipated customer demand for current products and new product introductions. Unfavorable changes in estimates of excess and obsolete inventory would result in an increase in cost of revenue and a decrease in gross profit.

*Valuation of Long-Lived Assets.* Property, plant, and equipment and certain intangibles with finite lives are amortized over their estimated useful lives. Useful lives are based on our estimate of the period that the assets will generate revenue or otherwise productively support our business goals. We monitor events and changes in circumstances that could indicate that the carrying balances of long-lived assets may exceed the undiscounted expected future cash flows from those assets. If such a condition were to exist, we would determine if an impairment loss should be recognized by comparing the carrying amount of the assets to their fair value.

*Valuation of Goodwill and Other Intangible Assets.* Goodwill and other intangible assets with indefinite lives are not subject to amortization but are evaluated for impairment annually or whenever events or changes in circumstances indicate that the asset might be impaired. We conducted our annual impairment analysis of our goodwill as of June 30, 2019 and concluded there had been no impairment in goodwill. We closely monitor our stock price and market capitalization and perform such analysis when events or circumstances indicate that there may have been a change to the carrying value of those assets.

*Warranty Cost.* We provide warranties against defects in materials and workmanship of our laser systems for specified periods of time. For the years ended December 31, 2019, 2018, and 2017 laser systems sold were covered by our warranty for a period of up to two years from the date of sale by us or the distributor to the end-user. In 2017, for Waterlase systems sold domestically and purchased in 2017 or later, we decreased the warranty period from two years to one year. Laser systems sold internationally were covered by our warranty for a period of up to 28 months from the date of sale to the international distributor. Estimated warranty expenses are recorded as an accrued liability with a corresponding provision to cost of revenue. This estimate is recognized concurrent with the recognition of revenue on the sale to the distributor or end-user. Warranty expenses expected to be incurred after one year from the time of sale to the distributor are classified as a long-term warranty accrual. Our overall accrual is based on our historical experience and our expectation of future conditions, taking into consideration the location and type of customer and the type of laser, which directly correlate to the materials and components under warranty, the duration of the warranty period, and the logistical costs to service the warranty. Additional factors that may impact our warranty accrual include changes in the quality of materials, leadership and training of the production and services departments, knowledge of the lasers and workmanship, training of customers, and adherence to the warranty policies. Additionally, an increase in warranty claims or in the costs associated with servicing those claims would likely result in an increase in the accrual and a decrease in gross profit. We offer extended warranties on certain imaging products. However, all imaging products are initially covered by the manufacturer’s warranties.

*Litigation and Other Contingencies.* We regularly evaluate our exposure to threatened or pending litigation and other business contingencies. Because of the uncertainties related to the amount of loss from litigation and other business contingencies, the recording of losses relating to such exposures requires significant judgment about the potential range of outcomes. As additional information about current or future litigation or other contingencies becomes available, we assess whether such information warrants the recording of expense relating to contingencies. To be recorded as expense, a loss contingency must be both probable and reasonably estimable. If a loss contingency is significant but is not both probable and estimable, we disclose the matter in thenotes to our consolidated financial statements.

*Income Taxes.* Based upon our operating losses during 2019, 2018, and 2017 and the available evidence, management has determined that it is more likely than not that the deferred tax assets as of December 31, 2019 will not be realized in the near term. Consequently, we have established a valuation allowance against our net deferred tax asset totaling approximately $53.2 million and $46.9 million as of December 31, 2019 and 2018, respectively. In this determination, we considered factors such as our earnings history, future projected earnings, and tax planning strategies. If sufficient evidence of our ability to generate sufficient future taxable income tax benefits becomes apparent, we may reduce our valuation allowance, resulting in tax benefits in our statement of operations and in additional paid-in-capital. Management evaluates the potential realization of our deferred tax assets and assesses the need for reducing the valuation allowance periodically.

**Fair Value of Financial Instruments**

Our financial instruments, consisting of cash and cash equivalents, accounts receivable, accounts payable, capital lease obligations and accrued liabilities, approximate fair value because of the liquid or short-term nature of these items.

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants in the principal market ( or, if none exists, the most advantageous market) for the specific asset or liability at the measurement date (referred to as the “exit price”). The fair value is based on ass umptions that market participants would use, including a consideration of non-performance risk. Under the accounting guidance for value hierarchy, there are three levels of measurement inputs. Level 1 inputs are quoted prices in active markets for identical assets or liabilities. Level 2 inputs are observable, either directly or indirectly. Level 3 inputs are unobservable due to little or no corroborating market data.

**Results of Operations**

The following table sets forth certain data from our operating results for each of the years ended December 31, 2019, 2018, and 2017, expressed in thousands and as percentages of revenue:

| | Years Ended December 31, | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2019 | | | 2018 | | | 2017 | | |
| Products and services revenue | $ 37,787 | 100.0 | % | $ 46,143 | 100.0 | % | $ 46,798 | 99.7 | % |
| License fees and royalty revenue | 12 | — | % | 12 | — | % | 128 | 0.3 | % |
| Net revenue | 37,799 | 100.0 | % | 46,155 | 100.0 | % | 46,926 | 100.0 | % |
| Cost of revenue | 23,511 | 62.2 | % | 29,260 | 63.4 | % | 31,800 | 67.8 | % |
| Gross profit | 14,288 | 37.8 | % | 16,895 | 36.6 | % | 15,126 | 32.2 | % |
| Operating expenses: | | | | | | | | | |
| Sales and marketing | 14,396 | 38.1 | % | 18,121 | 39.3 | % | 16,718 | 35.6 | % |
| General and administrative | 10,748 | 28.4 | % | 11,771 | 25.5 | % | 9,712 | 20.7 | % |
| Engineering and development | 4,765 | 12.6 | % | 5,203 | 11.3 | % | 6,229 | 13.3 | % |
| Disposal of internally developed software | — | — | % | 1,185 | 2.6 | % | 505 | 1.1 | % |
| Loss on patent litigation settlement | — | — | % | 1,500 | 3.2 | % | — | — | % |
| Total operating expenses | 29,909 | 79.1 | % | 37,780 | 81.9 | % | 33,164 | 70.7 | % |
| Loss from operations | (15,621) | (41.3) | % | (20,885) | (45.2) | % | (18,038) | (38.5) | % |
| Non-operating (loss) gain, net | (2,278) | (6.0) | % | (568) | (1.2) | % | 605 | 1.3 | % |
| Loss before income tax provision | (17,899) | (47.4) | % | (21,453) | (46.5) | % | (17,433) | (37.2) | % |
| Income tax provision (benefit) | (44) | (0.1) | % | 63 | 0.1 | % | (582) | (1.2) | % |
| Net loss | $ (17,855) | (47.2) | % | $ (21,516) | (46.6) | % | $ (16,851) | (36.0) | % |

The following table summarizes our net revenues by category for the years ended December 31,2019, 2018, and 2017 (dollars in thousands):

| | Years Ended December 31, | | | | | |
|---|---|---|---|---|---|---|
| | 2019 | | 2018 | | 2017 | |
| Laser systems | $ 22,842 | 60.4 % | $ 29,733 | 64.4 % | $ 29,121 | 62.0 % |
| Imaging systems | 619 | 1.6 % | 1,694 | 3.7 % | 3,685 | 7.9 % |
| Consumables and other | 7,164 | 19.0 % | 8,287 | 18.0 % | 7,332 | 15.6 % |
| Services | 7,162 | 19.0 % | 6,429 | 13.9 % | 6,660 | 14.2 % |
| Total products and services | 37,787 | 100.0 % | 46,143 | 100.0 % | 46,798 | 99.7 % |
| License fees and royalty | 12 | — % | 12 | — % | 128 | 0.3 % |
| Net revenue | $ 37,799 | 100.0 % | $ 46,155 | 100.0 % | $ 46,926 | 100.0 % |

**Non-GAAP Disclosure**

In addition to the financial information prepared in conformity with GAAP, we provide certain historical non-GAAP financial information. Management believes that these non-GAAP financial measures assist investors in making comparisons of period-to-period operating results and that, in some respects, are indicative of our ongoing core performance.. In 2019, we revised our non-GAAP financial measures to include the change in allowance for doubtful accounts in an effort to better align Adjusted EBITDA with our loan covenants and how management evaluates business performance. Prior year non-GAAP disclosures have been revised to conform to the current definition of Adjusted EBITDA.

Management believes that the presentation of this non-GAAP financial information provides investors with greater transparency and facilitates comparison of operating results across a broad spectrum of companies with varying capital structures, compensation strategies, derivative instruments, and amortization methods, which provides a more complete understanding of our financial performance, competitive position, and prospects for the future. However, the non-GAAP financial measures presented in this Form 10-K have certain limitations in that they do not reflect all of the costs associated with the operations of our business as determined in accordance with GAAP. Therefore, investors should consider non-GAAP financial measures in addition to, and not as a substitute for, or as superior to, measures of financial performance prepared in accordance with GAAP. Further, the non-GAAP financial measures presented by us may be different from similarly named non-GAAP financial measures used by other companies.

***Adjusted EBITDA***

Management uses Adjusted EBITDA in its evaluation of our core results of operations and trends between fiscal periods and believes that these measures are important components of its internal performance measurement process. Adjusted EBITDA is defined as net loss before interest, taxes, depreciation and amortization, stock-based compensation and allowance for doubtful accounts. Management uses adjusted EBITDA in its evaluation of the our core results of operations and trends between fiscal periods and believes that these measures are important components of its internal performance measurement process. Therefore, investors should consider non-GAAP financial measures in addition to, and not as a substitute for, or as superior to, measures of financial performance prepared in accordance with GAAP. Further, the non-GAAP financial measures presented by us may be different from similarly named non-GAAP financial measures used by other companies.

The following table contains a reconciliation of non-GAAP Adjusted EBITDA to GAAP net loss attributable to common stockholders (in thousands):

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2019 | 2018 | 2017 |
| GAAP net loss attributable to common stockholders | $ (17,855) | $ (21,516) | $ (20,829) |
| Deemed dividend on convertible preferred stock | — | — | 3,978 |
| GAAP net loss | $ (17,855) | $ (21,516) | $ (16,851) |
| Adjustments: | | | |
| Interest expense (income), net | 2,157 | 510 | (42) |
| Income tax provision (benefit) | (44) | 63 | (582) |
| Depreciation and amortization | 982 | 945 | 1,203 |
| Disposal of internally developed software | — | 1,185 | 505 |
| Loss on patent litigation settlement | — | 1,500 | — |
| Stock-based and other non-cash compensation | 2,742 | 2,768 | 2,207 |
| Change in allowance for doubtful accounts | 1,695 | — | — |
| Adjusted EBITDA | $ (10,323) | $ (14,545) | $ (13,560) |

**Comparison of Results of Operations**

***Year Ended December 31, 2019 Compared with Year Ended December 31, 2018***

*Net Revenue.* Net revenue for the year ended December 31, 2019 was $37.8 million, a decrease of $8.4 million, or 18%, as compared with net revenue of $46.2 million for the year ended December 31, 2018. Domestic revenues were $22.8 million, or 60% of net revenue, for the year ended December 31, 2019 compared to $28.7 million, or 62% of net revenue, for the year ended December 31, 2018. International revenues for year ended December 31, 2019 were $15.0 million, or 40 % of net revenue, compared to $17.5 million, or 38% of net revenue for year ended December 31, 2018. Given the recent dental office closures, we expect our first quarter for the year ended December 31, 2020, to be lower.

The decrease in year-over-year net revenue primarily resulted from decreases in domestic sales due to open sales territories, which were the result of strategic decisions we made to realign a significant portion of our U.S. sales force and change the culture through increased transparency and accountability. As of result of these decisions, we had approximately one-third of our sales territories open.

Laser system net revenues decreased by approximately $6.9 million, or 23%, for the year ended December 31, 2019 compared to the same period in 2018The laser systems revenue decrease was driven by a 28% decrease in domestic revenue and a 18% decrease in international revenue. The decrease in domestic revenue was primarily due to the open sales territories discussed above.

Imaging system net revenue decreased by approximately $1.0 million, or 63%, for the year ended December 31, 2019 as compared to the same period in 2018 and is due to our decision in 2018 to exit this business.

Consumables and other net revenue, which includes products such as disposable tips and shipping revenue, decreased approximately $1.1 million, or 14%, for the year ended December 31, 2019, as compared to the same period in 2018. The decrease was driven primarily by the drop in total net revenue for the year ended December 31, 2019 as compared to the same period in 2018.

*Cost of Revenue.* Cost of revenue decreased by $5.7 million, or approximately 20%, to $23.5 million, or 62% of net revenue for the year ended December 31, 2019, compared to cost of revenue of $29.3 million, or 63% of net revenue, for the same period in 2018. The decrease in cost of revenue for the year ended December 31, 2019 as compared to the same period in 2018 is primarily due to the decline is sales for the year ended December 31, 2019.

*Gross Profit.* Gross profit as a percentage of revenue typically fluctuates with product and regional mix, selling prices, product costs and revenue levels. Gross profit for the year ended December 31, 2019 was $14.3 million, or 38% of net revenue, a decrease of approximately $2.6 million, or 15%, as compared with gross profit of $16.9 million, or 37% of net revenue, for the same period in 2018. The decrease in gross profit is commensurate with the decline in sales, while the increase in gross profit percentage was primarily due to our continued efforts at cost reduction.

*Operating Expenses.* Operating expenses for the year ended December 31, 2019 were $29.9 million, or 79% of net revenue, a decrease of approximately $7.9 million, or 21%, as compared with $37.8 million, or 82% of net revenue, for the same period in 2018. See the following expense categories for further explanations.

*Sales and Marketing Expense.* Sales and marketing expense for the year ended December 31, 2019 decreased by $3.7 million, or 21%, to $14.4 million, or 38% of net revenue, as compared with $18.1 million, or 39% of net revenue, during the year ended December 31, 2018. The decrease for the year ended December 31, 2019 was primarily a result of decreases in payroll and consulting-related expense of $2.4 million primarily due to lower headcount from the open territories, advertising and marketing expense of $0.5 million as we continued to use more digital media, other including travel and entertainment expenses of $0.6 million, and sales commission of $0.2 million.

*General and Administrative Expense.* General and administrative expense for the year ended December 31, 2019 decreased by $1.0 million, or 9%, to $10.7 million, or 28% of net revenue, as compared with $11.8 million, or 25.5% of net revenue, for the same period in 2018. The decrease in general and administrative expense was primarily due to decreases in patent and legal expense of $1.4 million, payroll and consulting-related expense of $0.6 million, other expenses including bank fees of $0.3 million, offset by an increase in provision for doubtful accounts of $1.2 million, as compared to the same period in 2018. The increase in the provision for doubtful accounts relates to balances owed from our distributor in China. We do not expect similar increases in our allowance for doubtful accounts going forward, however, as previously discussed, there were uncertainties surrounding the impact of the COVID-19 pandemic on our financial results that we are not reasonably able to predict. We expect general and administrative expenses to decrease as a percentage of revenue in 2020 primarily due to decreased legal expenses.

*Engineering and Development Expense.* Engineering and development expense for the year ended December 31, 2019 decreased by $0.4 million, or 8%, to $4.8 million, or 13% of net revenue, as compared with $5.2 million, or 11% of net revenue, for the same period in 2018. The decrease was primarily related to decreased payroll and consulting-related expense of $0.2 million, and operating supplies expense of $0.2 million as compared to the same period in 2018. We expect to continue our investment in engineering and development activity. However, our primary focus will be on our sales and marketing efforts. Therefore, we expect engineering and development expenses to decrease as a percentage of revenue in 2019.

*Non-Operating Income (Loss)*

*Gain (Loss) on Foreign Currency Transactions.* We recognized a $0.1 million loss on foreign currency transactions for the year ended December 31, 2019 compared to a $0.1 million loss for the same period in 2018, due to exchange rate fluctuations primarily between the U.S. dollar and the Euro.

*Interest Income (Expense), Net.* Net interest expense increased by $1.7 million to $2.2 million for the year ended December 31, 2019 compared to $0.5 million of net interest expense for the same period in 2018. The increase in interest expense was the result of the interest relating to the SWK Loan we entered into in 2018.

*Provision (benefit) for Income Taxes.* Our provision for income taxes was a benefit of $44,000 for the year ended December 31, 2019, an increase of $0.1 million as compared with our provision for income taxes of $63,000 for the same period in 2018. The decrease in our provision for 2019 is primarily due to the release of our valuation allowance against our deferred tax asset in our European subsidiary.

*Net Loss.* For the reasons stated above, our net loss was $17.9 million for the year ended December 31, 2019 compared to a net loss of $21.5 million for the same period in 2018. The decrease in net loss of approximately $3.7 million, or 17%, was primarily due to the decline in operating expenses.

***Year Ended December 31, 2018 Compared with Year Ended December 31, 2017***

*Net Revenue.* Net revenue for the year ended December 31, 2018 was $46.2 million, a decrease of $0.8 million, or 2%, as compared with net revenue of $46.9 million for the year ended December 31, 2017. Domestic revenues were $28.7 million, or 62% of net revenue, for the year ended December 31, 2018 compared to $29.3 million, or 62% of net revenue, for the same period in 2017. International revenues for the year ended December 31, 2018 were $17.5 million, or 38% of net revenue, compared to $17.6 million, or 38% of net revenue for the same period in 2017.

The decrease in year-over-year net revenue resulted from decreases in worldwide imaging systems, services, and royalty revenue and was partially offset by increases of 2% and 13% in worldwide laser system and consumables and other revenue, respectively.

Laser system net revenues increased by approximately $0.6 million, or 2%, for the year ended December 31, 2018 compared to the same period in 2017The laser systems revenue increase was driven by a 7% increase in domestic revenue which was partially offset by 3% decline in international revenue. The increase in domestic laser revenues is primarily due to our increased sales efforts in our model markets as well as the rest of the U.S.

Imaging system net revenue decreased by approximately $2.0 million, or 54%, for the year ended December 31, 2018 compared the same period in 2017. This decrease was primarily driven by a one-time study club purchase in 2017 and our renewed focus on laser sales in 2018.

Consumables and other net revenue, which includes products such as disposable tips and shipping revenue, increased approximately $1.0 million, or 13%, for the year ended December 31, 2018, as compared to the same period in 2017. The increase in consumables and other net revenue was primarily driven by an increase of approximately 12% in domestic sales, which is attributed to our growing laser customer base.

License fees and royalty revenue decreased by approximately $0.1 million or 91%, for the year ended December 31, 2018 compared to the same period in 2017 primarily due to winding down of the previously disclosed Fotona Proizvodnja Optoelektronskih Naprav D.D. and Fotona LLC intellectual property litigation.

*Cost of Revenue.* Cost of revenue decreased by $2.5 million, or approximately 8%, to $29.3 million, or 63% of net revenue for the year ended December 31, 2018, compared to cost of revenue of $31.8 million, or 68% of net revenue, for the same period in 2017. The decrease in cost of revenue for the year ended December 31, 2018 as compared to the same period in 2017 is primarily due to product mix. For the year ended December 31, 2018, we sold fewer imaging systems which have lower profit margin leading to an overall decline in cost of revenue as a percentage of revenue from the same period in 2017.

*Gross Profit.* Gross profit as a percentage of revenue typically fluctuates with product and regional mix, selling prices, product costs and revenue levels. Gross profit for the year ended December 31, 2018 was $16.9 million, or 37% of net revenue, an increase of approximately $1.8 million, or 12%, as compared with gross profit of $15.1 million, or 32% of net revenue, for the same period in 2017. The increase in gross profit reflects new customer growth and a favorable change in product mix with an increase in laser sales, which have higher average selling prices and higher profit margins than our other product offerings.

*Operating Expenses.* Operating expenses for the year ended December 31, 2018 were $37.8 million, or 82% of net revenue, an increase of approximately $4.6 million, or 14%, as compared with $33.2 million, or 71% of net revenue, for the same period in 2017. See the following expense categories for further explanations.

*Sales and Marketing Expense.* Sales and marketing expense for the year ended December 31, 2018 increased by $1.4 million, or 8%, to $18.1 million, or 39% of net revenue, as compared with $16.7 million, or 36% of net revenue, during the same period in 2017. The increase for the year ended December 31, 2018 was primarily a result of increases in payroll and consulting-related expense of $0.7 million, advertising and marketing expense of $0.4 million, share-based compensation of $0.3 million and commissions of $0.1 million; the increases were partially offset by a decrease in convention related costs of $0.3 million.

*General and Administrative Expense.* General and administrative expense for the year ended December 31, 2018 increased by $2.0 million, or 21%, to $11.8 million, or 25% of net revenue, as compared with $9.7 million, or 21% of net revenue, for the same period in 2017. The increase in general and administrative expense was primarily due to increases in patent and legal expense of $0.9 million, payroll and consulting-related expense of $0.5 million, provision for doubtful accounts of $0.4 million, and other general expenses of $0.2 million, while share-based compensation was consistent with the same period in 2017.

*Engineering and Development Expense.* Engineering and development expense for the year ended December 31, 2018 decreased by $1.0 million, or 16%, to $5.2 million, or 11% of net revenue, as compared with $6.2 million, or 13% of net revenue, for the same period in 2017. The decrease was primarily related to decreased payroll and consulting-related expense of $0.4 million and decreased supplies expense of $0.4 million. The decrease in payroll and consulting-related expense resulted primarily from decreased salaries and wages of $0.3 million. The decrease in supplies expense resulted primarily from decreased operating supplies of $0.3 million.

*Disposal of internally developed software.* For the year ended December 31, 2018, we recognized a $1.2 million loss on disposal of internally developed software costs. During 2018, it was determined that capitalized website development costs were impaired due to the fact that further development of the tools would not be pursued. For the same period in 2017, we recognized a $0.5 million loss on disposal of internally developed software resulting from our decision to stop implementation of a new ERP system.

*Loss on patent litigation settlement.* For the year ended December 31, 2018, we recognized a contingent loss of $1.5 million relating to the patent litigation claim with CAO. Under a confidential settlement agreement, CAO agreed to dismiss with prejudice the previously-disclosed lawsuits filed by CAO against BIOLASE and grant BIOLASE a non-exclusive, non-transferable (except as provided in such confidential settlement agreement), royalty free, fully paid, worldwide license to the licensed patents for use in the licensed products that were the subject of the litigation. BIOLASE agreed to pay $500,000 in cash and 500,000 restricted shares of our common stock, which will vest on December 31, 2021. If upon December 31, 2021, the fair value of the shares issued to CAO is less than $1 million, BIOLASE will pay the difference between the value of the stock on December 31, 2021 and $1 million in cash.

*Non-Operating Income (Loss)*

*Gain (Loss) on Foreign Currency Transactions.* We recognized a $0.1 million loss on foreign currency transactions for the year ended December 31, 2018 compared to a $0.5 million gain for the same period in 2017, due to exchange rate fluctuations primarily between the U.S. dollar and the Euro.

*Interest Income (Expense), Net.* Net interest expense increased by $0.6 million to $0.5 million for the year ended December 31, 2018 compared to $0.1 million of net interest income for the same period in 2017. The increase in interest expense was the result of $0.3 million in interest relating to the SWK Loan and interest expense of $0.2 million relating to our Business Financing Agreement with Western Alliance Bank. We repaid the borrowings under our Business Financing Agreement in the fourth quarter of For the year ended December 31, 2018 with the proceeds from the SWK Loan.

*Provision (benefit) for Income Taxes.* Our provision for income taxes was $0.1 million for the year ended December 31, 2018, an increase of $0.7 million as compared with our benefit for income taxes of $0.6 million for the same period in 2017. The increase in our provision for 2018 is primarily due to the one-time impact of the Tax Cuts and Jobs Act of 2017 had upon adoption for the same period in 2017.

*Net Loss.* For the reasons stated above, our net loss was $21.5 million for the year ended December 31, 2018 compared to a net loss of $16.9 million for the same period in 2017. The increase in net loss of approximately $4.7 million, or 28%, was primarily due to increased loss from operations of $2.8 million, including non-cash expenses consisting of the $1.5 million loss relating to the CAO patent infringement settlement and the $0.7 million increase in loss on disposal of internally developed software. Net loss for the year ended December 31, 2018 also included increased legal expenses of $0.9 million and an increase in interest expense of $0.6 million, which were offset by decreases in engineering payroll and consulting expenses and supplies costs of $1.0 million.

**Liquidity and Capital Resources**

At December 31, 2019, we had approximately $6.1 million in cash and cash equivalents, including restricted cash equivalents. Management defines cash and cash equivalents as highly liquid deposits with original maturities of 90 days or less when purchased. The decrease in our cash and cash equivalents by $2.3 million from December 31, 2018 was primarily due to cash used in operating and investing activities of $12.8 million and $0.2 million, respectively, and the effect of exchange rates on cash of $0.1 million, partially offset by cash provided by financing activities of $10.6 million. The $12.8 million of net cash used in operating activities in 2019 was primarily driven by our net loss of $17.9 million during the year.

At December 31, 2019, we had approximately $14.7 million in working capital. Our principal sources of liquidity at December 31, 2019, consisted of approximately $6.1 million in cash, cash equivalents and restricted cash, and $8.8 million of net accounts receivable, and $2.7 million of unused availability under the PMB Loan as further described below. However, under the Credit Agreement, we are required to maintain at least $3.0 million of cash and availability under the Loan Agreement.

We have reported recurring losses from operations and have not generated cash from operations for the three years ended December 31, 2019. Our level of cash used in operations, the potential need for additional capital, and the uncertainties surrounding our ability to raise additional capital, raise substantial doubt about our ability to continue as a going concern. The accompanying financial statements have been prepared on a going concern basis, which assumes that we will continue in operation for the next 12 months and will be able to realize our assets and discharge ourliabilities and commitments in the normal course of business. The financial statements do not include any adjustments that might be necessary if we are unable to continue as a going concern.

As a result of reduced sales due to the COVID-19 pandemic and actions taken to contain it, cash generated from our operations during the first quarter of 2020 will be less than we anticipated. Moreover, there is no assurance that sales will return to normal levels during the second quarter of 2020 or at any time thereafter. As of the date of the filing of this annual report on Form 10-K, management is evaluating all options to conserve cash and to obtain additional debt or equity financing and/or enter into a collaborative arrangement or sale of assets, to permit the Company to continue operations.

Furthermore, i n order for us to continue operations beyond the next 12 months and be able to discharge our liabilities and commitments in the normal course of busin ess, we must sell our products directly to end users and through distributors, establish profitable operations through increased sales, decrease expenses, generate cash from operations, or obtain additional funds when needed. We intend to improve our finan cial condition and ultimately improve our financial results by increasing revenues through expansion of our product offerings, continuing to expand and develop our field sales force and distributor relationships both domestically and internationally, forming strategic arrangements within the dental and medical industries, educating dental and medical patients as to the benefits of our advanced medical technologies, and reducing expenses.

*Term Loan*

On November 9, 2018, we entered into a five-year secured Credit Agreement ("Credit Agreement") with SWK Funding LLC ("SWK"), pursuant to which we borrowed $12.5 million ("SWK Loan"). Our obligations under the Credit Agreement are secured by substantially all of the our assets. Under the terms of the Credit Agreement, repayment of the loan is interest-only for the first two years, paid quarterly with the option to extend the interest-only period. Principal repayments will begin in the second quarter of 2021 and will be approximately $0.7 million quarterly until the loan matures in the fourth quarter of 2023. The loan bears interest at London Interbank Bank Offered Rate ("LIBOR") plus 10% or another index that approximates LIBOR as close as possible if and when LIBOR no longer exists. Approximately $0.9 million of the proceeds from the SWK Loan were used to pay off all amounts owed to Western Alliance under the Business Financing Agreement. In connection with the Credit Agreement, we issued warrants to SWK (the "SWK Warrants") on November 9, 2018 to purchase up to 372,023 shares of BIOLASE common stock and on May 7, 2019, to purchase up to 115,175 shares of BIOLASE common stock. The SWK Warrants were immediately exercisable and expire 7 years after the applicable issuance date. The exercise price of the SWK Warrants issued on November 9, 2018 is $1.34, and the exercise price of the SWK Warrants issued on May 7, 2019 is $2.17, both of which were based on the average closing price of BIOLASE common stock for the ten trading days immediately preceding the applicable issuance date.

The Credit Agreement contains financial and non-financial covenants requiringus to, among other things, (i) maintain unencumbered liquid assets of no less than $1.5 million or (B) the sum of aggregate cash flow from operations less capital expenditures, ii) achieve certain revenue and EBITDA levels during the first two years of the loan, (iii) limit future borrowing, investments and dividends, and (iv) submit monthly and quarterly financial reporting.

As of March 31, 2019, we were not in compliance with certain covenants in the Credit Agreement, as described in Note 9 to the consolidated financial statements included in Item 8 of this 10-K, and in May 2019, SWK granted us a waiver of such covenants. On May 7, 2019, we and SWK agreed to amend the Credit Agreement (the "First Amendment) to increase the total commitment from $12.5 million to $15.0 million, and to revise the financial covenants to (a) adjust minimum revenue and EBITDA levels, (b) require the us to have a shelf registration statement declared effective by the Securities and Exchange Commission before September 30, 2019, with a proposed maximum aggregate offering price of at least $10.0 million if we do not reach set minimum revenue levels for the three-month period ended September 30, 2019, and (c) require minimum liquidity of $1.5 million at all times. The First Amendment provides that if aggregate minimum revenue and EBITDA levels are not achieved by September 30, 2019, the minimum liquidity requirement will be increased to $3.0 million, until we have obtained additional equity or debt funding of no less than $5.0 million. In connection with the amendment, we paid to SWK loan origination and other fees of approximately $0.1 million payable in cash and approximately $0.2 million in additional SWK Warrants to purchase BIOLASE common stock.

On September 30, 2019, we entered into the Second Amendment to Credit Agreement (the "Second Amendment") with SWK, in connection with that certain Credit Agreement, by and among us, SWK, and the lender parties thereto. The Second Amendment amends the Credit Agreement to provide for a permitted inventory and accounts receivable revolving loan facility, secured by a first lien security interest in our inventory and accounts receivable, with a maximum principal amount of $5.0 million and with such other material terms and conditions acceptable to SWK in its commercially reasonable discretion. In addition, SWK agreed to waive the effect of our non-compliance with certain unencumbered liquid assets financial operating covenants as set forth in the Credit Agreement, and SWK agreed to forbear from exercising rights and remedies otherwise available to it in the event of such non-compliance through October 31, 2019, or earlier in the event that an additional equity or subordinated debt financing is consummated with gross proceeds of not less than $5.0 million, or in the event of a default under the Credit Agreement. The Second Amendment contains representations, warranties, covenants, releases, and conditions customary for a forbearance and credit agreement amendment of this type.

On November 6, 2019, we agreed to further amend the Credit Agreement. Pursuant to the Third Amendment, SWK granted the us a waiver of our non-compliance with certain financial covenants in the Credit Agreement. Also pursuant to the Third Amendment, we and SWK agreed to (i) revise financial covenants to adjust minimum revenue and EBITDA levels and (ii) remove the automatic increase of the minimum liquidity requirement based on certain aggregate minimum revenue and EBITDA levels as of September 30, 2019 (which was added pursuant to the First Amendment). In connection with the Third Amendment, we consolidated the SWK Warrants issued to SWK on November 9, 2018 and May 7, 2019, and price was adjusted to $1.00.

As of December 31, 2019, we were was not in compliance with debt covenants and obtained a waiver as part of a Fourth Amendment to Credit Agreement ("Fourth Amendment") in March 2020. Because we do not anticipate we will regain compliance by March 31, 2020, we reclassified the Term Loan from a long-term liability to a current liability in the consolidated balance sheets. Additionally, there were uncertainties surrounding the impact of the COVID-19 pandemic on our financial results. The details of the Fourth Amendment and uncertainties surrounding the impact of COVID-19 on our business are contained in Note 11 to the consolidated financial statements included in Item 8 of this 10-K.

*Revolving Credit Facility*

On October 28, 2019, BIOLASE, Inc. entered into a loan and security agreement (the "Loan Agreement") with Pacific Mercantile Bank, as lender ("Lender"), which provides for a revolving line of credit (the "PMB Loan"), secured by substantially all of the Company's assets, with a maximum principal amount not to exceed the lesser of (i) $3 million or (ii) the sum of 90% of the Eligible Accounts (as defined in the Loan Agreement) plus 75% of the Eligible Inventory (as defined in the Loan Agreement, and subject to certain limitations set forth therein); *provided* that the maximum principal amount of the PMB Loan may be reduced from time to time in the Lender's good faith business judgment as set forth in the Loan Agreement. Borrowings under the PMB Loan may be used for working capital. The PMB Loan matures on October 28, 2021, unless earlier terminated.

Our obligations under the Loan Agreement are secured by a security interest in substantially all of the our property. No borrowings may be made under the Loan Agreement unless and until Exim Bank agrees to guarantee the PMB Loan and we have entered into a borrower agreement with Exim Bank.

Borrowings under the PMB Loan bear interest at a daily rate equal to the prime rate published in the *Wall Street Journal*, plus 1.5% per annum; *provided*, that the interest rate in effect on any day shall not be less than 6.0% per annum. Additionally, we are required to pay an initial and annual fee of $52,500 to Exim Bank, as well as a termination fee equal to $30,000 in the event the Loan Agreement is terminated on or prior to October 28, 2020.

The Loan Agreement requires us to maintain unrestricted cash at Lender *plus* unused availability under the PMB Loan in an amount equal to at least the Burn Rate. "Burn Rate" means our net profit/net loss *plus* depreciation *plus* amortization *plus* stock-based compensation, measured on a trailing three month basis. In addition, the Loan Agreement contains customary affirmative and negative covenants for financings of its type (subject to customary exceptions).

The Loan Agreement provides that the occurrence of any of the following events (subject to applicable cure periods, if any) will constitute an event of default: payment default, loans in excess of the credit limit, breach of representation or warranty, covenant breach, incurrence of certain liens, certain events with respect to the collateral, cross-defaults to certain other indebtedness or obligations secured by liens, a Material Adverse Change (as defined in the Loan Agreement) or a breach of a material agreement that may reasonably result in a Material Adverse Change, final judgement in excess of a certain monetary threshold, certain events of bankruptcy or insolvency, any guarantee or pledge ceasing to be in effect, payment of certain subordinated debt, a Change in Control (as defined in the Loan Agreement), a change in the our President, Chief Executive Officer, or Chief Financial Officer under certain circumstances, a change in two or more members of our Board of Directors within 90 days under certain circumstances, or any felony indictment of any of our directors, officers or significant stockholders. Upon the occurrence and during the continuation of an event of default, the Lender may exercise any remedies available to it, including accelerating the repayment of the PMB Loan.

As of December 31, 2019, we had approximately $2.7 million of unused availability under this facility.

*Public Offering of Common Shares and Private Placement of Unregistered Preferred Shares*

On October 29, 2019, we consummated the sale of 7,820,000 shares of BIOLASE common stock at a price to the public of $0.5750 per share in an underwritten public offering and in addition, granted the underwriters a 30-day over-allotment option to purchase up to an additional 1,173,000 shares of BIOLASE common stock at the public offering price, less the underwriting discount.

On October 29, 2019, we also sold to existing to investors affiliated with Jack W. Schuler and Oracle Investment Management, Inc., 69,565 unregistered shares of the our Series E Preferred Stock at a price of $57.50 per share in a concurrent private placement. Each share of preferred stock is automatically convertible into 100 shares of common stock at a conversion price equal to $0.5750 per share, subject to customary anti-dilution adjustments, at such time as BIOLASE increases the amount of its authorized common stock to permit the full conversion.

At the closing, we received approximately $4.2 million in net proceeds from the common stock offering, after deducting the underwriting discount, and approximately $4.0 million in gross proceeds from the concurrent private placement, resulting in total net proceeds from the offering and private placement of approximately $8.2 million.

On November 5, 2019, the underwriters exercised their over-allotment option to purchase an additional 1,173,000 shares of BIOLASE common stock at a share price of $0.5750 per share for approximately $0.6 million in net proceeds, after deducting the underwriting discount.

Additional capital requirements may depend on many factors, including, among other things, the rate at which our business grows, demands for working capital, manufacturing capacity, and any acquisitions that we may pursue. From time to time, we could be required, or may otherwise attempt, to raise capital through either equity or debt offerings. We cannot provide assurance that we will enter into any such equity or debt financings in the future or that the required capital will be available on acceptable terms, if at all, or that any such financing activity will not be dilutive to our stockholders.

***Concentration of Credit Risk***

Financial instruments, which potentially expose us to a concentration of credit risk, consist principally of cash and cash equivalents, restricted cash, and trade accounts receivable. We maintain our cash and cash equivalents and restricted cash with established commercial banks. At times, balances may exceed federally insured limits. To minimize the risk associated with trade accounts receivable, we perform ongoing credit evaluations of customers' financial condition and maintain relationships with our customers that allow us to monitor changes in business operations so we can respond as needed. We do not, generally, require customers to provide collateral before we sell them our products. However, we have required certain distributors to make prepayments for significant purchases of our products.

***Receivables and Allowance for Doubtful Accounts***

Trade accounts receivable are recorded at the invoiced amount and do not bear interest. The allowance for doubtful accounts is our best estimate of the amount of probable credit losses in the existing accounts receivable. We determine the allowance based on a quarterly specific account review of past due balances. All other balances are reviewed on a pooled basis by age of receivable. Account balances are charged off against the allowance when it is probable the receivable will not be recovered. We do not have any off-balance-sheet credit exposure related to our customers.

**Consolidated Cash Flows**

The following table summarizes our statements of cash flows for the years ended December 31, 2019, 2018, and 2017 (in thousands):

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2019 | 2018 | 2017 |
| Net cash (used in) provided by: | | | |
| Operating activities | $ (12,746) | $ (14,147) | $ (18,412) |
| Investing activities | (207) | (522) | (747) |
| Financing activities | 10,721 | 11,235 | 21,618 |
| Effect of exchange rates on cash | (23) | (106) | 262 |
| Net change in cash and cash equivalents | $ (2,255) | $ (3,540) | $ 2,721 |

***Year Ended December 31, 2019 Compared with Year Ended December 31, 2018***

Cash used in operating activities for the year ended December 31, 2019 decreased by $1.4 million compared to the same period in 2018 and was primarily due to a decrease in net loss of $3.7 million, offset by an increase in adjustments to reconcile net loss to cash and cash equivalents of $1.2 million which included a $1.3 million increase in the provision for bad debts, a decrease in the loss on patent litigation of $1.5 million related to the CAO patent litigation settlement in the prior year, an decrease in loss on disposal of internally developed software of $0.7 million, a $0.2 million increase in the provision for inventory obsolescence. Additionally, net changes in operating assets and liabilities resulted in an increase of $1.1 million to operating cash flows in for the year ended December 31, 2019 driven primarily by a $2.1 million change in accounts receivable and a $5.0 million decrease in accounts payable and accrued liabilities. Cash used in operating activities for the same period in 2018 totaled $14.2 million and was primarily comprised of a net loss of $21.5 million and adjustments to reconcile net loss to net cash and cash equivalents of $7.4 million.

Cash used in investing activities for the year ended December 31, 2019 totaled $0.2 million compared to $0.5 million for the same period in 2018. The $0.3 million decrease in net cash used in investing activities was due to our continued efforts to effectively manage resources. We expect capital expenditures for 2020 to increase for the year ended December 31, 2020 as we make new investments in leasehold improvements.

Cash provided by financing activities decreased by $0.5 million to $10.7 million compared to the same period in 2018 and was primarily due to the sale of our common stock in a public offering and the sale of our Series E Convertible Preferred Stock in a private placement during the fourth quarter of 2019 compared to the net proceeds from the SWK Loan during the year ended December 31, 2018. See Notes 6 and 8 to the consolidated financial statements for more information.

The $0.1 million effect of exchange rate on cash for the year ended December 31, 2019 was due to a recognized loss on foreign currency transactions, primarily driven by changes in the Euro during the year ended December 31, 2018.

***Year Ended December 31, 2018 Compared with Year Ended December 31, 2017***

Cash used in operating activities for the year ended December 31, 2018 decreased by $4.3 million compared to the same period in 2017 and was primarily due to an increase in net loss of $4.7 million, offset by an increase in adjustments to reconcile net loss to cash and cash equivalents of $3.5 million which included a $1.5 million loss related to the CAO patent litigation settlement, an increase in loss on disposal of internally developed software of $0.7 million, a $0.6 million increase in share-based compensation, and an increase of $0.7 million in deferred income taxes and a $0.5 million decrease in provision for inventory reserves. Additionally, net changes in operating assets and liabilities resulted in an increase of $5.4 million to operating cash flows in the year ended December 31, 2018 driven primarily by $6.8 million change in accounts payable and accrued liabilities from the same period in 2017 due to the timing of payments made in 2017 as compared to the year ended December 31, 2018. Cash used in operating activities for the same period in 2017 totaled $18.4 million and was primarily comprised of net loss of $16.9 million, adjustments to reconcile net loss to net cash and cash equivalents of $3.8 million and cash outflow from net changes in assets and liabilities of $5.4 million. The $5.4 million net decrease in our operating assets and liabilities was primarily due to a decrease in accounts payable and accrued liabilities of $5.0 million related to the timing of our payments.

Cash used in investing activities for the year ended December 31, 2018 totaled $0.5 million compared to $0.7 million for the same period in 2017. The $0.2 million decrease in net cash used in investing activities was due to our continued efforts to effectively manage resources.

Cash provided by financing activities decreased by $10.4 million compared to the same period in 2017 and was primarily due to the difference in the net proceeds from our rights offering in the same period in 2017.

The $0.1 million effect of exchange rate on cash for the year ended December 31, 2018 was due to a recognized loss on foreign currency transactions, primarily the Euro currency conversion rates during the year ended December 31, 2018.

**Contractual Obligations**

*Leases*

We lease our primary facility under a non-cancellable operating lease that expires in April 2020. In January 2020, we entered into two new non-cancellable operating leases.

On January 22, 2020, the Company entered into a five-year real property lease agreement for an approximately 11,000 square foot facility in Corona, California where it will move its manufacturing operations. The lease commences on July 1, 2020. Future minimum rent payments under this lease are approximately $0.5 million.

On February 4, 2020, the Company also entered into a sixty-six month real property lease agreement for office space of approximately 11,000 square feet of office space in Foothill Ranch, California. The lease commences on July 1, 2020. Future minimum rent payments under this lease are approximately $2.1 million.

*Loans*

On November 9, 2018, we entered into the Credit Agreement with SWK, which provides us with the SWK Loan, a variable-rate term loan in the amount of $12.5 million. The SWK Loan bears interest at LIBOR plus 10% and is interest-only for the first two years of the five-year loan term, with the possibility of extending the interest-only period beyond two years. Principal repayments will begin in 2021, and will be approximately $0.7 million per quarter until the loan matures in November 2023.

On October 28, 2019, we entered into the Loan Agreement with Pacific Mercantile Bank, as lender, which provides us with the PMB Loan. Borrowings under the PMB Loan may be used for working capital. The PMB Loan matures on October 29, 2021, unless earlier terminated. There were no draws on the PMB Loan as of December 31, 2019.

*Purchase Obligations*

Purchase obligations relate to purchase orders with suppliers that we expect to complete primarily during the year ended December 31, 2019. In conformity with current GAAP, purchase obligations are not reported in the consolidated balance sheet as of December 31, 2019.

The following table presents our expected cash requirements for contractual obligations outstanding as of December 31, 2019, for the years ended as indicated below (in thousands):

| | Less Than 1 Year | 1 to 3 Years | 3 to 5 Years | More Than 5 years | Total |
|---|---|---|---|---|---|
| Operating lease obligations | $ 282 | $ 45 | $ — | $ — | $ 327 |
| Purchase obligations | 9,482 | 351 | — | — | 9,833 |
| SWK Loan interest (1) | 1,873 | 3,265 | 2,455 | — | 7,593 |
| SWK Loan principal | — | 4,900 | 10,100 | — | 15,000 |
| Total | $ 11,637 | $ 8,561 | $ 12,555 | $ — | $ 32,753 |

(1) estimated using LIBOR rates as at December 31, 2019

**Recent Accounting Pronouncements**

See Note 2 to the consolidated financial statements included in Part IV, Item 15 of this Annual Report on Form 10-K, which is incorporated herein by reference.

**Off-Balance Sheet Arrangements**

We do not have any off-balance sheet arrangements as defined in Regulation S-K Item 303(A)(4)(ii).

**Item 8. Financial Statements**

All financial statements required by this Item 8, including the report of the independent registered public accounting firm, are listed in Part IV, Item 15 of this Form 10-K, are set forth beginning on Page F-1 of this Form 10-K, and are hereby incorporate d herein by reference.

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

None.

**Item 9A.** ***Controls and Procedures***

**Disclosure Controls and Procedures**

Our management has evaluated , with the participation of our President and Chief Executive Officer and Chief Financial Officer, the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on that evaluation, our President and Chief Executive Officer and Chief Financial Officer have concluded that the Company's disclosure controls and procedures were effective as of December 31, 2019.

**Management's Report on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework established by the Committee of Sponsoring Organizations of the Treadway Commission entitled "Internal Control — Integrated Framework (2013)" (the "COSO Framework"). Our internal control over financial reporting was not subject to attestation by our independent registered public accounting firm, as we are not an accelerated filer.

We identified a material weakness in internal control related to ineffective financial statement close process controls as they relate to the accounting for our Series E Convertible Preferred Stock. During our review of the consolidated financial statements as of December 31, 2019, we determined that the classification of the Series E Convertible Preferred Stock on the consolidated balance sheet was incorrect and that due to the fact that the Series E Convertible Preferred Stock is redeemable at the control of the stockholder, it should have been classified as mezzanine equity pursuant to the accounting guidance in Accounting Standards Codification Topic 480 – "*Distinguishing Liabilities from Equity,"* and not a component of permanent equity. We believe that these control deficiencies were a result of a misinterpretation of the terms and conditions of the Certificate of Designations with respect to the Series E Convertible Preferred Stock Agreement which led to the misclassification. The error was corrected and the material weakness did not result in any misstatements to the consolidated financial statements, and the correction of the error did not result in any changes to previously released financial results. Based on this material weakness, the Company's management concluded that at December 31, 2019, the Company's internal control over financial reporting was not effective.

**Remediation**

Management has been implementing and continues to implement measures designed to ensure that control deficiencies contributing to the material weakness are remediated and operate, such that these controls are designed, implemented, and operating effectively. The remediation actions include: (i) additional levels of review; (ii) additional training; and (iii) use of external consultants on highly technical accounting matters; and (iv) enhanced quarterly reporting on the remediation measures to the Audit Committee of the Board of Directors. We believe that these actions will remediate the material weakness. The weakness will not be considered remediated, however, until the applicable controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively. We expect that the remediation of this material weakness will be completed prior to the end of fiscal 2020.

Based on the fact that this is an isolated incident and there have been no other indications over the design and effectiveness of our internal controls, management believes that our consolidated financial statements included in this Form 10-K have been prepared in accordance with U.S. GAAP. Our CEO and CFO have certified that, based on their knowledge, the financial statements, and other financial information included in this Form 10-K, fairly present in all material respects the financial condition, results of operations and cash flows of the Company as of, and for, the periods presented in this Form 10-K. BDO LLP has issued an unqualified opinion on our consolidated financial statements, which is included in Item 8 of this Form 10-K.

**Changes in Internal Control over Financial Reporting**

Except for the material weakness identified during the fourth quarter, there have been no changes in our internal control over financial reporting that occurred during the Company's fiscal quarter ended December 31, 2019 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Item 9B.** ***Other Information***

On March 25, 2020, the Company agreed to further amend the Credit Agreement. Pursuant to the Fourth Amendment to the Credit Agreement, SWK granted the Company a waiver of the Company's non-compliance with certain financial covenants contained in the Credit Agreement. Also pursuant to the Fourth Amendment, the Company and SWK agreed to (i) revise financial covenants to adjust minimum revenue and EBITDA levels and (ii) revise the financial covenant with respect to required unencumbered liquid assets.

## PART III

**Item 10.** ***Directors, Executive Officers and Corporate Governance***

Information regarding our executive officers is included in Part I of this Form 10-K under "Item 1. Business — Executive Officers of the Registrant." In addition, the information set forth under the caption "Election of Directors" and "Security Ownership of Certain Beneficial Owners and Management — Section 16(a) Beneficial Ownership Reporting Compliance" in the proxy statement for the Company's 2020 annual meeting of stockholders (the "Proxy Statement") is incorporated by reference herein.

The Biolase, Inc. Code of Business Conduct and Ethics applies to all of our employees, officers, and directors, including our President and Chief Executive Officer. The Code of Business Conduct can be found on our website at the following address: media.corporate-ir.net/media_files/nsd/blti/corpgov/CodeofConductandEthics.pdf.

**Item 11.** ***Executive Compensation***

The information set forth under the captions "Executive Compensation" and "Director Compensation" in the Proxy Statement is incorporated by reference herein.

**Item 12.** ***Security Ownership of Certain Beneficial Owners and Management and Related StockholderMatters***

The information set forth under the caption "Security Ownership of Certain Beneficial Owners and Management" in the Proxy Statement and the information set forth under the caption "Equity Compensation Plan Information" in Item 5 of this Form 10-K are incorporated by reference herein.

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

The information set forth under the captions "Election of Directors" and "Certain Relationships and Related Transactions" in the Proxy Statement is incorporated by reference herein.

**Item 14.** ***Principal Accountant Fees and Services***

The information set forth under the caption "Principal Accountant Fees and Services" in the Proxy Statement is incorporated by reference herein.

## PART IV

**Item 15.** ***Exhibits and Financial Statement Schedules***

(a) The following documents are filed as part of this Annual Report on Form 10-K beginning on the pages referenced below:

*(1) Financial Statements:*



*(2) Financial Statement Schedule:*



All other schedules have been omitted as they are not applicable, not required or the information is included in the consolidated financial statements or the notes thereto.

*(3) Exhibits:*

The exhibits filed as a part of this Annual Report on Form 10-K are listed in the accompanying Exhibit Index on page 57.

**Item 16.** ***Form 10-K Summary***

None

| Exhibit | Description | Filed Herewith | Incorporated by Reference | | | |
|---|---|---|---|---|---|---|
| | | | Form | Period Ending/Date of Report | Exhibit | Filing Date |
| 3.1.1 | Restated Certificate of Incorporation, including, (i) Certificate of Designations, Preferences and Rights of 6% Redeemable Cumulative Convertible Preferred Stock of the Registrant; (ii) Certificate of Designations, Preferences and Rights of Series A 6% Redeemable Cumulative Convertible Preferred Stock of the Registrant; (iii) Certificate of Correction Filed to Correct a Certain Error in the Certificate of Designation of the Registrant; and (iv) Certificate of Designations of Series B Junior Participating Cumulative Preferred Stock of the Registrant | | S-1, Amendment No. 1 | 12/23/2005 | 3.1 | 12/23/2005 |
| 3.1.2 | Amendment to Restated Certificate of Incorporation | | 8-K | 05/10/2012 | 3.1 | 05/16/2012 |
| 3.1.3 | Second Amendment to Restated Certificate of Incorporation | | 8-A/A | 11/04/2014 | 3.1.3 | 11/04/2014 |
| 3.1.4 | Certificate of Elimination of Series B Junior Participating Cumulative Preferred Stock | | 8-K | 11/10/2015 | 3.1 | 11/12/2015 |
| 3.1.5 | Certificate of Designations, Preferences and Rights of Series C Participating Convertible Preferred Stock of the Registrant | | 8-K | 08/08/2016 | 3.1 | 08/08/2016 |
| 3.1.6 | Certificate of Elimination of Series C Participating Convertible Preferred Stock of the Registrant | | 8-K | 04/18/2017 | 3.1 | 04/20/2017 |
| 3.1.7 | Certificate of Designations, Preferences and Rights of Series D Participating Convertible Preferred Stock of the Registrant | | 8-K | 04/18/2017 | 3.2 | 04/20/2017 |
| 3.1.8 | Third Amendment to Restated Certificate of Incorporation | | S-3 | 07/21/2017 | 3.4 | 07/21/2017 |
| 3.1.9 | Fourth Amendment to Restated Certificate of Incorporation | | 8-K | 05/10/2018 | 3.1 | 05/11/2018 |
| 3.1.10 | Certificate of Designations, Preferences and Rights of Series E Participating Convertible Preferred Stock of the Registrant | | S-1/A | 10/07/2019 | 3.1.10 | 10/07/2019 |
| 3.2 | Seventh Amended and Restated Bylaws of the Registrant, adopted on October 8, 2018 | | 8-K | 10/08/2018 | 3.1 | 10/09/2018 |
| 4.1 | Form of Warrant Issued on November 7, 2014 (attached as Exhibit A to the Securities Purchase Agreement, dated November 3, 2014, among the Registrant and the investors listed on Schedule I thereto) | | 8-K | 11/03/2014 | 99.1 | 11/07/2014 |
| 4.2 | Form of Warrant Issued on August 8, 2016 (attached as Exhibit B to the Securities Purchase Agreement, dated August 1, 2016, among the Registrant and the investors listed on Schedule I thereto) | | 8-K | 08/01/2016 | 99.1 | 08/02/2016 |
| 4.3 | Form of Warrant Issued on April 18, 2017 | | DEF14A | 06/30/2017 | D | 05/19/2017 |
| 4.4 | Warrant to Purchase Stock Issued on March 6, 2018 to Western Alliance Bank | | 10-K | 12/31/2017 | 4.4 | 03/14/2018 |
| 4.5 | Warrant to Purchase Stock Issued on November 9, 2018 to Western Alliance Bank | | 10-Q | 09/30/2018 | 4.1 | 11/14/2018 |

| Exhibit | Description | Filed Herewith | Incorporated by Reference | | | |
|---|---|---|---|---|---|---|
| | | | Form | Period Ending/Date of Report | Exhibit | Filing Date |
| 4.6 | Warrant to Purchase Stock Issued on November 9, 2018 to SWK Funding LLC | | 10-Q | 09/30/2018 | 4.2 | 11/14/2018 |
| 4.7 | Warrant to Purchase Stock Issued on May 7, 2019 to SWK Funding LLC | | 10-Q | 03/31/2019 | 4.7 | 05/10/2019 |
| 4.8 | Consolidated Amended and Restated Warrant to Purchase Common Stock, dated November 9, 2019, by and between the Registrant and SWK Funding LLC | | | | | |
| 4.9 | Description of Registrant's Securities Registered Pursuant to Section 12 of the Exchange Act | X | | | | |
| 10.1* | 2002 Stock Incentive Plan, as amended | | DEF14A | 05/06/2016 | A | 04/07/2016 |
| 10.2* | Form of Stock Option Agreement under the 2002 Stock Incentive Plan (attached as Exhibit A to the Notice of Grant of Stock Option under the 2002 Stock Incentive Plan – Discretionary Option Grant Program) | | 10-K | 12/31/2004 | 10.26 | 07/19/2005 |
| 10.3* | Form of Option Award Notice for California Employees under the 2002 Stock Incentive Plan | | 10-Q | 09/30/2015 | 10.2 | 11/06/2015 |
| 10.4* | Form of Option Award Notice for Non-California Employees under the 2002 Stock Incentive Plan | | 10-Q | 09/30/2015 | 10.3 | 11/06/2015 |
| 10.5* | Form of Option Award Notice for Non-Employee Directors under the 2002 Stock Incentive Plan | | 10-Q | 09/30/2015 | 10.4 | 11/06/2015 |
| 10.6* | Form of Restricted Stock Unit Award Notice for Non-Employee Directors under the 2002 Stock Incentive Plan | | 10-Q | 09/30/2015 | 10.5 | 11/06/2015 |
| 10.7* | 2018 Long-Term Incentive Plan | | DEF14A | 05/09/2018 | A | 04/05/2018 |
| 10.8* | First Amendment to 2018 Long-Term Incentive Plan | | DEF14A | 09/21/2018 | B | 08/24/2018 |
| 10.9* | Second Amendment to 2018 Long-Term Incentive Plan | | DEF14A | 05/15/2019 | A | 04/10/2019 |
| 10.10 | Lease, dated January 10, 2006, by and between the Registrant and The Irvine Company LLC | | 8-K | 01/10/2006 | 10.1 | 01/17/2006 |
| 10.11 | Third Amendment to Lease, dated March 16, 2015, by and between the Registrant and The Irvine Company LLC | | 10-Q | 03/31/2015 | 10.3 | 05/01/2015 |
| 10.12 | Lease dated January 22, 2020 by and between the Registrant and Foothill Corporate I MT, LLC | X | | | | |
| 10.13 | Lease dated January 22, 2020 by and between the Registrant and Green River Properties, LLC | X | | | | |
| 10.14* | Form of Indemnification Agreement between the Registrant and its officers and directors | | 10-Q | 09/30/2005 | 10.1 | 11/09/2005 |
| 10.15* | Form of Stock Option Agreement for inducement grants made to John R. Beaver on September 30, 2017 | | 8-K | 09/30/2017 | 10.1 | 10/03/2017 |
| 10.16* | Employment Agreement, dated August 7, 2018, by and between the Registrant and Todd Norbe | | 8-K | 08/07/2018 | 10.1 | 08/08/2018 |

| Exhibit | Description | Filed Herewith | Incorporated by Reference | | | |
|---|---|---|---|---|---|---|
| | | | Form | Period Ending/Date of Report | Exhibit | Filing Date |
| 10.17 | Confidential Settlement Agreement, dated January 25, 2019, by and between the Registrant and CAO Group, Inc. | | 10-K | 12/31/2018 | 10.28 | 03/08/2019 |
| 10.18 | Standstill Agreement, dated November 10, 2015, by and among the Registrant, Jack W. Schuler, Renate Schuler and the Schuler Family Foundation | | 8-K | 11/10/2015 | 99.1 | 11/12/2015 |
| 10.19 | Standstill Agreement, dated November 10, 2015, by and among the Registrant and Larry N. Feierg, Oracle Partners, L.P., Oracle Institutional Partners, L.P., Oracle Ten Fund Master, L.P., Oracle Associates, LLC, and Oracle Investment Management, Inc. | | 8-K | 11/10/2015 | 99.2 | 11/12/2015 |
| 10.20 | Amendment to Standstill Agreement, dated August 1, 2016, by and among the Registrant, Jack W. Schuler, Renate Schuler and the Schuler Family Foundation | | 8-K | 08/01/2016 | 99.2 | 08/02/2016 |
| 10.21 | Amendment to Standstill Agreement, dated August 1, 2016, by and among the Registrant, Larry N. Feinberg, Oracle Partners, L.P., Oracle Institutional Partners, L.P., Oracle Ten Fund Master, L.P., Oracle Associates, LLC and Oracle Investment Management, Inc. | | 8-K | 08/01/2016 | 99.3 | 08/02/2016 |
| 10.22 | Amendment to Standstill Agreement, dated November 9, 2017, by and among the Registrant, Jack W. Schuler, Renate Schuler and the Schuler Family Foundation | | 8-K | 11/09/2017 | 99.1 | 11/09/2017 |
| 10.23 | Amendment to Standstill Agreement, dated November 9, 2017, by and among the Registrant, Larry N. Feinberg, Oracle Partners, L.P., Oracle Institutional Partners, L.P., Oracle Ten Fund Master, L.P., Oracle Associates, LLC and Oracle Investment Management, Inc. | | 8-K | 11/09/2017 | 99.2 | 11/09/2017 |

| Exhibit | Description | Filed Herewith | Incorporated by Reference | | | |
|---|---|---|---|---|---|---|
| | | | Form | Period Ending/Date of Report | Exhibit | Filing Date |
| 10.24 | Credit Agreement dated November 9, 2018, by and between the Registrant and SWK Funding LLC | | 10-Q | 09/30/2018 | 10.6 | 11/14/2018 |
| 10.25 | First Amendment to Credit Agreement, dated May 7, 2019, by and between the Registrant and SWK LLC | | 10-Q | 03/31/2019 | 10.8 | 05/10/2019 |
| 10.26 | Letter Agreement, dated August 20, 2019, by and between the Registrant and SWK Funding LLC | | S-1 | 09/04/2019 | 10.28 | 09/05/2019 |
| 10.27 | Second Amendment to Credit Agreement, dated as of September 30, 2019, by and between the Registrant and SWK Funding LLC | | S-1/A | 11/09/2017 | 99.2 | 11/09/2017 |
| 10.28 | Third Amendment to Credit Agreement, dated September 30, 2019, by and between the Registrant and SWK Funding LLC | | 10-Q | 09/30/2019 | 10.5 | 11/12/2019 |
| 10.29 | Fourth Amendment to Credit Agreement, dated as of March 25, 2020 by and between the Registrant and SWK Funding LLC | X | | | | |
| 10.30 | Loan and Security Agreement, dated as of October 28, 2019, by and between Registrant and Pacific Mercantile Bank | | 10-Q | 10/28/2019 | 10.1 | 11/01/2019 |
| 21.1 | Subsidiaries of the Registrant | X | | | | |
| 23.1 | Consent of Independent Registered Public Accounting Firm, BDO USA, LLP | X | | | | |
| 31.1 | Certification of Chief Executive Officer pursuant to Rule 13a-14 and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended | X | | | | |
| 31.2 | Certification of Chief Financial Officer pursuant to Rule 13a-14 and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended | X | | | | |
| 32.1 | Certification of Chief Executive Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 | ** | | | | |
| 32.2 | Certification of Chief Financial Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 | ** | | | | |
| 101 | The following financial information from the Company's Annual Report on Form 10-K, for the year ended December 31, 2019, formatted in eXtensible Business Reporting Language:<br>(i) Consolidated Balance Sheets,<br>(ii) Consolidated Statements of Operations and Comprehensive Loss,<br>(iii) Consolidated Statements of Redeemable Preferred Stock and Stockholders' Equity (Deficit),<br>(iv) Consolidated Statements of Cash Flows,<br>(v) Notes to Consolidated Financial Statements | X | | | | |

† Confidential treatment was granted for certain confidential portions of this exhibit pursuant to Rule 24b-2 under the Securities Exchange Act of 1934. In accordance with Rule 24b-2, these confidential portions were omitted from this exhibit and filed separately with the Securities and Exchange Commission.

* Management contract or compensatory plan or arrangement.

** Furnished herewith.

## SIGNATURES

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

**BIOLASE, INC.,**
a Delaware Corporation
(registrant)

Dated: March 27, 2020

By: /s/ TODD A. NORBE
**Todd A. Norbe**
**President and Chief Executive Officer**

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

| Signature | Title | Date |
|---|---|---|
| /s/ TODD A. NORBE<br>**Todd A. Norbe** | President and Chief Executive Officer (Principal Executive Officer) and Director | March 27, 2020 |
| /s/ JOHN R. BEAVER<br>**John R. Beaver** | Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | March 27, 2020 |
| /s/ DR. MIKE DITOLLA<br>**Dr. Mike DiTolla** | Director | March 27, 2020 |
| /s/ DR. RICHARD B. LANMAN<br>**Dr. Richard B. Lanman** | Director | March 27, 2020 |
| /s/ DR. JONATHAN T. LORD<br>**Dr. Jonathan T. Lord** | Director | March 27, 2020 |
| /s/ JESS ROPER<br>**Jess Roper** | Director | March 27, 2020 |
| /s/ GARRETT SATO<br>**Garrett Sato** | Director | March 27, 2020 |
| /s/ DR. ELAINE WAGNER<br>**Dr. Elaine Wagner** | Director | March 27, 2020 |

**BIOLASE, INC.**

**Index to Consolidated Financial Statements and Schedule**



All Schedules, except Schedule II, have been omitted as the required information is shown in the consolidated financial statements, or notes thereto, or the amounts involved are not significant or the schedules are not applicable.

**Report of Independent Registered Public Accounting Firm**

Shareholders and Board of Directors
BIOLASE, Inc.
Irvine, California

**Opinion on the Consolidated Financial Statements**

We have audited the accompanying consolidated balance sheets of BIOLASE, Inc. ( the "Company") as of December 31, 2019 and 2018, the related consolidated statements of operations and comprehensive loss, redeemable preferred stock and stockholders' equity, cash flows for each of the three years in the period ended December 31, 2019, and the related notes and schedule listed in the index appearing under Item 15(a)(2) (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2019, in conformity with accounting principles generally accepted in the United States of America.

**Going Concern Uncertainty**

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has suffered recurring losses from operations, has negative cash flows from operations and has uncertainties regarding the Company's ability to meet its debt covenants and service its debt. These factors, among others, raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

**Change in Accounting Principle**

As discussed in Notes 2 and 7 to the consolidated financial statements, the Company has changed its method of accounting for leases in 2019 due to the adoption of Accounting Standards Codification ("ASC") 842 - *Leases*.

**Basis for Opinion**

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ BDO USA, LLP

We have served as the Company's auditor since 2005.

Costa Mesa, California

March 27, 2020

**BIOLASE, INC.**
**CONSOLIDATED BALANCE SHEETS**
(in thousands, except per share data)

| | December 31, | |
|---|---|---|
| | **2019** | **2018** |
| **ASSETS** | | |
| **Current assets:** | | |
| Cash and cash equivalents | $ 5,789 | $ 8,044 |
| Restricted cash | 312 | 312 |
| Accounts receivable, less allowance of $ 2,531 and $850 in 2019 and 2018, respectively | 8,760 | 11,112 |
| Inventory | 10,995 | 12,248 |
| Prepaid expenses and other current assets | 1,163 | 1,591 |
| **Total current assets** | 27,019 | 33,307 |
| Property, plant, and equipment, net | 1,193 | 1,975 |
| Goodwill | 2,926 | 2,926 |
| Right of use asset | 276 | — |
| Other assets | 433 | 308 |
| **Total assets** | $ 31,847 | $ 38,516 |
| **LIABILITIES, REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY** | | |
| **Current liabilities:** | | |
| Accounts payable | $ 5,332 | $ 5,953 |
| Accrued liabilities | 4,744 | 7,538 |
| Deferred revenue | 2,237 | 2,476 |
| Term loan | 13,466 | — |
| **Total current liabilities** | 25,779 | 15,967 |
| Deferred income taxes, net | 78 | 77 |
| Deferred revenue | 358 | — |
| Warranty accrual | 245 | 447 |
| Other liabilities | 1,045 | 100 |
| Term loan | — | 10,836 |
| **Total liabilities** | 27,505 | 27,427 |
| **Commitments and contingencies —Note 7** | | |
| **Redeemable preferred stock:** | | |
| Preferred stock, par value $0.001 per share; 1,000 shares authorized, 70 and 0 shares issued and outstanding as of December 31, 2019 and 2018, respectively | $ 3,965 | $ — |
| **Total redeemable preferred stock** | 3,965 | — |
| **Stockholders' equity:** | | |
| Common stock, par value $0.001 per share; 40,000 and 40,000 shares authorized, 31,439 and 21,972, shares issued and outstanding as of December 31, 2019 and 2018, respectively | 31 | 21 |
| Additional paid-in capital | 235,594 | 228,430 |
| Accumulated other comprehensive loss | (701 ) | (670 ) |
| Accumulated deficit | (234,547 ) | (216,692 ) |
| **Total stockholders' equity** | 377 | 11,089 |
| **Total liabilities, redeemable preferred stock and stockholders' equity** | $ 31,847 | $ 38,516 |

See accompanying notes to consolidated financial statements.

**BIOLASE, INC.**
**CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS**
(in thousands, except per share data)

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2019 | 2018 | 2017 |
| Products and services revenue | $ 37,787 | $ 46,143 | $ 46,798 |
| License fees and royalty revenue | 12 | 12 | 128 |
| Net revenue | 37,799 | 46,155 | 46,926 |
| Cost of revenue | 23,511 | 29,260 | 31,800 |
| Gross profit | 14,288 | 16,895 | 15,126 |
| Operating expenses: | | | |
| Sales and marketing | 14,396 | 18,121 | 16,718 |
| General and administrative | 10,748 | 11,771 | 9,712 |
| Engineering and development | 4,765 | 5,203 | 6,229 |
| Disposal of internally developed software | — | 1,185 | 505 |
| Loss on patent litigation settlement | — | 1,500 | — |
| Total operating expenses | 29,909 | 37,780 | 33,164 |
| Loss from operations | (15,621) | (20,885) | (18,038) |
| (Loss) gain on foreign currency transactions | (121) | (58) | 563 |
| Interest (expense) income, net | (2,157) | (510) | 42 |
| Non-operating (loss) gain, net | (2,278) | (568) | 605 |
| Loss before income tax provision | (17,899) | (21,453) | (17,433) |
| Income tax provision (benefit) | (44) | 63 | (582) |
| Net loss | (17,855) | (21,516) | (16,851) |
| Other comprehensive income (loss) items: | | | |
| Foreign currency translation adjustments | (31) | (94) | 300 |
| Comprehensive loss | $ (17,886) | $ (21,610) | $ (16,551) |
| | | | |
| Net loss | $ (17,855) | $ (21,516) | $ (16,851) |
| Deemed dividend on convertible preferred stock | — | — | (3,978) |
| Net loss attributable to common stockholders | $ (17,855) | $ (21,516) | $ (20,829) |
| | | | |
| Net loss per share attributable to common stockholders: | | | |
| Basic | $ (0.77) | $ (1.05) | $ (1.41) |
| Diluted | $ (0.77) | $ (1.05) | $ (1.41) |
| Shares used in the calculation of net loss per share: | | | |
| Basic | 23,201 | 20,588 | 14,752 |
| Diluted | 23,201 | 20,588 | 14,752 |

See accompanying notes to consolidated financial statements.

**BIOLASE, INC.**
**CONSOLIDATED STATEMENTS OF REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY**
(in thousands)

| | Redeemable Preferred Stock | | Stockholders' Equity | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Series E Convertible Preferred Stock | | Common Stock and Additional Paid-in Capital | | Convertible Preferred Stock | | Accumulated Other Comprehensive Loss | Accumulated Deficit | Total Stockholders' Equity |
| | Shares | Amount | Shares | Amount | Shares | Amount | | | |
| Balances, January 1, 2017 | — | — | 13,513 | 201,266 | — | — | (876) | (178,325) | 22,065 |
| Exercise of stock options, net | — | — | — | 3 | — | — | — | — | 3 |
| Stock-based compensation | — | — | — | 2,145 | — | — | — | — | 2,145 |
| Issuance of stock from RSUs, net | — | — | 81 | — | — | — | — | — | — |
| Issuance of Series D participating convertible preferred stock and warrants, net of issuance cost of $251 | — | — | — | 2,026 | 81 | 8,214 | — | — | 2,026 |
| Beneficial conversion feature of Series D participating convertible preferred stock | — | — | — | 1,952 | — | (1,952) | — | — | 1,952 |
| Deemed dividend related to beneficial conversion feature of Series D participating convertible preferred stock | — | — | — | (3,978) | — | 3,978 | — | — | (3,978) |
| Issuance of common stock upon conversion of Series D participating convertible preferred stock | — | — | 1,613 | 10,240 | (81) | (10,240) | — | — | 10,240 |
| Issuance of stock from rights offering, net | — | — | 5,261 | 11,358 | — | — | — | — | 11,358 |
| Net loss | — | — | — | — | — | — | — | (16,851) | (16,851) |
| Foreign currency translation adjustment | — | — | — | — | — | — | 300 | — | 300 |
| Balances, December 31, 2017 | — | — | 20,468 | 225,012 | — | — | (576) | (195,176) | 29,260 |
| Exercise of stock options, net | — | — | 1 | 3 | — | — | — | — | 3 |
| Fees for rights offering | — | — | — | (38) | — | — | — | — | (38) |
| Stock-based compensation | — | — | — | 2,627 | — | — | — | — | 2,627 |
| Issuance of stock from RSUs, net | — | — | 603 | — | — | — | — | — | — |
| Warrant issued in connection with debt instruments | — | — | — | 847 | — | — | — | — | 847 |
| Net loss | — | — | — | — | — | — | — | (21,516) | (21,516) |
| Foreign currency translation adjustment | — | — | — | — | — | — | (94) | — | (94) |
| Balances, December 31, 2018 | — | — | 21,072 | 228,451 | — | — | (670) | (216,692) | 11,089 |
| Issuance of Series E Convertible Preferred Stock, net of issuance costs of $35 | 70 | 3,965 | — | — | — | — | — | — | — |
| Exercise of stock options, net | — | — | 2 | 4 | — | — | — | — | 4 |
| Issuance of Common Stock in public offering, net of issuance costs of $920 | — | — | 8,993 | 4,250 | — | — | — | — | 4,250 |
| Stock-based compensation | — | — | — | 2,395 | — | — | — | — | 2,395 |
| Issuance of stock from RSUs, net | — | — | 1,372 | 364 | — | — | — | — | 364 |
| Warrant issued in connection with debt instruments | — | — | — | 161 | — | — | — | — | 161 |
| Net loss | — | — | — | — | — | — | — | (17,855) | (17,855) |
| Foreign currency translation adjustment | — | — | — | — | — | — | (31) | — | (31) |
| Balances, December 31, 2019 | 70 | 3,965 | 31,439 | 235,625 | — | — | (701) | (234,547) | 377 |

See accompanying notes to consolidated financial statements.

**BIOLASE, INC.**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**
(in thousands)

| | Years Ended December 31, | | |
|---|---|---|---|
| | **2019** | **2018** | **2017** |
| Cash Flows From Operating Activities: | | | |
| Net loss | $ (17,855) | $ (21,516) | $ (16,851) |
| Adjustments to reconcile net loss to net cash and cash equivalents used in operating activities: | | | |
| Depreciation and amortization | 982 | 945 | 1,203 |
| Loss on disposal of assets, net | — | 1,228 | 505 |
| Provision for bad debts, net | 1,695 | 469 | 40 |
| Provision for inventory excess and obsolescence | 413 | 166 | 623 |
| Amortization of discount on debt | 140 | 202 | — |
| Amortization of debt issuance costs | 188 | 126 | — |
| Loss on patent litigation settlement | — | 1,500 | — |
| Stock-based compensation | 2,742 | 2,768 | 2,207 |
| Warrants issued to consultants | 48 | — | — |
| Deferred income taxes | 7 | (27) | (694) |
| Earned interest income, net | 2 | 1 | (42) |
| Changes in operating assets and liabilities: | | | |
| Accounts receivable | 655 | (1,458) | (337) |
| Inventory | 840 | (127) | 419 |
| Prepaid expenses and other current assets | 439 | (25) | (11) |
| Accounts payable, accrued and other liabilities | (3,156) | 1,762 | (5,077) |
| Deferred revenue | 114 | (161) | (397) |
| Net cash and cash equivalents used in operating activities | (12,746) | (14,147) | (18,412) |
| Cash Flows From Investing Activities: | | | |
| Purchases of property, plant, and equipment | (207) | (558) | (747) |
| Proceeds from disposal of property, plant, and equipment | — | 36 | — |
| Net cash and cash equivalents used in investing activities | (207) | (522) | (747) |
| Cash Flows From Financing Activities: | | | |
| Principal payments under capital lease obligation | — | (46) | (146) |
| Borrowings under lines of credit | — | 3,696 | — |
| Payments under lines of credit | — | (3,696) | — |
| Proceeds from term loan | 2,500 | 12,500 | — |
| Payments of debt issuance costs | (133) | (1,058) | — |
| Proceeds from equity offerings | 9,171 | — | 21,761 |
| Payments of fees for shelf registration | (821) | (164) | — |
| Proceeds from exercise of stock options | 4 | 3 | 3 |
| Net cash and cash equivalents provided by financing activities | 10,721 | 11,235 | 21,618 |
| Effect of exchange rate changes | (23) | (106) | 262 |
| (Decrease) increase in cash and cash equivalents | (2,255) | (3,540) | 2,721 |
| Cash, cash equivalents and restricted cash, beginning of year | 8,356 | 11,896 | 9,175 |
| Cash, cash equivalents and restricted cash, end of year | $ 6,101 | $ 8,356 | $ 11,896 |
| Supplemental cash flow disclosure - cash paid | | | |
| Interest paid | $ 1,784 | $ 23 | $ 1 |
| Interest received | $ — | $ — | $ 74 |
| Income taxes paid | $ 35 | $ 44 | $ 164 |
| Cash paid for operating leases | $ 797 | $ — | $ — |
| Supplemental cash flow disclosure - Non-cash investing and financing activities | | | |
| Accrued capital expenditures | $ 18 | $ 31 | $ 102 |
| Loss on patent litigation settlement | $ — | $ 1,500 | $ — |
| Settlement of liability awards with RSUs | $ 201 | $ — | $ — |
| Right of Use Assets obtained in exchange for a lease liability | $ 276 | $ — | $ — |
| Equity financing costs in accounts payable | $ 129 | $ — | $ — |
| Warrants issued in connection with debt instruments | $ 161 | $ 847 | $ — |

See accompanying notes to consolidated financial statements.

## NOTE 1 — BASIS OF PRESENTATION

### *The Company*

BIOLASE, Inc. ("BIOLASE" and, together with its consolidated subsidiaries, the "Company") incorporated in Delaware in 1987, is a leading provider of advanced laser systems for the dental industry that develops, manufacture, markets, and sells laser systems that provide significant benefits for dental practitioners and their patients.

### *Use of Estimates*

The preparation of these consolidated financial statements in conformity with generally accepted accounting principles in the United States of America ("GAAP") requires the Company to make estimates and assumptions that affect amounts reported in the consolidated financial statements and the accompanying notes. Significant estimates in these consolidated financial statements include allowances on accounts receivable, inventory, and deferred taxes, as well as estimates for accrued warranty expenses, goodwill and the ability of goodwill to be realized, revenue deferrals, effects of stock-based compensation and warrants, contingent liabilities, and the provision or benefit for income taxes. Due to the inherent uncertainty involved in making estimates, actual results reported in future periods may differ materially from those estimates.

### *Fair Value of Financial Instruments*

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants in the principal market (or, if none exists, the most advantageous market) for the specific asset or liability at the measurement date (referred to as the "exit price"). The fair value is based on assumptions that market participants would use, including a consideration of non-performance risk. Under the accounting guidance for fair value hierarchy, there are three levels of measurement inputs. Level 1 inputs are quoted prices in active markets for identical assets or liabilities. Level 2 inputs are observable, either directly or indirectly. Level 3 inputs are unobservable due to little or no corroborating market data.

The Company's financial instruments, consisting of cash, cash equivalents, restricted cash, accounts receivable, accounts payable, accrued liabilities, and SWK Loan (as defined below), approximate fair value because of the liquid or short-term nature of these items or market interest rates as of December 31, 2019.

### *Reverse Stock Split*

At the Company's annual meeting of stockholders on May 9, 2018 (the "2018 Annual Meeting"), the Company's stockholders approved an amendment to its Restated Certificate of Incorporation to effect a reverse stock split of its common stock, at a ratio ranging from one-for-five to one-for-fifteen, with the final ratio to be determined by the Company's board of directors (the "Board"). Immediately after the 2018 Annual Meeting, the Board approved a one-for-five (1:5) reverse stock split of the outstanding shares of the BIOLASE common stock. On May 10, 2018, the Company filed an amendment (the "Fourth Amendment") to its Restated Certificate of Incorporation with the Secretary of State of the State of Delaware to effect the reverse stock split and to reduce the authorized shares of common stock from 200,000,000 shares to 40,000,000 shares. Except as the context otherwise requires, all current and prior year share numbers (including common stock warrants) and share price amounts (including exercise prices and closing market prices) contained in these audited financial statements and notes thereto reflect the one-for-five reverse stock split. Additionally, in 2018 the Company recorded a reclassification of $0.1 million between common stock and additional paid-in capital, equal to the reduction in par value.

***Concentration of Credit Risk, Interest Rate Risk and Foreign Currency Exchange Rate***

Financial instruments which potentially expose the Company to a concentration of credit risk consist principally of cash and cash equivalents, restricted cash, and trade accounts receivable. The Company maintains its cash and cash equivalents and restricted cash with established commercial banks. At times, balances may exceed federally insured limits. To minimize the risk associated with trade accounts receivable, management performs ongoing credit evaluations of customers' financial condition and maintains relationships with the Company's customers that allow management to monitor current changes in business operations so the Company can respond as needed. The Company does not, generally, require customers to provide collateral before it sells them its products. However, the Company has required certain distributors to make prepayments for significant purchases of products.

Substantially all of the Company's revenue is denominated in U.S. dollars, including sales to international distributors. Only a small portion of its revenue and expenses is denominated in foreign currencies, principally the Euro and Indian Rupee. The Company's foreign currency expenditures primarily consist of the cost of maintaining offices, consulting services, and employee-related costs. During the years ended December 31, 2019, 2018, and 2017, the Company did not enter into any hedging contracts. Future fluctuations in the value of the U.S. dollar may affect the price competitiveness of the Company's products outside the U.S.

***Liquidity and Management's Plans***

The Company has reported losses from operations of $15.6 million, $20.9 million, and $18.0 million for the years ended December 31, 2019, 2018, and 2017, respectively, and has not generated cash from operations for the years ended December 31, 2019, 2018, and 2017. During the year ended December 31, 2017, the principal sources of liquidity for the Company were its net proceeds from the December 5, 2017, April 18, 2017 and August 8, 2017 sales by the Company of $11.4 million, $10.2 million, and $9.5 million, respectively, of unregistered shares of the Company's equity securities. During the year ended December 31, 2018, the Company also received liquidity from the Credit Agreement (as defined and described in Note 6) with SWK Funding, LLC which provided borrowings of $12.5 million but required the repayment of the Business Financing Agreement (as defined and described in Note 6) with Western Alliance Bank, which provided borrowings up to $6.0 million.

As of December 31, 2019, the Company was not in compliance with debt covenants of the Credit Agreement with SWK Funding, LLC and obtained a waiver as part of a Fourth Amendment to Credit Agreement ("Fourth Amendment") in March 2020. The Company does not anticipate it will regain compliance by March 31, 2020, therefore the Company has reclassified the Term Loan from a long-term liability to a current liability in the consolidated balance sheets. The details of the Fourth Amendment are contained in Note 11 to these consolidated financial statements.

On October 28, 2019, BIOLASE, Inc. (the "Company") entered into a loan and security agreement with Pacific Mercantile Bank, as lender , which provides for a revolving line of credit. See Note 6 for additional information.

On October 29, 2019, BIOLASE consummated the sale of 7,820,000 shares of its common stock at a price to the public of $0.5750 per share in a public offering and in addition, granted the underwriters a 30-day over-allotment option to purchase up to an additional 1,173,000 shares of common stock at the public offering price, less the underwriting discount.

On October 29, 2019, BIOLASE also sold to existing to investors 69,565 unregistered shares of the Company's Series E Convertible Preferred Stock ("Series E Preferred Stock") at a price of $57.50 per share in a concurrent private placement. Each share of preferred stock is automatically convertible into 100 shares of common stock at a conversion price equal to $0.5750 per share, subject to customary anti-dilution adjustments, at such time as BIOLASE increases the amount of its authorized common stock to permit the full conversion.

At the closing and after exercise of the underwriter's overallotment option, BIOLASE received approximately $4.2 million in net proceeds from the common stock offering, after deducting the underwriting discount, and approximately $4.0 million in gross proceeds from the concurrent private placement, resulting in total net proceeds from the offering and private placement of approximately $8.2 million.

On November 5, 2019, the underwriters exercised their over-allotment option to purchase an additional 1,173,000 shares of common stock at a share price of $0.5750 per share for approximately $0.6 million in net proceeds, after deducting the underwriting discount.

Additional capital requirements may depend on many factors, including, among other things, the rate at which business grows, demands for working capital, manufacturing capacity, and any acquisitions that the Company may pursue. From time to time, the Company could be required, or may otherwise attempt, to raise capital through either equity or debt offerings. The Company cannot provide assurance that it will enter into any such equity or debt financings in the future or that the required capital will be available on acceptable terms, if at all, or that any such financing activity will not be dilutive to its stockholders.

The Company's recurring losses, level of cash used in operations, potential need for additional capital and the uncertainties surrounding its ability to meet its debt covenants and service its debt, or raise additional capital, raises substantial doubt about its ability to continue as a going concern. The financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

Additionally, there are uncertainties surrounding the impact of COVID-19 on the Company's business and operations. The details of these uncertainties are contained in Note 11 to these consolidated financial statements.

At December 31, 2019, the Company had approximately $14.7 million in working capital. The Company's principal sources of liquidity at December 31, 2019 consisted of approximately $6.1 million in cash, cash equivalents, and restricted cash, and $8.8 million of net accounts receivable.

In order for the Company to continue operations beyond the next 12 months and be able to discharge its liabilities and commitments in the normal course of business, the Company must increase sales of its products, control or potentially reduce expenses and establish profitable operations in order to generate cash from operations or obtain additional funds when needed.

Additional capital requirements may depend on many factors, including, among other things, the rate at which the Company's business grows, demands for working capital, manufacturing capacity, and any acquisitions that the Company may pursue. From time to time, the Company could be required, or may otherwise attempt, to raise capital through either equity or debt offerings. The Company cannot provide assurance that it will be able to successfully enter into any such equity or debt financings in the future or that the required capital would be available on acceptable terms, if at all, or that any such financing activity would not be dilutive to its stockholders.

## NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### *Cash and Cash Equivalents*

The Company considers all highly liquid investments with maturities of three months or less when purchased, as cash equivalents. Cash equivalents are carried at cost, which approximates fair market value.

### *Restricted Cash*

Restricted cash represents $0.2 million relating to a revolving 90-day certificate of deposit maintained by the Company as collateral in connection with corporate credit cards and $0.1 million relating to its commercial credit card servicing agreement with Western Alliance Bank. At December 31, 2019 and 2018, the restricted cash balance was $0.3 million and $0.3 million, respectively.

The following table provides a reconciliation of cash, cash equivalents, and restricted cash reported in the consolidated balance sheets to the same total reported in the consolidated statements of cash flows (in thousands):

| | For the years ended December 31, | |
|---|---|---|
| | 2019 | 2018 |
| Cash and cash equivalents | $ 5,789 | $ 8,044 |
| Restricted cash | 312 | 312 |
| Total cash, cash equivalents, and restricted cash in the consolidated statement of cash flows | $ 6,101 | $ 8,356 |

***Inventory***

The Company values inventory at the lower of cost or net realizable value, with cost determined using the first-in, first-out method. The carrying value of inventory is evaluated periodically for excess quantities and obsolescence. Management evaluates quantities on hand, physical condition, and technical functionality as these characteristics may be impacted by anticipated customer demand for current products and new product introductions. The allowance is adjusted based on such evaluation, with a corresponding provision included in cost of revenue. Abnormal amounts of idle facility expenses, freight, handling costs and wasted material are recognized as current period charges, and the Company's allocation of fixed production overhead is based on the normal capacity of its production facilities.

***Property, Plant, and Equipment***

Property, plant, and equipment is stated at acquisition cost less accumulated depreciation. Maintenance and repairs are expensed as incurred. Upon sale or disposition of assets, any gain or loss is included in the consolidated statements of operations.

The cost of property, plant, and equipment is depreciated using the straight-line method over the following estimated useful lives of the respective assets, except for leasehold improvements, which are depreciated over the lesser of the estimated useful lives of the respective assets or the related lease terms.

| | |
|---|---|
| Building | 30 years |
| Leasehold improvements | 3 to 5 years |
| Equipment and computers | 3 to 5 years |
| Furniture and fixtures | 5 years |

Depreciation expense for the years ended December 31, 2019, 2018, and 2017 totaled approximately $1.0 million, $0.9 million and $1.2 million, respectively. The Company recognized losses on disposal of internally developed software of $0, $1.2 million and $0.5 million during the years ended December 31, 2019, 2018 and, 2017, respectively.

***Goodwill and Other Intangible Assets***

Goodwill is not subject to amortization but is evaluated for impairment annually or whenever events or changes in circumstances indicate that the asset might be impaired. The Company operates in one reporting segment and operating unit; therefore, goodwill is tested for impairment at the consolidated level against the fair value of the Company. The fair value of a reporting unit refers to the amount at which the unit as a whole could be bought or sold in a current transaction between willing parties. Quoted market prices in active markets are the best evidence of fair value and are used as the basis for measurement, if available. Management assesses potential impairment on an annual basis on June 30th and compares the Company's market capitalization to its carrying amount, including goodwill. A significant decrease in the Company's stock price could indicate a material impairment of goodwill which, after further analysis, could result in a material charge to operations. Inherent in the Company's fair value determinations are certain judgments and estimates, including projections of future cash flows, the discount rate reflecting the inherent risk in future cash flows, the interpretation of current economic indicators and market valuations, and strategic plans with regard to operations. A change in these underlying assumptions could cause a change in the results of the tests, which could cause the fair value of the reporting unit to be less than its respective carrying amount.

Costs incurred to acquire and successfully defend patents, and costs incurred to acquire trademarks and trade names are capitalized. Costs related to the internal development of technologies that are ultimately patented are expensed as incurred. Intangible assets, except those determined to have an indefinite life, are amortized using the straight-line method or over management's best estimate of the pattern of economic benefit over the estimated useful life of the assets. Intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable.

***Long-Lived Assets***

The carrying values of long-lived assets, including intangible assets subject to amortization, are reviewed when indicators of impairment, such as reductions in demand or significant economic slowdowns, are present. Reviews are performed to determine whether carrying value of an asset is impaired based on comparisons to undiscounted expected future cash flows. If this comparison indicates that there is impairment, the impaired asset is written down to fair value, which is typically calculated using discounted expected future cash flows. Impairment is based on the excess of the carrying amount over the fair value of those assets.

***Redeemable Preferred Stock***

The Company classifies convertible preferred stock that is redeemable at the stockholder's discretion as mezzanine equity. In 2019, the Company issued 69,565 shares of its Series E Convertible Preferred Shares to two stockholder's who own over 60% of the common stock of the Company for a share price of $57.50 per share and a par value of $0.001 per share. Each share of the Series E Convertible Preferred Stock is convertible into 100 shares of the Company's common stock upon exercised. Additional details are discussed further in Note 8 to these consolidated financial statements.

***Other Comprehensive (Loss) Income***

Other comprehensive (loss) income encompasses the change in equity from transactions and other events and circumstances from non-owner sources and is included as a component of stockholders' equity but is excluded from net (loss) income. Accumulated other comprehensive (loss) income is comprised of foreign currency translation adjustments.

***Foreign Currency Translation and Transactions***

Transactions of the Company's German, Spanish, Australian, and Indian subsidiaries are denominated in their local currencies which have been determined to be their functional currencies. The results of operations and cash flows are translated at average exchange rates during the period, and assets and liabilities are translated at end-of-period exchange rates. Translation gains or losses are shown as a component of accumulated other comprehensive (loss) income in stockholders' equity. Income and losses resulting from foreign currency transactions which are denominated in a currency other than the entity's functional currency, are included in the consolidated statements of operations.

***Revenue Recognition***

*Contracts with Customers*

Revenue for sales of products and services is derived from contracts with customers. The products and services promised in customer contracts include delivery of laser systems, imaging systems, and consumables as well as certain ancillary services such as training and extended warranties. Contracts with each customer generally state the terms of the sale, including the description, quantity and price of each product or service. Payment terms are stated in the contract and vary according to the arrangement. Because the customer typically agrees to a stated rate and price in the contract that does not vary over the life of the contract, the Company's contracts do not contain variable consideration. The Company establishes a provision for estimated warranty expense.

*Performance Obligations*

At contract inception, the Company assesses the products and services promised in its contracts with customers. The Company then identifies performance obligations to transfer distinct products or services to the customers. In order to identify performance obligations, the Company considers all of the products or services promised in contracts regardless of whether they are explicitly stated or are implied by customary business practices.

Revenue from products and services transferred to customers at a single point in time accounted for 81%, 86%, and 85% of net revenue for the years ended December 31, 2019, 2018, and 2017, respectively. The majority of the Company's revenue recognized at a point in time is for the sale laser systems, imaging systems, and consumables. Revenue from these contracts is recognized when the customer is able to direct the use of and obtain substantially all of the benefits from the product which generally coincides with title transfer during the shipping process.

Revenue from services transferred to customers over time accounted for 19%, 14%, and 15% of net revenue for the years ended December 31,2019, 2018, and 2017, respectively. The majority of our revenue that is recognized over time relates to product training and extended warranties. Deferred revenue attributable to undelivered elements, which primarily consists of product training, totaled approximately $0.6 million and $0.7 million as of December 31, 2019 and 2018, respectively.

*Transaction Price Allocation*

The transaction price for a contract is allocated to each distinct performance obligation and recognized as revenue when, or as, each performance obligation is satisfied. For contracts with multiple performance obligations, the Company allocates the contract's transaction price to each performance obligation using the best estimate of the standalone selling price of each distinct good or service in a contract. The primary method used to estimate standalone selling price is the observable price when the good or service is sold separately in similar circumstances and to similar customers.

*Significant Judgments*

Revenue is recorded for extended warranties over time as the customer benefits from the warranty coverage. This revenue will be recognized equally throughout the contract period as the customer receives benefits from the Company's promise to provide such services. Revenue is recorded for product training as the customer attends a training program or upon the expiration of the obligation, which is generally after nine months.

The Company also has contracts that include both the product sales and product training as performance obligations. In those cases, the Company records revenue for product sales at the point in time when the product has been shipped. The customer obtains control of the product when it is shipped, as all shipments are made FOB shipping point, and after the customer selects its shipping method and pays all shipping costs and insurance. The Company has concluded that control is transferred to the customer upon shipment.

*Accounts Receivable*

Accounts receivable are stated at estimated net realizable value. The allowance for doubtful accounts is based on an analysis of customer accounts and the Company's historical experience with accounts receivable write-offs.

*Contract Liabilities*

The Company performs its obligations under a contract with a customer by transferring products and/or services in exchange for consideration from the customer. The Company typically invoices its customers as soon as control of an asset is transferred and a receivable for the Company is established. The Company, however, recognizes a contract liability when a customer prepays for goods and/or services and the Company has not transferred control of the goods and/or services. The opening and closing balances of the Company's contract liabilities are as follows (in thousands):

| | December 31, | |
|---|---|---|
| | 2019 | 2018 |
| Undelivered elements (training, installation, product and support services) | $ 559 | $ 730 |
| Extended warranty contracts | 2,063 | 1,735 |
| Deferred royalties | — | 11 |
| Total deferred revenue | 2,622 | 2,476 |
| Less: long-term portion of deferred revenue | 385 | — |
| Deferred revenue – current | $ 2,237 | $ 2,476 |

The balance of contract assets was immaterial as the Company did not have a significant amount of uninvoiced receivables in the years ended December 31, 2019 and 2018.

The amount of revenue recognized during the years ended December 31, 2019 and December 31, 2018 that was included in the opening contract liability balance related to undelivered elements was $0.5 million and $0.8 million, respectively. The amounts related to extended warranty contracts was $0.7 million and $0.8 million, for the years ended December 31, 2019 and December 31, 2018, respectively. Deferred royalties was $0 and $11,000 for the years ended December 31, 2019 and December 31, 2018, respectively.

*Disaggregation of Revenue*

The Company disaggregates revenue from contracts with customers into geographical regions and by the timing of when goods and services are transferred. The Company determined that disaggregating revenue into these categories depicts how the nature, amount, timing and uncertainty of revenue and cash flows are affected by regional economic factors.

The Company's revenues related to the following geographic areas were as follows (in thousands):

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2019 | 2018 | 2017 |
| United States | $ 22,814 | $ 28,661 | $ 29,296 |
| International | 14,985 | 17,494 | 17,630 |
| | $ 37,799 | $ 46,155 | $ 46,926 |

Information regarding revenues disaggregated by the timing of when goods and services are transferred is as follows (in thousands):

| | For the Year Ended December 31, | | |
|---|---|---|---|
| | 2019 | 2018 | 2017 |
| Revenue recognized over time | 7,174 | 6,441 | 7,123 |
| Revenue recognized at a point in time | $ 30,625 | $ 39,714 | $ 39,803 |
| Total | $ 37,799 | $ 46,155 | $ 46,926 |

The Company's sales by end market is as follows (in thousands):

| | For the Year Ended December 31, | | |
|---|---|---|---|
| | 2019 | 2018 | 2017 |
| End-customer | $ 25,173 | $ 30,478 | $ 31,886 |
| Distributors | 12,626 | 15,677 | 15,040 |
| | $ 37,799 | $ 46,155 | $ 46,926 |

*Shipping and Handling Costs and Revenues*

Shipping and freight costs are treated as fulfillment costs. For shipments to end-customers, the customer bears the shipping and freight costs and has control of the product upon shipment. For shipments to distributors, the distributor bears the shipping and freight costs, including insurance, tariffs and other import/export costs.

***Provision for Warranty Expense***

The Company provides warranties against defects in materials and workmanship of its laser systems for specified periods of time. For the years ended December 31, 2019 and 2018, laser systems sold were covered by the warranty for a period of up to two years from the date of sale by the Company or the distributor to the end-user. In 2017, for Waterlase systems sold domestically and purchased in 2017 or later, the Company decreased the warranty period from two years to one year. Laser systems sold internationally were covered by the warranty for a period of up to 28 months from the date of sale to the international distributor. Estimated warranty expenses are recorded as an accrued liability with a corresponding provision to cost of revenue. This estimate is recognized concurrent with the recognition of revenue on the sale to the distributor or end-user. Warranty expenses expected to be incurred after one year from the time of sale to the distributor are classified as a long-term warranty accrual. The Company's overall accrual is based on its historical experience and management's expectation of future conditions, taking into consideration the location and type of customer and the type of laser, which directly correlate to the materials and components under warranty, the duration of the warranty period, and the logistical costs to service the warranty. Additional factors that may impact the Company's warranty accrual include changes in the quality of materials, leadership and training of the production and services departments, knowledge of the lasers and workmanship, training of customers, and adherence to the warranty policies. Additionally, an increase in warranty claims or in the costs associated with servicing those claims would likely result in an increase in the accrual and a decrease in gross profit. All imaging products are initially covered by the manufacturer's warranties. However, the Company offers extended warranties on certain imaging products.

Changes in the initial product warranty accrual and the expenses incurred under the Company's initial and extended warranties for the years ended December 31 are included within accrued liabilities on the Consolidated Balance Sheets and were as follows (in thousands):

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2019 | 2018 | 2017 |
| Balance, January 1 | $ 1,308 | $ 1,190 | $ 1,706 |
| Provision for estimated warranty cost | 806 | 901 | 492 |
| Warranty expenditures | (1,004) | (783) | (1,008) |
| Balance, December 31 | 1,110 | 1,308 | 1,190 |
| Less: long-term portion of warranty accrual | 245 | 447 | 70 |
| Current portion of warranty accrual | $ 865 | $ 861 | $ 1,120 |

***Advertising Costs***

Advertising costs are expensed as incurred and totaled approximately $0.5 million, $0.6 million and $0.6 million for the years ended December 31, 2019, 2018, and 2017, respectively.

***Engineering and Development***

Engineering and development expenses are generally expensed as incurred and consist of engineering personnel salaries and benefits, prototype supplies, contract services, and consulting fees related to product development.

***Stock-Based Compensation***

During the years ended December 31, 2019, 2018, and 2017, the Company recognized compensation cost related to stock options of $2.7 million, $2.8 million, and $2.2 million, respectively, based on the grant-date fair value. In 2019, $0.4 million of the total stock compensation cost related to performance-based awards was recognized as a liability. The following table summarizes the income statement classification of compensation expense associated with share-based payments (in thousands):

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2019 | 2018 | 2017 |
| Cost of revenue | $ 293 | $ 420 | $ 207 |
| Sales and marketing | 557 | 535 | 235 |
| General and administrative | 1,662 | 1,440 | 1,469 |
| Engineering and development | 230 | 373 | 296 |
| | $ 2,742 | $ 2,768 | $ 2,207 |

As of December 31, 2019 and 2018, the Company had $2.7 million and $2.8 million, respectively, of total unrecognized compensation cost, net of estimated forfeitures, related to unvested share-based compensation arrangements granted under its existing plans. The $2.7 million in cost is expected to be recognized over a weighted-average period of 1.54 years as of December 31, 2019.

Stock-based compensation expense is estimated at the grant date of the award, is based on the fair value of the award and is recognized ratably over the requisite service period of the award. For restricted stock units ("RSUs") the Company estimates the fair value of the award based on the number of awards and the fair value of BIOLASE common stock on the grant date, and applies an estimated forfeiture rate. For stock options, the Company estimates the fair value of the option award using the Black-Scholes option pricing model. This option-pricing model requires the Company to make several assumptions regarding the key variables used to calculate the fair value of its stock options. The risk-free interest rate used is based on the U.S. Treasury yield curve in effect for the expected lives of the options at their grant dates. Since July 1, 2005, the Company has used a dividend yield of zero, as it does not intend to pay cash dividends on its common stock in the foreseeable future. The most critical assumptions used in calculating the fair value of stock options is the expected life of the option and the expected volatility of the Company's common stock. The expected life is calculated in accordance with the simplified method, whereby for service-based awards the expected life is calculated as a midpoint between the vesting date and expiration date. The Company uses the simplified method, as there is not a sufficient history of share option exercises. For performance-based awards, the expected life equals the life of the award. Management believes that the historic volatility of the Company's common stock is a reliable indicator of future volatility, and accordingly, a stock volatility factor based on the historical volatility of the Company's common stock over a lookback period of the expected life is used in approximating the estimated volatility of new stock options. Compensation expense is recognized using the straight-line method for all service-based employee awards and graded amortization for all performance-based awards. Compensation expense is recognized only for those options expected to vest, with forfeitures estimated at the date of grant based on historical experience and future expectations. Forfeitures are estimated at the time of the grant and revised in subsequent periods as actual forfeitures differ from those estimates. The Company applied a forfeiture rate of 10.05% and 48.73% to awards granted to executives and employees, respectively, during the year ended December 31, 2019.

The stock option fair values were estimated using the Black-Scholes option-pricing model with the following weighted-average assumptions:

| | For the years ended December 31, | | |
|---|---|---|---|
| | 2019 | 2018 | 2017 |
| Expected term (years) | 5.97 | 5.87 | 5.51 |
| Volatility | 85 % | 81 % | 79 % |
| Annual dividend per share | $ — | $ — | $ — |
| Risk-free interest rate | 2.55 % | 2.54 % | 1.99 % |

***Income Taxes***

Differences between accounting for income taxes for financial statement purposes and accounting for tax return purposes are stated as deferred tax assets or deferred tax liabilities in the accompanying consolidated financial statements. The provision for income taxes represents the tax payable for the period and the change during the period in deferred tax assets and liabilities. The Company establishes a valuation allowance when it is more likely than not that the deferred tax assets will not be realized. See Note 5 for additional disclosures related to the Company's income taxes.

***Net Loss Per Share — Basic and Diluted***

Basic net income (loss) per share is computed by dividing income (loss) available to common stockholders by the weighted-average number of common shares outstanding for the period. In computing diluted net income (loss) per share, the weighted average number of shares outstanding is adjusted to reflect the effect of potentially dilutive securities. Income is adjusted for any deemed dividends to preferred stockholders to compute income available to common stockholders.

Outstanding stock options, restricted stock units and warrants to purchase approximately 6,922,000, 5,862,000, and 3,384,000 shares were not included in the calculation of diluted loss per share amounts for the years ended December 31, 2019, 2018, and 2017, respectively, as their effect would have been anti-dilutive. Also excluded is the 6,965,500 common shares that will be issued upon conversion of the 69,565 Series E Convertible Preferred Shares discussed further below and in Note 8.

***Recent Accounting Pronouncements***

Changes to GAAP are established by the Financial Accounting Standards Board ("FASB") in the form of accounting standards updates ("ASUs") to the FASB's Accounting Standards Codification ("ASC").

The Company considers the applicability and impact of all ASUs. ASUs not listed below were assessed and determined not to be applicable or are expected to have minimal impact on the Company's consolidated financial position and results of operations.

*Adopted Accounting Standards*

In February 2016, the FASB established ASU Topic 842 – Leases, by issuing ASU Topic No. 2016-02, which requires lessees to recognize lease on-balance sheet and disclose key information about leasing arrangements. Topic 842 was subsequently amended by ASU Topic 2018-11 – Targeted Improvements. The new standard establishes a right-of-use model ("ROU") that requires a lessee to recognize a ROU asset and a lease liability for all leases with a term longer than 12 months. Leases will be classified as finance or operating, with classification affecting the pattern and classification of expense recognition in the statement of operations. On January 1, 2019, the Company adopted Topic 842, using the modified-retrospective approach as discussed in Note 7, and as a result recognized a right-of-use asset of approximately $0.8 million as adjusted for deferred rent at the date of adoption of $0.2 million, and a lease liability of approximately $1.0 million. No cumulative-effect adjustment to retained earnings was required upon adoption of Topic 842.

*Accounting Standards To Be Adopted*

*First Quarter of 2020*

In January 2017, the FASB issued ASU 2017-04,*Intangibles-Goodwill and Other (Topic 350) Simplifying the Test for Goodwill Impairment.*ASU 2017-04 eliminates the two-step process that required identification of potential impairment and a separate measure of the actual impairment. The annual assessment of goodwill impairment will be determined by using the difference between the carrying amount and the fair value of the reporting unit. The Company is currently assessing the impact that adopting this new accounting standard will have on its consolidated financial statements.

In August 2018, the FASB issued ASU 2018-15,*Intangibles - Goodwill and Other - Internal-Use Software (Subtopic 350-40).*ASU 2018-15 aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal use software (and hosting arrangements that include an internal-use software license). The guidance provides criteria for determining which implementation costs to capitalize as an asset related to the service contract and which costs to expense. The capitalized implementation costs are required to be expensed over the term of the hosting arrangement. The guidance also clarifies the presentation requirements for reporting such costs in the entity's financial statements. Early adoption is permitted. The Company is currently evaluating the impact that adopting this new accounting standard will have on its consolidated financial statements and related disclosures.

In March 2020, the FASB issued ASU 2020-04, Reference Rate Reform. This ASU was issued because the London Interbank Offered Rate (LIBOR) is a benchmark interest rate referenced in a variety of agreements that are used by all types of entities. At the end of 2021, banks will no longer be required to report information that is used to determine LIBOR. As a result, LIBOR could be discontinued. Other interest rates used globally could also be discontinued for similar reasons. ASU 2020-04 provides companies with optional guidance to ease the potential accounting burden associated with transitioning away from reference rates that are expected to be discontinued. Companies can apply the ASU immediately. However, the guidance will only be available for a limited time (generally through December 31, 2022). The Company is currently evaluating the impact that adopting this new accounting standard will have on its consolidated financial statements and related disclosures.

*First Quarter of 2023*

In June 2016, the FASB issued ASU 2016-13,*Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*. The standard's main goal is to improve financial reporting by requiring earlier recognition of credit losses on financing receivables and other financial assets in scope and to replace the incurred loss impairment methodology under current GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. The Company will be required to use a forward-looking expected credit loss model for accounts receivables, loans, and other financial instruments. Credit losses relating to available-for-sale debt securities will also be recorded through an allowance for credit losses rather than as a reduction in the amortized cost basis of the securities. The standard will be effective for the Company beginning January 1, 2023, with early adoption permitted beginning January 1, 2019. The Company is currently assessing the impact that adopting this new accounting standard will have on its consolidated financial statements.

**NOTE 3 — SUPPLEMENTARY BALANCE SHEET INFORMATION**

*Accounts Receivable, net:*

| | December 31, | |
|---|---|---|
| **(in thousands):** | **2019** | **2018** |
| Trade | $ 8,760 | $ 10,990 |
| Royalties | — | 71 |
| Other | — | 51 |
| Total receivables, net | $ 8,760 | $ 11,112 |

Accounts receivable is net of allowances for doubtful accounts of approximately $2.6 million and $0.9 million and sales returns of approximately $0.2 and $0.2 million at December 31, 2019 and 2018, respectively.

*Inventory:*

| | December 31, | |
|---|---|---|
| **(in thousands):** | **2019** | **2018** |
| Raw materials | $ 3,689 | $ 3,590 |
| Work-in-process | 1,064 | 1,435 |
| Finished goods | 6,242 | 7,223 |
| Inventory | $ 10,995 | $ 12,248 |

Inventory includes write-downs for excess and obsolete inventory totaling approximately $1.3 million and $1.1 million at December 31, 2019 and 2018, respectively.

*Property, Plant, and Equipment, net:*

| | December 31, | |
|---|---|---|
| **(in thousands):** | **2019** | **2018** |
| Building | $ 209 | $ 213 |
| Leasehold improvements | 2,004 | 2,004 |
| Equipment and computers | 7,479 | 7,277 |
| Furniture and fixtures | 634 | 634 |
| Construction in progress | 27 | 25 |
| Total property, plant, and equipment before depreciation and land | 10,353 | 10,153 |
| Less: accumulated depreciation | (9,322) | (8,344) |
| Total property, plant, and equipment, net before land | 1,031 | 1,809 |
| Land | 162 | 166 |
| Property, plant, and equipment, net | $ 1,193 | $ 1,975 |

During the year ended December 31, 2018, the Company recognized a non-cash, pre-tax charge related to the disposal of internally developed software of $1.2 million primarily due to the decision to cancel future deployments of a global enterprise resource planning system and certain other web-based tools originally intended to customize such systems. The Company did not recognize any impairments on property, plant, and equipment during the year ended December 31, 2019.

*Accrued Liabilities:*

| | December 31, | |
|---|---|---|
| | 2019 | 2018 |
| Payroll and benefits | $ 1,726 | $ 2,400 |
| Warranty accrual, current portion | 865 | 861 |
| Taxes | 242 | 714 |
| Accrued professional services | 330 | 1,044 |
| Accrued insurance premium | 546 | 328 |
| Patent litigation settlement | — | 1,500 |
| Lease liability | 323 | — |
| Other | 712 | 691 |
| Accrued liabilities | $ 4,744 | $ 7,538 |

**NOTE 4 — INTANGIBLE ASSETS AND GOODWILL**

The Company conducted its annual impairment test of goodwill as of June 30, 2019 and determined that there was no impairment. The Company also tests its intangible assets and goodwill between the annual impairment test if events occur or circumstances change that would more likely than not reduce the fair value of the Company or its assets below their carrying amounts. For intangible assets subject to amortization, the Company performs its impairment test when indicators, such as reductions in demand or significant economic slowdowns, are present. No events have occurred that triggered further impairment testing of the Company's intangible assets and goodwill during the years ended December 31, 2019 and 2018.

As of December 31, 2019 and 2018, the Company had goodwill (indefinite life) of $2.9 million. As of December 31, 2019 and 2018, all intangible assets have been fully amortized and there was no amortization expense for the respective years.

The following table presents the details of the Company's intangible assets, related accumulated amortization and goodwill (in thousands):

| | As of December 31, 2019 and 2018 | | | |
|---|---|---|---|---|
| | Gross | Accumulated Amortization | Impairment | Carrying Value |
| Patents (4-10 years) | $ 1,914 | $ (1,914) | $ — | $ — |
| Trademarks (6 years) | 69 | (69) | — | — |
| Other (4 to 6 years) | 817 | (817) | — | — |
| Total | $ 2,800 | $ (2,800) | $ — | $ — |
| Goodwill (indefinite life) | $ 2,926 | | | $ 2,926 |

**NOTE 5 — INCOME TAXES**

The Company accounts for income taxes under the asset and liability method, whereby deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. Management evaluates the need to establish a valuation allowance for deferred tax assets based upon the amount of existing temporary differences, the period in which they are expected to be recovered, and expected levels of taxable income. A valuation allowance to reduce deferred tax assets is established when it is "more likely than not" that some or all of the deferred tax assets will not be realized. Based on the Company's net losses in prior years, management has determined that a full valuation allowance against the Company's net deferred tax assets is appropriate.

The following table presents the current and deferred provision for income taxes for the years ended December 31 (in thousands):

| | 2019 | 2018 | 2017 |
|---|---|---|---|
| **Current:** | | | |
| Federal | $ — | $ — | $ — |
| State | 23 | 14 | 19 |
| Foreign | 73 | 90 | 93 |
| | 96 | 104 | 112 |
| **Deferred:** | | | |
| Federal | (12) | (41) | (694) |
| State | — | — | — |
| Foreign | (128) | — | — |
| | (140) | (41) | (694) |
| | $ (44) | $ 63 | $ (582) |

The provision for income taxes differs from the amount that would result from applying the federal statutory rate as follows for the years ended December 31:

| | 2019 | 2018 | 2017 |
|---|---|---|---|
| Statutory regular federal income tax rate | (21.0)% | (21.0)% | (34.0)% |
| Change in valuation allowance | 35.0 % | 28.6 % | (90.6)% |
| State tax benefit (net of federal benefit) | (7.0)% | (3.1)% | (3.2)% |
| Research credits | 2.1 % | (1.7)% | (1.7)% |
| Foreign amounts with no tax benefit | — % | — % | — % |
| Non-deductible expenses | 2.4 % | 0.3 % | 1.0 % |
| Effect of change in rate | (20.0)% | 0.5 % | 127.1 % |
| Expired net operating loss carryforwards | 10.7 % | — % | — % |
| Other | (2.6)% | (3.3)% | (2.0)% |
| Total | (0.4)% | 0.3 % | (3.4)% |

The components of the deferred income tax assets and liabilities as of December 31 (in thousands):

| | 2019 | 2018 |
|---|---|---|
| Capitalized intangible assets for tax purposes | $ (38) | $ (42) |
| Reserves not currently deductible | 1,384 | 1,666 |
| Deferred revenue | 44 | 38 |
| Stock options | 4,694 | 4,153 |
| State taxes | 5 | 5 |
| Income tax credits | 3,429 | 3,820 |
| Inventory | 974 | 549 |
| Property and equipment | 302 | 126 |
| Other comprehensive income | — | — |
| Unrealized gain on foreign currency | 111 | 85 |
| Disallowed Interest | 708 | 120 |
| Lease liability | 129 | — |
| Net operating losses | 42,527 | 37,205 |
| Total deferred tax assets | 54,269 | 47,725 |
| Valuation allowance | (53,222) | (46,967) |
| Net deferred tax assets | 1,047 | 758 |
| Capitalized intangible assets | (708) | (629) |
| Right of use asset | (109) | — |
| Other | (179) | (206) |
| Total deferred tax liabilities | (996) | (835) |
| Net deferred tax assets | $ 51 | $ (77) |

Based upon the Company's operating losses incurred for each of three years ended December 31, 2019, and the available evidence, the Company has established a valuation allowance against its net deferred tax assets in the amount of $53.2 million as of December 31, 2019. Management considered factors such as the Company's earnings history, future projected earnings, and tax planning strategies. If sufficient evidence of the Company's ability to generate sufficient future taxable income tax benefits becomes apparent, the valuation allowance may be reduced, thereby resulting in tax benefits in the statement of operations and additional paid-in-capital. Management evaluates the potential realization of the Company's deferred tax assets and assesses the need for reducing the valuation allowance periodically.

As of December 31, 2019, the Company had net operating loss ("NOL") carryforwards for federal and state purposes of approximately $169.5 million and $111.3 million, respectively, which expire in 2037. The utilization of NOL and credit carryforwards may be limited under the provisions of the Internal Revenue Code ("IRC") Section 382 and similar state provisions. IRC Section 382 generally imposes an annual limitation on the amount of NOL carryforwards that may be used to offset taxable income where a corporation has undergone significant changes in stock ownership. As of December 31, 2019, the Company had research and development tax credit carryforwards for federal and state purposes of approximately $2.2 million and $2.1 million, respectively, which will begin to expire in 2037 through for federal purposes and will carry forward indefinitely for state purposes. An updated analysis may be required at the time the Company begins utilizing any of its net operating losses to determine if there is an IRC Section 382 limitation.

The following table summarizes the activity related to the Company's unrecognized tax benefits during the year ended December 31, 2019 (in thousands):

| | |
|---|---|
| Balance at January 1, 2019 | $ 509 |
| Additions for tax positions related to the prior year | — |
| Lapse of statute of limitations | — |
| Balance at December 31, 2019 | $ 509 |

The Company expects resolution of unrecognized tax benefits, if created, would occur while the full valuation allowance of deferred tax assets is maintained. The Company does not expect to have any unrecognized tax benefits that, if recognized, would affect the effective tax rate. As of December 31, 2019 and 2018, the Company does not have liability for potential penalties or interest. The Company does not expect its unrecognized tax benefits to change significantly over the next 12 months.

The Company files U.S., state and foreign income tax returns in jurisdictions with varying statutes of limitations. The 2014 through 2019 tax years generally remain subject to examination by federal and most state tax authorities. In foreign jurisdictions, the 2012 through 2019 tax years remain subject to examination by their respective tax authorities.

U.S. income taxes or withholding taxes were provided for all the distributed earnings for the Company's foreign subsidiaries as of December 31, 2019. At December 31, 2019, unremitted earnings of foreign subsidiaries were approximately $0.6 million and have been included in our computation of the transition tax associated with the enactment of the 2017 Act. We do not provide for U.S. taxes on our unremitted earnings of foreign subsidiaries that have not been previously taxed since we intend to invest such undistributed earnings indefinitely outside of the U.S.

The 2017 Act subjects a U.S, stockholder to current tax on global intangible low-taxed income (GILTI) earned by certain foreign subsidiaries. The FASB Staff Q&A, Topic 740 No. 5, Accounting for Global Intangible Low-Taxed Income, states that an entity can make an accounting policy election to either recognize deferred taxes for temporary differences expected to reverse as GILTI in future years or provide for the tax expense related to GILTI in the year the tax is incurred. We have elected to recognize the tax on GILTI as a period expense in the period the tax is incurred. The current income related to the GILTI inclusion in 2019 is $0.1 million.

**NOTE 6 — DEBT**

The following table presents the details of the principal outstanding and unamortized discount (in thousands):

| | December 31, | |
|---|---|---|
| | 2019 | 2018 |
| Term loan | $ 15,000 | $ 12,500 |
| Discount and debt issuance costs on term loan | (1,534) | (1,664) |
| Total | $ 13,466 | $ 10,836 |

***Lines of Credit***

*Pacific Mercantile Bank*

On October 28, 2019, the Company entered into a loan and security agreement (the "Loan Agreement") with Pacific Mercantile Bank, as lender (the "Lender"), which provides for a revolving line of credit (the "PMB Loan") in a maximum principal amount not to exceed the lesser of (i) $3 million or (ii) the sum of 90% of the Eligible Accounts (as defined in the Loan Agreement) plus 75% of the Eligible Inventory (as defined in the Loan Agreement, and subject to certain limitations set forth therein); *provided* that the maximum principal amount of the PMB Loan may be reduced from time to time in the Lender's good faith business judgment as set forth in the Loan Agreement. Borrowings under the PMB Loan may be used for working capital. The PMB Loan matures on October 28, 2021, unless earlier terminated.

The Company's obligations under the Loan Agreement are secured by a security interest in substantially all of the Company's property. No borrowings may be made under the Loan Agreement unless and until Exim Bank agrees to guarantee the PMB Loan and the Company has entered into a borrower agreement with Exim Bank.

Borrowings under the PMB Loan bear interest at a daily rate equal to the prime rate published in the *Wall Street Journal*, plus 1.5% per annum; *provided*, that the interest rate in effect on any day shall not be less than 6.0% per annum. Additionally, the Company is required to pay an initial and annual fee of $52,500 to Exim Bank, as well as a termination fee equal to $30,000 in the event the Loan Agreement is terminated on or prior to October 28, 2020.

The Loan Agreement requires the Company to maintain unrestricted cash at Lender *plus* unused availability under the PMB Loan in an amount equal to at least the Burn Rate. "Burn Rate" means the Company's net profit/net loss *plus* depreciation *plus* amortization *plus* stock-based compensation, measured on a trailing three month basis. In addition, the Loan Agreement contains customary affirmative and negative covenants for financings of its type (subject to customary exceptions).

The Loan Agreement provides that the occurrence of any of the following events (subject to applicable cure periods, if any) will constitute an event of default: payment default, loans in excess of the credit limit, breach of representation or warranty, covenant breach, incurrence of certain liens, certain events with respect to the collateral, cross-defaults to certain other indebtedness or obligations secured by liens, a Material Adverse Change (as defined in the Loan Agreement) or a breach of a material agreement that may reasonably result in a Material Adverse Change, final judgement in excess of a certain monetary threshold, certain events of bankruptcy or insolvency, any guarantee or pledge ceasing to be in effect, payment of certain subordinated debt, a Change in Control (as defined in the Loan Agreement), a change in the Company's President, Chief Executive Officer, or Chief Financial Officer under certain circumstances, a change in two or more members of the Company's Board of Directors within 90 days under certain circumstances, or any felony indictment of any of the Company's directors, officers or significant stockholders. Upon the occurrence and during the continuation of an event of default, the Lender may exercise any remedies available to it, including accelerating the repayment of the PMB Loan.

As of December 31, 2019, theCompany had no borrowings outstanding and unused availability under this credit facility of $2.7 million. The Company was in compliance with all debt covenants at December 31, 2019.

*Western Alliance Bank*

On March 6, 2018, the Company and two of its wholly-owned subsidiaries (such subsidiaries, together with BIOLASE, the "Borrower") entered into the Business Financing Agreement (the "Business Financing Agreement" with Western Alliance Bank ("Western Alliance"). Pursuant to the terms and conditions of the Business Financing Agreement, Western Alliance has agreed to provide the Borrower a secured revolving line of credit permitting the Borrower to borrow or receive letters of credit up to the lesser of $6.0 million (the "Domestic Revolver") (subject to a $6.0 million credit limit relating to domestic eligible accounts receivable (the "domestic credit limit") and a $3.0 million credit limit relating to export-related (the "EXIM Revolver") eligible accounts receivable (the "EXIM credit limit") and the borrowing base, which is defined as the sum of the domestic borrowing base (up to 75% of the Borrower's eligible domestic accounts receivable less such reserves as Western Alliance may deem proper and necessary) and the export-related borrowing base (up to 85% of the Borrower's eligible export-related accounts receivable less such reserves as Western Alliance may deem proper and necessary). The Business Financing Agreement was set to expire on March 6, 2020, and the Borrower's obligations thereunder were secured by a security interest in all of the Borrower's assets.

The Business Financing Agreement required the Company to maintain compliance with certain financial and non-financial covenants, as defined therein. Western Alliance had the right to declare the amounts outstanding under the Business Financing Agreement immediately due and payable upon a default.

Amounts outstanding under the Business Financing Agreement bore interest at a per annum floating rate equal to the greater of 4.5% or the "Prime Rate" published in the Money Rates section of the Western Edition of The Wall Street Journal (or such other rate of interest publicly announced from time to time by Western Alliance as its "Prime Rate"), plus 1.5% with respect to advances made under the line of credit, plus an additional 5.0% during any period that an event of default has occurred and is continuing. The commitment fee under the Business Financing Agreement was 0.25% of the domestic credit limit and 1.75% of the EXIM credit limit, payable on March 6, 2018 and each anniversary thereof.

Pursuant to the Business Financing Agreement, the Company paid the first of two annual commitment fees totaling $67,500, being 0.25% of the aggregate $6.0 million commitment for the Domestic Revolver and 1.75% of the aggregate $3.0 million commitment for the EXIM Revolver. The commitment fees and the legal costs associated with acquiring the credit facilities were capitalized and were amortized on a straight-line basis as interest expense over the term of the Business Financing Agreement.

As additional consideration for the lines of credit, the Company also issued the Western Alliance Warrants. For additional information on the Western Alliance Warrants, see Note 8 to the consolidated financial statements. The fair value of the Western Alliance Warrants was estimated using the Black-Scholes option-pricing model with the following assumptions: expected term of 10 years; volatility of 91.49%; annual dividend per share of $0.00; and risk-free interest rate of 2.88%; and resulted in an estimated fair value of $0.1 million, which was recorded as a liability and resulted in a discount to the credit facilities at issuance. The discount was expensed to interest expense at the time the Business Financing Agreement was terminated, as discussed below.

On August 13, 2018, the Borrower and Western Alliance entered into a Waiver and Business Financing Modification Agreement, pursuant to which Western Alliance waived certain of the Borrower's covenants under the Business Financing Agreement and provided an advance of $1.5 million, which advance was due by September 27, 2018.

On September 27, 2018, the Borrower and Western Alliance entered into a Business FinancingModification Agreement which reduced the credit limit under the Business Financing Agreement to $2.5 million and extended the due date of the $1.5 million advance to March 6, 2018. In connection with the agreement, the Original Western Alliance Warrants were terminated and the Company issued to Western Alliance new warrants (the "Western Alliance Warrants") to purchase up to 56,338 shares of its common stock. The Western Alliance Warrants are immediately exercisable and expire on September 27, 2028. These warrants contain down-round features that require the Company to adjust the exercise price proportionately should the Company issue shares at a price less than $2.13 per share.

On October 22, 2018, the Borrower and Western Alliance entered into a new Business Financing Modification Agreement, pursuant to which Western Alliance waived BIOLASE's non-compliance with certain financial operating covenants as set forth in the Business Financing Agreement, and the Borrower agreed to certain amended covenants contained in the Business Financing Agreement, including $300,000 minimum unrestricted cash balance covenant and a waiver of reporting items required to be delivered by BIOLASE to Western Alliance under the Business Financing Agreement.

On November 9, 2018, all outstanding borrowings, accrued interest and fees under the Business Financing Agreement were repaid with a portion of the proceeds under the Credit Agreement, and the Business Financing Agreement was terminated. The Company recorded approximately $0.1 million of interest expense including unamortized debt issuance costs that were written-off upon extinguishment of the debt. The warrants held by Western Alliance remain outstanding and are classified in equity in the consolidated balance sheet under ASU 2017-11 as of December 31, 2019 and December 31, 2018.

***Term Loan***

On November 9, 2018, the Company entered into a five-year secured Credit Agreement ("Credit Agreement") with SWK Funding LLC ("SWK"), pursuant to which the Company has borrowed $12.5 million ("SWK Loan"). The Company's obligations under the Credit Agreement are secured by substantially all of the Company's assets. Under the terms of the Credit Agreement, repayment of the loan is interest-only for the first two years, paid quarterly with the option to extend the interest-only period. Principal repayments will begin in the first quarter of 2021 and will be approximately $0.7 million quarterly until the loan matures in the fourth quarter of 2023. The loan bears interest at the London Interbank Bank Offered Rate ("LIBOR") plus 10% or another index that approximates LIBOR as close as possible if and when LIBOR no longer exists. Approximately $0.9 million of the proceeds from the SWK Loan were used to pay off all amounts owed to Western Alliance under the Business Financing Agreement. The Company plans used the remaining proceeds to provide additional working capital to fund its growth initiatives, such as broadening its customer base and increasing the utilization of its products to drive recurring higher margin consumables revenue.

The Credit Agreement contains financial and non-financial covenants requiring the Company to, among other things, (i) maintain unencumbered liquid assets of (A) no less than $1.5 million or (B) the sum of aggregate cash flow from operations less capital expenditures, (ii) achieve certain revenue and EBITDA levels during the first two years of the loan, (iii) limit future borrowing, investments and dividends, and (iv) submit monthly and quarterly financial reporting. The Company was in compliance with these debt covenants as of December 31, 2018.

In connection with the SWK Loan, the Company paid approximately $1.0 million in debt issuance costs, including a $0.2 million loan origination fee, a $0.4 million finder's fee, and $0.4 million in legal and other fees. These costs were recognized as a discount on the SWK Loan and are being amortized on a straight-line basis over the loan term which approximates the effective-interest method.

The Company recognized approximately $2.2 million in interest expense relating to the SWK Loan for the year ended December 31, 2019. The weighted-average interest rate for the year ended December 31, 2019 was approximately 12.5%.

As of March 31, 2019, the Company was not in compliance with certaincovenants in the Credit Agreement and in May 2019, SWK granted the Company a waiver of such covenants. On May 7, 2019, the Company and SWK agreed to amend the Credit Agreement (the "First Amendment) to increase the total commitment from $12.5 million to $15.0 million, and to revise the financial covenants to (a) adjust minimum revenue and EBITDA levels, (b) require the Company to have a shelf registration statement declared effective by the Securities and Exchange Commission before September 30, 2019, with a proposed maximum aggregate offering price of at least $10.0 million if the Company does not reach set minimum revenue levels for the three-month period ended September 30, 2019, and (c) require minimum liquidity of $1.5 million at all times. The First Amendment provides that if aggregate minimum revenue and EBITDA levels are not achieved by September 30, 2019, the minimum liquidity requirement will be increased to $3.0 million, until the Company has obtained additional equity or debt funding of no less than $5.0 million. The Company borrowed the additional $2.5 million during the year ended December 31, 2019.

In connection with the amendment, the Company paid to SWK loan origination and other fees of approximately $0.1 million payable in cash and approximately $0.2 million in additional SWK Warrants (as defined below) to purchase the Company's common stock. The Company paid an additional finder's fee to Deal Partners Group ("DPG") of approximately $0.1 million in cash and $0.1 million in additional DPG Warrants to purchase the Company's common stock. The Company accounted for the First Amendment as a modification to existing debt and as a result, recognized the amounts paid to SWK in cash and warrants as additional debt issuance costs. Amounts paid to DPG in cash and warrants relating to the First Amendment were expensed as incurred in the Company's consolidated statement of operations for the year ended December 31, 2019.

On September 30, 2019, BIOLASE, Inc entered into the Second Amendment to Credit Agreement (the "Second Amendment") with SWK, in connection with that certain Credit Agreement, by and among the Company, SWK, and the lender parties thereto. The Second Amendment amends the Credit Agreement to provide for a permitted inventory and accounts receivable revolving loan facility, secured by a first lien security interest in the Company's inventory and accounts receivable, with a maximum principal amount of $5 million and with such other material terms and conditions acceptable to SWK in its commercially reasonable discretion. In addition, SWK agreed to waive the effect of the Company's non-compliance with certain unencumbered liquid assets financial operating covenants as set forth in the Credit Agreement, and SWK agreed to forbear from exercising rights and remedies otherwise available to it in the event of such non-compliance through October 31, 2019, or earlier in the event that an additional equity or subordinated debt financing is consummated with gross proceeds of not less than $5 million, or in the event of a default under the Credit Agreement. The Second Amendment contains representations, warranties, covenants, releases, and conditions customary for a forbearance and credit agreement amendment of this type.

On November 6, 2019, the Company agreed to further amend the Credit Agreement. Pursuant to the Third Amendment, SWK granted the Company a waiver of the Company's non-compliance with certain financial covenants in the Credit Agreement. Also pursuant to the Third Amendment, the Company and SWK agreed to (i) revise financial covenants to adjust minimum revenue and EBITDA levels and (ii) remove the automatic increase of the minimum liquidity requirement based on certain aggregate minimum revenue and EBITDA levels as of September 30, 2019 (which w as added pursuant to the First Amendment). In connection with the Third Amendment, the Company consolidated the SWK Warrants issued to SWK on November 9, 2018 and May 7, 2019. The price was adjusted to $1.00, the impact of this was immaterial.

As of December 31, 2019, the Company was not in compliance with debt covenants and obtained a waiver as part of a Fourth Amendment to Credit Agreement ("Fourth Amendment") in March 2020. We do not anticipate we will regain compliance by March 31, 2020, therefore we reclassified the Term Loan from a long-term liability to a current liability in the consolidated balance sheets. Additionally, there were uncertainties surrounding the impact of COVID-19 on our business. The details of the Fourth Amendment and uncertainties surrounding the impact of COVID-19 on our business are contained in Note 11 to these consolidated financial statements.

*SWK Warrants*

In connection with the Credit Agreement, the Company issued warrants to SWK (the "SWK Warrants") on November 9, 2018, to purchase up to 372,023 shares of the Company's common stock. The SWK Warrants are immediately exercisable and expire on November 9, 2026. The exercise price of the SWK Warrants is $1.34, which was the average closing price of the Company's common stock for the ten trading days immediately preceding November 9, 2018. These warrants contain down-round features that require the Company to adjust the exercise price proportionately should the Company issue shares at a price per share less than the exercise price. The fair value of the SWK Warrants was estimated using the Black-Scholes option-pricing model with the following assumptions: expected term of 8 years; volatility of 81.79%; annual dividend per share of $0.00; and risk-free interest rate of 3.13%; and resulted in an estimated fair value of $0.4 million. In November 2019, these warrants were consolidated and the strike price was adjusted to $1.00. The impact of the reprice was de minimis to our consolidated financial statements. See Note 8 for additional information.

*DPG Warrants*

In connection with the SWK Loan, the Company paid a finder's fee to DPG of $0.5 million cash and issued warrants (the "DPG Warrants") on November 9, 2018 to purchase up to 279,851 shares of common stock and on May 7, 2019 to purchase up to 34,552 shares of BIOLASE common stock. TheDPG Warrants are exercisable immediately and expire 7 years after the applicable issuance date. The exercise price of the DPG Warrants issued on November 9, 2018 is $1.34, and the exercise price of the DPG warrants issued on May 7, 2019 is $2.17, both of which were based on the average closing price of BIOLASE common stock for the ten trading days immediately preceding the applicable issuance date. These warrants contain down-ro und features that require the Company to adjust the exercise price proportionately should BIOLASE issue shares at a price per share less than the exercise price. The fair value of the 279,851DPG Warrants issued on November 9, 2018 was $0.3 million, estima ted using the Black-Scholes option-pricing model with the following assumptions: ex pected term of 8 years; volatility of 81.79%; annual dividend per share of $0.00; and risk-free interest rate of 3.13%. The fair value of the 34,552 DPG Warrants issued on M ay 7, 2019 was $0.1 million, estimated using a binomial option-pricing model with the following assumptions: expected term of 8 years; volatility of 80.73%; annual dividend per share of $0.00; and a risk-free rate of 2.37%.In 2019, the SWK Warrants and the DPG Warrants were repriced as a result of the sale of shares of BIOLASE common stock at a price of $0.5750 per share during the Company's public offering in October 2019. The exercise price of the SWK Warrants and the DPG Warrants issued on November 9, 20 18 was adjusted from $1.34 per share to $0.8767 per share and the exercise price of the SWK Warrants and the DPG Warrants issued on May, 2019 was adjusted from $2.17 per share to $1.4197 per share. The impact of the reprice was de minimis to our consolidated financial statements.

The value of each of the SWK Warrants issued in 2018 and 2019 and the DPG Warrants issued in 2018 was recognized as a discount on the SWK Loan and is being amortized on a straight-line basis which approximates the effective-intere st method, over the loan term of five years. Additionally, based on the adoption of ASU 2017-11 in the fourth quarter of 2018, the SWK Warrants and the DPG Warrants are classified as equity in the consolidated balance sheet as of December 31, 2018.

The future minimum principal payments as of December 31, 2019, are as follows (in thousands):

| | Principal | Interest (1) |
|---|---|---|
| 2020 | $ — | 1,873 |
| 2021 | 2,100 | 1,793 |
| 2022 | 2,800 | 1,472 |
| 2023 | 10,100 | 2,455 |
| Total future payments | $ 15,000 | $ 7,593 |

(1) Estimated using LIBOR rates as at December 31, 2019

**NOTE 7 — COMMITMENTS AND CONTINGENCIES**

***Leases***

The Company enters into operating leases primarily for real estate, office equipment, and fleet vehicles. Lease terms generally range from one to five years, and often include options to renew for one year. The Company leases its 57,000 square foot corporate headquarters and manufacturing facility located at 4 Cromwell, Irvine, California, which expires on June 30, 2020. The Company entered into a new lease agreement in February 2020, the details of this lease are discussed in Note 11 to these financial statements. Future minimum rental commitments under existing operating lease agreements with non-cancelable terms greater than one year for the years ending December 31 are listed below. The Company also leases additional office space and certain office equipment under various operating lease arrangements.

On January 1, 2019, the Company adopted Topic 842, using the modified-retrospective approach as discussed in Note 2, and as a result recognized a right-of-use asset of approximately $0.8 million as adjusted for deferred rent at the date of adoption of $0.2 million, and a lease liability of approximately $1.0 million. No cumulative-effect adjustment to retained earnings was required upon adoption of Topic 842. Right-of-use assets are recorded in Other assets and lease liabilities are included in Accrued liabilities or Other liabilities depending on whether they are current or noncurrent. Because the rate implicit in each lease is not readily determinable, the Company uses its incremental borrowing rate ("IBR") to determine the present value of the lease payments and on the date of adoption, the Company determined its IBR to be 12.78%. This rate was based on the Company's financing of the SWK Loan which is a collateralized loan, and was based on prevailing market rates during the fourth quarter of 2018.

Information related to the Company's right-of-use assets and related liabilities were as follows (in thousands):

| | Year Ended December 31, 2019 |
|---|---|
| Cash paid for operating lease liabilities | $ 797 |
| Right-of-use assets obtained in exchange for new operating lease obligations | 803 |
| Weighted-average remaining lease term | 0.6 |
| Weighted-average discount rate | 12.8 % |

Lease expense consists of payments for real property, office copiers, and IT equipment. The Company recognizes payments for non-lease components such as common area maintenance in the period incurred. In 2019, the Company paid approximately $0.8 million in lease payments. The weighted-average remaining lease term under existing leases is less than one year. As of December 31, 2019 the Company had no leases that had not commenced. In the first quarter of 2020, the Company signed two leases for new office space. For additional information, see Note 11 to these consolidated financial statements.

Future minimum rental commitments under lease agreements, as of December 31, 2019, with non-cancelable terms greater than one year for each of the years ending December 31 are as follows (in thousands):

| Due in 12 month period ended December 31, 2019 | |
|---|---|
| 2020 | 326 |
| 2021 | 16 |
| Thereafter | — |
| | 342 |
| Less imputed interest | (16) |
| Total lease liabilities | $ 326 |
| | |
| Current operating lease liabilities | 323 |
| Non-current lease liabilities | $ 3 |
| Total lease liabilities | 326 |

Future minimum rental commitments under lease agreements, as of December 31, 2018, with non-cancelable terms greater than one year for each of the years ending December 31 are as follows (in thousands):

| | Year Ended December 31, 2018 |
|---|---|
| 2019 | 802 |
| 2020 | 313 |
| 2021 | 33 |
| 2022 and thereafter | — |
| Total future minimum lease obligations | 1,148 |

Rent expense totaled approximately $0.8 million, $0.8 million and $1.0 million in each of the years ended December 31, 2019, 2018, and 2017, respectively.

***Employee Arrangements and Other Compensation***

Certain members of management are entitled to severance benefits payable upon termination following a change in control, which would approximate $3.0 million and $3.0 million at December 31, 2019 and 2018, respectively. The Company also has agreements with certain employees to pay bonuses based on targeted performance criteria. As of December 31, 2019 and 2018, approximately $0.2 million and $0.3 million was accrued for performance bonuses, which is included in accrued liabilities in the consolidated balance sheets. See Note 8 for additional information relating to specific stock-based compensation awards.

***Purchase Commitments***

The Company generally purchases components and subassemblies for its products from a limited group of third-party suppliers through purchase orders. The Company had $9.8 million of purchase commitments as of December 31, 2019, for which the Company has not received the goods or services and which is expected to be purchased primarily within one year. These purchase commitments were made to secure better pricing and to ensure the Company will have the necessary parts to meet anticipated near term demand. Although open purchase orders are considered enforceable and legally binding, the Company may be able to cancel, reschedule, or adjust requirements prior to supplier fulfillment.

***Litigation***

The Company discloses material loss contingencies deemed to be reasonably possible and accrues for loss contingencies when, in consultation with its legal advisors, management concludes that a loss is probable and reasonably estimable. The ability to predict the ultimate outcome of such matters involves judgments, estimates, and inherent uncertainties. The actual outcome of such matters could differ materially from management's estimates.

*Intellectual Property Litigation*

On April 24, 2012, CAO Group, Inc. ("CAO")filed a lawsuit against BIOLASE in the District of Utah alleging that BIOLASE's ezlase dental laser infringes on U.S. Patent No. 7,485,116 (the "116 Patent"). On September 9, 2012, CAO amended its complaint, adding claims for (1) business disparagement/injurious falsehood under common law and (2) unfair competition under 15 U.S.C. Section 1125(a). The additional claims stem from a press release that BIOLASE issued on April 30, 2012, which CAO claims contained false statements that are disparaging to CAO and its diode product. The amended complaint sought injunctive relief, treble damages, attorneys' fees, punitive damages, and interest. Until January 24, 2018, this lawsuit was stayed in connection with United States Patent and Trademark Office proceedings relating to the 116 Patent, which proceedings ultimately culminated in a January 27, 2017 decision by the United States Court of Appeals for the Federal Circuit, affirming the findings of the Patent Trial and Appeal Board, which were generally favorable to the Company. On January 25, 2018, CAO moved for leave to file a second amended complaint to add certain claims, which filing the Company is not opposing.

On January 23, 2018, CAO filed a lawsuit against BIOLASE in the Central District of California alleging that BIOLASE's diode lasers infringe on U.S. Patent Nos. 8,337,097, 8,834,497, 8,961,040 and 8,967,883. The complaint seeks injunctive relief, treble damages, attorneys' fees, punitive damages, and interest.

On January 25, 2019 (the "Effective Date"), BIOLASE entered into a settlement agreement (the "Settlement Agreement") with CAO. Pursuant to the Settlement Agreement, CAO agreed to dismiss with prejudice the lawsuits filed by CAO against the Company in April 2012 and January 2018. In addition, CAO granted to the Company and its affiliates a non-exclusive, non-transferable (except as provided in the Settlement Agreement), royalty-free, fully-paid, worldwide license to the licensed patents for use in the licensed products and agreed not to sue the Company, its affiliates or any of its manufacturers, distributors, suppliers or customers for use of the licensed patents in the licensed products, and the parties agreed to a mutual release of claims. The Company has agreed (i) to pay to CAO, within five days of the Effective Date, $500,000 in cash, (ii) to issue to CAO, within 30 days of the Effective Date, 500,000 restricted shares of common stock of the Company (the "Stock Consideration"), and (iii) to pay to CAO, within 30 days of December 31, 2021, an amount in cash equal to the difference (if positive) between $1,000,000 and the value of the Stock Consideration on December 31, 2021. The Stock Consideration vests and becomes transferrable on December 31, 2021, subject to the terms of a restricted stock agreement to be entered into between the parties. The Company considered this a Type I subsequent event and recognized a $1.5 million contingent loss on patent litigation settlement in its statement of operations for the year ended December 31, 2018. In January 2019, the Company paid CAO $500,000 in cash. On January 31, 2019, the case was dismissed with prejudice. As of December 31, 2019, the Company did not record any gain or loss on patent litigation which represents the change in fair value of the restricted stock to be issued to CAO. As of December 31, 2019, the total accrued liability is $1.0 million and is included in other long-term liabilities in the consolidated balance sheet.

**NOTE 8 —REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY**

***Redeemable Preferred Stock***

The Board, without further stockholder authorization, may issue from time to time up to 1,000,000 shares of the Company's preferred stock. Of the 1,000,000 shares of preferred stock, 500,000 shares are designated as Series B Junior Participating Cumulative Preferred Stock. In 2019, the Company sold Series E Convertible Preferred Shares in a private offering and as of December 31, 2019 and 2018, 69,565 of these shares were issued and outstanding. There were no shares of the Company's preferred stock issued or outstanding as of December 31, 2018.

On October 24, 2019, the Company entered into a Securities Purchase Agreement (the "Purchase Agreement"), by and among the Company, the Schuler Family Foundation, Oracle Partners, LP, Oracle Institutional Partners, LP and Oracle Ten Fund, LP (collectively, the "Investors"). Pursuant to the terms of the Purchase Agreement, on October 29, 2019, the Company sold to the Investors an aggregate of 69,565 shares of Series E Participating Convertible Preferred Stock, par value $0.001 per share ("Series E Preferred Stock"), at a per share price of $57.50 in a private placement (the "Private Placement"), and received gross proceeds of approximately $4.0 million, before transaction costs. Each share of Series E Preferred Stock will be convertible into 100 shares of Common Stock reflecting a conversion price equal to $0.5750 per share, subject to customary anti-dilution adjustments. The shares of Series E Preferred Stock automatically convert into shares of Common Stock upon receipt of the Requisite Stockholder Approval. The shares of Series E Preferred Stock have no other conversion rights.

The Purchase Agreement contains customary representations, warranties and covenants by the Company, customary indemnification obligations of the Company and the Investors, including for liabilities under the Securities Act, and other obligations of the parties. The representations, warranties and covenants contained in the Purchase Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement and may be subject to limitations agreed upon by the contracting parties.

The shares of Series E Preferred Stock were offered in reliance upon exemptions from registration under the Securities Act afforded by Regulation D and corresponding provisions of state securities laws. The Company has agreed to use commercially reasonable efforts to file, within 30 days following receipt of the Requisite Stockholder Approval, a registration statement with the U.S. Securities and Exchange Commission to register the resale of the shares of Common Stock underlying the Series E Preferred Stock.

In connection with the completion of the Private Placement, on October 29, 2019, the Company filed the Certificate of Designations, Preferences and Rights of Series E Participating Convertible Preferred Stock of BIOLASE, Inc. (the "Certificate of Designations") with the Secretary of State of the State of Delaware to establish the terms, rights, obligations and preferences of the Series E Preferred Stock. The Certificate of Designations became effective upon the filing with the Secretary of State of the State of Delaware. The number of shares of Series E Preferred Stock designated is 70,000, and each share of Series E Preferred Stock has a stated value equal to $57.50.

*Voting Rights*

Except as otherwise provided by the General Corporation Law of the State of Delaware (the "DGCL"), other applicable law or as provided in the Certificate of Designations, the holders of the Series E Preferred Stock will not be entitled to vote (or render written consents) on any matter submitted for a vote (or written consents in lieu of a vote as permitted by the DGCL, the charter and the bylaws) of holders of Common Stock. The consent of the holders of at least a majority of the outstanding shares of Series E Preferred Stock will be required to alter or change adversely the terms of the Series E Preferred Stock. The express prior written consent of both underwriters of the Company's public stock offering or their respective designees will be required to directly or indirectly alter, modify or repeal any terms, conditions or other provisions of the Series E Preferred Stock in a manner adverse to the interests of the holders of the Common Stock (as so reasonably determined by such underwriters or their respective designees).

*Dividends*

If the Board of Directors declares a cash dividend payable upon the Common Stock, then the holders of the outstanding shares of Series E Preferred Stock will be entitled to the amount of dividends as would be payable in respect of the number of shares of Common Stock into which the shares of Series E Preferred Stock could be converted, such number to be determined as of the record date for the dividend or, if no such record date is established, as of the date of such dividend. Dividends are payable at the same time as and when dividends on the Common Stock are paid to the holders of Common Stock.

*Liquidation Preference*

In the event of any liquidation, dissolution, or winding up of the Company whether voluntary or involuntary (each, a "Liquidation"), the holders of Series E Preferred Stock will be entitled to have set apart for them, or to be paid, out of the assets of the Company available for distribution to stockholders (whether such assets are capital, surplus or earnings) after provision for payment of all debts and liabilities of the Company in accordance with the DGCL, before any distribution or payment is made with respect to any shares of junior securities and subject to the liquidation rights and preferences of any class or series of senior securities and parity securities, an amount equal to the greater of (i) $57.50, being the purchase price per share of Series E Preferred Stock (which amount shall be subject to customary anti-dilution adjustments) plus the all accrued but unpaid dividends thereon and (ii) such amount as would have been payable on the number of shares of Common Stock into which the shares of Series E Preferred Stock could have been converted immediately prior to such Liquidation.

*Conversion*

The number of shares of Common Stock into which each share of Series E Preferred Stock is initially convertible is equal to the number obtained by dividing (i) the sum of $57.50, being the initial purchase price per share of the Series E Preferred Stock, and the amount of any accrued but unpaid dividends thereon by (ii) $0.5750, being the conversion price per share of Series E Preferred Stock, subject to customary anti-dilution adjustments. This reflects an initial conversion rate of 100 shares of Common Stock for each share of Series E Preferred Stock, and an initial conversion price per share of Common Stock equal to the public offering price of the shares of Common Stock. Each share of Series E Preferred Stock will be automatically converted upon obtaining the Requisite Stockholder Approval (as defined below) and filing the related certificate of amendment to the Company's charter with the Secretary of State of the State of Delaware.

Subject to applicable law, the rules and regulations of Nasdaq and the Company's charter and bylaws, the Company will establish a record date for, call, give notice of, convene and hold a meeting of the holders of Common Stock, no later than June 1, 2020, for the purpose of voting upon any and all corporate actions in furtherance of the full conversion of the outstanding shares of Series E Preferred Stock into shares of Common Stock, including, without limitation, effectuating an amendment to the charter to increase the number of authorized shares of Common Stock and satisfy Nasdaq requirements with respect to the issuance of Common Stock upon conversion of the Series E Preferred Stock (the "Corporate Actions") to secure the favorable vote of the holders of a majority of the outstanding shares of Common Stock present in person or represented by proxy at the Stockholders' Meeting with respect to the Corporate Actions (the "Requisite Stockholder Approval").

The Company will file with the Secretary of State of the State of Delaware a certificate of amendment to its charter reflecting the approval of the Corporate Actions promptly following receipt of the Requisite Stockholder Approval. Upon such filing, all shares of Series E Preferred Stock will be automatically converted, without any further action by the holders of such shares, into the number of fully paid and nonassessable shares of Common Stock equal to the number obtained by dividing (i) the stated value of such Series E Preferred Stock, plus the amount of any accrued but unpaid dividends as of the conversion date by (ii) the conversion price in effect on the conversion date (determined as provided in the Certificate of Designations). The Certificate of Designations contains customary anti-dilution adjustments to the conversion price in the event of stock dividends, subdivisions or splits and upon stock combinations.

In the event of (A) a capital reorganization of the Common Stock, (B) a reclassification of the Common Stock (other than a subdivision, split-up or combination of shares) or (C) a merger or consolidation of the Company with or into another corporation, or the sale of all or substantially all of the Company's properties and assets to any other person, then, as a part of such reorganization, reclassification, merger, or consolidation or sale, provision will be made so that holders of Series E Preferred Stock, as the case may be, shall thereafter be entitled to receive upon conversion of the Series E Preferred Stock, the kind and amount of shares of stock or other securities or property of the Company, or of the successor corporation resulting from such merger, consolidation or sale, to which such holder would have been entitled if such holder had converted its shares of Series E Preferred Stock immediately prior to such capital reorganization, reclassification, merger, consolidation or sale.

*Redemption*

At any time and from time to time on or after the third anniversary of the closing of the Private Placement, the Company may elect, by delivering an irrevocable written notice to the holders of Series E Preferred Stock, to redeem all or any portion of the Series E Preferred Stock held by such holder at a price per share equal to the stated value per share plus an amount equal to all accrued and unpaid dividends thereon to the date of such notice. No redemption may be effected in violation of any applicable laws, rules and/or regulations including the DGCL and/or the terms of any of the Company's debt or other securities and/or contractual obligations. Shares of Series E Preferred Stock are not entitled to any redemption rights or mandatory sinking fund or analogous fund provisions. As noted above, the existing shareholders who purchased the Series E Convertible Preferred Stock own approximately 60% of the Company's common stock as of the date of purchase and at December 31, 2019, and as such provide them with control over the redemption of the Series E Convertible Preferred Stock. Under ASU Topic 480, "Distinguishing Equity from Liabilities," the Series E Convertible Preferred Shares has been classified as mezzanine equity in the consolidated balance sheet at December 31, 2019.

*Ranking*

The Series E Preferred Stock will rank senior to the Common Stock with respect to distributions upon any Liquidation, on parity to any class or series of the Company's capital stock hereafter created specifically ranking by its terms on parity with the Series E Preferred Stock and junior to any class or series of the Company's capital stock hereafter created specifically ranking by its terms senior to the Series E Preferred Stock.

PERMANENT EQUITY:

***Preferred Stock***

*2017 Private Placement*

On April 18, 2017, the Company completed a private placement with several institutional and individual investors, and certain of its directors and officers, under which the Company sold an aggregate of 80,644 shares of BIOLASE Series D Participating Convertible Preferred Stock, par value $0.001 per share ("Preferred Stock"), and warrants (the "2017 Warrants") to purchase up to an aggregate of 3,925,871 unregistered shares of BIOLASE common stock at an exercise price of $1.80 per share, subject to customary anti-dilution adjustments. Each share of Preferred Stock converted automatically into 100 shares of BIOLASE common stock upon receipt of stockholder approval on June 30, 2017, reflecting a conversion price equal to $1.24 per share, which was the closing price of BIOLASE common stock quoted on the NASDAQ Capital Market on April 10, 2017. On June 30, 2017, BIOLASE's stockholders also approved the issuance of BIOLASE common stock related to the exercise of the 2017 Warrants by certain holders whose 2017 Warrants were subject to a beneficial ownership limitation.

The 2017 Warrants became exercisable on October 18, 2017 and expire on April 18, 2022, or, if earlier, five business days after the Company delivers notice that the closing price per share of BIOLASE common stock exceeded the exercise price of $1.80 per share for 30 consecutive trading days during the exercise period. Gross proceeds from the sale were approximately $10.5 million, and net proceeds, after offering expenses of approximately $0.3 million, were approximately $10.2 million. In connection with the registration rights granted to these investors, the Company filed with the SEC a registration statement on Form S-3, which was declared effective on August 24, 2017.

In accordance with applicable accounting standards, the $10.5 million gross proceeds from the private placement described above were allocated to the Preferred Stock and the 2017 Warrants in the amount of $8.2 million and $2.3 million, respectively. The allocation was based on the relative fair values of the underlying BIOLASE common stock and the 2017 Warrants as of the commitment date, with the fair value of the 2017 Warrants determined using a Black Scholes model. Assumptions used in the Black-Scholes model include an expected term of five years, a risk-free rate of 1.90% and a dividend yield of 0%. This transaction resulted in a discount from allocation of proceeds to separable instruments of $2.0 million and a beneficial conversion to BIOLASE common stock with a value of $2.0 million, which have been reflected as a deemed distribution to preferred shareholders for the year ended December 31, 2017.

***Common Stock***

At December 31, 2019, 31,439,144 shares of the Company's common stock were issued and outstanding. On May 10, 2018, the Company filed the Fourth Amendment to its Restated Certificate of Incorporation to reduce the authorized shares of common stock from 200,000,000 shares to 40,000,000 shares. See Note 1 for further information on the reverse stock split.

*Public Offering of Common Shares and Private Placement of Unregistered Preferred Shares*

On October 29, 2019, the Company consummated the sale of 7,820,000 shares of its common stock at a price to the public of $0.5750 per share in a public offering and in addition, granted the underwriters a 30-day over-allotment option to purchase up to an additional 1,173,000 shares of common stock at the public offering price, less the underwriting discount. At the closing, BIOLASE received approximately $4.2 million in net proceeds from the common stock offering, after deducting the underwriting discount. On November 5, 2019, the underwriters exercised their over-allotment option to purchase an additional 1,173,000 shares of BIOLASE common stock at a share price of $0.5750 per share for approximately $0.6 million in net proceeds, after deducting the underwriting discount.

*Stock Dividends*

There were no dividends paid or declared in 2019, 2018 or 2017.

***Warrants***

The Company issues warrants for the sale of its common stock as approved by its Board.

The following table summarizes warrant activity (in thousands, except per share data):

| | Shares | | Weighted-Average Exercise Price Per Share |
|---|---|---|---|
| Warrants outstanding, January 1, 2017 | 2,281 | $ | 20.90 |
| Granted/Issued | 785 | $ | 9.00 |
| Exercised | — | $ | — |
| Forfeited, cancelled, or expired | (1,841) | $ | 20.00 |
| Warrants outstanding, December 31, 2017 | 1,225 | $ | 9.65 |
| Granted/Issued | 760 | $ | 2.23 |
| Exercised | — | $ | — |
| Forfeited, cancelled, or expired | (52) | $ | 2.36 |
| Warrants outstanding, December 31, 2018 | 1,933 | $ | 9.65 |
| Granted/Issued | 150 | $ | 2.22 |
| Exercised | — | $ | — |
| Forfeited, cancelled, or expired | — | $ | — |
| Warrants outstanding, December 31, 2019 | 2,083 | $ | 6.30 |
| Warrants exercisable, December 31, 2019 | 2,083 | $ | 6.12 |
| Vested warrants expired during the 12 months ended December 31, 2019 | — | $ | — |

On March 6, 2018, in connection with the execution of the Original Business Financing Agreement, the Company issued to Western Alliance warrants (the "Original Western Alliance Warrants") to purchase up to the number of shares of common stock equal to $120,000 divided by the applicable exercise price at the time such warrants are exercised. The Original Western Alliance Warrants are fully vested and exercisable. The Original Western Alliance Warrants may be exercised with a cash payment from Western Alliance, or, in lieu of a cash payment, Western Alliance may convert the warrants into a number of shares, in whole or in part. The initial exercise price of the warrants was $2.35 per share, which was the Reverse Stock Split-adjusted closing market price of BIOLASE common stock on March 6, 2018. On September 27, 2018, the Company entered into the Second Modification Agreement to amend the Original Business Financing Agreement. In connection with the Second Modification Agreement, the Original Western Alliance Warrants were terminated, and the Company issued new warrants (the "Western Alliance Warrants") to purchase up to the number of shares of common stock equal to $120,000 divided by the exercise price of $2.13, which was the closing price of the Company's common stock on September 27, 2018. The Western Alliance Warrants are immediately exercisable and expire on September 27, 2028. These warrants contain down-round features that require the Company to adjust the exercise price proportionately should the Company issue shares at a price per share less than the exercise price. As a result of the early-adoption of ASU 2017-11, the value of these warrants has been recognized in equity in the consolidated balance sheets as of December 31, 2019 and 2018.

On November 9, 2018 , in connection with the Credit Agreement, BIOLASE issued to SWK, LLC or its assignees (collectively with SWK, the "Holder")warrants to purchase up to 372,023 shares of common stock. The exercise price of the SWK Warrants is $1.34 per share, which was the average closing price of common stock for the ten trading days immediately preceding November 9, 2018 . The SWK Warrants are immediately exercisable, expire on November 9, 2026 and contain a "cashless exercise feature." Subject to certain limitations, the Holder has certain piggyback registration rights with respect to the shares that are issued upon exercise of the SWK Warrants These warrants contain down-round features that require the Company to adjust the exercise price proportionately should the Company issue shares at a price per share less than the exercise price. As a result of the early-adoption of ASU 2017-11, the value of these warrants has been recognized in equity in the consolidated balance sheets as of December 31, 2019 and 2018.

On November 14, 2018, in connection with the SWK Loan, the Company issued to DPG warrants to purchase up to 279,851 shares of common stock. The exercise price of the DPG Warrants is $1.34 per share, which was the average closing price of common stock for the ten trading days immediately preceding November 9, 2018. The DPG Warrants are immediately exercisable, expire on November 9, 2026 and contain a "cashless exercise feature." Subject to certain limitations, the Holder has certain piggyback registration rights with respect to the shares that are issued upon exercise of the DPG Warrants. These warrants contain down-round features that require the Company to adjust the exercise price proportionately should the Company issue shares at a price per share less than the exercise price. As a result of the early-adoption of ASU 2017-11, the value of these warrants has been recognized in equity in the consolidated balance sheet as of December 31, 2019 and 2018.

In 2019 the Company issued 149,727 warrants to purchase common stock at a weighted average exercise price of $2.17 to SWK and DPG. As a result of the early-adoption of ASU 2017-11, the value of these warrants has been recognized in equity in the consolidated balance sheets as of December 31, 2019.

In November 2019, the SWK Warrants were repriced to $1.00 as part of the fourth amendment to the Credit Agreement and the DPG Warrants were repriced as a result of the sale of common shares at a price of $0.5750 per share during the Company's public offering in October 2019. The strike price of the SWK Warrants was adjusted to $1.00 per share and the strike price of the DPG Warrants was adjusted from $1.34 to $0.8767 and $2.17 to $ 1.4197 per share.

The repricing did not have a material impact on the Company's consolidated financial statements for the year ended December 31, 2019.

***Stock Options***

*2002 Stock Incentive Plan*

The 2002 Stock Incentive Plan (as amended effective as of May 26, 2004, November 15, 2005, May 16, 2007, May 5, 2011, June 6, 2013, October 30, 2014, April 27, 2015, and May 6, 2017, the "2002 Plan") was replaced by the 2018 Plan (as defined below) with respect to future equity awards. Persons eligible to receive awards under the 2002 Plan included officers, employees, and directors of the Company, as well as consultants. As of December 31, 2019, a total of 3,110,000 shares have been authorized for issuance under the 2002 Plan, of which 961,982 shares of common stock have been issued pursuant to options that were exercised, 1,724,264 shares of common stock have been reserved for options and restricted stock units that are outstanding, and 0 shares of common stock remain available for future grants.

*2018 Stock Incentive Plan*

At the 2018 Annual Meeting, the Company's stockholders approved the 2018 Long-Term Incentive Plan (as amended, the "2018 Plan") which was amended by Amendment No. 1 to the 2018 Long Term Incentive Plan, approved by the Company's stockholders at a special meeting on September 21, 2018. The purposes of the 2018 Plan are (i) to align the interests of the Company's stockholders and recipients of awards under the 2018 Plan by increasing the proprietary interest of such recipients in the Company's growth and success; (ii) to advance the interests of the Company by attracting and retaining non-employee directors, officers, other employees, consultants, independent contractors and agents; and (iii) to motivate such persons to act in the long-term best interests of the Company and its stockholders.

As of December 31, 2019, a total of 3,271,101 shares of common stock have been authorized for issuance under the 2018 Plan, of which 1,875,801 shares of common stock have been reserved for outstanding options and unvested RSUs, and 1,395,300 shares of common stock remain available for future grants.

Stock options may be granted as incentive or non-qualified options; however, no incentive stock options have been granted to date. The exercise price of options is at least equal to the market price of the stock as of the date of grant. Options may vest over various periods but typically vest on a quarterly basis over four years. Options expire after five years, ten years, or within a specified time from termination of employment, if earlier. The Company issues new shares of common stock upon the exercise of stock options. The following table summarizes option activity under the 2002 Plan and the 2018 Plan (in thousands, except per share data):

| | Shares | Weighted-Average Exercise Price Per Share | Weighted-Average Remaining Contractual Term (Years) | Aggregate Intrinsic Value(1) |
|---|---|---|---|---|
| Options outstanding, January 1, 2017 | 1,322 | $ 13.60 | | |
| Granted at fair market value | 446 | $ 5.15 | | |
| Exercised | — | $ 4.30 | | |
| Forfeited, cancelled, or expired | (421) | $ 9.15 | | |
| Options outstanding, December 31, 2017 | 1,347 | $ 8.99 | | |
| Granted at fair market value | 611 | $ 1.98 | | |
| Exercised | (1) | $ 2.10 | | |
| Forfeited, cancelled, or expired | (334) | $ 10.68 | | |
| Options outstanding, December 31, 2018 | 1,623 | $ 6.54 | | |
| Granted at fair market value | 90 | $ 1.74 | | |
| Exercised | (2) | $ 2.10 | | |
| Forfeited, cancelled, or expired | (424) | $ 9.43 | | |
| Options outstanding, December 31, 2019 | 1,287 | $ 5.77 | | $ — |
| Options exercisable, December 31, 2019 | 1,033 | $ 6.58 | | $ — |
| Vested options expired during the twelve months ended December 31, 2019 | 224 | $ 9.91 | | |

(1) The intrinsic value calculation does not include negative values. This can occur when the fair market value on the reporting date is less than the strike price of a grant.

The following table summarizes additional information for those options that are outstanding and exercisable as of December 31, 2019 (in thousands, except per share data):

| | Options Outstanding | | | Exercisable | |
|---|---|---|---|---|---|
| Range of Exercise Prices | Number of Shares | Weighted-Average Exercise Price | Weighted-Average Remaining Life (Years) | Number of Shares | Weighted-Average Exercise Price |
| $0.58 - $2.08 | 146,186 | $ 1.47 | 8.89 | 47,820 | $ 1.51 |
| $2.09 - $2.65 | 279,000 | $ 2.12 | 8.23 | 151,923 | $ 2.11 |
| $2.66 - $7.18 | 281,724 | $ 4.74 | 6.27 | 275,864 | $ 4.71 |
| $7.19 - $8.00 | 321,431 | $ 7.35 | 3.12 | 304,530 | $ 7.35 |
| $8.01 - $13.20 | 258,470 | $ 11.29 | 4.27 | 252,735 | $ 11.35 |
| Total | 1,286,811 | $ 5.77 | 5.81 | 1,032,872 | $ 6.58 |

Cash proceeds, along with fair value disclosures related to grants, exercises, and vesting options, are as follows for the years ended December 31 (in thousands, except per share amounts):

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2019 | 2018 | 2017 |
| Proceeds from stock options exercised | $ 4 | $ 2 | $ 3 |
| Tax benefit related to stock options exercised(1) | N/A | N/A | N/A |
| Intrinsic value of stock options exercised(2) | $ — | $ — | $ 1 |
| Weighted-average fair value of options granted | $ 1.51 | $ 1.38 | $ 3.45 |
| Total fair value of shares vested during the year | $ 587 | $ 1,191 | $ 1,286 |

(1) Excess tax benefits received related to stock option exercises are presented as operating cash inflows. For the periods presented, the Company did not receive a tax benefit related to the exercise of stock options due to its net operating losses.

(2) The intrinsic value of stock options exercised is the amount by which the market price of the stock on the date of exercise exceeded the strike price of the stock on the date of grant.

*Stock Option Activity*

*2019 Stock Option Activity*

There were no material option grants in 2019.

*2018 Stock Option Activity*

Effective January 25, 2018, the Compensation Committee of the Board awarded 360,000 non-qualified stock options to purchase shares of common stock to certain employees of the Company. These awards were valued at $2.11 per share and expire 10 years from the grant date. The options vest ratably over the 36-month period, commencing on February 25, 2018.

*2017 Stock Option Activity*

- Effective February 6, 2017, the Compensation Committee of the Board issued 122,200 non-qualified stock options to purchase shares of common stock to certain employees of the Company. These awards were issued at $7.75 per share, the closing market price of common stock on the grant date, and expire 10 years from the grant date. Vesting periods for options are as follows: (i) for the 117,200 options awarded to existing employees, one-half vest on the first anniversary of grant date and one-half vest on the second anniversary of the grant date and (ii) for the 5,000 options awarded to new employees, 25% vest on February 6, 2018 and the remainder vest ratably over the 36-month period, commencing on March 6, 2018.

- On May 10, 2017, non-employee directors of the Company were granted a total of 105,105 non-qualified stock options to purchase shares of common stock. These awards were issued at $6.05 per share, the closing market price of common stock on the grant date, and expire 10 years from the grant date. The total grant vests in equal installments over a consecutive 12-month period, commencing on June 10, 2017.

- On September 1, 2017, Paul N. Clark resigned from the Board, effective September 11, 2017, and as Chairman of the Board, effective September 1, 2017. Effective September 1, 2017, Dr. Jonathan T. Lord was appointed Chairman of the Board. On September 11, 2017, the Compensation Committee of the Board approved a modification to expiration dates applicable to Mr. Clark's vested options. As a result of the modification, the Company recognized additional compensation expense of $44,000 for the year ended December 31, 2017. On September 11, 2017, Dr. Lord was granted 13,077 non-qualified stock options to purchase shares of common stock at $2.70 per share, the closing market price of the Company's common stock on the grant date, and expiring 10 years from the grant date. On September 12, 2017, Dr. Lord was granted 13,178 non-qualified stock options to purchase shares of common stock at $3.05 per share, the closing market price of common stock on the grant date, and expiring 10 years from the grant date. Both grants vest in equal installments over an eight-month period, commencing on October 10, 2017.

- On October 27, 2017, Frederic H. Moll, M.D. resigned from the Board, effective November 11, 2017. On November 11, 2017, the Compensation Committee of the Board approved a modification to expiration dates applicable to Dr. Moll's vested options. As a result of the modification, the Company recognized additional compensation expense of $22,000 for the year ended December 31, 2017. Also, on October 27, 2017 the Board elected Richard B. Lanman, M.D. to the Board. In connection with his election to the Board, on November 1, 2017, Dr. Lanman was granted 27,066 non-qualified stock options to purchase shares of common stock at $3.75 per share, the closing market price of the Company's common stock on the grant date, and expiring 10 years from the grant date.

- Effective November 7, 2017, the Compensation Committee of the Company's board of directors issued 85,200 non-qualified stock options to purchase shares of common stock to certain employees of the Company. These awards were issued at $3.00 per share, the closing market price of the Company's common stock on the grant date, and expire 10 years from the grant date. Vesting periods for options are as follows: one-half vest on the first anniversary of the grant date and one-half vest ratably monthly commencing thirteen months after the grant date through the twenty-fourth month.

**Restricted Stock Units**

*2019 Restricted Stock Units Activity*

- Under the 2018 Plan, the Company granted approximately 1.4 million RSUs to certain employees of the Company as part of the Company's 2019 bonus programs. 715,000 of these RSUs are subject to time-based vesting and were valued at which was the closing share price on the date of grant. The remaining 685,000 awards vest based on certain Company performance criteria. Additionally, the Company issued approximately 175,000 RSUs to certain employees as part of the quarter bonus program. The fair value of these awards varied and were based on closing market share price on the date of grant.

- In 2019, the Compensation Committee of the Board issued 518,132 RSUs to Board members including 98,738 RSUs to Mike DiTolla who joined the Board in the third quarter of 2019.

- Additional RSUs were granted to certain new hires during 2019, none of which were individually material.

*2018 Restricted Stock Units Activity*

- Under the 2002 Plan, effective January 26, 2018, the Board issued 40,000 RSUs to the Company's President and Chief Executive Officer. This award was valued at $2.00 per share, the reverse stock split adjusted closing market price of the Company's common stock on the grant date, and will vest upon the achievement of specific annual Company performance criteria.

Effective September 10, 2018 and September 21, 2018, respectively, the Compensation Committee of the Board granted the following:

- 650,000 shares to the Company's President and Chief Executive Officer. These awards were valued at $2.17 per share, the closing price of the Company's common stock on the grant date. Vesting periods for the awards are as follows: (i) 54% of the total grant is subject to time vesting with 33% vesting on August 7, 2018 and the remaining 67% vesting ratably semi-annually over the two-year period commencing on February 7, 2020; and (ii) 46% of the awards is subject to specific 2019 , 2020 and 2021 performance criteria, with vesting upon satisfaction of the applicable performance criteria, subject to continued service through the applicable vesting dates.

- 30,388 shares to certain employees of the Company. These awards were valued at $2.06 per share, the closing price of the Company'scommon stock on the grant date. Vesting periods for the awards are as follows: (i) 50% of 24,271 shares vest on September 10, 2018 and the remaining 50% vest on September 10, 2020; and (ii) 6,117 shares fully vest on March 15, 2018 , subject to continued service through the applicable vesting dates.

Effective May 14, 2018 , the Compensation Committee of the Board granted the following:

- 1,193,850 shares to certain Board members, employees and consultants of the Company. These awards were valued at $1.45 per share, the closing price of the Company's common stock on the grant date, and vest 40% on December 31, 2018 and 60% on December 31, 2018 , subject to continued service through the applicable vesting dates.

- 398,275 shares to certain Board members of the Company. These awards were valued at $1.45 per share, the closing price of BIOLASE common stock on the grant date, and fully vest on the first anniversary of the grant date, subject to continued service through the applicable vesting date.

- 10,127 shares to certain employees of the Company. These awards were valued at $1.45 per share, the closing price of the Company's common stock on the grant date, and were fully vested on the grant date, subject to continued service through the applicable vesting date.

Effective June 15, 2018 , the Board granted 155,000 RSUs to two new Board members. These awards were valued at $1.25 per share, the closing price of the Company's common stock on the grant date, and vest fully on May 9, 2018 .

*2017 Restricted Stock Units Activity*

Effective February 6, 2017, the Compensation Committee of the Board approved the grant of the following awards:

- 16,000 restricted stock units ("RSUs") were awarded to an employee of the Company as part of the employee's 2017 compensation. These awards were valued at $7.75 per share, the closing market price of the Company's common stock on the grant date, and vest as follows: (i) 6,000 of the RSUs vested on March 14, 2017, (ii) 4,000 of the RSUs vested on September 14, 2017, and (iii) 6,000 of the RSUs vest on May 10, 2018.

- 200,000 stock-settled RSUs were awarded to the Company's President and Chief Executive Officer as part of his 2017 compensation. These RSUs were valued at $7.75 per share, the closing market price of the Company's common stock on the grant date. These RSUs vest as follows: (i) one-quarter of the RSUs vest on February 6, 2019, (ii) one-eighth of the RSUs vest on February 6, 2020, (iii) one-eighth of the RSUs vest on February 6, 2021, and (iv) one-half of the RSUs vest upon the achievement of specific interim and annual Company performance criteria.

- On May 9, 2017 and in connection with the Company's 2017 compensation plan, 100,000 RSUs were awarded to certain employees and consultants of the Company. These awards were valued at $6.10 per share, the closing market price of the Company's common stock on the grant date. The RSUs vest as follows: (i) one-half of the total grant is subject to time vesting with 50% vesting on May 9, 2018 and the remaining 50% vesting on May 9, 2019, and (ii) one-half of the total grant is subject to specific 2017 and 2018 performance criteria, with vesting upon satisfaction of the applicable performance criteria.

- On May 10, 2017, non-employee directors of the Company were granted a total of 35,032 RSUs valued at $6.05 per share, the closing market price of the Company's common stock on the grant date. These awards vest on May 10, 2018. On September 1, 2017, Paul N. Clark resigned from the Board, effective September 11, 2017, and as Chairman of the Board, effective September 1, 2017. On September 11, 2017, the Compensation Committee of the Board approved a modification to the vesting criteria applicable to Mr. Clark's unvested RSUs. As a result of the modification, the Company recognized additional compensation expense of $12,000 for the year ended December 31, 2017. On October 27, 2017, Frederic H. Moll, M.D. resigned from the Board, effective November 11, 2017. On November 11, 2017, the Compensation Committee of the Board approved a modification to the vesting criteria applicable to Dr. Moll's unvested RSUs. As a result of the modification, the Company recognized additional compensation expense of $10,000 for the year ended December 31, 2017.

The following table summarize RSU activity under the 2002 and 2018 Plans(in thousands):

| | Shares |
|---|---|
| Unvested restricted stock units, January 1, 2017 | 84 |
| Granted | 470 |
| Vested | (81) |
| Forfeited or cancelled | (115) |
| Unvested restricted stock units, December 31, 2017 | 358 |
| Granted | 2,836 |
| Vested | (604) |
| Forfeited or cancelled | (427) |
| Unvested restricted stock units, December 31, 2018 | 2,163 |
| Granted | 2,432 |
| Vested | (604) |
| Forfeited or cancelled | (427) |
| Unvested restricted stock units, December 31, 2019 | 3,564 |

**Inducement Stock-Based Awards**

*Inducement Activity*

There were no new grants relating to inducements for the year ended December 31, 2019. Approximately 124,000 options were canceled and 308,455 remain outstanding at December 31, 2019.

*2017 Inducement Activity*

- On March 13, 2017, and as amended on April 19, 2017, in connection with the hiring of a new Vice President of Sales, the Compensation Committee of the Board awarded non-qualified stock options to purchase 80,000 shares of BIOLASE common stock. This award was issued at $5.85 per share, the closing market price of the Company's common stock on the grant date, and expires 10 years from the grant date. Vesting periods for the options are as follows: (i) two-fifths of the total grant is subject to time vesting with 25% vesting as of March 13, 2018 and the remaining 75% vesting ratably monthly over a 36-month period commencing on March 13, 2018 , and (ii) three-fifths of the total grant is subject to specific 2017 and 2018 performance criteria, with vesting upon satisfaction of the applicable performance criteria. This award was forfeited upon the departure of the Vice President of Sales in November 2017.

- On March 27, 2017, in connection with the hiring of a new Senior Vice President and Chief Financial Officer, the Compensation Committee of the Board awarded non-qualified stock options to purchase 120,000 shares of common stock. This award was issued at $6.40 per share, the closing market price of the Company's common stock on the grant date, and expires 10 years from the grant date. Vesting periods for the options are as follows: (i) two-thirds of the total grant is subject to time vesting with 25% vesting as of March 27, 2018 and the remaining 75% vesting ratably monthly over a 36-month period commencing on March 27, 2018, and (ii) one-third of the total grant is subject to specific 2017 and 2018 performance criteria, with vesting upon satisfaction of the applicable performance criteria. This award was forfeited upon the departure of the Senior Vice President and Chief Financial Officer in May 2017.

- On October 2, 2017, in connection with the hiring of a new Senior Vice President and Chief Financial Officer, the Compensation Committee of the Board awarded non-qualified stock options to purchase 120,000 shares of common stock. This award was issued at $2.95 per share, the closing market price of the Company' common stock on the grant date, and expires 10 years from the grant date. Vesting periods for the options are as follows: (i) two-thirds of the total grant is subject to time vesting with 25% vesting as of October 2, 2018 and the remaining 75% vesting ratably monthly over a 36-month period commencing on October 2, 2018, and (ii) one-third of the total grant is subject to specific 2017 and 2018 performance criteria, with vesting upon satisfaction of the applicable performance criteria.

**Deferred Compensation Plan**

In July 2019, the Company introduced a Deferred Compensation Plan pursuant to the Internal Revenue Code Section 409A. The purpose of the plan is to provide income deferral opportunities to certain eligible employees. During the period ended December 31, 2019, the Company had four individuals enrolled however none of the grants that vested in 2019 were eligible for this program.

**NOTE 9 — SEGMENT INFORMATION**

The Company currently operates in a single business segment. Management uses one measurement of profitability and does not segregate its business for internal reporting. Sales to customers located in the United States accounted for approximately 60%, 62%, and 62% of net revenue and international sales accounted for approximately 40%, 38%, and 38% of net revenue for the years ended December 31, 2019, 2018, and 2017, respectively. No individual international country outside the United States represented more than 10% of net revenue during the years ended December 31, 2019, 2018, and 2017.

Long-lived assets by geographic location was as follows (in thousands):

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2019 | 2018 | 2017 |
| United States | $ 908 | $ 1,673 | $ 3,347 |
| International | 285 | 302 | 327 |
| | $ 1,193 | $ 1,975 | $ 3,674 |

**NOTE 10 — CONCENTRATIONS**

Revenue from the Company's products for the years ended December 31, 2019, 2018 and 2017 are as follows:

| | Years Ended December 31, | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2019 | | | 2018 | | | 2017 | | |
| Laser systems | $ 22,842 | 60.4 | % | $ 29,733 | 64.4 | % | $ 29,121 | 62.0 | % |
| Imaging systems | $ 619 | 1.6 | % | 1,694 | 3.7 | % | 3,685 | 7.9 | % |
| Consumables and other | $ 7,164 | 19.0 | % | 8,287 | 18.0 | % | 7,332 | 15.6 | % |
| Services | $ 7,162 | 19.0 | % | 6,429 | 13.9 | % | 6,660 | 14.2 | % |
| License fees and royalties | $ 12 | — | % | 12 | — | % | 128 | 0.3 | % |
| Total revenue | $ 37,799 | 100.0 | % | $ 46,155 | 100.0 | % | $ 46,926 | 100.0 | % |

The Company maintains its cash and cash equivalent accounts with established commercial banks. Such cash deposits periodically exceed the Federal Deposit Insurance Corporation insured limit.

No individual customer represented more than 10% of the Company's accounts receivable at December 31, 2019. One individual customer represented approximately 12% of the Company's accounts receivable at December 31, 2018.

The Company currently purchases certain key components of its products from single suppliers. Although there are a limited number of manufacturers of these key components, management believes that other suppliers could provide similar key components on comparable terms. A change in suppliers, however, could cause delays in manufacturing and a possible loss of sales, which could adversely affect the Company's business, results of operations and financial condition.

**NOTE 11 — SUBSEQUENT EVENTS**

***Lease Agreements***

On January 22, 2020, the Company entered into a five-year real property lease agreement for an approximately 11,000 square foot facility in Corona, California where it will move its manufacturing operations. The lease commences on July 1, 2020. Future minimum rent payments under this lease are approximately $0.5 million.

On February 4, 2020, the Company also entered into a sixty-six month real property lease agreement for office space of approximately 11,000 square feet of office space in Foothill Ranch, California. The lease commences on July 1, 2020. Future minimum rent payments under this lease are approximately $2.1 million.

***SWK Fourth Amendment***

As of December 31, 2019, the Company was not in compliance with its debt covenants under its Credit Agreement (as amended) with SWK. In March 2020, the Company entered into a Fourth Amendment to its Credit Agreement with SWK. Under this Amendment, the financial covenant is amended to require consolidated unencumbered liquid assets of no less than $3.0 million as of any date of determination. The amendment also adjusted the Minimum Aggregate Revenue requirements.

***Impact of Coronavirus (COVID-19) on Our Operations***

On January 30, 2020, the World Health Organization ("WHO") announced a global health emergency because of a new strain of coronavirus originating in Wuhan, China (the "COVID-19 outbreak") and the risks to the international community as the virus spreads globally beyond its point of origin. In March 2020, the WHO classified the COVID-19 outbreak as a pandemic, based on the rapid increase in exposure globally and on March 13, 2020, the United States declared a national emergency with respect to the coronavirus outbreak. This outbreak has severely impacted global economic activity, and many countries and many states in the United States have reacted to the outbreak by instituting quarantines, mandating business and school closures and restricting travel. These mandated business closures have included dental office closures in Europe and the United States for all but emergency procedures. Our salespeople have been unable to call on dental customers during these closures. In addition, most dental shows and workshops scheduled in the first and second quarters of 2020 have been canceled. More than half of our sales each quarter typically occur in the

last three weeks of the quarter. Given the dental office closures in Europe and the United States during the last three weeks of the first quarter of 2020, management anticipates a substantial decrease in sales for the quarter, Moreover, there is no assurance that sales will return to normal levels during the second quarter of 2020 or at any time thereafter. As of the date of the filing of this annual report on Form 10-K, management is evaluating all options to conserve cash and to obtain additional debt or equity financing and/or enter into a collaborative arrangement or sale of assets, to permit the Company to continue operations. However, the full impact of the COVID-19 outbreak continues to evolve and it is uncertain as to the full magnitude that the pandemic will have on the Company's financial condition, liquidity, and future results of operations. Management is actively monitoring the global situation on its financial condition, liquidity, operations, suppliers, industry, and workforce. Given the daily evolution of the COVID-19 outbreak and the global responses to curb its spread, the Company is not able to estimate the effects of the COVID-19 outbreak on its results of operations, financial condition, or liquidity for fiscal year 2020.

**BIOLASE, INC.**

**Schedule II — Consolidated Valuation and Qualifying Accounts and Reserves**
**For the Years Ended December 31, 2019, 2018, and 2017**
**(in thousands)**

| | Balance at Beginning of Year | Charges (Reversals) to Cost or Expenses | Deductions | Balance at End of Year |
|---|---|---|---|---|
| Year Ended December 31, 2019: | | | | |
| Allowance for doubtful accounts | $ 850 | $ 1,827 | $ (146) | $ 2,531 |
| Allowance for sales returns | 210 | — | — | $ 210 |
| Allowance for tax valuation | 46,967 | 6,366 | (111) | $ 53,222 |
| Year Ended December 31, 2018: | | | | |
| Allowance for doubtful accounts | $ 802 | $ 469 | $ (421) | $ 850 |
| Allowance for sales returns | 210 | — | — | 210 |
| Allowance for tax valuation | 40,866 | 6,101 | — | 46,967 |
| Year Ended December 31, 2017: | | | | |
| Allowance for doubtful accounts | $ 1,209 | $ (401) | $ (6) | $ 802 |
| Allowance for sales returns | 210 | — | — | 210 |
| Allowance for tax valuation | 54,310 | (13,444) | — | 40,866 |

# DESCRIPTION OF THE REGISTRANT'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

The following is a summary of certain provisions of the common stock, par value $0.001 per share ("Common Stock"), of BIOLASE, Inc. ("BIOLASE," "we," "us" or "our"), which is the only security of BIOLASE registered pursuant to Section 12 of the Securities Exchange Act of 1934. This summary does not purport to be complete and is subject to the applicable provisions of the General Corporation Law of the State of Delaware (the "DGCL"), as well as BIOLASE's Restated Certificate of Incorporation, as amended (the "Certificate of Incorporation"), and BIOLASE's Seventh Amended and Restated Bylaws (the "Bylaws"), each of which are included as exhibits to our Annual Report on Form 10-K and incorporated by reference herein.

**Our Authorized Capital Stock**

Under the Certificate of Incorporation, we are authorized to issue 40,000,000 shares of our Common Stock and 1,000,000 shares of preferred stock, par value $0.001 per share.

**Voting Rights**

Holders of our Common Stock are entitled to one vote per share. Each of our directors is elected by the affirmative vote of a majority of the votes cast with respect to such director in uncontested elections. In a contested election, each of our directors is elected by an affirmative vote of a plurality of the votes cast by the shares represented and entitled to vote with respect to the election of such director. A "contested election" is defined in the Bylaws as an election with respect to which, as of the record date for the meeting at which directors are to be elected, the number of nominees exceeds the number of directors to be elected at such meeting. Vacancies on the BIOLASE board of directors (the "Board of Directors") may be filled by an affirmative vote of two-thirds of the remaining members of the Board of Directors or at a meeting of the stockholders in the manner set forth in the second preceding sentence.

**Dividend Rights**

Subject to any preferential rights of any outstanding shares of our preferred stock to receive dividends before any dividends may be paid on our Common Stock, the holders of our Common Stock will be entitled to share ratably in any dividends that may be declared by our Board of Directors out of funds legally available for the payment of dividends. Our ability to pay dividends on our Common Stock will be limited by restrictions on our ability to pay dividends or make distributions to our stockholders and on the ability of our subsidiaries to pay dividends or make distributions to BIOLASE, in each case, under the terms of our current, and any future, agreements governing our indebtedness.

**Other Rights**

Each holder of our Common Stock is subject to, and may be adversely affected by, the rights of the holders of any series of preferred stock that the Board of Directors may designate and we may issue in the future. Holders of our Common Stock have no preemptive, conversion or other rights to subscribe for additional shares. Our Common Stock does not carry any redemption rights or any preemptive rights enabling a holder to subscribe for, or receive shares of, any class of our Common Stock or any other securities convertible into shares of any class of our Common Stock.

**Liquidation Rights**

Subject to any preferential rights of any outstanding shares of our preferred stock, in the event of our liquidation, dissolution or winding up, holders of our Common Stock are entitled to share ratably in the assets remaining after payment of liabilities and the liquidation preferences of any outstanding preferred stock.

**Standstill Agreements**

Pursuant to (1) a standstill agreement with Jack W. Schuler, Renate Schuler and the Schuler Family Foundation (collectively, the "Schuler Parties"), dated November 10, 2015 (as amended on August 1, 2016 and November 9, 2017, the "Schuler Standstill Agreement"), and (2) a standstill agreement with Larry N. Feinberg, Oracle Partners, L.P., Oracle Institutional Partners, L.P., Oracle Ten Fund Master, L.P., Oracle Associates, LLC and Oracle Investment Management, Inc. (collectively, the "Oracle Parties") dated November 10, 2015 (as amended on August 1, 2016 and November 9, 2017, the "Oracle Standstill Agreement" and, together with the Schuler Standstill Agreement, the "Standstill Agreements"), each of the Schuler Parties and the Oracle Parties agreed with respect to itself and its associates and affiliates (i) not to purchase or acquire any shares of our Common Stock if such a purchase would result in aggregate beneficial ownership by it and its affiliates and associates in excess of 41% of the issued and outstanding shares of our Common Stock and (ii) not to sell, transfer or otherwise convey shares of our Common Stock (or warrants or other rights to acquire shares of our Common Stock) to anyone who will immediately thereafter beneficially own shares in excess of 20% of the issued and outstanding shares of our Common Stock, as a result of such transfer and other transfers from third parties.

**Preferred Stock**

The Certificate of Incorporation authorizes our Board of Directors to provide for the issuance of shares of preferred stock in one or more series without further authorization from stockholders. Prior to issuance of shares of each series, our Board of Directors is required by the DGCL and the Certificate of Incorporation to fix the designation, powers, preferences and rights of the shares of such series and the qualifications, limitations or restrictions thereof. A duly authorized committee of our Board of Directors has designated 70,000 of the 1,000,000 authorized shares of preferred stock as Series E Participating Convertible Preferred Stock ("Series E Preferred Stock").

***Series E Participating Convertible Preferred Stock***

*Voting Rights*

Except as otherwise provided by the DGCL, other applicable law or as provided in the Certificate of Designations, Preferences and Rights of the Series E Preferred Stock (the "Certificate of Designations"), the holders of Series E Preferred Stock are not entitled to vote (or render written consents) on any matter submitted for a vote (or written consents in lieu of a vote as permitted by the DGCL, the Certificate of Incorporation and the Bylaws) of holders of our Common Stock.

*Dividends*

If the Board of Directors declares a cash dividend payable upon our Common Stock, then the holders of the outstanding shares of Series E Preferred Stock will be entitled to the amount of dividends as would be payable in respect of the number of shares of our Common Stock into which the shares of Series E Preferred Stock could be converted, such number to be determined as of the record date for the dividend or, if no such record date is established, as of the date of such dividend. Dividends are payable at the same time as and when dividends on our Common Stock are paid to the holders of our Common Stock.

*Liquidation Preference*

In the event of any liquidation, dissolution or winding up of BIOLASE, whether voluntary or involuntary (each, a "Liquidation"), the holders of Series E Preferred Stock will be entitled to have set apart for them, or to be paid, out of our assets available for distribution to stockholders after provision for payment of all of our debts and liabilities in accordance with the DGCL, before any distribution or payment is made with respect to any shares of junior securities and subject to the liquidation rights and preferences of any class or series of senior securities and parity securities, an amount equal to the greater of (i) $57.50, being the purchase price per share of Series E Preferred Stock (which amount is subject to customary anti-dilution adjustments) plus all accrued but unpaid

dividends thereon and (ii) such amount as would have been payable on the number of shares ofour Common Stock into which the shares of Series E Preferred Stock could have been converted immediately prior to such Liquidation.

*Conversion*

The number of shares of our Common Stock into which each share of Series E Preferred Stock is initially convertible is equal to the number obtained by dividing (i) the sum of $57.50, being the initial purchase price per share of the Series E Preferred Stock, and the amount of any accrued but unpaid dividends thereon by (ii) $0.5750, being the conversion price per share of Series E Preferred Stock, subject to customary anti-dilution adjustments. This reflects an initial conversion rate of 100 shares of our Common Stock for each share of Series E Preferred Stock. Each share of Series E Preferred Stock will be automatically converted upon obtaining the Requisite Stockholder Approval (as defined below) and filing the related certificate of amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware.

Subject to applicable law, the rules and regulations of Nasdaq, the Certificate of Incorporation and the Bylaws, we will establish a record date for, call, give notice of, convene and hold a meeting of the holders of our Common Stock (the "Stockholders' Meeting"), no later than June 1, 2020, for the purpose of voting upon any and all corporate actions in furtherance of the full conversion of the outstanding shares of Series E Preferred Stock into shares of our Common Stock, including, without limitation, effectuating an amendment to the Certificate of Incorporation to increase the number of authorized shares of our Common Stock (the "Corporate Actions") to secure the favorable vote of the holders of a majority of the outstanding shares of our Common Stock present in person or represented by proxy at the Stockholders' Meeting with respect to the Corporate Actions (the "Requisite Stockholder Approval").

We will file with the Secretary of State of the State of Delaware a certificate of amendment to the Certificate of Incorporation reflecting the approval of the Corporate Actions promptly following receipt of the Requisite Stockholder Approval. Upon such filing, all shares of Series E Preferred Stock will be automatically converted, without any further action by the holders of such shares, into the number of fully paid and nonassessable shares of our Common Stock equal to the number obtained by dividing (i) the stated value of such Series E Preferred Stock, plus the amount of any accrued but unpaid dividends as of the conversion date, by (ii) the conversion price in effect on the conversion date (determined as provided in the Certificate of Designations). The Certificate of Designations contains customary anti-dilution adjustments to the conversion price in the event of stock dividends, subdivisions or splits and upon stock combinations.

In the event of (A) a capital reorganization of our Common Stock, (B) a reclassification of our Common Stock (other than a subdivision, split-up or combination of shares) or (C) a merger or consolidation of BIOLASE with or into another corporation, or the sale of all or substantially all of our properties and assets to any other person, then, as a part of such reorganization, reclassification, merger, consolidation or sale, provision will be made so that holders of Series E Preferred Stock, as the case may be, shall thereafter be entitled to receive upon conversion of the Series E Preferred Stock, the kind and amount of shares of stock or other securities or property of BIOLASE, or of the successor corporation resulting from such merger, consolidation or sale, to which such holder would have been entitled if such holder had converted its shares of Series E Preferred Stock immediately prior to such capital reorganization, reclassification, merger, consolidation or sale.

*Redemption*

At any time and from time to time on or after October 29, 2022, we may elect, by delivering an irrevocable written notice to the holders of Series E Preferred Stock, to redeem all or any portion of the Series E Preferred Stock held by such holder at a price per share equal to the stated value per share plus an amount equal to all accrued and unpaid dividends thereon to the date of such notice. No redemption may be effected in violation of any applicable laws, rules or regulations including the DGCL and the terms of any of our debt or other securities or contractual obligations. Shares of Series E Preferred Stock are not entitled to any redemption rights or mandatory sinking fund or analogous fund provisions.

*Ranking*

The Series E Preferred Stock ranks senior to our Common Stock with respect to distributions upon any Liquidation, on parity to any class or series of our capital stock specifically ranking by its terms on parity with the Series E Preferred Stock and junior to any class or series of our capital stock specifically ranking by its terms senior to the Series E Preferred Stock.

**Anti-Takeover Provisions**

We are subject to Section 203 of the DGCL ("Section 203"). In general, Section 203 prohibits a publicly held Delaware corporation from engaging in "business combination" transactions with any "interested stockholder" for a period of three years following the time that the stockholder became an interested stockholder, unless:

- prior to the time the stockholder became an interested stockholder, either the applicable business combination or the transaction which resulted in the stockholder becoming an interested stockholder is approved by the corporation's board of directors;

- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the voting stock owned by the interested stockholder) shares owned by directors who are also officers of the corporation and shares owned by employee stock plans in which the employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

- at or subsequent to the time that the stockholder became an interested stockholder, the business combination is approved by the corporation's board of directors and authorized at an annual or special meeting of stockholders by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

A "business combination" is defined to include, in general and subject to exceptions, a merger of the corporation with the interested stockholder; a sale of 10% or more of the market value of the corporation's consolidated assets to the interested stockholder; certain transactions that result in the issuance of the corporation's stock to the interested stockholder; a transaction that has the effect of increasing the proportionate share of the corporation's stock owned by the interested stockholder; and any receipt by the interested stockholder of loans, guarantees or other financial benefits provided by the corporation. An "interested stockholder" is defined to include, in general and subject to exceptions, a person that (1) owns 15% or more of the outstanding voting stock of the corporation or (2) is an "affiliate" or "associate" (as defined in Section 203) of the corporation and was the owner of 15% or more of the corporation's outstanding voting stock at any time within the prior three year period.

A Delaware corporation may opt out of Section 203 with an express provision in its original certificate of incorporation or by an amendment to its certificate of incorporation or bylaws expressly electing not to be governed by Section 203 and approved by a majority of its outstanding voting shares. We have not opted out of Section 203. As a result, Section 203 could delay, deter or prevent a merger, change of control or other takeover of BIOLASE that our stockholders might consider to be in their best interests, including transactions that might result in a premium being paid over the market price of our Common Stock, and may also limit the price that investors are willing to pay in the future for our Common Stock.

*Undesignated Preferred Stock*

The ability to authorize undesignated preferred stock makes it possible for our Board of Directors to issue one or more series of preferred stock with voting or other rights or preferences. Thus, our Board of Directors could authorize the issuance of shares of preferred stock that have priority over our Common Stock with respect to dividends or rights upon liquidation or with terms and conditions that could have the effect of delaying, deferring or

preventing a transaction or a change of control of BIOLASE that might involve a premium price for holders of our Common Stock or otherwise be in their best interests.

*Requirements for Advance Notification of Stockholder Nominations and Proposals*

The Bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of the Board of Directors or a committee of the Board of Directors.

*Stockholder Action by Written Consent; Special Meetings of Stockholders*

Our stockholders may take action by written consent in lieu of a meeting as provided in the Bylaws. The Bylaws provide that certain procedures, including notifying the Board of Directors and awaiting a record date, must be followed for stockholders to act by written consent. A special meeting of our stockholders may be called only by our Board of Directors, the Chairman of the Board, the Executive Vice Chairman, the Chief Executive Officer or the President. A special meeting may also be called at the request of stockholders holding a majority of the aggregate number of shares of capital stock of BIOLASE issued and outstanding and entitled to vote at that meeting (subject to certain timeliness and content requirements of the demand).

**Stock Exchange Listing**

Our Common Stock trades on The Nasdaq Capital Market under the symbol “BIOL.”

# LEASE AGREEMENT

BY AND BETWEEN

FOOTHILL CORPORATE I MT, LLC,
a Delaware limited liability company as Landlord
and

BIOLASE, INC.,
a Delaware corporation

as Tenant

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**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** ("Lease"), dated January ____, 2020, for reference purposes only, is made by and between **FOOTHILL CORPORATE I MT, LLC**, a Delaware limited liability company ("Landlord"), and **BIOLASE, INC.**, a Delaware corporation ("Tenant"), to be effective and binding upon the parties as of the date the last of the designated signatories to this Lease shall has executed this Lease (the "Effective Date").

**ARTICLE 1 REFERENCE**

**1.1 References.** All references in this Lease (subject to any further clarifications contained in this Lease) to the following terms shall have the following meaning or refer to the respective address, person, date, time period, amount, percentage, calendar year or fiscal year as below set forth:

| | |
|---|---|
| Tenant Representative and Telephone Number: | _____ |
| | _____ |
| Landlord Representative and | Michael Stubben, CFO |
| Telephone Number: | 702-685-7438 |
| Lease Expiration Date: | Seventy-Eight (78) months after Lease Commencement Date pursuant to Section 2.3, unless earlier terminated in accordance with the terms of this Lease or extended by Tenant pursuant to Article 16 hereof. |
| One Month's Prepaid Rent: | $29,840.00 |
| Security Deposit: | $34,592.75, due upon the Effective Date. |
| Late Charge Amount: | Five Percent (5%) of the Delinquent Amount |
| Tenant's Required Liability Coverage: | $5,000,000 Combined Single Limit |
| Tenant's Broker: | CBRE, Inc. |
| Landlord's Broker: | CBRE, Inc. |
| Tenant Parties: | Tenant and any of Tenant's employees, agents, vendors, invitees, guests, permittees, assignees, sublessees, subsidiaries, affiliates or contractors. |

| | |
|---|---|
| Property: | That certain real property situated in Foothill Ranch, County of Orange, State of California, as presently improved with one commercial building with the street address of 27042 Towne Centre Drive, Foothill Ranch, California, which real property is generally shown on the Site Plan attached hereto as **Exhibit A.** |
| Building: | That certain building on the Property in which the Leased Premises are located commonly known as 27042 Towne Centre Drive, Foothill Ranch, California (the "Building"), which Building is shown outlined on **Exhibit A** hereto. |
| Common Areas: | The term "Common Areas" shall mean all areas in the Building and the Property not reserved for the exclusive use of Landlord, Tenant or any other tenant, including, without limitation, plazas, walkways, private roadways, loading docks, parking areas, landscaped areas, and the areas devoted to corridors, fire vestibules, stairways, elevator foyers, lobbies, electric and telephone closets, restrooms, mechanical rooms, and other similar facilities for the benefit of all tenants (or invitees) or servicing the Building as a whole. Landlord reserves the right to make changes to the Common Areas as it deems reasonably necessary. |
| HVAC: | Heating, ventilating, and/or air conditioning. |
| Leased Premises: | That certain space shown on the floor plan attached as **Exhibit B,** designated as Suite 265, on the second floor of the Building consisting of approximately 11,936 rentable square feet as determined by Landlord's method of measurement (which has been previously explained to Tenant) and which Landlord and Tenant agree, for purposes of this Lease, shall be deemed the rentable square footage of the Leased Premises. The Building and the Leased Premises are not subject to re-measurement unless, pursuant to |

a written amendment to this Lease which may be mutually executed by Landlord and Tenant at any time, space is subtracted therefrom, or additional space is added thereto. Recognizing that both Landlord and Tenant have agreed to the foregoing rentable square footage number and have agreed that there will be no re-measurement except as expressly provided above, Landlord has given Tenant the opportunity to measure the Building and the Leased Premises and has encouraged Tenant to do so, and Tenant hereby confirms that, as of the date hereof, it has elected, in its sole discretion and without reliance on any representation by Landlord or its agents or any brokers, not to measure the Building or the

_____

Tenant initials

Tenant's Building Share:

The term "Tenant's Building Share" shall mean the percentage obtained by dividing the rentable square footage of the Leased Premises at the time of calculation by the rentable square footage of the Building at the time of calculation (which Landlord and Tenant agree is currently 83,218 rentable square feet), and multiplying such quotient by 100. Tenant's Building Share therefore is currently 14.34%. In the event the rentable square footage of the Building is increased or decreased, then Tenant's Building Share shall be appropriately adjusted, and as to the calendar year in which such change occurs, for the purposes of Article 3 below, Tenant's Building Share shall be determined on the basis of the number of days during such calendar year at each such different Tenant's Building Share.

Base Monthly Rent:

| Months | Base Monthly Rent | |
|---|---|---|
| 1 | $ | 29,840.00 |
| 2-7 | $ | 0.00 |
| 8-12 | $ | 29,840.00 |
| 13-24 | $ | 30,735.20 |
| 25-36 | $ | 31,657.26 |
| 37-48 | $ | 32,606.98 |
| 49-60 | $ | 33,585.19 |
| 61-66 | $ | 34,592.75 |

| | |
|---|---|
| Base Year for Taxes: | Calendar year 2020 |
| Base Year for Operating Expenses: | Calendar year 2020 |
| Parking: | Four (4) unreserved, unassigned parking stalls for every 1,000 rentable square feet within the Leased Premises, such spaces to be located in the parking area of the Common Areas. Parking is provided to Tenant by Landlord without additional charge for the initial, unextended Lease Term (and any extension of the Lease Term). In addition, Tenant shall be granted six (6) reserved parking stalls located in a mutually agreed upon location near the entrance of the Building. |
| Permitted Use: | General office use, and uses ancillary thereto, to the extent each such use is in compliance with all Laws and Restrictions. |
| Exhibits: | The term "Exhibits" shall mean the Exhibits of this Lease which are described as follows:<br><br>**Exhibit A** - Site Plan<br><br>**Exhibit B** - Floor Plan<br><br>**Exhibit C** - Work Letter<br><br>**Exhibit D** - Intentionally deleted<br><br>**Exhibit E** - Rules and Regulations<br><br>**Exhibit F** - Form of Subordination, Nondisturbance and Attornment Agreement<br><br>**Exhibit G** - Form of Estoppel Certificate |

## ARTICLE 2

## LEASED PREMISES, TERM AND POSSESSION

**2.1 Demise of Leased Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord for Tenant's own use in the conduct of Tenant's business and not for purposes of

speculating in real estate, for the Lease Term and upon the terms and subject to the conditions of this Lease, that certain interior space described in Article 1 as the Leased Premises. Tenant's lease of the Leased Premises, together with the appurtenant right to use the Common Areas as described in Paragraph 2.2 below, shall be conditioned upon and be subject to the continuing compliance by Tenant with (i) all the terms and conditions of this Lease, (ii) all Laws and Restrictions governing the use or occupancy of the Leased Premises and the Property, (iii) all easements and other matters now of public record respecting the use of the Leased Premises and Property, and (iv) all reasonable rules and regulations from time to time established by Landlord related to the Leased Premises . Tenant shall have access to the Leased Premises and the parking area within the Common Areas twenty-four (24) hours a day, seven (7) days a week throughout the Lease Term. Notwithstanding any provision of this Lease to the contrary, Landlord hereby reserves to itself and its designees all rights of access, use and occupancy of the Building roof, and Tenant shall have no right of access, use or occupancy of the Building roof except (if at all) to the extent required in order to enable Tenant to perform Tenant 's maintenance and repair obligations pursuant to this Lease.

**2.2 Right to Use Common Areas.** As an appurtenant right to Tenant's right to the use and **occupancy** of the Leased Premises, Tenant shall have the right to use the Common Areas in conjunction with its use of the Leased Premises solely for the purposes for which they were designed and intended and for no other purposes whatsoever. Tenant's right to so use the Common Areas shall be subject to the limitations on such use as set forth in Article 1 and shall terminate concurrently with any termination of this Lease.

**2.3 Lease Commencement Date and Lease Term.** The term of this Lease shall begin on July 1, 2020 (the " Lease Commencement Date"). If Landlord is able to complete Landlord's Work prior to the Lease Commencement Date, Tenant shall be permitted to move into the Leased Premises at no additional cost. The term of this Lease shall in all events end on the Lease Expiration Date (as set forth in Article 1). The Lease Term shall be that period of time commencing on the Lease Commencement Date and ending on the Lease Expiration Date (the "Lease Term").

**2.4 Delivery of Possession.** Landlord shall deliver to Tenant, and Tenant shall accept, possession of the Leased Premises in its AS IS condition, WITH ALL FAULTS on the Lease Commencement Date, except and subject only to Landlord's completing, on or before July 1, 2020, Landlord's Work described and defined in Paragraph 1 of the Work Letter attached as **Exhibit C** to and made a part of this Lease (the " Work Letter"), the terms and provisions of which are hereby incorporated into this Lease. Notwithstanding the foregoing, Tenant may have access to the Leased Premises thirty (30) days prior to the anticipated Lease Commencement Date for purposes of installing FF&E. Said access, however, shall not interfere with Landlord's ability to complete the Landlord Work. If Landlord is unable to deliver possession of the Leased Premises to Tenant prior to the Lease Commencement Date, then Landlord hereby agrees to pay Tenant's rent, pro rata share of operating expenses and holdover charges at Tenant's prior leased space.

**2.5 Performance of Landlord's Work; Acceptance of Possession.** Landlord shall, pursuant to the Work Letter, perform Landlord's Work substantially as set forth in Paragraph 1 of the Work Letter. If any dispute arises as to whether the Leased Premises are substantially completed and ready for Tenant's occupancy, a certificate furnished by Landlord's architect certifying the date of substantial completion, together with Landlord's delivery to Tenant of a certificate of occupancy evidencing completion of Landlord's Work (it being acknowledged and agreed that applicable Laws may only require a "finaled job card" from the applicable building inspector), shall be conclusive of that fact and date and binding upon Landlord and Tenant. It is agreed that by accepting possession of the Leased Premises, Tenant formally accepts same and acknowledges that the Leased Premises are in the condition called for hereunder, subject to normal punch list items specified by Tenant to Landlord in writing within ten (10) days of such occupancy.

**2.6 Surrender of Possession.** Immediately prior to the expiration or upon the sooner termination of this Lease, Tenant shall remove all of Tenant's signs from the exterior of the Building and

shall remove all of Tenant 's equipment (including telecommunications installations, unless Landlord otherwise elects), trade fixtures, furniture, supplies, wall decorations and other personal property from within the Leased Premises, the Building and the Common Areas, and shall vacate and surrender the Leased Premises, the Building, the Common Areas and the Property to Landlord in the same condition, broom clean, as existed at the Lease Commencement Date, reasonable wear and tear excepted. Tenant shall repair all damage to the Leased Premises, the exterior of the Building and the Common Areas caused by Tenant's removal of Tenant's property. If Landlord elects by written notice to Tenant not later than thirty (30) days prior to the termination or expiration of the Term to require Tenant to surrender Tenant's telecommunications installations, then Tenant shall leave the same in good condition and repair and labeled and/or coded sufficiently so that Landlord can readily determine the origin, destination and function of such installations. Tenant shall patch and refinish, to Landlord's reasonable satisfaction, all penetrations made by Tenant or its employees to the floor, walls or ceiling of the Leased Premises, whether such penetrations were made with Landlord's approval or not. Tenant shall repair or replace all stained or damaged ceiling tiles, wall coverings and floor coverings to the reasonable satisfaction of Landlord, in each case to the extent such staining or damage was caused by Tenant or any Tenant Parties, reasonable wear and tear excepted. Tenant shall repair all damage caused by Tenant or any Tenant Parties to the exterior surface of the Building and the paved surfaces of the Common Areas and, where necessary, replace or resurface same, reasonable wear and tear excepted. Additionally, to the extent that Landlord shall have notified or is deemed to have notified Tenant in writing at the time the improvements were completed that it desired to have certain improvements made by Tenant or at the request of Tenant removed at the expiration or sooner termination of the Lease, Tenant shall, upon the expiration or sooner termination of the Lease, remove any such improvements constructed or installed by Landlord or Tenant and repair all damage caused by such removal. If the Leased Premises, the Building, the Common Areas and the Property are not surrendered to Landlord in the condition required by this paragraph at the expiration or sooner termination of this Lease, Landlord may, at Tenant's expense, so remove Tenant's signs, property and/or improvements not so removed and make such repairs and replacements not so made or hire, at Tenant's expense, independent contractors to perform such work. Tenant shall be liable to Landlord for all reasonable costs incurred by Landlord in returning the Leased Premises , the Building, the Common Areas and the Property to the required condition, together with interest on all costs so incurred from the date paid by Landlord at the then maximum rate of interest not prohibited or made usurious by law until paid. Tenant shall pay to Landlord the amount of all costs so incurred plus such interest thereon, within ten (10) days of Landlord's billing Tenant for same. Notwithstanding the foregoing, Landlord may consent (in its sole and absolute discretion) to accept a cash payment from Tenant in lieu of Tenant completing all or any portion of the work required pursuant to this paragraph, such consent to be in a written notice specifying the work from which Tenant shall be excused. Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in surrendering the Leased Premises, including, without limitation, any claims made by any succeeding tenant or any losses to Landlord with respect to lost opportunities to lease to succeeding tenants. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be required to remove any of Landlord's Work upon the expiration or sooner termination of this Lease.

## ARTICLE 3

## RENT, LATE CHARGES AND SECURITY DEPOSIT

**3.1 Base Monthly Rent.**

(a) Commencing on the Lease Commencement Date (as determined pursuant to Paragraph 2 .3 above) and continuing throughout the Lease Term, Tenant shall pay to Landlord, without prior demand therefor, in advance on the first day of each calendar month, cash or other immediately available good funds in the amount set forth as "Base Monthly Rent" in Article 1 (the "Base Monthly Rent").

(b) Base Monthly Rent is not payable during the second through the seventh full calendar months of the Lease Term (the "Rent Abatement Period").

**3.2 Additional Rent.** Commencing on the Lease Commencement Date (as determined pursuant to Paragraph 2.3 above) and continuing throughout the Lease Term, in addition to the Base Monthly Rent and to the extent not required by Landlord to be contracted for and paid directly by Tenant, Tenant shall pay to Landlord as additional rent (the "Additional Rent") the following amounts:

(a) An amount equal to the Operating Expense Increase, the Insurance Cost Increase, and the Tax Increase (as such terms are defined in Article 13) incurred by Landlord. Payment shall be made as follows: Landlord shall deliver to Tenant Landlord's reasonable estimate of the Operating Expense Increase, Insurance Cost Increase, and Tax Increase, or group of expenses, which it anticipates will be paid or incurred for the ensuing calendar or fiscal year, as Landlord may determine, and Tenant shall pay to Landlord an amount equal to the estimated amount of such expenses for such year in equal monthly installments during such year with the installments of Base Monthly Rent. Landlord reserves the right to revise such estimate from time to time and upon receipt of Landlord's revised estimate, Tenant's monthly payments shall be based upon the revised estimate. Landlord reserves the right to change from time to time the methods of billing Tenant for any given expense or group of expenses or the periodic basis on which such expenses are billed. Notwithstanding anything to the contrary in this Lease, the Operating Expense Increase, Insurance Cost Increase and Tax Increase shall not be due and payable during the first twelve (12) full calendar months of the Lease Term.

(b) Landlord's share of the consideration received by Tenant upon certain assignments and sublettings as required by Article 7.

(c) Any legal fees and costs that Tenant is obligated to pay or reimburse to Landlord pursuant to Article 13; and

(d) Any other charges or reimbursements due Landlord from Tenant pursuant to the terms of this Lease.

**3.3 Year-End Adjustments.** If Landlord shall have elected to bill Tenant for the Operating Expense Increase, Insurance Cost Increase, and/or Tax Increase (or any group of such expenses) on an estimated basis in accordance with the provisions of Paragraph 3.2(a) above, Landlord shall furnish to Tenant within four (4) months following the end of the applicable calendar or fiscal year, as the case may be, a statement setting forth (i) the amount of such expenses paid or incurred during the just ended calendar or fiscal year, as appropriate, and (ii) the amount that Tenant has paid to Landlord for credit against such expenses for such period. If Tenant shall have paid more than its obligation for such expenses for the stated period, Landlord shall, at its election, either (i) credit the amount of such overpayment toward the next ensuing payment or payments of Additional Rent that would otherwise be due or (ii) refund in cash to Tenant the amount of such overpayment, in either case after first deducting any amounts then owed by Tenant under this Lease. If such year-end statement shall show that Tenant did not pay its obligation for such expenses in full, then Tenant shall pay to Landlord the amount of such underpayment within thirty (30) days from Landlord's billing of same to Tenant.

Tenant may, at Tenant's sole cost and expense, cause an audit of Landlord's books and records to determine the accuracy of Landlord's billings for the Operating Expense Increase, Insurance Cost Increase and/or Tax Increase under this Lease, provided Tenant completes (and delivers to Landlord the written results of) such audit within one hundred twenty (120) days after Tenant's receipt of the year-end statement described above setting forth the annual reconciliation of the Operating Expense Increase, Insurance Cost Increase and/or Tax Increase, and provided further that the person or entity performing such audit is not compensated on any type of contingent basis. If such audit reveals that the actual Operating Expense Increase, Insurance Cost Increase and/or Tax Increase for any given year were less than the amount that Tenant paid for the Operating Expense Increase, Insurance Cost Increase and/or Tax Increase, respectively, for any such year, then unless Landlord contests such audit results as provided below, Landlord shall credit the excess to Tenant's next payment of Additional Rent. If such audit reveals that the actual Operating Expense Increase, Insurance Cost Increase and/or Tax Increase for any given year were more than the amount that Tenant paid for the Operating Expense Increase, Insurance Cost Increase and/or Tax Increase, respectively, for any such year, Tenant shall pay such amount to Landlord within thirty (30) days after completion of the audit. Landlord shall have the right to contest the results of Tenant's audit and thereafter promptly have an audit performed ("Landlord's Audit") by a certified public accounting firm selected by Landlord and acceptable to Tenant in Tenant's reasonable discretion. In such case, the results of Landlord's Audit shall be binding and conclusive on Landlord and Tenant, and any resulting overpayment or underpayment shall be handled as provided above. Tenant shall pay the cost of Landlord's Audit unless Landlord's Audit confirms the actual Operating

Expense Increase, Insurance Cost Increase and/or Tax Increase for the given year were less than the amount Tenant paid for the Operating Expense Increase, Insurance Cost Increase and/or Tax Increase, respectively, for such year, in which case Landlord shall pay the cost of Landlord 's Audit. The provisions of this Paragraph shall survive the expiration or sooner termination of this Lease.

**3.4 Late Charge and Interest on Rent in Default.** Tenant acknowledges that the late payment by Tenant of any monthly installment of Base Monthly Rent or any Additional Rent will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amounts of which are extremely difficult or impractical to fix. Such costs and expenses will include without limitation, administration and collection costs and processing and accounting expenses. Therefore, if any installment of Base Monthly Rent is not received by Landlord from Tenant within five (5) calendar days after the same becomes due, Tenant shall immediately pay to Landlord a late charge in an amount equal to the amount set forth in Article 1 as the "Late Charge Amount," and if any Additional Rent is not received by Landlord when the same becomes due, Tenant shall immediately pay to Landlord a late charge in an amount equal to five percent (5%) of the Additional Rent not so paid. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the anticipated loss Landlord would suffer by reason of Tenant's failure to make timely payment. In no event shall this provision for a late charge be deemed to grant to Tenant a grace period or extension of time within which to pay any rental installment or prevent Landlord from exercising any right or remedy available to Landlord upon Tenant's failure to pay each rental installment due under this Lease when due, including the right to terminate this Lease. If any rent remains delinquent for a period in excess of five (5) calendar days, then, in addition to such late charge, Tenant shall pay to Landlord interest on any rent that is not so paid from said fifth day at the lesser of ten percent (10%) and the then maximum rate of interest not prohibited or made usurious by Law until paid.

**3.5 Payment of Rent.** Except as specifically provided otherwise in this Lease, all rent shall be paid in lawful money of the United States, without any abatement, reduction or offset for any reason whatsoever, to Landlord at such address as Landlord may designate from time to time. Tenant's obligation to pay Base Monthly Rent and all Additional Rent shall be appropriately prorated at the commencement and expiration of the Lease Term. The failure by Tenant to pay any Additional Rent as required pursuant to this Lease when due shall be treated the same as a failure by Tenant to pay Base Monthly Rent when due, and Landlord shall have the same rights and remedies against Tenant as Landlord would have had Tenant failed to pay the Base Monthly Rent when due.

**3.6 Prepaid Rent.** Tenant shall, upon execution of this Lease, pay to Landlord the amount set forth in Article 1 as " One Month's Prepaid Rent" as prepayment of rent for credit against the first payment of Base Monthly Rent due hereunder.

**3.7 Security Deposit.** Tenant shall deposit concurrently with Tenant 's execution of this Lease, with Landlord the amount set forth in Article 1 as the Security Deposit as security for the performance by Tenant of the terms of this Lease to be performed by Tenant, and not as prepayment of rent. Tenant hereby grants to Landlord a security interest in the Security Deposit, including, but not limited to , replenishments thereof. Landlord may apply such portion or portions of the Security Deposit as are reasonably necessary for the following purposes: (i) to remedy any default by Tenant in the payment of Base Monthly Rent or Additional Rent or a late charge or interest on defaulted rent, or any other monetary payment obligation of Tenant under this Lease; (ii) to repair damage to the Leased Premises, the Building or the Common Areas caused or permitted to occur by Tenant; (iii) to clean and restore and repair the Leased Premises, the Building or the Common Areas following their surrender to Landlord if not surrendered in the condition required pursuant to the provisions of Article 2, (iv) to remedy any other default of Tenant including, without limitation, paying in full on Tenant 's behalf any sums claimed by materialmen or contractors of Tenant to be owing to them by Tenant for work done or improvements made at Tenant 's request to the Leased Premises, and (v) to cover any other expense, loss or damage which Landlord may at any time suffer due to Tenant's default. In this regard, Tenant hereby waives any restriction on the uses to which the Security Deposit may be applied as contained in Section 1950.7(c) of the California Civil Code and/or any successor statute. In the event the Security Deposit or any portion thereof is so used, Tenant shall pay to Landlord, promptly upon demand, an amount in cash sufficient to restore the Security Deposit to the full original sum. Landlord shall not be deemed a trustee of the Security Deposit. Landlord may use the Security Deposit in Landlord's ordinary business and shall not be required to segregate it from Landlord's general accounts. Tenant shall not be entitled to any interest on the Security Deposit. If Landlord transfers the Building or the Property during the Lease Term, Landlord may pay the Security Deposit to any subsequent owner in conformity with the provisions of Section 1950.7 of the California Civil Code and/or any successor statute, in which event the transferring landlord shall be released from all liability for the return of the Security Deposit. Tenant specifically grants to Landlord (and Tenant hereby waives the provisions of California Civil Code Section 1950.7 to the contrary) a period of sixty (60) days following a surrender of the Leased Premises by Tenant to Landlord within which to inspect the Leased Premises, make required restorations and repairs, receive and verify workmen's billings therefor, cure any other defaults, deduct any damages, and prepare a final accounting with respect to the Security Deposit. In no event shall the Security Deposit or any portion thereof, be considered prepaid rent.

## ARTICLE 4

## USE OF LEASED PREMISES AND COMMON AREA

**4.1 Permitted Use.** Tenant shall be entitled to use the Leased Premises solely for the " Permitted Use" as set forth in Article 1 and for no other purpose whatsoever. Tenant shall have the right to vacate the Leased Premises at any time during the Lease Term, provided Tenant maintains the Leased Premises in the same condition as if fully occupied and as otherwise required by the terms of this Lease, including the continued payment of Base Monthly Rent. Tenant shall have the right to use the Common Areas in conjunction with its Permitted Use of the Leased Premises solely for the purposes for which they were designed and intended and for no other purposes whatsoever.

**4.2 General Limitations on Use.** Tenant shall not do or permit anything to be done in or about the Leased Premises, the Building, the Common Areas or the Property which does or could (i) jeopardize the structural integrity of the Building or (ii) cause damage to any part of the Leased Premises, the Building, the Common Areas or the Property. Tenant shall not operate any equipment within the Leased Premises which does or could (A) injure, vibrate or shake the Leased Premises or the Building, (B) damage, overload or impair the efficient operation of any electrical, plumbing, and/or HVAC systems within or servicing the Leased Premises or the Building, or (C) damage or impair the efficient operation of the sprinkler system (if any) within or servicing the Leased Premises or the Building. Tenant shall not install any equipment or antennas on or make any penetrations of the exterior walls or roof

of the Building. Tenant shall not affix any equipment to or make any penetrations or cuts in the floor, ceiling, walls or roof of the Leased Premises. Tenant shall not place any loads upon the floors, walls, ceiling or roof systems which could endanger the structural integrity of the Building or damage its floors, foundations or supporting structural components. Tenant shall not place any explosive, flammable or harmful fluids or other waste materials in the drainage systems of the Leased Premises, the Building, the Common Areas or the Property. Tenant shall not drain or discharge any fluids in the landscaped areas or across the paved areas of the Property. Tenant shall not use any of the Common Areas for the storage of its materials, supplies, inventory or equipment and all such materials, supplies, inventory or equipment shall at all times be stored within the Leased Premises. Tenant shall not commit nor permit to be committed by any of the Tenant Parties any waste in or about the Leased Premises, the Building, the Common Areas or the Property.

**4.3 Noise and Emissions.** All noise generated by Tenant in its use of the Leased Premises shall be confined or muffled so that it does not interfere with the businesses of or annoy the occupants and/or users of adjacent properties. All dust, fumes, odors and other emissions generated by Tenant's use of the Leased Premises shall be sufficiently dissipated in accordance with sound environmental practice and exhausted from the Leased Premises in such a manner so as not to interfere with the businesses of or annoy the occupants and/or users of adjacent properties, or cause any damage to the Leased Premises, the Building, the Common Areas or the Property or any component part thereof or the property of adjacent property owners.

**4.4 Trash Disposal.** Tenant shall provide trash bins or other adequate garbage disposal facilities within the Leased Premises sufficient for the interim disposal of all of its trash, garbage and waste. Landlord shall cause such trash, garbage and waste to be regularly removed from the Leased Premises. Tenant shall keep the Leased Premises in a clean, safe and neat condition free and clear of all of Tenant's trash, garbage, waste and/or boxes, pallets and containers containing same at all times. Tenant agrees to assume responsibility for compliance by all of the Tenant Parties with the provisions contained in this paragraph.

**4.5 Parking.** Tenant shall not, at any time, park or permit to be parked any recreational vehicles, inoperative vehicles or equipment in the Common Areas or on any portion of the Property. Tenant agrees to assume responsibility for compliance by its employees and invitees with the parking provisions contained herein. If Tenant or its employees park any vehicle within the Property in violation of these provisions, then Landlord may, upon prior written notice to Tenant giving Tenant one (1) business day (or any applicable statutory notice period, if longer than one (1) business day) to remove such vehicle(s), in addition to any other remedies Landlord may have under this Lease, charge Tenant, as Additional Rent, and Tenant agrees to pay, as Additional Rent, Twenty-Five Dollars ($25) per business day for each business day that each such vehicle is so parked within the Property. Tenant agrees to assume responsibility for compliance by the Tenant Parties with the parking provisions contained herein. Landlord reserves the right to grant easements and access rights to others for use of the parking areas on the Property, provided that such grants do not materially interfere with Tenant's use of the parking areas.

**4.6 Signs.** Tenant Subject to the terms of this Paragraph 4.6 and applicable Laws and Restrictions, (i) Landlord shall provide non-exclusive Building-standard (A) directory signage for Tenant in the main lobby of the Building and (B) suite signage for Tenant, and (ii) Tenant will be permitted to install a single Building eyebrow sign at Tenant's sole cost and on a non-exclusive basis ("Tenant's Eyebrow Signage"). Tenant's Eyebrow Signage (including, without limitation, the location, size, design, colors and material thereof) shall not be installed without Tenant having first obtained the written approval of Landlord, and any approval required by applicable Laws and Restrictions (it being acknowledged and agreed that Landlord, at no cost to Landlord, shall use

commercially reasonable efforts to assist Tenant in obtaining any such approval, but that Landlord has made no representations or warranties of any kind as to whether or not any such approval may be obtained). Tenant's Eyebrow Signage shall be subject each of the following conditions:

(i) Tenant's Eyebrow Signage shall be designed, maintained and installed in accordance with all applicable Laws and Restrictions. The design and location of Tenant's Eyebrow Signage shall be consistent with applicable Laws and Restrictions.

(ii) Tenant may not change Tenant's Eyebrow Signage without the prior written consent of Landlord.

(iii) All approvals and permits required to be obtained for the installation and maintenance of Tenant's Eyebrow Signage shall be obtained and maintained at Tenant's sole cost and expense.

(iv) Tenant's Eyebrow Signage will be constructed, installed and maintained at Tenant's sole cost and expense.

(v) Tenant shall install, operate, insure, maintain, repair and replace Tenant's Eyebrow Signage (and the lighting therefor, if any) at Tenant's sole cost and expense subject to applicable code and such reasonable rules and regulations as Landlord may require, including, without limitation, the Building's construction rules and regulations.

(vi) If Tenant's Eyebrow Signage is lighted or electrified as may be permitted pursuant to the terms hereof, it must be separately metered or sub-metered as more specifically described in Paragraph 5.2(d) below.

(vii) Tenant must remove Tenant's Eyebrow Signage at Tenant's sole cost and expense upon the earliest to occur of (y) any termination of this Lease or (z) the expiration of the Lease Term. Upon such removal by Tenant, Tenant shall fully repair and restore the area where Tenant's Eyebrow Signage was installed and located, including, without limitation, the restoration and replacement of any Building surfaces. If Tenant does not remove Tenant's Eyebrow Signage as and when required under the terms of the Lease, Landlord may remove it and perform such restoration, repair and replacement, and Tenant shall reimburse Landlord for Landlord's costs and expenses of such removal, restoration and replacement within thirty (30) days of demand.

(viii) Tenant's Eyebrow Signage shall be personal to the original Tenant named herein.

Notwithstanding the signage rights granted to Tenant pursuant to this Paragraph 4.6, Landlord reserves and retains the right to place Landlord's name and/or ownership affiliation in or on the Leased Premises, the Building, the Common Areas or the Property, or on any of the signs located thereon, as determined in Landlord's sole discretion.

**4.7 Compliance with Laws and Restrictions.** Tenant shall abide by and shall promptly observe and comply with, at its sole cost and expense, all Laws and Restrictions respecting the use and occupancy of the Leased Premises, the Building, the Common Areas or the Property including, without limitation, Title 24, building codes, the Americans with Disabilities Act and the rules and regulations promulgated thereunder, and all Laws governing the use and/or disposal of hazardous materials, and shall defend with competent counsel, indemnify and hold Landlord harmless from any claims, damages or liability resulting from Tenant's failure to so abide, observe, or comply. Notwithstanding anything to the contrary in this Lease, Tenant shall not be obligated to make any alterations, modifications or improvements to the Leased Premises, the Building, the Common Areas or the Property in order to comply with any Laws or Restrictions unless such compliance is required (i) in connection with any alterations, modifications or

improvements performed by or at the request of Tenant (except for Landlord 's Work), (ii) to accommodate Tenant 's employees with disabilities, (iii) as a result of Tenant's use or occupancy of the Leased Premises in a manner inconsistent with the Permitted Use or the general use and occupancy of the Building, or (iv) as a result of any breach by Tenant of any of Tenant 's covenants or agreements under this Lease. Tenant 's indemnity obligations hereunder shall survive the expiration or sooner termination of this Lease. The foregoing is not intended to and shall not limit Landlord's obligations under Paragraph 6.3 below.

**4.8 Compliance with Insurance Requirements.** With respect to any insurance policies required or permitted to be carried by Landlord in accordance with the provisions of this Lease, Tenant shall not conduct nor permit any other person to conduct any activities nor keep, store or use (or allow any other person to keep, store or use) any item or thing within the Leased Premises, the Building, the Common Areas or the Property which (i) is prohibited under the terms of any such policies, (ii) could result in the termination of the coverage afforded under any of such policies, (iii) could give to the insurance carrier the right to cancel any of such policies, or (iv) could cause an increase in the rates (over standard rates) charged for the coverage afforded under any of such policies. Tenant shall comply with all requirements of any insurance company, insurance underwriter, or Board of Fire Underwriters which are necessary to maintain, at standard rates, the insurance coverages carried by either Landlord or Tenant pursuant to this Lease.

**4.9 Landlord's Right to Enter.** Landlord and its agents shall have the right to enter the Leased Premises during normal business hours after giving Tenant at least twenty-four (24) hours' prior notice (which notice may be oral or electronic in nature and shall not be required in the event of a bona fide emergency, as reasonably determined by Landlord) and subject to Tenant's reasonable security measures for the purpose of (i) inspecting the same; (ii) showing the Leased Premises to prospective purchasers, mortgagees or tenants; (iii) making necessary alterations, additions or repairs; and (iv) performing any of Tenant's obligations when Tenant has failed to do so. Landlord shall have the right to enter the Leased Premises during normal business hours (or as otherwise agreed), subject to Tenant's reasonable security measures, for purposes of supplying any maintenance or services agreed to be supplied by Landlord. Landlord shall also have the right, upon at least twenty-four (24) hours' prior notice to Tenant (which notice may be oral or electronic in nature and shall not be required in the event of a bona fide emergency, as reasonably determined by Landlord), to access the Building's vertical risers and the interstitial space above Tenant's acoustical ceiling to connect new utility and communications lines from other floors to the base Building utility lines. Landlord shall have the right to enter the Common Areas during normal business hours for purposes of (i) inspecting the exterior of the Building and the Common Areas; (ii) posting notices of non-responsibility (and for such purposes Tenant shall provide Landlord at least thirty (30) days' prior written notice of any work to be performed on the Leased Premises as well as notice within one (1) day after the commencement of such work); and (iii) supplying any services to be provided by Landlord. Any entry into the Leased Premises or the Common Areas obtained by Landlord in accordance with this paragraph shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Leased Premises, or an eviction, actual or constructive of Tenant from the Leased Premises or any portion thereof.

**4.10 Use of Common Areas.** Tenant, in its use of the Common Areas, shall at all times keep the Common Areas in a safe condition free and clear of all materials, equipment, debris, trash (except within existing enclosed trash areas), inoperable vehicles, and other items which are not specifically permitted by Landlord to be stored or located thereon by Tenant. If, in the opinion of Landlord, unauthorized persons are using any of the Common Areas by reason of, or under claim of, the express or implied authority or consent of Tenant, then Tenant, upon demand of Landlord, shall restrain, to the fullest extent then allowed by Law, such unauthorized use, and shall initiate such appropriate proceedings as may be required to so restrain such use. Landlord reserves the right to grant easements and access rights to others for use of the Common Areas and shall not be liable to Tenant for any diminution in Tenant's right to use the Common Areas as a result. The Building contains a "Conference Center" for the use of the tenants. Tenant will be provided unlimited usage of the Conference Center, subject to availability, on a pre-scheduled basis with thirty (30) days' notice, at no

additional cost to Tenant during the Term, with access available on Saturdays and Sundays, upon prior notice and duly scheduled, as contained in this Section 4.10, and subject to after-hour HVAC provisions contained in this Lease. Tenant's rights under this Section 4.10 are conditioned upon Tenant not being in default under the Lease and adhering to the Rules and Regulations. Landlord makes no representations or commitment as to the continuous operation of the Conference Center.

**4.11 Environmental Protection.** Tenant's obligations under this Paragraph 4.11 shall survive the expiration or termination of this Lease.

(a) As used herein, the term "Hazardous Materials" shall mean any toxic or hazardous substance, material or waste or any pollutant or infectious or radioactive material, including, but not limited to, those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous materials," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant," or "solid waste" in the (a) Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA" or "Superfund"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. § 9601 *et seq.,* (b) Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 *et seq.,* (c) Federal Water Pollution Control Act (" FSPCA"), 33 U.S.C. § 1251 *et seq.,* (d) Clean Air Act (" CAA"), 42 U.S.C. § 7401 *et seq.,* (e) Toxic Substances Control Act ("T SCA"), 14 U.S.C. § 2601 *et seq.,* (f) Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.,* (g) Carpenter-Presley-Tanner Hazardous Substance Account Act ("California Superfund"), Cal. Health & Safety Code § 25300 *et seq.,* (h) California Hazardous Waste Control Act, Cal. Health & Safety code § 25100 *et seq.,* (i) Porter-Cologne Water Quality Control Act (" Porter-Cologne Act"), Cal. Water Code § 13000 *et seq.,* (j) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety codes§ 25220 *et seq.,* (k) Safe Drinking Water and Toxic Enforcement Act of 1986 (" Proposition 65"), Cal. Health & Safety code § 25249.5 *et seq.,* (1) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety code § 25280 *et seq.,* (m) Air Resources Law, Cal. Health & Safety Code§ 39000 *et seq.,* and (n) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other biohazardous wastes and substances, materials and wastes which are, or in the future become, regulated under applicable Laws for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, (vii) radioactive materials and waste, and (viii) materials and wastes that are harmful to or may threaten human health, ecology or the environment.

(b) Notwithstanding anything to the contrary in this Lease, Tenant, at its sole cost, shall comply with, and shall cause the Tenant Parties to comply with, all Laws relating to the storage, use and disposal of Hazardous Materials at the Property; provided, however, that Tenant shall not be responsible for contamination of the Leased Premises and/or the Building, or the Property by Hazardous Materials existing as of the date the Leased Premises are delivered to Tenant (whether before or after the Lease Commencement Date) excepting only contamination caused by Tenant or the Tenant Parties. Tenant shall not store, use or dispose of any Hazardous Materials except for ordinary office and cleaning supplies used in compliance with all Laws and Restrictions ("Office & Cleaning Supplies"). In no event shall Tenant or any of the Tenant Parties conduct any invasive or destructive environmental tests of the Leased Premises or cause or permit to be discharged into the plumbing or sewage system of the Building or onto the land underlying or adjacent to the Building any Hazardous Materials. Tenant shall be solely responsible for and shall defend, indemnify, and hold Landlord and its agents harmless from and against all claims, costs and liabilities, including attorneys' fees and costs,

arising out of or in connection with Tenant ’s storage, use and/or disposal of Hazardous Materials. If the presence of Hazardous Materials on the Leased Premises caused or permitted by Tenant or any of the Tenant Parties results in contamination or deterioration of water or soil, then Tenant shall promptly take any and all action necessary to clean up such contamination, but the foregoing shall in no event be deemed to constitute permission by Landlord to allow the presence of such Hazardous Materials. Tenant shall further be solely responsible for, and shall defend, indemnify, and hold Landlord and its agents harmless from and against all claims, costs and liabilities, including attorneys’ fees and costs, arising out of or in connection with any removal, cleanup and restoration work and materials required hereunder to return the Leased Premises and any other property of whatever nature to their condition existing prior to the appearance of the Hazardous Materials, to the extent such Hazardous Materials were introduced to the Property by Tenant or any of the Tenant Parties.

(c) Upon termination or expiration of the Lease Term, Tenant, at its sole expense, shall cause all Hazardous Materials placed in or about the Leased Premises, the Building and/or the Property by Tenant or any of the Tenant Parties, and all installations (whether interior or exterior) made by or on behalf of Tenant or any of the Tenant Parties relating to the storage, use, disposal or transportation of Hazardous Materials to be removed from the property and transported for use, storage or disposal in accordance and compliance with all Laws and other requirements respecting Hazardous Materials used or permitted to be used by Tenant. If Tenant uses any Hazardous Materials other than Office & Cleaning Supplies, then Tenant shall apply for and shall obtain from all appropriate regulatory authorities (including any applicable fire department or regional water quality control board) all permits, approvals and clearances necessary for the closure of the Property and shall take all other actions as may be required to complete the closure of the Building, and the Property. (The foregoing sentence shall not be read to imply that Tenant has any right to use any Hazardous Materials other than Office & Cleaning Supplies.) In addition, if Landlord reasonably believes that Tenant has caused or permitted contamination of the Leased Premises or Property, then at Landlord’s request, prior to vacating the Leased Premises, Tenant shall undertake and submit to Landlord an environmental site assessment from an environmental consulting company reasonably acceptable to Landlord which site assessment shall evidence Tenant’s compliance with this Paragraph 4.11.

(d) At any time prior to expiration of the Lease Term, subject to reasonable prior notice (not less than forty-eight (48) hours) and Tenant’s reasonable security requirements and provided such activities do not unreasonably interfere with the conduct of Tenant’s business at the Leased P remises, Landlord shall have the right to enter in and upon the Property, Building and Leased Premises in order to conduct appropriate tests of water and soil to determine whether levels of any Hazardous Materials in excess of legally permissible levels has occurred as a result of Tenant’s use thereof. Landlord shall furnish copies of all such test results and reports to Tenant and, at Tenant’s option and cost, shall permit split sampling for testing and analysis by Tenant. Such testing shall be at Tenant’s expense if Landlord has a reasonable basis for suspecting and confirms the presence of Hazardous Materials in the soil or surface or ground water in, on, under, or about the Property, the Building or the Leased Premises, which has been caused by or resulted from the activities of Tenant or any of the Tenant Parties.

(e) Landlord may voluntarily cooperate in a reasonable manner with the efforts of all governmental agencies in reducing actual or potential environmental damage. Tenant shall not be entitled to terminate this Lease or to any reduction in or abatement of rent by reason of such voluntary cooperation, nor for any required compliance. Tenant agrees at all times to cooperate fully with the requirements and recommendations of governmental agencies regulating, or otherwise involved in, the protection of the environment.

(f) Upon request, Landlord will provide Tenant with a copy of the most recent Phase I environmental report detailing the condition of the Property.

**4.12 Rules and Regulations.** Tenant shall comply with the Rules and Regulations for the Property as may be amended and adopted from time to time, provided, that, Landlord has provided Tenant with written notice of such Rules and Regulations. A copy of Landlord 's current Rules and Regulations for the Property is attached to this Lease as **Exhibit E,** and such Rules and Regulations are incorporated herein by reference. A violation by Tenant or any of the Tenant Parties of any of such Rules and Regulations shall constitute a default by Tenant under this Lease. If there is a conflict between the Rules and Regulations and any of the provisions of this Lease, the provisions of this Lease shall prevail. Landlord shall not be responsible or liable to Tenant for the violation of such Rules and Regulations by any other tenant or user of the Property.

**4.13 Reservations.** Landlord reserves the right from time to time to grant, without the consent or joinder of Tenant, such easements, rights of way and dedications that Landlord deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights of way and dedications do not unreasonably interfere with the use of the Leased Premises by Tenant. Landlord also reserves the right from time to time to name the Building and/or the Property, change any such names, and change the address of the Building and/or the Property. Tenant agrees to execute any documents reasonably requested by Landlord to effectuate any such easement rights, dedications, maps or restrictions, and to confirm any such names or addresses.

## ARTICLE 5

## REPAIRS, MAINTENANCE, SERVICES AND UTILITIES

**5.1 Repair and Maintenance.** Except in the case of damage to or destruction of the Leased Premises, the Building, the Common Areas or the Property caused by an act of God or other peril, in which case the provisions of Article 10 shall control, the parties shall have the following obligations and responsibilities with respect to the repair and maintenance of the Leased Premises, the Building, the Common Areas, and the Property.

(a) Tenant's Obligations. Except with respect to maintenance of Building systems that is Landlord's responsibility pursuant to Paragraph 5.l(b) below, Tenant shall, at all times during the Lease Term and at its sole cost and expense, continuously keep and maintain in good order, condition and repair the Leased Premises and every part thereof. Without limiting the foregoing and notwithstanding any other provision of this Lease, Tenant shall be responsible for maintenance of all dishwashers, water heaters, disposals, and refrigerator water lines, and all plumbing associated with the foregoing located within the Leased Premises, whether already existing, or installed by or for the benefit of Tenant. Tenant shall, at its sole cost and expense, repair all damage to the Leased Premises, and if applicable, the Building, the Common Areas or the Property caused by such Tenant's appliances or plumbing, or otherwise caused by the activities of Tenant or any of the Tenant Parties, promptly following written notice from Landlord to so repair such damages. If Tenant shall fail to perform the required maintenance or fail to make repairs required of it pursuant to this Paragraph within a reasonable period of time following notice from Landlord to do so, then Landlord may, at its election and without waiving any other remedy it may otherwise have under this Lease or at law, perform such maintenance or make such repairs and charge to Tenant, as Additional Rent, the costs so incurred by Landlord for same.

(b) Landlords Obligations. Landlord shall, at all times during the Lease Term as a part of Operating Expenses, maintain in good condition and repair the Common Areas, the foundation, roof structure and membrane, load-bearing and exterior walls of the Building, and those Building elevators, electrical, plumbing, and life safety (and Building central HVAC) systems or components thereof which serve the Building. Landlord shall hire a licensed roofing contractor to regularly and periodically inspect and perform required maintenance on the roof of the Building, and a licensed HVAC contractor to regularly and periodically inspect and perform required maintenance on the HVAC equipment and systems serving the Leased Premises. The provisions of this subparagraph (b) shall in no way limit the right of Landlord to charge to Tenant, as Additional Rent pursuant to Article

3 (to the extent permitted pursuant to Article 3), the costs incurred by Landlord in performing such maintenance and/or making such repairs.

**5.2 Utilities and Services.**

(a) Landlord will furnish to the Leased Premises during the period from 7:00 a.m. to 6:00 p.m., Monday through Friday, from 9:00 a.m. to 1:00 p.m. on Saturdays, excluding Sundays, New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas and such other holidays as are generally recognized in the vicinity of the Property (hereafter, "Building Standard Hours"), and subject to rules and regulations from time to time established by Landlord: lighting and HVAC in amounts required, in Landlord's reasonable judgment, for the normal use and occupancy of the Leased Premises; provided, however, that HVAC on Saturdays will only be provided upon not less than 24 hours prior written request from Tenant. Tenant acknowledges that the HVAC system of the Building is designed to operate efficiently while electrical equipment such as customary lamps, typewriters, computers and other typical office machines are being used in the Leased Premises and while the Leased Premises are occupied in any building system zone by not more than one person per 150 square feet of rentable area of the Leased Premises. If the temperature otherwise maintained in any portion of the Leased Premises by the HVAC system of the Building is affected by (i) Tenant's use of any lights, machines or equipment (including, without limitation, computers, electronic data processing machines and copying machines) in excess of normal office usage, or (ii) the occupancy of the Leased Premises by more than one person per 150 square feet of rentable area of the Leased Premises, or (iii) an electrical load that generates heat in excess of normal office usage, Landlord shall have the right, unless Tenant ceases and desists from such usage or excess occupancy within fifteen (15) days after written notice from Landlord, to install any machinery and equipment that Landlord reasonably deems necessary to restore temperature balance, including, without limitation, supplemental and independent HVAC systems and/or modifications to the standard HVAC equipment. In such event, the cost thereof, including the cost of installation and any additional cost of operation and maintenance incurred thereby, shall be paid by Tenant to Landlord within thirty (30) days after demand therefor by Landlord; provided, however, Landlord agrees to use commercially reasonable efforts to resolve such issue in a cost effective manner. Tenant shall notify Landlord in advance, prior to installing or operating any machines or equipment, of the specifications of such machines or equipment which could so affect the temperature otherwise maintained in any portion of the Leased Premises by the HVAC system of the Building. In addition, Tenant shall pay Landlord the amount of Landlord's then current hourly charge (currently $55.00 per hour, subject to change from time to time by Landlord) for Building standard HVAC usage during any times other than Building Standard Hours. Unless a system has been installed permitting Tenant to control its own after-hours HVAC use, Tenant must notify Landlord by Friday at 12:00 p.m. as to what weekend usage Tenant will require, unless otherwise waived by Landlord.

(b) Landlord will furnish to the Leased Premises during Building Standard Hours, and subject to rules and regulations from time to time established by Landlord: (i) elevator service (if any), (ii) water for lavatory and drinking purposes, and (iii) janitorial service on business days in the manner that such services are customarily furnished in comparable office buildings in the south Orange County submarket (currently once daily Monday through Friday); provided that in no event shall Landlord be obligated to furnish janitorial service on Saturdays, Sundays, or legal holidays. Landlord shall use commercially reasonable efforts to provide additional janitorial service on weekends or late evenings upon Tenant's request, but all charges for additional janitorial services provided outside Building Standard Hours shall be paid by Tenant.

(c) In the event any governmental entity promulgates or revises any statute, ordinance or building, fire or other code or imposes mandatory or voluntary controls or guidelines on Landlord or the Building or any part thereof, or Landlord's engineers propose guidelines or otherwise

make recommendations, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions or the provision of any other utility or service provided with respect to this Lease, or in the event Landlord is required or elects to make alterations or to perform maintenance with respect to, any part of the Property in order to comply with such mandatory or voluntary controls, guidelines or recommendations, such compliance, the making of such alterations and/or the performance of such maintenance shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Monthly Rent and Additional Rent reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant or a disturbance of Tenant ’s peaceable possession, provided, that, Tenant ’s use of and access to the Leased Premises is not materially impaired.

(d) Tenant will at its sole cost and expense install a separate meter or submeter serving any supplemental HVAC units, server rooms, rooftop equipment, lighted or electrified Building signage, and other non-standard office use areas, if and to the extent any of the same are permitted in accordance with the terms and conditions of this Lease, and will pay all electrical charges measured by such meter or submeter directly to the provider of such electricity (if separately metered) or to Landlord promptly after demand (if submetered). Without the prior written consent of Landlord, which Landlord may refuse in its sole discretion, the electrical current available to the Leased Premises for both lighting and power (excluding the central HVAC system) shall at no time exceed a connected load of 4 watts per square foot of useable area of the Leased Premises plus 1.5 watts per square foot of usable area for lighting. Without the prior written consent of Landlord, which Landlord may refuse in its sole discretion, Tenant shall not: (i) connect or use any electrical equipment that exceeds the capacity of the Building electrical system; (ii) connect any apparatus, machine or device through electrical outlets except in the manner for which such outlets are designed and without the use of any device intended to increase the plug capacity of any electrical outlet; or (iii) maintain at any time an electrical demand load in excess of 4 watts per square foot of useable area of the Leased Premises. At any time that Tenant’s use of electricity exceeds the foregoing limits, Landlord shall have the right to impose a reasonable charge, as determined by Landlord, for such excess use. If Landlord reasonably believes that Tenant’s use of electricity exceeds the foregoing limits, Landlord shall have the right at any time to install an electric current meter in the Leased Premises or otherwise to measure the amount of electric current consumed on the Leased Premises, and the cost of such meter or other corrective measures and the installation and maintenance thereof shall be paid for by Tenant. Landlord agrees that, if and to the extent that an electric current meter is installed for the Leased Premises and chargeable to Tenant hereunder, and Tenant is separately billed for the electricity provided to the Leased Premises, Landlord will exclude electricity (except to the extent attributable solely to the Common Areas) from the determination of the Operating Expenses for purposes of this Lease.

(e) Tenant acknowledges that building management may not be available to support or provide services and/or repairs and/or maintenance, including, without limitation, HVAC hot/cold calls, light bulb changes, and janitorial cleaning, to the Leased Premises outside Building Standard Hours and/or that such services may involve additional charges which shall be billed directly to Tenant. In addition, in the event that Landlord, at Tenant’s request, provides services to Tenant that are (i) in excess of those services required to maintain Building-standard improvements, or (ii) are not otherwise provided for in this Lease, Tenant shall pay Landlord’s reasonable charges for such services within ten (10) days of Tenant’s receipt of a billing therefor.

(f) Landlord shall not be in default hereunder and no damages, compensation, or claim shall be payable by Landlord, and this Lease and the obligations of Tenant to perform all of its covenants and agreements hereunder shall in no way be affected, impaired, reduced, or excused, in the event that there shall be an interruption, curtailment, or suspension of the Building’s HVAC, utility, sanitary, elevator, water, telecommunications, security (including equipment, devices, and personnel), or other Building systems serving the Leased Premises or any other services required of Landlord under this Lease (an “Interruption of Service”), by reason of any casualty, accident, emergency, shortages of labor or materials

or any other causes of any kind whatsoever that are beyond the control of Landlord, including, but limited to:

(1) Lack of access to the Building or the Leased Premises (which shall include, but not be limited to, lack of access to the Building or the Leased Premises when it or they are structurally sound but inaccessible due to evacuation of the surrounding area or damage to nearby structures or public areas);

(2) Any cause outside the Building;

(3) Reduced air quality or other contaminants within the Building that would adversely affect the Building or its occupants (including, but not limited to, the presence of biological or other airborne agents within the Building or the Leased Premises);

(4) Disruption of mail and deliveries to the Building or the Leased Premises resulting from a casualty;

(5) Disruption of telephone and telecommunications services to the Building or the Leased Premises resulting from a casualty; or

(6) Blockages of any windows, doors, or walkways to the Building or the Leased Premises resulting from a casualty.

Landlord reserves the right, without any liability to Tenant, except as otherwise expressly provided in this Lease, and without being in breach of any covenant of this Lease, to effect an Interruption of Service, as required by this Lease or by Law, or as Landlord in good faith deems advisable, whenever and for so long as may be necessary, to make repairs, alterations, upgrades, changes, or for any other reasonable reason, to the Building's HVAC, utility, sanitary, elevator, water, telecommunications, security, or other Building systems serving the Leased Premises, or any other services required of Landlord under this Lease. In no event shall Landlord be permitted to effect an Interruption of Service as a retaliatory action against Tenant and/or other tenants of the Building.

In each instance, Landlord shall exercise commercially reasonable diligence to eliminate the cause of the Interruption of Service, if resulting from conditions within the Building and to conclude the Interruption of Service. Landlord shall give Tenant notice, when practicable, of the commencement and anticipated duration of such Interruption of Service.

The occurrence of an Interruption of Service shall not constitute an actual or constructive eviction of Tenant, in whole or in part, entitle Tenant to any abatement or diminution of Rent or any other costs due from Tenant pursuant to this Lease, relieve or release Tenant from any of its obligations under this Lease, or entitle Tenant to terminate this Lease.

Tenant hereby waives the provisions of California Civil Code Section 1932 or any other applicable existing or future Law or ordinance or governmental regulation permitting the termination of this Lease due to any interruption, failure or inability to provide Landlord services as provided for herein.

(g) If any portions of the Leased Premises require HVAC or other utility service in excess of the standard service to be provided by Landlord hereunder, Tenant may install, at Tenant's cost, supplemental systems (such as supplemental HVAC units) subject to Landlord's prior approval. Any supplemental units installed by Tenant shall be separately metered and utility charges relating to the operation thereof shall be paid for by Tenant. Tenant at its sole cost and expense shall remove all such supplemental units and alterations relating thereto and restore the Leased Premises prior to the expiration or termination of the Lease Term.

**5.3 Security.** Tenant shall be solely responsible for security measures at the Leased Premises. Tenant acknowledges that Landlord has not undertaken any duty whatsoever to provide security for the Leased Premises or the Property and, accordingly, Landlord is not responsible for the security of same or the protection of Tenant's property or any of the Tenant Parties from any cause whatsoever, including , but not limited to , criminal and/or terrorist acts. To the extent Tenant determines that such security or protection services are advisable or necessary, Tenant shall arrange for and pay the costs of providing same. In the event Landlord in its sole and absolute discretion agrees to provide any security services, whether it be guard service or access systems or otherwise, Landlord shall do so strictly as an accommodation to Tenant and Landlord shall have no liability whatsoever in connection therewith, whether it be for failure to maintain the secure access system, or for failure of the guard service to provide adequate security, or otherwise. Landlord may, but shall be under no obligation to, implement security measures for the Building or other portions of the Property, such as the registration or search of all persons entering or leaving the Building, requiring identification for access to the Building, evacuation of the Building for cause, suspected cause, or for drill purposes, the issuance of magnetic pass cards or keys for Building or elevator or access and other actions that Landlord deems necessary or appropriate to prevent any threat of property loss or damage, bodily injury or business interruption. Tenant shall cooperate and comply with, and cause all of the Tenant Parties to cooperate and comply with, such security measures. Landlord shall have no responsibility to prevent, and shall not be liable to Tenant or any of the Tenant Parties, for losses due to theft, burglary or other criminal activity, or for damages or injuries to persons or property resulting from persons gaining access to the Leased Premises, the Building, or the Property, and Tenant hereby releases Landlord and its agents and employees from all liabilities for such losses, damages or injury, regardless of the cause thereof. Without limitation, Paragraph 8.1 below is intended by Tenant and Landlord to apply to this Paragraph 5.3.

**5.4 Energy and Resource Consumption.**

(a) Energy Consumption Reduction Efforts. Landlord may voluntarily cooperate in a reasonable manner with the efforts of governmental agencies and/or utility suppliers in reducing energy or other resource consumption within the Property. Provided the foregoing does not unreasonably alter Tenant's obligations or liabilities under this Lease, and further provided there is no material increase in or to Tenant's monetary obligations and liabilities under this Lease, Tenant shall not be entitled to terminate this Lease or to any reduction in or abatement of Rent by reason of such cooperation. Tenant agrees to reasonably cooperate with Landlord and to abide by all reasonable rules established by Landlord (i) in order to maximize the efficient operation of the electrical and HVAC systems and all other energy or other resource consumption systems with the Property and/or (ii) in order to comply with the recommendations of utility suppliers and governmental agencies regulating the consumption of energy and/or other resources.

(b) Tenant Utility Usage Data Reporting. If Tenant is billed directly by a utility company with respect to Tenant's electricity and natural gas/propane usage at the Leased Premises, then, promptly following Landlord's written request, Tenant shall provide its monthly electricity and natural gas/propane usage data for the Leased Premises to Landlord for the period of time requested by Landlord (in electronic or paper format) or, at Landlord's option, provide any written authorization or other documentation required for Landlord to request information regarding Tenant's electricity and natural gas/propane .usage data with respect to the Leased Premises directly from the utility company.

**5.5 Limitation of Landlord's Liability.** Landlord shall not be liable to Tenant for injury to Tenant or any of the Tenant Parties, damage to property of Tenant or any Tenant Parties, or loss of Tenant's or any Tenant Parties' business or profits, nor shall Tenant be entitled to terminate this Lease or to any reduction in or abatement of rent by reason of (i) Landlord's failure to provide security services or systems within the Property for the protection of the Leased Premises, the Building or the Common Areas, or the protection of Tenant's property or any of the Tenant Parties, or (ii) Landlord's failure to perform any

maintenance or repairs to the Leased Premises, the Building, the Common Areas or the Property until Tenant shall have first notified Landlord, in writing, of the need for such maintenance or repairs, and then only after Landlord shall have had a reasonable period of time following its receipt of such notice within which to perform such maintenance or repairs, or (iii) any failure, interruption, rationing or other curtailment in the supply of water, electric current, gas or other utility service to the Leased Premises, the Building, the Common Areas or the Property from whatever cause (other than Landlord's active gross negligence or willful misconduct), or (iv) the unauthorized intrusion or entry into the Leased Premises by third parties (other than Landlord).

## ARTICLE 6
## ALTERATIONS AND IMPROVEMENTS

**6.1 By Tenant.** Tenant shall not make any alterations to or modifications of the Leased Premises or construct any improvements within the Leased Premises until Landlord shall have first approved, in writing, the plans and specifications therefor, which approval may not be unreasonably withheld. Tenant's written request shall also contain a request for Landlord to elect whether or not it will require Tenant to remove the subject alterations, modifications or improvements at the expiration or earlier termination of this Lease. If such additional request is not included, Landlord may make such election at the expiration or earlier termination of this Lease (and for purposes of Tenant's removal obligations set forth in Paragraph 2.6 above, Landlord shall be deemed to have made the election at the time the alterations, modifications or improvements were completed). All such modifications, alterations or improvements, once so approved, shall be made, constructed or installed by Tenant at Tenant's expense (including all permit fees and governmental charges related thereto), using a licensed contractor first reasonably approved by Landlord, in substantial compliance with the Landlord-approved plans and specifications therefor. All work undertaken by Tenant shall be done in accordance with all Laws and Restrictions and in a good and workmanlike manner using new materials of good quality. Tenant shall not commence the making of any such modifications or alterations or the construction of any such improvements until (i) all required governmental approvals and permits shall have been obtained, (ii) all requirements regarding insurance imposed by this Lease have been satisfied, (iii) Tenant shall have given Landlord at least five (5) business days prior written notice of its intention to commence such work so that Landlord may post and file notices of non-responsibility, and (iv) if reasonably requested by Landlord, Tenant shall have obtained contingent liability and broad form builder's risk insurance in an amount satisfactory to Landlord in its reasonable discretion to cover any perils relating to the proposed work not covered by insurance carried by Tenant pursuant to Article 9. In no event shall Tenant make any modification, alterations or improvements whatsoever to the Common Areas or the exterior or structural components of the Building including, without limitation, any cuts or penetrations in the floor, roof or exterior or load bearing walls of the Leased Premises. As used in this Article 6, the term "modifications, alterations and/or improvements" shall include, without limitation, the installation of additional electrical outlets, overhead lighting fixtures, drains, sinks, partitions, doorways, or the like.

**6.2 Ownership of Improvements.** All modifications, alterations and improvements made or added to the Leased Premises by Tenant (other than Tenant's inventory, equipment, movable furniture, wall decorations and trade fixtures) shall be deemed real property and a part of the Leased Premises, but shall remain the property of Tenant during the Lease Term, and Tenant hereby covenants and agrees not to grant a security interest in any such items to any party other than Landlord. Any such modifications, alterations or improvements, once completed, shall not be altered or removed from the Leased Premises during the Lease Term without Landlord's written approval first obtained in accordance with the provisions of Paragraph 6.1 above. At the expiration or sooner termination of this Lease, all such modifications, alterations and improvements other than Tenant's inventory, equipment, movable furniture, wall decorations and trade fixtures, shall automatically become the property of Landlord and shall be surrendered to Landlord as part of the Leased Premises as required pursuant to Article 2, unless Landlord shall require Tenant to remove any of such modifications, alterations or improvements in accordance with the provisions of Article 2, in which case Tenant shall so remove same. Landlord shall have no obligations to reimburse Tenant for all or any portion of the cost or value

of any such modifications, alterations or improvements so surrendered to Landlord. All modifications, alterations or improvements which are installed or constructed on or attached to the Leased Premises by Landlord and/or at Landlord's expense shall be deemed real property and a part of the Leased Premises and shall be property of Landlord. All lighting, plumbing, electrical, and HVAC fixtures, partitioning, window coverings, wall coverings and floor coverings installed by Tenant shall be deemed improvements to the Leased Premises and not trade fixtures of Tenant.

**6.3 Alterations Required by Law.** Tenant shall make all modifications, alterations and improvements to the Leased Premises, the Building, the Common Areas and/or the Property, in each case at its sole cost, that are required by any Law because of (i) Tenant's use or occupancy of the Leased Premises, the Building, the Common Areas or the Property, (ii) Tenant's application for any permit or governmental approval, or (iii) Tenant's making of any modifications, alterations or improvements to or within the Leased Premises. If Landlord shall, at any time during the Lease Term, be required by any governmental authority to make any modifications, alterations or improvements to the Building or the Property, the cost incurred by Landlord in making such modifications, alterations or improvements, including interest at a rate equal to ten percent (10%) (but in no event more than the maximum rate of interest not prohibited or made usurious), shall be amortized by Landlord over the useful life of such modifications, alterations or improvements, as determined in accordance with generally accepted accounting principles, and the monthly amortized cost of such modifications, alterations and improvements as so amortized shall be considered an Operating Expense.

**6.4 Liens.** Tenant shall keep the Property and every part thereof free from any lien, and shall pay when due all bills arising out of any work performed , materials furnished, or obligations incurred by Tenant, its agents, employees or contractors relating to the Property. If any such claim of lien is recorded against Tenant's interest in this Lease, the Property or any part thereof , Tenant shall bond against, discharge or otherwise cause such lien to be entirely released within ten (10) days after the same has been recorded. Tenant's failure to do so shall be conclusively deemed a material default under the terms of this Lease.

## ARTICLE 7

## ASSIGNMENT AND SUBLETTING BY TENANT

**7.1 By Tenant.** Tenant shall not sublet the Leased Premises or any portion thereof or assign its interest in this Lease, or permit the occupancy of the Leased Premises by a person or entity other than Tenant, whether voluntarily or by operation of Law, without Landlord's prior written consent which shall not be unreasonably withheld. Notwithstanding the foregoing, Tenant shall be permitted to assign all or a portion of the Leased Premises to any affiliate of Tenant, without seeking approval by Landlord. Any attempted subletting or assignment, or occupancy of the Leased Premises by a person or entity other than Tenant (or permitted affiliate), without Landlord's prior written consent, at Landlord's election, shall constitute a default by Tenant under the terms of this Lease. The acceptance of Rent by Landlord from any person or entity other than Tenant, or the acceptance of Rent by Landlord from Tenant with knowledge of a violation of the provisions of this paragraph, shall not be deemed to be a waiver by Landlord of any provision of this Article 7 or this Lease or to be a consent to any subletting by Tenant or any assignment of Tenant's interest in this Lease. Without limiting the circumstances in which it may be reasonable for Landlord to withhold its consent to an assignment or subletting, Landlord and Tenant acknowledge that it shall be reasonable for Landlord to withhold its consent in the following instances:

(a) the proposed assignee or sublessee is a governmental agency;

(b) the proposed assignee or sublessee is a mortgage company, or a call center or other high -density processing operation requiring more than Tenant's allotted parking set forth in Paragraph 1.1 hereof;

(c) in Landlord's reasonable judgment, the use of the Leased Premises by the proposed assignee or sublessee would involve occupancy other than for a Permitted Use, would diminish the reputation of the Landlord or the Building, or would require increased services by Landlord;

(d) in the event of a proposed assignment, in Landlord's reasonable judgment , the credit-worthiness of the proposed assignee is less than that of Tenant and does not meet the credit standards applied by Landlord;

(e) the proposed assignee or sublessee (or any of its affiliates) has been in material default under a lease, has been in litigation with a previous landlord, or in the ten (10) years prior to the assignment or sublease has filed for bankruptcy protection, has been the subject of an involuntary bankruptcy, or has been adjudged insolvent;

(f) Landlord (or any of its affiliates) has experienced a previous default by or is in litigation with the proposed assignee or sublessee (or any of their affiliates);

(g) in Landlord's reasonable judgment, the Leased Premises, or the relevant part thereof, will be used in a manner that will violate any negative covenant as to use contained in this Lease;

(h) the use of the Leased Premises by the proposed assignee or sublessee will violate any applicable Laws or Restrictions;

(i) the proposed assignee or sublessee is a tenant at the Property and there is comparable space then available at the Property for such proposed assignee or sublessee;

(j) the proposed assignment or sublease fails to include all of the terms and provisions required to be included therein pursuant to this Article 7; or

(k) Tenant is in default of any obligation of Tenant under this Lease, or Tenant has defaulted under this Lease on three or more occasions during the twelve (12) months preceding the date that Tenant shall request consent.

**7.2 Merger, Reorganization, or Sale of Assets.** Any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer in the aggregate over the Lease Term of a controlling percentage of the capital stock of or other equity interests in Tenant, or the sale or transfer of all or a substantial portion of the assets of Tenant, shall be deemed a voluntary assignment of Tenant's interest in this Lease. The phrase "controlling percentage" means the direct or indirect ownership of or right to vote (i) stock possessing more than fifty percent of the total combined voting power of all classes of Tenant's capital stock issued , outstanding and entitled to vote for the election of directors, or (ii) equity interests possessing the ability to direct the management of Tenant. If Tenant is a partnership, a withdrawal or change, voluntary, involuntary or by operation of Law, of any general partner, or the dissolution of the partnership, shall be deemed a voluntary assignment of Tenant's interest in this Lease . Upon Landlord's request from time to time, Tenant shall promptly provide Landlord with a statement certified by the Tenant's chief executive officer or chief financial officer, which shall provide the following information: (a) the names of all of Tenant's shareholders and their ownership interests at the time thereof, provided Tenant's shares are not publicly traded; (b) the state in which Tenant is incorporated; (c) the location of Tenant's principal place of business; (d) information regarding a material change in the corporate structure of Tenant, including, without limitation, a merger or consolidation; and (e) any other information regarding Tenant's ownership that Landlord reasonably requests . In the event of an acquisition by one entity of the controlling percentage of the capital stock of Tenant where this Lease is not assigned to and assumed in full by such entity, it shall be a condition to Landlord's consent to such change in control that such entity acquiring the controlling percentage assume, as a primary obligor, all rights and obligations of Tenant under this Lease (and such entity shall execute all documents reasonably required to effectuate such assumption).

**7.3 Landlord's Election.** If Tenant shall desire to assign its interest under the Lease or to sublet the Leased Premises, Tenant must first notify Landlord, in writing, of its intent to so assign or sublet, at least thirty (30) days in advance of taking any action with respect thereto. Once Tenant (or Landlord or both pursuant to the joint marketing election described below) has identified a potential assignee or sublessee, Tenant shall notify Landlord, in writing, of its intent to so assign or sublet, at least thirty (30) days in advance of the date it intends to so assign its interest in this Lease or sublet the Leased Premises, specifying in detail the terms of such proposed assignment or subletting, including the name of the proposed assignee or sublessee, the proposed assignee's or sublessee's intended use of the Leased Premises, current financial statements (including a balance sheet, income statement and statement of cash flow) of such proposed assignee or sublessee, the form of documents to be used in effectuating such assignment or subletting and such other information as Landlord may reasonably request. Landlord shall have a period of ten (10) business days following receipt of such notice and the required information within which to do one of the following: (i) consent to such requested assignment or subletting subject to Tenant's compliance with the conditions set forth in Paragraph 7.4 below, or (ii) refuse to so consent to such requested assignment or subletting, provided that such consent shall not be unreasonably refused. During such ten (10) business day period, Tenant covenants and agrees to supply to Landlord, upon request, all necessary or relevant information which Landlord may reasonably request respecting such proposed assignment or subletting and/or the proposed assignee or sublessee. In addition, in the event Tenant desires to sublease all of the Leased Premises, Landlord shall have the right to elect to jointly market with Tenant the Leased Premises for subleasing and/or direct leasing, such joint marketing election to be made, if at all, in writing and delivered to Tenant during the thirty (30) day period described in the first sentence of this Paragraph 7.3.

**7.4 Conditions to Landlord's Consent.** If Landlord elects to consent, or shall have been ordered to so consent by a court of competent jurisdiction, to such requested assignment or subletting, such consent shall be expressly conditioned upon the occurrence of each of the conditions below set forth, and any purported assignment or subletting made or ordered prior to the full and complete satisfaction of each of the following conditions shall be void and, at the election of Landlord, which election may be exercised at any time following such a purported assignment or subletting but prior to the satisfaction of each of the stated conditions, shall constitute a material default by Tenant under this Lease until cured by satisfying in full each such condition by the assignee or sublessee. The conditions are as follows:

(a) Landlord having approved in form and substance the assignment or sublease agreement and any ancillary documents, which approval shall not be unreasonably withheld by Landlord if the requirements of this Article 7 are otherwise complied with.

(b) Each such sublessee or assignee having agreed, in writing satisfactory to Landlord and its counsel and for the benefit of Landlord, to assume, to be bound by, and to perform the obligations of this Lease to be performed by Tenant which relate to space being subleased.

(c) Tenant having fully and completely performed all of its obligations under the terms of this Lease through and including the date of such assignment or subletting.

(d) Tenant having reimbursed to Landlord all reasonable costs and reasonable attorneys ' fees incurred by Landlord in conjunction with the processing and documentation of any such requested subletting or assignment, which amount shall not exceed $1,500.00 for each such requested sublease (and which limitation shall not apply to each such requested assignment). Tenant shall be obligated to so reimburse Landlord whether or not such subletting or assignment is completed.

(e) Tenant having delivered to Landlord a complete and fully-executed duplicate original of such sublease agreement or assignment agreement (as applicable) and all related agreements.

(f) Tenant having paid, or having agreed in writing to pay as to future payments, to Landlord fifty percent (50%) of all assignment consideration or excess rentals to be paid to Tenant or to any other on Tenant's behalf or for Tenant's benefit for such assignment or subletting as follows:

(i) If Tenant assigns its interest under this Lease and if all or a portion of the consideration for such assignment is to be paid by the assignee at the time of the assignment, that Tenant shall have paid to Landlord and Landlord shall have received an amount equal to fifty percent (50%) of the assignment consideration so paid or to be paid (whichever is the greater) at the time of the assignment by the assignee, less Tenant's reasonable assignment expenses, including, but not limited to, marketing expenses, subtenant improvements, leasing commissions and legal fees; or

(ii) If Tenant assigns its interest under this Lease and if Tenant is to receive all or a portion of the consideration for such assignment in future installments, that Tenant and Tenant's assignee shall have entered into a written agreement with and for the benefit of Landlord satisfactory to Landlord and its counsel whereby Tenant and Tenant' s assignee jointly agree to pay to Landlord an amount equal to fifty percent (50%) of all such future assignment consideration installments to be paid by such assignee as and when such assignment consideration is so paid.

(iii) If Tenant subleases the Leased Premises, that Tenant and Tenant's sublessee shall have entered into a written agreement with and for the benefit of Landlord satisfactory to Landlord and its counsel whereby Tenant and Tenant's sublessee jointly agree to pay to Landlord fifty percent (50%) of all excess rentals to be paid by such sublessee.

**7.5 Assignment Consideration and Excess Rentals Defined.** For purposes of this Article 7, including any amendment to this Article 7 by way of addendum or other writing: (i) the term "assignment consideration" shall mean all consideration to be paid by the assignee to Tenant or to any other party on Tenant's behalf or for Tenant's benefit as consideration for such assignment, less Tenant's reasonable assignment expenses, including, but not limited to, marketing expenses, subtenant improvements, leasing commissions and legal fees; and (ii) the term "excess rentals" shall mean all consideration to be paid by the sublessee to Tenant or to any other party on Tenant's behalf or for Tenant's benefit for the sublease of all or any part of the Leased Premises in excess of the rent due to Landlord under the terms of this Lease for the portion subleased for the same period, without deduction for any costs or expenses, except that Tenant may first deduct third party, market rate leasing commissions and reasonable legal fees (which legal fees shall not exceed $1,500.00 in the aggregate for any one (1) sublease). Tenant agrees that the portion of any assignment consideration and/or excess rentals arising from any assignment or subletting by Tenant which is to be paid to Landlord pursuant to this Article 7 now is and shall then be the property of Landlord and not the property of Tenant.

**7.6 Payments.** All payments required by this Article 7 to be made to Landlord shall be made in cash in full as and when they become due. At the time Tenant, Tenant's assignee or sublessee makes each such payment to Landlord, Tenant or Tenant 's assignee or sublessee, as the case may be, shall deliver to Landlord an itemized statement in reasonable detail showing the method by which the amount due Landlord was calculated and certified by the party making such payment as true and correct.

**7.7 Good Faith.** The rights granted to Tenant by this Article 7 are granted in consideration of Tenant's express covenant, which Tenant hereby makes, that all pertinent allocations which are made by Tenant between the rental value of the Leased Premises and the value of any of Tenant's personal property which may be conveyed or leased (or services provided) generally concurrently with and which may reasonably be considered a part of the same transaction as the permitted assignment or subletting shall be made fairly, honestly and in good faith. If Tenant shall breach this covenant, Landlord may immediately declare Tenant to be in default under the terms of this Lease and terminate this Lease and/or exercise any other rights and remedies Landlord would have under the terms of this Lease in the case of a material default by Tenant under this Lease.

**7.8 Effect of Landlord's Consent.** No subletting or assignment, even with the consent of Landlord, shall relieve Tenant of its personal and primary obligation to pay rent and to perform all of the other obligations to be performed by Tenant hereunder. Consent by Landlord to one or more assignments of Tenant's interest in this Lease or to one or more sublettings of the Leased Premises shall not be deemed to be a consent to any subsequent assignment or subletting. No sublease may be terminated or modified without Landlord's prior written consent. If Landlord shall have been ordered by a court of competent jurisdiction to consent to a requested assignment or subletting, or such an assignment or subletting shall have been ordered by a court of competent jurisdiction over the objection of Landlord, such assignment or subletting shall not be binding between the assignee (or sublessee) and Landlord until such time as all conditions set forth in Paragraph 7.4 above have been fully satisfied (to the extent not then satisfied) by the assignee or sublessee, including, without limitation, the payment to Landlord of all agreed assignment considerations and/or excess rentals then due Landlord. Upon a default while a sublease is in effect, Landlord may collect directly from the sublessee all sums becoming due to Tenant under the sublease and apply this amount against any sums due Landlord by Tenant, and Tenant authorizes and directs any sublessee to make payments directly to Landlord upon notice from Landlord. No direct collection by Landlord from any sublessee shall constitute a novation or release of Tenant or any guarantor, a consent to the sublease or a waiver of the covenant prohibiting subleases. Landlord, as Tenant's agent, may endorse any check, draft or other instrument payable to Tenant for sums due under a sublease, and apply the proceeds in accordance with this Lease; this agency is coupled with an interest and is irrevocable.

**7.9 Permitted Sublease or Occupancy.** Notwithstanding anything to the contrary in this Article 7, so long as Biolase, Inc. is the Tenant hereunder and it is not in default under this Lease, from and after the Lease Commencement Date, Tenant shall have the right to sublease, or otherwise permit the occupancy of, all or any portion of the Leased Premises to an affiliate of Tenant, upon prior written notice to Landlord but without Landlord's prior written consent. Such sublease or permitted occupancy shall be for the Permitted Use, and in the event of a sublease, Landlord shall have the right to require such subtenant to enter into a written agreement with Landlord and Tenant confirming the obligations of such subtenant under this Lease as they pertain to the subleased portion of the Leased Premises. No excess rentals (as defined in Paragraph 7.5 above) shall be due and payable in connection with such sublease or permitted occupancy. Neither any such sublease nor any such permitted occupancy shall relieve Tenant of its personal and primary obligation to pay Rent and to perform all of the other obligations to be performed by Tenant hereunder.

## ARTICLE 8

## LIMITATION ON LANDLORD'S LIABILITY AND INDEMNITY

**8.1 Limitation on Landlord's Liability and Release.** Landlord shall not be liable to Tenant for, and Tenant hereby releases and waives all claims and rights of recovery against Landlord and its partners, principals, members, managers, officers, agents, employees, lenders, attorneys, contractors, invitees, consultants, predecessors, successors and assigns (including without limitation prior and subsequent owners of the Property or portions thereof) (collectively, the "Landlord lndemnitees") from, any and all liability, whether in contract, tort or on any other basis, for any injury to or any damage sustained by Tenant or any of the Tenant Parties, any damage to property of Tenant or any of the Tenant Parties, or any loss to business, loss of profits or other financial loss of Tenant or any of the Tenant Parties resulting from or attributable to the condition of, the management of, the repair or maintenance of, the protection of, the supply of services or utilities to, the damage in or destruction of the Leased Premises, the Building, the Property or the Common Areas, including without limitation (i) the failure, interruption, rationing or other curtailment or cessation in the supply of electricity, water, gas or other utility service to the Property, the Building or the Leased Premises; (ii) the vandalism or forcible entry into the Building or the Leased Premises; (iii) the penetration of water into or onto any portion of the Leased Premises; (iv) the failure to provide security and/or adequate lighting in or about the Property, the Building or the Leased Premises, (v) the existence of any design or construction defects within the Property, the Building or the Leased Premises; (vi) the failure of any mechanical systems to function properly (such as the HVAC systems); (vii) the blockage of access to any portion of the Property, the Building or the Leased Premises, except that Tenant does not so release Landlord from such liability to the extent such damage was directly caused by Landlord's gross negligence, willful misconduct, or Landlord's failure to perform an obligation expressly undertaken by Landlord pursuant to this Lease after a reasonable period of time shall have lapsed following receipt of written notice from Tenant to so perform such obligation. In this regard, Tenant acknowledges that it is fully apprised of the provisions of Law relating to releases, and particularly to those provisions contained in Section 1542 of the California Civil Code which reads as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

_____
Tenant initials

Notwithstanding such statutory provision, and for the purpose of implementing a full and complete release and discharge, Tenant hereby (i) waives the benefit of such statutory provision and (ii) acknowledges that, subject to the exceptions specifically set forth herein, the release and discharge set forth in this paragraph is a full and complete settlement and release and discharge of all claims and is intended to include in its effect, without limitation , all claims which Tenant, as of the date hereof, does not know of or suspect to exist in its favor.

**8.2 Tenant's Indemnification of Landlord.** Tenant shall defend with competent counsel satisfactory to Landlord any claims made or legal ac tions filed or threatened against the Landlord Indemnitees with respect to the violation of any Law, or the death, bodily injury, personal injury, property damage, or interference with contractual or property rights suffered by any third party occurring w ithin the Leased Premises or resulting from the use or occupancy by Tenant or any of the Tenant Parties of the Leased Premises, the Building or the Common Areas, or resulting from the activities of Tenant or any of the Tenant Parties in or about the Leased Premises, the Building,

the Common Areas or the Property, and Tenant shall indemnify and hold the Landlord lndemnitees ha rmless from any loss liability, penalties, or expense whatsoever (including any loss attributable to vacant space which otherwise would have been leased, but for such activities) resulting therefrom, except to the extent proximately caused by the active gross negligence or willful misconduct of Landlord. This indemnity agreement shall survive the expiration or sooner termination of this Lease.

## ARTICLE 9

## INSURANCE

**9.1 Tenant's Insurance.** Tenant shall maintain insurance complying with all of the following:

(a) Tenant shall procure, pay for and keep in full force and effect, at all times during the Lease Term, the following:

(i) Commercial general liability insurance insuring Ten ant against liability for personal injury, bodily injury, death and damage to property occurring within the Leased Premises, or resulting from Tenant's use or occupancy o f the Leased Premises, the Building, the Common Areas or the Property, or resulting from Tenant's activities in or about the Leased Premises or the Property, with coverage in an amount equal to Tenant' s Required Liability Coverage (as set forth in Article 1), which insurance shall contain "blanket contractual liability" and "broad form property damage" endorsements insuring Tenant's performance of Tenant's obligations to indemnify Landlord as contained in this Lease.

(ii) Fire and property damage insurance in "special form" coverage insuring Tenant against loss from physical damage to Tenant's personal property, inventory, trade fixtures and improvements within the Leased Premises with coverage for the full actual replacement cost thereof;

(iii) Business income/extra expense insurance sufficient to pay Base Monthly Rent and Additional Rent for a period of not less than twelve (12) months;

(iv) Machinery breakdown, if applicable;

(v) Product liability insurance (including, without limitation, if food and/or beverages are distributed, sold and/or consumed within the Leased Premises, to the extent obtainable, coverage for liability arising out of the distribution, sale, use or consumption of food and/or beverages (including alcoholic beverages, if applicable) at the Leased Premises for not less than Tenant's Required Liability Coverage (as set forth in Article 1);

(vi) Workers' compensation insurance (statutory coverage) with employer's liability insurance in amounts not less than $1,000,000 sufficient to comply with all laws; and

(vii) With respect to making of any alterations or modifications or the construction of improvements or the like undertaken by Tenant, course of construction, commercial general liability, automobile liability and workers' compensation (to be carried by Tenant's contractor), in an amount and with coverage reasonably satisfactory to Landlord.

(b) Each policy of liability insurance required to be carried by Tenant pursuant to this paragraph or actually carried by Tenant with respect to the Leased Premises or the Property: (i) shall, except with respect to insurance required by subparagraphs (a)(ii) and (a)(viii) above, name Landlord, and such others as are designated by Landlord, as additional insureds; (ii) shall, with respect to insurance required by subparagraph (a)(ii) above, name Landlord, and such others as are designated by Landlord, as loss payees; (iii) shall be primary insurance providing that the insurer shall be liable for the full amount of the loss, up to and including the total amount of liability set forth in the declaration of coverage, without the right of contribution from or prior payment by any other insurance coverage of Landlord; (iv) shall be in a form satisfactory to Landlord; (v) shall be carried with companies reasonably acceptable to Landlord with Best's ratings of at least A and XI; (vi) shall provide that such policy shall not be subject to cancellation, lapse or change except after at least thirty (30) days prior written notice to Landlord, or ten (10) days for nonpayment of premium , and (vii) shall contain a so-called "severability" or "cross liability" endorsement. Each policy of property insurance maintained by Tenant with respect to the Leased Premises or the Property or any property therein (i) shall provide that such policy shall not be subject to cancellation, lapse or change except after at least thirty (30) days prior written notice to Landlord and (ii) shall contain a waiver and/or a permission to waive by the insurer of any right of subrogation against Landlord, its partners, principals, members, managers, officers, employees, agents and contractors, which might arise by reason of any payment under such policy or by reason of any act or omission of Landlord, its partners, principals, members, managers, officers, employees, agents and contractors.

(c) Prior to the time Tenant or any of its contractors enters the Leased Premises, Tenant shall deliver to Landlord, with respect to each policy of insurance required to be carried by Tenant pursuant to this Article 9, a copy of such policy (appropriately authenticated by the insurer as having been issued, premium paid) or a certificate of the insurer certifying in form satisfactory to Landlord that a policy has been issued, premium paid, providing the coverage required by this Paragraph and containing the provisions specified herein. With respect to each renewal or replacement of any such insurance, the requirements of this Paragraph must be complied with not less than thirty days prior to the expiration or cancellation of the policies being renewed or replaced. Landlord may, at any time and from time to time, inspect and/or copy any and all insurance policies required to be carried by Tenant pursuant to this Article 9. If Landlord's Lender, insurance broker, advisor or counsel reasonably determines at any time that the amount of coverage set forth in Paragraph 9. l(a) for any policy of insurance Tenant is required to carry pursuant to this Article 9 is not adequate, then Tenant shall increase the amount of coverage for such insurance to such greater amount as Landlord's Lender, insurance broker, advisor or counsel reasonably deems adequate. In the event Tenant does not maintain said insurance, Landlord may, in its sole discretion and without waiving any other remedies hereunder, procure said insurance and Tenant shall pay to Landlord as additional rent the cost of said insurance plus a ten percent (10%) administrative fee.

**9.2 Landlord's Insurance.** With respect to insurance maintained by Landlord:

(a) Landlord shall maintain, as the minimum coverage required of it by this Lease, fire and property damage insurance in so-called special form coverage insuring Landlord (and such others as Landlord may designate) against loss from physical damage to the Building with coverage of not less than one hundred percent (100%) of the full actual replacement cost thereof and against loss of rents for a period of not less than six months. Such fire and property damage insurance, at Landlord's election but without any requirements on Landlord's behalf to do so, (i) may be written in so-called "all risk" form, excluding only those perils commonly excluded from such coverage by Landlord's then property damage insurer; (ii) may provide coverage for physical damage to the improvements so insured for up to the entire full actual replacement cost thereof; (iii) may be endorsed to cover loss or damage caused by any additional perils against which Landlord may elect to insure, including earthquake and/or flood; and/or (iv) may provide coverage for loss of rents for a period of up to twelve (12) months. Landlord shall not be required to cause such insurance to cover any of Tenant's personal property, inventory, and trade fixtures, or any modifications, alterations or improvements made or

constructed by Tenant to or within the Leased Premises. Landlord shall use commercially reasonable efforts to obtain such insurance at competitive rates.

(b) Landlord shall maintain commercial general liability insurance insuring Landlord (and such others as are designated by Landlord) against liability for personal injury, bodily injury, death, and damage to property occurring in, on or about, or resulting from the use or occupancy of the Property, or any portion thereof, with combined single limit coverage of at least Two Million Dollars ($2,000,000). Landlord may carry such greater coverage as Landlord or Landlord's Lender, insurance broker, advisor or counsel may from time to time determine is reasonably necessary for the adequate protection of Landlord and the Property.

(c) Landlord may maintain any other insurance which in the opinion of its insurance broker, advisor or legal counsel is prudent to carry under the given circumstances, provided such insurance is commonly carried by owners of property similarly situated and operating under similar circumstances.

**9.3 Mutual Waiver of Subrogation.** Landlord hereby releases Tenant, and Tenant hereby releases Landlord and its respective partners, principals, members, managers, officers, agents, employees and servants, from any and all liability for loss, damage or injury to the property of the other in or about the Leased Premises or the Property which is caused by or results from a peril or event or happening which is covered by insurance actually carried and in force at the time of the loss by the party sustaining such loss; provided, however, that such waiver shall be effective only to the extent permitted by the insurance covering such loss and to the extent such insurance is not prejudiced thereby.

## ARTICLE 10

## DAMAGE TO LEASED PREMISES

**10.1 Landlord's Duty to Restore.** If the Leased Premises, the Building or the Common Area are damaged by any peril after the Effective Date, Landlord shall restore the same, as and when required by this paragraph, unless this Lease is terminated by Landlord pursuant to Paragraph 10.3 or by Tenant pursuant to Paragraph 10.4. If this Lease is not so terminated, then upon the issuance of all necessary governmental permits, Landlord shall commence and diligently prosecute to completion the restoration of the Leased Premises, the Building or the Common Area, as the case may be, to the extent then allowed by law, to substantially the same condition in which it existed as of the Lease Commencement Date. Landlord's obligation to restore shall be limited to the improvements constructed by Landlord. Landlord shall have no obligation to restore any alterations, modifications or improvements made by Tenant to the Leased Premises or any of Tenant's personal property, inventory or trade fixtures. Upon completion of the restoration by Landlord, Tenant shall forthwith replace or fully repair all of Tenant's personal property, inventory, trade fixtures and other improvements constructed by Tenant to like or similar conditions as existed at the time immediately prior to such damage or destruction.

**10.2 Insurance Proceeds.** All insurance proceeds available from the fire and property damage insurance carried by Landlord shall be paid to and become the property of Landlord. If this Lease is terminated pursuant to either Paragraph 10.3 or 10.4, all insurance proceeds available from insurance carried by Tenant which cover loss of property that is Landlord's property or would become Landlord's property on termination of this Lease shall be paid to and become the property of Landlord, and the remainder of such proceeds shall be paid to and become the property of Tenant. If this Lease is not terminated pursuant to either Paragraph 10.3 or 10.4, all insurance proceeds available from

insurance carried by Tenant which cover loss to property that is Landlord 's property shall be paid to and become the property of Landlord, and all proceeds available from such insurance which cover loss to property which would only become the property of Landlord upon the termination of this Lease shall be paid to and remain the property of Tenant. The determination of Landlord's property and Tenant's property shall be made pursuant to Paragraph 6.2.

**10.3 Landlord's Right to Terminate.** Landlord shall have the option to terminate this Lease in the event any of the following occurs, which option may be exercised only by delivery to Tenant of a written notice of election to terminate within thirty days after the date of such damage or destruction:

(a) The Building is damaged by any peril covered by valid and collectible insurance actually carried by Landlord and in force at the time of such damage or destruction to such an extent that the estimated cost to restore the Building exceeds the lesser of (i) the insurance proceeds available from insurance actually carried by Landlord, or (ii) fifty percent of the then actual replacement cost thereof;

(b) The Building is damaged by an uninsured peril, which peril Landlord was not required to insure against pursuant to the provisions of Article 9 of this Lease.

(c) The Building is damaged by any peril and, because of the Laws or Restrictions then in force, the Building (i) cannot be restored at reasonable cost or (ii) if restored, cannot be used for the same use being made thereof before such damage.

**10.4 Tenant's Right to Terminate.** If the Leased Premises, the Building or the Common Area are damaged by any peril and Landlord does not elect to terminate this Lease or is not entitled to terminate this Lease pursuant to this Article 10, then as soon as reasonably practicable, Landlord shall furnish Tenant with the written opinion of Landlord's architect or construction consultant as to when the restoration work required of Landlord with respect to the Leased Premises may be complete. Tenant shall have the option to terminate this Lease (if Tenant is not then in default) in the event any of the following occurs, which option may be exercised only by delivery to Landlord of a written notice of election to terminate within seven days after Tenant receives from Landlord the estimate of the time needed to complete such restoration:

(a) If the time estimated to substantially complete the restoration exceeds twelve (12) months from and after the date the architect's or construction consultant's written opinion is delivered; or

(b) If the damage occurred within (12) twelve months of the last day of the Lease Term and the time estimated to substantially complete the restoration exceeds one hundred fifty (150) days from and after the date such restoration is commenced.

**10.5 Tenant's Waiver.** Landlord and Tenant agree that the provisions of Paragraph 10.4 above, captioned "Tenant's Right To Terminate", are intended to supersede and replace the provisions contained in California Civil Code, Section 1932, Subdivision 2, and California Civil Code , Section 1933, and accordingly, Tenant hereby waives the provisions of such Civil Code Sections and the provisions of any successor Civil Code Sections or similar laws hereinafter enacted.

**10.6 Abatement of Rent.** In the event of damage to the Leased Premises which does not result in the termination of this Lease, then effective upon and after the expiration of the period insured by any applicable rental or business interruption insurance (the "Insured Period"), the Base Monthly Rent (and any Additional Rent) shall be temporarily abated during the period (after the Insured Period) of Landlord's and/or Tenant's (as applicable) restoration, in proportion in the degree to which Tenant's use of the Leased Premises (during the restoration period but after the Insured Period) is impaired by such damage.

## ARTICLE 11

## CONDEMNATION

**11.1 Tenant's Right to Terminate.** Except as otherwise provided in Paragraph 11.4 below regarding temporary takings, Tenant shall have the option to terminate this Lease if, as a result of any taking, (i) all of the Leased Premises is taken, or (ii) twenty-five percent (25%) or more of the Leased Premises is taken and the part of the Leased Premises that remains cannot, within a reasonable period of time, be made reasonably suitable for the continued operation of Tenant's business. Tenant must exercise such option within a reasonable period of time, to be effective on the later to occur of (i) the date that possession of that portion of the Leased Premises that is condemned is taken by the condemnor or (ii) the date Tenant vacated the Leased Premises.

**11.2 Landlord's Right to Terminate.** Except as otherwise provided in Paragraph 11.4 below regarding temporary takings, Landlord shall have the option to terminate this Lease if, as a result of any taking, (i) all of the Leased Premises is taken, (ii) twenty-five percent (25%) or more of the Leased Premises is taken and the part of the Leased Premises that remains cannot, within a reasonable period of time, be made reasonably suitable for the continued operation of Tenant's business, or (iii) because of the Laws or Restrictions then in force, the Leased Premises may not be used for the same use being made before such taking, whether or not restored as required by Paragraph 11.3 below. Any such option to terminate by Landlord must be exercised within a reasonable period of time, to be effective as of the date possession is taken by the condemnor.

**11.3 Restoration.** If any part of the Leased Premises or the Building is taken and this Lease is not terminated, then Landlord shall, to the extent not prohibited by Laws or Restrictions then in force, repair any damage occasioned thereby to the remainder thereof to a condition reasonably suitable for Tenant's continued operations and otherwise, to the extent practicable, in the manner and to the extent provided in Paragraph 10.1.

**11.4 Temporary Taking.** If a material portion of the Leased Premises is temporarily taken for a period of one (1) year or less and such period does not extend beyond the Lease Expiration Date, this Lease shall remain in effect. If any material portion of the Leased Premises is temporarily taken for a period which exceeds one (1) year or which extends beyond the Lease Expiration Date, then the rights of Landlord and Tenant shall be determined in accordance with Paragraphs 11.1 and 11.2 above.

**11.5 Division of Condemnation Award.** Any award made for any taking of the Property, the Building, or the Leased Premises, or any portion thereof, shall belong to and be paid to Landlord, and Tenant hereby assigns to Landlord all of its right, title and interest in any such award; provided, however, that Tenant shall be entitled to receive any portion of the award that is made specifically (i) for the taking of personal property, inventory or trade fixtures belonging to Tenant, (ii) for the interruption of Tenant's business or its moving costs, or (iii) for the value of any leasehold improvements installed and paid for by Tenant. The rights of Landlord and Tenant regarding any condemnation shall be determined as provided in this Article 11, and each party hereby waives the provisions of Section 1265.130 of the California Code of Civil Procedure, and the provisions of any similar law hereinafter enacted, allowing either party to petition the Supreme Court to terminate this Lease and/or otherwise allocate condemnation awards between Landlord and Tenant in the event of a taking of the Leased Premises.

**11.6 Abatement of Rent.** In the event of a taking of the Leased Premises which does not result in a termination of this Lease (other than a temporary taking), then, as of the date possession is taken by the condemning authority, the Base Monthly Rent shall be reduced in the same proportion that the area of that part of the Leased Premises so taken (less any addition to the area of the Leased Premises by reason of any reconstruction) bears to the area of the Leased Premises immediately prior to such taking.

**11.7 Taking Defined.** The term "taking" or "taken" as used in this Article 11 shall mean any transfer or conveyance of all or any portion of the Property to a public or quasi-public agency or other entity having the power of eminent domain pursuant to or as a result of the exercise of such power by such an agency, including any inverse condemnation and/or any sale or transfer by Landlord of all or any portion of the Property to such an agency under threat of condemnation or the exercise of such power.

## ARTICLE 12

## DEFAULT AND REMEDIES

**12.1 Events of Tenant's Default.** Tenant shall be in default of its obligations under this Lease if any of the following events occur:

(a) Tenant shall have failed to pay Base Monthly Rent or any Additional Rent when due; or

(b) Tenant shall have done or permitted to be done any act, use or thing in its use, occupancy or possession of the Leased Premises or the Building or the Common Areas which is prohibited by the terms of this Lease; or

(c) Tenant shall have failed to perform any term, covenant or condition of this Lease (except those requiring the payment of Base Monthly Rent or Additional Rent, which failures shall be governed by subparagraph (a) above) within the shorter of (i) any specific time period expressly provided under this Lease for the performance of such term, covenant or condition, or (ii) thirty (30) days after written notice from Landlord to Tenant specifying the nature of such failure and requesting Tenant to perform same; or

(d) (i) Tenant shall have sublet the Leased Premises or assigned or encumbered its interest in this Lease in violation of the provisions contained in Article 7, or (ii) any guarantor shall have assigned or delegated its rights or obligations under the applicable guaranty without first obtaining Landlord's written consent if and as required by the terms of the applicable guaranty, in either case (i) or (ii), whether voluntarily or by operation of law; or

(e) Tenant shall have abandoned the Leased Premises and otherwise failed to keep the same in a safe and secure condition, and to maintain the Leased Premises in accordance with this Lease; or

(f) Tenant or any guarantor of this Lease shall have permitted or suffered the sequestration or attachment of, or execution on, or the appointment of a custodian or receiver with respect to, all or any substantial part of the property or assets of Tenant (or such guarantor) or any property or asset essential to the conduct of Tenant's (or such guarantor's) business, and Tenant (or such guarantor) shall have failed to obtain a return or release of the same within thirty (30) days thereafter, or prior to sale pursuant to such sequestration, attachment or levy, whichever is earlier; or

(g) Tenant or any guarantor of this Lease shall have made a general assignment of all or a substantial part of its assets for the benefit of its creditors; or

(h) Tenant or any guarantor of this Lease shall have allowed (or sought) to have entered against it a decree or order which: (i) grants or constitutes an order for relief, appointment of a trustee, or condemnation or a reorganization plan under the bankruptcy laws of the United States; (ii) approves as properly filed a petition seeking liquidation or reorganization under said bankruptcy laws or any other debtor's relief law or similar statute of the United States or any state thereof; or (iii) otherwise directs the winding up or liquidation of Tenant; provided, however, if any decree or order was entered without Tenant 's consent or over Tenant's objection, Landlord may not terminate this Lease pursuant to this Subparagraph if such decree or order is rescinded or reversed within thirty days after its original entry; or

(i) Tenant or any guarantor of this Lease shall have availed itself of the protection of any debtor's relief law, moratorium law or other similar law which does not require the prior entry of a decree or order; or

(j) Tenant (or its affiliate) shall be in default of its obligations under any lease between Landlord (or its affiliate) and Tenant (or its affiliate).

**12.2 Landlord's Remedies.** In the event of any default by Tenant, and without limiting Landlord's right to indemnification as provided in Article 8.2, Landlord shall have the following remedies, in addition to all other rights and remedies provided by law or otherwise provided in this Lease, to which Landlord may resort cumulatively, or in the alternative:

(a) Landlord may, at Landlord's election, keep this Lease in effect and enforce, by an action at law or in equity, all of its rights and remedies under this Lease including, without limitation, (i) the right to recover the rent and other sums as they become due by appropriate legal action, (ii) the right to make payments required by Tenant, or perform Tenant's obligations and be reimbursed by Tenant for the cost thereof with interest at the then maximum rate of interest not prohibited by law from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant, and (iii) the remedies of injunctive relief and specific performance to prevent Tenant from violating the terms of this Lease and/or to compel Tenant to perform its obligations under this Lease, as the case may be.

(b) Landlord may, at Landlord's election, terminate this Lease by giving Tenant written notice of termination, in which event this Lease shall terminate on the date set forth for termination in such notice, in which event Tenant shall immediately surrender the Leased Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Leased Premises and expel or remove Tenant and any other person who may be occupying the Leased Premises or any part thereof, without being liable for prosecution or any claim for damages therefor. Any termination under this subparagraph shall not relieve Tenant from its obligation to pay to Landlord all Base Monthly Rent and Additional Rent then or thereafter due, or any other sums due or thereafter accruing to Landlord, or from any claim against Tenant for damages previously accrued or then or thereafter accruing. In no event shall any one or more of the following actions by Landlord, in the absence of a written election by Landlord to terminate this Lease constitute a termination of this Lease:

(i) Appointment of a receiver or keeper in order to protect Landlord's interest hereunder;

(ii) Consent to any subletting of the Leased Premises or assignment of this Lease by Tenant, whether pursuant to the provisions hereof or otherwise; or

(iii) Any action taken by Landlord or its partners, principals, members,

managers, officers, agents, employees, or servants, which is intended to mitigate the adverse effects of any breach of this Lease by Tenant, including, without limitation, any action taken to maintain and preserve the Leased Premises on any action taken to relet the Leased Premises or any portion thereof for the account at Tenant and in the name of Tenant.

(c) In the event Tenant breaches this Lease and abandons the Leased Premises, Landlord may terminate this Lease, but this Lease shall not terminate unless Landlord gives Tenant written notice of termination. If Landlord does not terminate this Lease by giving written notice of termination, Landlord may enforce all its rights and remedies under this Lease, including the right and remedies provided by California Civil Code Section 1951.4 ("lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations"), as in effect on the Effective Date.

(d) In the event Landlord terminates this Lease due to Tenant's breach, Landlord shall be entitled, at Landlord's election, to the rights and remedies provided in California Civil Code Section 1951.2, as in effect on the Effective Date. For purposes of computing damages pursuant to Section 1951.2, an interest rate equal to the maximum rate of interest then not prohibited by law shall be used where permitted. Such damages shall include, without limitation:

(i) The worth at the time of the award of the unpaid rent which had been earned at the time of termination; plus

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

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided, 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; plus

(iv) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom, including without limitation, the following: (i) expenses for cleaning, repairing or restoring the Leased Premises, (ii) expenses for altering, remodeling or otherwise improving the Leased Premises for the purpose of reletting, including removal of existing leasehold improvements and/or installation of additional leasehold improvements (regardless of how the same is funded, including reduction of rent, a direct payment or allowance to a new tenant, or otherwise), (iii) broker's fees allocable to the remainder of the term of this Lease, advertising costs and other expenses of reletting the Leased Premises; (iv) costs of carrying and maintaining the Leased Premises, such as taxes, insurance premiums, utility charges and security precautions (although the foregoing shall not in any way modify Paragraph 5.3 above), (v) expenses incurred in removing, disposing of and/or storing any of Tenant's personal property, inventory or trade fixtures remaining therein; (vi) reasonable attorney's fees, expert witness fees, court costs and other reasonable expenses incurred by Landlord (but not limited to taxable costs) in retaking possession of the Leased Premises, establishing damages hereunder, and releasing the Leased Premises; and (vii) any other expenses, costs or damages otherwise incurred or suffered as a result of Tenant's default; plus

(v) The unamortized amount of (i) abated or free rent, and (ii) any tenant improvement or similar allowance paid or credited by Landlord to Tenant pursuant to this Lease or the Work Letter.

(e) In addition, Tenant acknowledges that an event of default under this Lease may cause Landlord to incur damages under its mortgage and related financing documents, including, but not limited to, the payment of default interest, legal fees, late charges, collection costs, and sums necessary to maintain Lender's yield on the loaned amounts. Accordingly, Tenant agrees that Landlord has the right to add such loan-related damages to the damages for which Tenant is responsible hereunder as a result of an event of default.

(f) Pursuant to California Code of Civil Procedure Section 1161.1, Landlord may accept a partial payment of Rent after serving a notice pursuant to California Code of Civil Procedure Section 1161, and may without further notice to the Tenant, commence and pursue an action to recover the difference between the amount demanded in that notice and the payment actually received. This acceptance of such a partial payment of Rent does not constitute a waiver of any rights, including any right the Landlord may have to recover possession of the Leased Premises. Further, Tenant agrees that any notice given by Landlord pursuant to Paragraph 12.1 of the Lease shall satisfy the requirements for notice under California Code of Civil Procedure Section 1161, and Landlord shall not be required to give any additional notice in order to be entitled to commence an unlawful detainer proceeding.

**12.3 Landlord's Default and Tenant's Remedies.** In the event Landlord fails to perform its obligations under this Lease, Landlord shall nevertheless not be in default under the terms of this Lease until such time as Tenant shall have first given Landlord written notice specifying the nature of such failure to perform its obligations, and then only after Landlord shall have had thirty (30) days following its receipt of such notice within which to perform such obligations; provided that, if longer than thirty (30) days is reasonably required in order to perform such obligations, Landlord shall have such longer period, not to exceed an additional thirty (30) days. In the event of Landlord's default as above set forth, then, and only then, Tenant may then proceed in equity or at law to compel Landlord to perform its obligations and/or to recover damages proximately caused by such failure to perform (except as and to the extent Tenant has waived its right to damages as provided in this Lease).

**12.4 Limitation of Tenant's Recourse.** Tenant's sole recourse against Landlord shall be to Landlord's interest in the Building and the Common Areas. If Landlord is a corporation, trust, partnership, joint venture, limited liability company, unincorporated association, or other form of business entity, Tenant agrees that (i) the obligations of Landlord under this Lease shall not constitute personal obligations of the officers, directors, trustees, partners, joint venturers, members, managers, owners, stockholders, or other principals of such business entity, and (ii) Tenant shall have recourse only to the interest of such corporation, trust, partnership, joint venture, limited liability company, unincorporated association, or other form of business entity in the Building and the Common Areas for the satisfaction of such obligations and not against the assets of such officers, directors, trustees, partners, joint venturers, members, managers, owners, stockholders or principals. Additionally, if Landlord is a partnership or limited liability company, then Tenant covenants and agrees:

(a) No partner, manager, or member of Landlord shall be sued or named as a party in any suit or action brought by Tenant with respect to any alleged breach of this Lease (except to the extent necessary to secure jurisdiction over the partnership or limited liability company and then only for that sole purpose);

(b) No service of process shall be made against any partner, manager, or member of Landlord except for the sole purpose of securing jurisdiction over the partnership; and

(c) No writ of execution will ever be levied against the assets of any partner, manager, or member of Landlord other than to the extent of his or her interest in the assets of the partnership or limited liability company constituting Landlord.

Tenant further agrees that each of the foregoing covenants and agreements shall be enforceable by Landlord and by any partner, manager, or member of Landlord and shall be applicable to any actual or alleged misrepresentation or nondisclosure made regarding this Lease or the Leased Premises or any actual or alleged failure, default or breach of any covenant or agreement either expressly or implicitly contained in this Lease or imposed by statute or at common law. Landlord shall not be liable in any event for incidental or consequential damages to Tenant by reason of any default by Landlord hereunder, whether or not Landlord is notified that such damages may occur.

**12.5 Tenant's Waiver.** Landlord and Tenant agree that the provisions of Paragraph 12.3 above are intended to supersede and replace the provisions of California Civil Code Sections 1932(1), 1941 and 1942, and accordingly, Tenant hereby waives the provisions of California Civil Code Sections 1932(1), 1941 and 1942 and/or any similar or successor law regarding Tenant's right to terminate this Lease or to make repairs and deduct the expenses of such repairs from the rent due under this Lease.

## ARTICLE 13
## GENERAL PROVISIONS

**13.1 Taxes on Tenant's Property.** Tenant shall pay before delinquency any and all taxes, assessments, license fees, use fees, permit fees and public charges of whatever nature or description levied, assessed or imposed against Tenant or Landlord by a governmental agency arising out of, caused by reason of or based upon Tenant's estate in this Lease, Tenant's ownership of property , improvements made by Tenant to the Leased Premises or the Common Areas, improvements made by Landlord for Tenant's use within the Leased Premises or the Common Areas, Tenant's use (or estimated use) of public facilities or services or Tenant's consumption (or estimated consumption) of public utilities, energy, water or other resources (collectively, " Tenant's Interest "). Upon demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments. If any such taxes, assessments, fees or public charges are levied against Landlord, Landlord's property, the Building or the Property, or if the assessed value of the Building or the Property is increased by the inclusion therein of a value placed upon Tenant's Interest, regardless of the validity thereof, Landlord shall have the right to require Tenant to pay such taxes, and if not paid and satisfactory evidence of payment delivered to Landlord at least ten (10) days prior to delinquency, then Landlord shall have the right to pay such taxes on Tenant's behalf and to invoice Tenant for the same, in either case whether before or after the expiration or earlier termination of the Lease Term. Tenant shall, within the earlier to occur of (a) thirty (30) days of the date it receives an invoice from Landlord setting forth the amount of such taxes, assessments, fees, or public charge so levied, or (b) the due date of such invoice, pay to Landlord, as Additional Rent, the amount set forth in such invoice. Failure by Tenant to pay the amount so invoiced within such time period shall be conclusively deemed a default by Tenant under this Lease. Tenant shall have the right to bring suit in any court of competent jurisdiction to recover from the taxing authority the amount of any such taxes, assessments, fees or public charges so paid.

**13.2 Holding Over.** This Lease shall terminate without further notice on the Lease Expiration Date (as set forth in Article 1). Any holding over by Tenant after expiration of the Lease Term shall neither constitute a renewal nor extension of this Lease nor give Tenant any rights in or to the Leased Premises except as expressly provided in this Paragraph. Any such holding over to which Landlord has consented shall be construed to be a tenancy from month to month, on the same terms and conditions herein specified insofar as applicable, except that the Base Monthly Rent shall be increased to an amount equal to one hundred twenty-five percent (125%) of the Base Monthly Rent payable during the last full month immediately preceding such holding over. Without limiting the foregoing, in the event of a holding over to which Landlord has consented, any rights of Landlord or obligations of Tenant set forth in this Lease and purporting to apply during the Lease Term, shall nonetheless also be deemed to apply during any such hold over period. Tenant acknowledges that if Tenant holds over without Landlord's consent, such holding over may compromise or otherwise affect Landlord's ability to enter into new leases with prospective tenants regarding the Leased Premises. Therefore, if Tenant fails to surrender the Leased Premises upon the expiration or termination of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from and against all claims resulting from such failure, including, without limiting the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender, and any losses suffered by Landlord, including lost profits, resulting from such failure to surrender.

**13.3 Subordination to Mortgages.** This Lease is subject to and subordinate to all ground leases, mortgages and deeds of trust which affect the Building or the Property and which are of public record as of the Effective Date, and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding the foregoing, if requested by Landlord, Tenant agrees, within ten (10) days after Landlord's written request therefor, to execute, acknowledge and deliver to Landlord any and all documents or instruments requested by Landlord or by the existing lessor or lender to assure the subordination of this Lease to such ground lease, mortgage or deed of trust, including but not limited to a subordination and nondisturbance agreement in the form attached to this Lease as **Exhibit F** or such other form as any such lessor or lender may require. If the proposed form of subordination and nondisturbance agreement is on a different form than the form attached hereto as **Exhibit F,** then Tenant shall not object to any concept included in such other form if a similar concept was included in **Exhibit F.** However, if the lessor under any such ground lease or any lender holding any such mortgage or deed of trust shall advise Landlord that it desires or requires this Lease to be made prior and superior thereto, then, upon written request of Landlord to Tenant, Tenant shall promptly execute, acknowledge and deliver any and all customary or reasonable documents or instruments which Landlord and such lessor or lender deems necessary or desirable to make this Lease prior thereto. Tenant hereby consents to Landlord's ground leasing the land underlying the Building or the Property and/or encumbering the Building or the Property as security for future loans on such terms as Landlord shall desire, all of which future ground leases, mortgages or deeds of trust shall be subject to and subordinate to this Lease. However, if any lessor under any such future ground lease or any lender holding such future mortgage or deed of trust shall desire or require that this Lease be made subject to and subordinate to such future ground lease, mortgage or deed of trust, then Tenant agrees, within ten (10) days after Landlord's written request therefor, to execute, acknowledge and deliver to Landlord any and all documents or instruments requested by Landlord or by such lessor or lender as may be necessary or proper to assure the subordination of this Lease to such future ground lease, mortgage or deed of trust, but only if such lessor or lender agrees not to disturb Tenant's quiet possession of the Leased Premises so long as Tenant is not in default under this Lease. Tenant's failure to execute and deliver such documents or instruments within ten (10) days after Landlord's request therefor shall be a material default by Tenant under this Lease, and no further notice shall be required under Paragraph 12.l(c) or any other provision of this Lease, and Landlord shall have all of the rights and remedies available to Landlord as Landlord would otherwise have in the case of any other material default by Tenant, it being agreed and understood by Tenant that Tenant's failure to so deliver such documents or instruments in a timely manner could result in Landlord being unable to perform committed obligations to other third parties which were made by Landlord in reliance upon this covenant of Tenant. If Landlord assigns the Lease as security for a loan, Tenant agrees to execute such documents as are reasonably requested by the lender and to provide reasonable provisions in the Lease protecting such lender's security interest which are customarily required by institutional lenders making loans secured by a deed of trust, which may include, but shall not be limited to, those provisions set forth in **Exhibit F** attached hereto.

**13.4 Tenant's Attornment Upon Foreclosure.** Tenant shall, upon request, att orn (i) to any purchaser of the Building or the Property at any foreclosure sale or private sale conducted pursuant to any security instruments encumbering the Building or the Property, (ii) to any grantee or transferee designated in any deed given in lieu of foreclosure of any security interest encumbering the Building or the Property, or (iii) to the lessor under an underlying ground lease of the land underlying the Building or the Property, should such ground lease be terminated; provided that such purchaser, grantee or lessor recognizes Tenant's rights under this Lease.

**13.5 Mortgagee Protection.** In the event of any default on the part of Landlord, Tenant will give notice by registered mail to any Lender or lessor under any underlying ground lease who shall have requested, in writing, to Tenant that it be provided with such notice, and Tenant shall offer such Lender or lessor a reasonable opportunity to cure the default, including time to obtain possession of the Leased Premises by power of sale or judicial foreclosure or other appropriate legal proceedings if reasonably necessary to effect a cure.

**13.6 Estoppel Certificate.** Tenant will, within ten (10) days following any request by Landlord, promptly execute and deliver to Landlord an estoppel certificate substantially in form attached as **Exhibit G,** (i) certifying that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect, (ii) stating the date to which the rent and other charges are paid in advance, if any, (iii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed, and (iv) certifying such other information about this Lease as may be reasonably requested by Landlord, its Lender or prospective lenders, investors or purchasers of the Building or the Property. Tenant's failure to execute and deliver such estoppel certificate within ten (10) days after Landlord's request therefor shall be a material default by Tenant under this Lease, it being agreed and understood by Tenant that Tenant's failure to so deliver such estoppel certificate in a timely manner could result in Landlord being unable to perform committed obligations to other third parties which were made by Landlord in reliance upon this covenant of Tenant. Landlord and Tenant intend that any statement delivered pursuant to this paragraph may be relied upon by any Lender or purchaser or prospective Lender or purchaser of the Building, the Property, or any interest in them.

**13.7 Tenant's Financial Information.** Tenant shall, within ten (10) days after Landlord's request therefor, deliver to Landlord a copy of Tenant's (and any guarantor's) current audited financial statements (or, if current audited financial statements are not then readily available, current unaudited financial statements certified by the chief financial officer of Tenant as being true, correct and complete in all material respects) (including a balance sheet, income statement and statement of cash flow), a list of all of Tenant's creditors with current contact information, and any such other information reasonably requested by Landlord regarding Tenant's financial condition. Landlord shall be entitled to disclose such financial statements or other information to its Lender, to any present or prospective principal of or investor in Landlord, or to any prospective Lender or purchaser of the Building, the Property, or any portion thereof or interest therein. Any such financial statement or other information which is marked "confidential" or "company secrets" (or is otherwise similarly marked by Tenant) shall be confidential and shall not be disclosed by Landlord to any third party except as specifically provided in this paragraph, unless the same becomes a part of the public domain without the fault of Landlord.

**13.8 Transfer by Landlord.** Landlord and its successors in interest shall have the right to transfer their interest in the Building, the Property, or any portion thereof at any time and to any person or entity. In the event of any such transfer, the Landlord originally named herein (and in the case of any subsequent transfer, the transferor), from the date of such transfer, shall be automatically relieved, without any further act by any person or entity, of all liability for (i) the performance of the obligations of the Landlord hereunder which may accrue after the date of such transfer, and (ii) repayment of any unapplied portion of the Security Deposit (upon transferring or crediting the same to the transferee), and (iii) the performance of the obligations of the Landlord hereunder which have accrued before the date of transfer if its transferee agrees to assume and perform all such prior obligations of the Landlord hereunder. Tenant shall attorn to any such transferee. After the date of any such transfer, the term "Landlord" as used herein shall mean the transferee of such interest in the Building or the Property.

**13.9 Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorist acts, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease (collectively, a "Force Majeure"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

**13.10 Notices.** Any notice required or permitted to be given under this Lease other than statutory notices shall be in writing and (i) personally delivered, (ii) sent by United States mail, registered or certified mail, postage prepaid, return receipt requested, (iii) sent by Federal Express or similar nationally recognized overnight courier service, or (iv) transmitted by PDF email or facsimile with a hard copy sent within one (1) business day by any of the foregoing means, and in all cases addressed as follows, and such notice shall be deemed to have been given upon the date of actual receipt or delivery (or refusal to accept delivery) at the address specified below (or such other addresses as may be specified by notice in the foregoing manner) as indicated on the return receipt or air bill:

| | |
|---|---|
| If to Landlord: | Foothill Corporate I MT, LLC<br>c/o Kingsbarn Real Estate Capital<br>11622 El Camino Real 1st Floor<br>Del Mar, CA 92130<br>Attention: General Counsel<br>Email: rjones@kingsbarn.com<br>Facsimile: (702) 454-9001 |
| With a copy to: | Kingsbarn Realty Capital, LLC<br>1645 Village Center Circle, Suite 200<br>Las Vegas, NV 89134<br>Attention: General Counsel<br>Email: rjones@kingsbarn.com<br>Facsimile: (702) 454-9001 |
| If to Tenant: | Biolase, Inc.<br><br>Attention: John Beaver, EVP & CFO<br>Email: jbeaver@biolase.com<br>Facsimile: (___) |

With a copy to:

Attention:
Facsimile: (___)

Any notice given in accordance with the foregoing shall be deemed received upon actual receipt or refusal to accept delivery. Any notice required by statute and not waived in this Lease shall be given and deemed received in accordance with the applicable statute or as otherwise provided by law.

**13.11 Attorneys' Fees and Costs.** In the event any party shall bring any action, arbitration, or other proceeding alleging a breach of any provision of this Lease, or a right to recover rent, to terminate this Lease, or to enforce, protect, interpret, determine, or establish any provision of this Lease or the rights or duties hereunder of either party, the prevailing party shall be entitled to recover from the non prevailing party as a part of such action or proceeding, or in a separate action for that purpose brought within one year from the determination of such proceeding, reasonable attorneys' fees, expert witness fees, court costs and reasonable disbursements, made or incurred by the prevailing party.

**13.12 Definitions.** Any term that is given a special meaning by any provision in this Lease shall, unless otherwise specifically stated, have such meaning wherever used in this Lease or in any Addenda or amendment hereto. In addition to the terms defined in Article 1, the following terms shall have the following meanings:

(a) **Real Property Taxes.** The term "Real Property Tax" or "Real Property Taxes" shall each mean the following (to the extent applicable to any portion of the Lease Term, regardless of when the same are imposed, assessed, levied, or otherwi se charged): any and all real and personal property taxes, assessments, fees, license fees, license taxes, commercial rental taxes, levies, charges or other impositions levied or otherwise imposed against the Property or any portion thereof or against any legal or equitable interest of Landlord therein by any governmental or quasi-governmental authority (including, without limitation, any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof), including, without limitation, taxes, assessments, surcharges, or service or other fees of a nature not presently in effect which are at any time hereafter levied on the Property or any portion thereof as a result of the use, ownership or operation of the Property or for any other reason, whether in lieu of or in addition to, any current real estate taxes and assessments. Real Property Taxes shall also include, without limitation, taxes, assessments, reassessments , special assessments, license taxes , business license fees, business license taxes, commercial rental taxes, levies, charges, penalties or taxes, imposed by any authority against the Leased Premises, the Building, the Property or any portion thereof or any legal or equitable interest of Landlord therein. Special assessments are deemed payable in such number of installments permitted by law, whether or not actually so paid, and include any applicable interest on such installments. Real Property Taxes shall also include, without limitation: (1) any assessment, tax, fee, levy or charge in addition to, or in substitution , partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of Real Property Taxes, it being acknowledged by Tenant and Landlord that Proposition 13 (codified as California Constitution Section XIII) was adopted by the voters of the State of California in the June 1978 election ("Proposition 13") and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, conservation, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. In further recognition of the decrease in the level and quality of governmental services and amenities as a result of Proposition 13 (or as a result of any restriction on real property taxes whether by law or by choice of the applicable legislative or assessing body), Real Property Taxes also include any

government or private assessments (or the Property's contribution toward a government or private cost-sharing agreement) for the purpose of augmenting or improving the quality of services and amenities normally or formerly provided by governmental agencies. Landlord and Tenant intend that all new and increased assessments, reassessments, taxes, fees, levies and charges, and all similar assessments, taxes, fees, levies and charges, be included within the definition of "Real Property Taxes"; (2) any assessment, tax, fee, levy or charge allocated to, or measured by, the area of the Leased Premises or the rent payable under this Lease , including, without limitation, any gross income tax with respect to the receipt of that rent, or on or relating to the possession, leasing, operating, management, maintenance, alteration, repair, use, or occupancy by Tenant of the Leased Premises or any portion of the Leased Premises; (3) all charges, levies or fees imposed by any governmental authority against Landlord by reason of or based upon the use of or number of parking spaces within the Property, the amount of public services or public utilities used or consumed *(e.g.* water, gas, electricity, sewage or waste water disposal) at the Property, the number of persons employed by tenants of the Property, the size (whether measured in area, volume, number of tenants or whatever) or the value of the Property, or the type of use or uses conducted within the Property; (4) any and all assessments, taxes , fees, levies and charges on the transaction contemplated under this Lease or any document to which Tenant is a party, creating or transferring an interest or an estate in the Leased Premises; (5) all possessor taxes charged or levied in place of Real Property Taxes; and (6) any expenses incurred by Landlord in attempting to protest, reduce or minimize Real Property Taxes, including, without limitation, expenses for tax consultants. If, at any time during the Lease Term, the taxation or assessment of the Property prevailing as of the Effective Date shall be altered so that in lieu of or in addition to any the Real Property Tax described above there shall be levied, awarded or imposed (whether by reason of a change in the method of taxation or assessment, creation of a new tax or charge, or any other cause) an alternate, substitute, or additional use or charge (i) on the value, size, use or occupancy of the Property or Landlord's interest therein or (ii) on or measured by the gross receipts, income or rentals from the Property, or on Landlord's business of owning, leasing or managing the Property or (iii) computed in any manner with respect to the operation of the Property, then any such tax or charge, however designated, shall be included within the meaning of the term "Real Property Taxes" for purposes of this Lease. Real Property Taxes may, at Landlord's election, be computed on an accrual basis based on the year in which they are levied even though they may not be paid until the following year. If a change in Real Property Taxes is obtained for any year of the Lease Term during which Tenant paid Tax Increase, then Landlord may retroactively adjust Real Property Taxes for that year and provide Tenant with a credit for, or bill Tenant for, as the case may be, the appropriate adjustment. Tenant shall pay Landlord the amounts owing from Tenant pursuant to such retroactive adjustment within 30 days after Tenant's receipt of a statement thereof from Landlord. If a change is obtained reducing Real Property Taxes for the Base Year for Taxes, Landlord may restate Real Property Taxes for the Base Year for Taxes and adjust the Tax Increase for all subsequent years. Tenant shall pay Landlord the amount of any resulting increase in the Tax Increase within thirty (30) days after Tenant's receipt of a statement thereof from Landlord. Notwithstanding the foregoing, the terms "Real Property Taxes" shall not include estate, inheritance, transfer, gift or franchise taxes of Landlord or the federal or state income tax imposed on Landlord's income from all sources. In addition, it is the intention of the parties that Real Property Taxes shall include taxes payable due to increases in tax rates and increases in the valuation of the Leased Premises as well as (I) increases in Real Property Taxes that result from changes in ownership of the Property, and, for the purposes of this Paragraph 13.12(a), "change in ownership" has the same definition as in California Revenue and Taxation Code Sections 60-62, or any amendments or successors to those sections, and (II) increases in Real Property Taxes that result from the abolition, overruling, amendment, or modification of California Revenue and Taxation Code Sections 60-69.5, or any amendments or successors to those sections.

Tenant acknowledges that as of the Effective Date, the Real Property Taxes under this Lease include special taxes or other amounts (collectively, the " Special Taxes") payable on account of the fact that the Property lies within the boundaries of (a) Mello Roos Community Facilities District 87-1 recorded in the Official

Records of Orange County, California (the "Official Records") on June 11, 1987 as Instrument No. 87-330256, on April 1, 1994 as Instrument No. 94-0229882, and on August 13, 1990 as Instrument No. 90-426719, and (b) Mello Roos Community Facilities District 88-1 recorded in the Official Records on August 2, 1990 as Instrument No. 90-410829. The Special Taxes are paid with general taxes and cannot be prepaid. From time to time, portions of the Special Taxes will be fully paid. At each point in time that a portion of the Special Taxes is fully paid, the Real Property Taxes for the Base Year for Taxes shall exclude any amounts paid during the Base Year for Taxes with respect to the applicable portion of the Special Taxes that have been fully paid, and thereafter the Tax Increase shall be calculated based on such adjusted amount of Real Property Taxes for the Base Year for Taxes for all purposes.

(b) **Landlord's Insurance Costs.** The term "Landlord's Insurance Costs" shall mean the following (to the extent applicable to any portion of the Lease Term, regardless of when the same are incurred): the costs paid by Landlord or the Building's management company to carry and maintain the policies of fire and property damage insurance for the Building and the Property and general liability and any other insurance required or permitted to be carried by Landlord pursuant to Article 9, which insurance may include, without limitation, casualty, earthquake, liability, rental loss, sprinkler and water damage insurance, together with any deductible amounts paid by Landlord upon the occurrence of any insured casualty or loss.

(c) **Operating Expenses.** The term "Operating Expenses" shall mean any and all costs, charges or expenses incurred in connection with the ownership, management, administration, repair, operation and/or maintenance of the Property. Operating Expenses include, but are not limited to, the following: (i) wages, salaries and fees of all employees and contractors, including, without limitation, any on-site management agent and staff, whether employed or engaged by Landlord or the Building's management company, in connection with the operation, maintenance, repair, administration, security, cleaning or other work or services for the Building, the Property, or any portion thereof, and all costs related to or associated with such employees and contractors or the carrying out of their duties, including, without limitation, costs and expenses of uniforms, uniform dry cleaning, taxes, auto allowances, insurance and benefits (including, without limitation, contributions to pension and/or profit sharing plans, vacation and other paid absences); (ii) costs and expenses of all tools, supplies, equipment and materials, including, without limitation, stationery, maintenance tools and supplies, janitorial tools and supplies and lighting tools and supplies, used in the operation, cleaning, management, repair or maintenance of the Property; (iii) costs, expenses and charges of all utilities, including, without limitation, telephone (including all costs and expenses of telephone service for the alarm system, if any), water, sewer, power, gas, lighting, and HVAC for the Property, except to the extent such utilities are charged directly to and paid in full directly by a tenant of the Building (but such expenses may be included in Operating Expenses for purposes of grossing up Operating Expenses); (iv) Landlord's Insurance Costs; (v) costs, expenses and charges of all repairs to the Building or other portions of the Property, including, without limitation, interior, exterior, structural and non-structural repairs, and regardless of whether foreseen or unforeseen, repairing and resurfacing the exterior surfaces of the Building (including roof), repairing and resurfacing paved areas, repairing structural parts of the Building, and repairing and replacing, when necessary, electrical, plumbing, heating, ventilating and air conditioning systems serving the Building, and common elements such as elevators, stair wells, and lobbies and Common Areas; (vi) costs, expenses and charges of all maintenance of the Building or other portions of the Property, including, without limitation, painting, landscaping, grounds keeping and the patching, painting, resurfacing and restriping of driveways, parking lots and/or other types of parking facilities; (vii) a market rate management fee payable to Landlord or the company or companies managing the Building including, without limitation, separate fees for security, energy management services and the parking facilities, if any; (viii) costs, expenses and charges of all maintenance, operation and service agreements for the Building or relating to any other portions of the Property, and any equipment related thereto, including, without limitation, costs, expenses and charges under or for service and/or maintenance agreements for janitorial service, trash removal, window cleaning and the sprinkler and security systems in the Building, if any, (ix) accounting and legal fees incurred in connection with the operation, management, repair and/or maintenance of the Property or related thereto; (x) costs, expenses and charges of additional services not provided to the Property at the Lease Commencement Date but thereafter provided; (xi) all computer rentals for energy management or security monitoring systems, if any; (xii) rental and/or purchase costs of parts, supplies, tools, equipment and other personal property, including, without limitation, the replacement cost thereof, and, if Landlord elects, depreciation of personal property on a straight line basis; (xiii) payments, charges and fees imposed under any easement, license, operating agreement, development agreement, declaration, restrictive covenant, reciprocal easement agreement, community association agreement, or other instrument or covenant relating to the sharing of costs with respect to the Property, or any portion thereof, whether recorded against or otherwise affecting the Property, or any portion thereof, whether existing as of the Effective Date or hereafter created; (xiv) permit, license and inspection costs; (xv) costs of employee shuttles and other transportation management efforts; and (xvi) the cost of capital repairs, like-kind replacements, or the cost of capital improvements made to the Building, the Property or any portion thereof that (x) are intended as a labor-saving device or to effect other economies in the maintenance or operation of all or a part of the Property or to reduce Real Property Taxes, or (y) are required under any governmental law, rule, order or regulation or (z) needed periodically to maintain the appearance or performance of the Property or its quality. All such capital expenditures may be amortized (including interest on the unamortized cost at the rate which is the greater of ten percent (10%) per annum or Wells Prime Plus Two over their useful life, as determined by Landlord; provided that if applicable Law imposes a limitation on the interest

imposed by Landlord on the unamortized cost of such capital expenditures, then the applicable interest shall be deemed to be the maximum rate permitted by applicable Law. If Landlord incurs Operating Expenses for the Property together with one or more other buildings or properties of Landlord, whether pursuant to a reciprocal easement agreement, common area agreement or otherwise, the shares, costs and expenses shall be apportioned among the Property and the other buildings or properties in a commercially reasonable manner selected by Landlord. If the occupancy of the Building, during any calendar year (including the Base Year) is less than ninety-five percent (95%), Landlord shall make adjustments to the variable components of Operating Expenses for that calendar year, as reasonably determined by Landlord to determine the amount of Operating Expenses that would have been incurred had the Building been ninety-five percent (95%) occupied. Such adjusted variable components of Operating Expenses and the other Operating Expenses will be considered to have been the amount of Operating Expenses for that calendar year for purposes of calculating Tenant's Building Share of Operating Expense Increase. For purposes hereunder, the term "variable components" includes only those components of Operating Expenses that are affected by variations in occupancy levels as determined by Landlord.

Notwithstanding anything to the contrary contained in this Lease, Operating Expenses shall not include the following (provided that Landlord reserves the right to charge such costs directly to Tenant to the extent any of the following are caused by the actions or inactions of Tenant, or result from the failure of Tenant to comply with the terms of this Lease):

(i) Costs expressly excluded from Operating Expenses under any other provisions of this Lease;

(ii) costs of providing any service directly to, and required to be paid by, any tenant of the Building;

(iii) entertainment, dining or travel expenses of Landlord;

(Iv) ground lease rentals;

(v) costs incurred by Landlord for the repair of damage to the Building to the extent that Landlord is actually reimbursed by insurance proceeds;

(vi) any penalties or damages for Landlord ’s default that Landlord pays to Tenant pursuant to the terms of this Lease or to other tenants in the Building pursuant to their respective leases;

(vii) depreciation and amortization of the Building, and allowances therefor;

(viii) the cost of the design, construction, renovation, redecorating or other preparation of tenant improvements for other tenants of the Building (including, without limitation, design fees for space planning and third-party fees and charges, permit, license and inspection fees) and allowances therefor;

(ix) real estate brokerage and leasing commissions and fees;

(x) advertising and promotional expenses incurred for marketing space in the Building or related to the Property;

(xi) wages, salaries, reimbursable expenses, benefits and other compensation of any personnel above the grade of Building manager;

(xii) legal, accounting or other professional fees incurred in connection with negotiating, preparing or enforcing leases or lease terms, amendments of leases, proceedings against any tenant relating to the collection of rent or other sums due to Landlord from such tenant or any other disputes with any tenant;

(xiii) legal, auditing, accounting or other professional fees not allocated to the operation or management of the Property;

(xiv) repairs or improvements made for the benefit solely of tenants of the Building other than Tenant;

(xv) overhead and profit paid to affiliates of Landlord for services on or to the Building or the Property or for supplies or other materials, to the extent that the costs of the services, supplies, or materials exceed the competitive costs of the services, supplies, or materials were they not provided by an affiliate of Landlord;

(xvi) costs with respect to the creation of a mortgage or a superior lease or in connection with a sale of the Building or the Property including, without limitation, survey, legal fees and disbursements, transfer taxes or stamps and appraisals, and engineering and inspection reports associated with the contemplated sale;

(xvii) costs incurred with respect to any specialty use or service in the Building which is operated by Landlord and is not available for use by Tenant or its employees;

(xviii) damages and repairs necessitated by the gross negligence or willful misconduct of Landlord;

(xix) costs incurred due to violations by Landlord of the terms and conditions of any lease, and penalties or interest for late payment of any obligation of Landlord (unless such penalties or interest result from Tenant’s late payment of Rent);

(xx) Landlord's general corporate overhead, including without limitation, the cost of Landlord 's general corporate accounting, except to the extent included in Landlord's management fees;

(xxi) the costs incurred in performing work or furnishing services for any tenant in the Building, to the extent that such work or service is in excess of any work or service Landlord is obligated to furnish to such tenant at Landlord's expense;

(xxxii) any rental concessions to, or lease buy-outs of, any tenant in the Building;

(xxiii) costs arising from Landlord's charitable or political contributions and real estate industry association dues and licensing fees;

(xxiv) any depreciation allowance or expense;

(xxv) Operating Expenses or costs which are paid directly by Tenant or other tenants; and

(xxvi) amounts paid to clerks in commercial concessions operated by Landlord which are a source of profit for the Property.

(d) **Operating Expense Increase.** The term "Operating Expense Increase" shall mean and include Tenant's Building Share of the increases in Operating Expenses in any given year over the Operating Expenses paid or incurred by Landlord during the Base Year for Operating Expenses. Operating Expenses for the Base Year shall not include market-wide cost increases due to extraordinary circumstances, including, but not limited to, Force Majeure, boycotts, strikes, conservation surcharges, embargoes or shortages, or amortized costs relating to capital improvements. In no event shall the components of the Operating Expense Increase for any year subsequent to the Base Year related to project utilities be less than the components of the applicable Operating Expenses related to project utilities in the Base Year. To the extent any components of Operating Expenses are incurred in connection with the entirety of the Property or only the Common Areas, Landlord reserves the right to recalculate such components of the Operating Expense Increase, and Tenant shall be required to pay its equitable portion thereof as reasonably determined by Landlord. Notwithstanding Tenant's Building Share, Landlord reserves the right to equitably apportion the Operating Expense Increase between Tenant and other tenants of the Property if, in Landlord's reasonable opinion (on the basis of factors such as hours and intensity of use of a utility or service), Tenant is responsible for a greater percentage of the Operating Expense Increase than represented by Tenant's Building Share as appropriate. In addition, Landlord reserves the right to reasonably and equitably adjust Base Year Operating Expenses due to extraordinary circumstances occurring in the Base Year. It is the intention of the parties by the preceding three sentences to equitably apportion Operating Expense Increases; provided, however, the parties hereto agree on a year-over-year cap of five percent (5%) for any increase in Operating Expenses.

(e) **Tax Increase.** The term "Tax Increase" shall mean and include Tenant's Building Share of the increases in Real Property Taxes in any given year over the Real Property Taxes paid or incurred by Landlord during the Base Year for Taxes. Real Property Taxes for the Base Year shall not include market-wide cost increases due to extraordinary circumstances, including, but not limited to, Force Majeure, special assessments, surcharges, or other unusual assessments or charges. In no event shall the components of the Tax Increase for any year subsequent to the Base Year be less than the components of the applicable Real Property Taxes in the Base Year. Notwithstanding Tenant's Building Share, Landlord reserves the right to equitably apportion the Tax Increase between Tenant and other tenants of the Property if, in Landlord's reasonable opinion, Tenant is responsible for a greater percentage of the Tax Increase than represented by Tenant's Building Share as appropriate due to performance of above-standard leasehold improvements or other reasonable basis. In addition, in the event the Building (alone or together with a portion of the Common Areas) is ever assessed as a separate tax parcel, Landlord shall have the right to recalculate the Tax Increase and the Real Property Taxes attributable to such parcel, and Tenant shall be required to pay Tenant's Building Share thereof. It is the intention of the parties by the preceding three sentences to equitably apportion Tax Increases.

(f) **Insurance Cost Increase.** The term "Insurance Cost Increase" shall mean and include Tenant's Building Share of the increases in Landlord's Insurance Costs in any given year over Landlord's Insurance Costs paid or incurred by Landlord during the Base Year. Landlord's Insurance Costs for the Base Year shall not include market-wide cost increases due to extraordinary circumstances, including, but not limited to, Force Majeure, boycotts, strikes, conservation surcharges, embargoes or shortages, or amortized costs relating to capital improvements. In no event shall the components of the Insurance Cost Increase for any year subsequent to the Base Year be less than the components of the applicable Landlord's Insurance Costs in the Base Year. Notwithstanding Tenant's Building Share, Landlord reserves the right to equitably apportion the Insurance Cost Increase between Tenant and other tenants of the Property if, in Landlord's reasonable opinion, Tenant is responsible for a greater percentage of the Insurance Cost Increase than represented by Tenant's Building Share as appropriate. To the extent any components of Landlord's Insurance Costs are incurred in connection with the entirety of the Property or only the Common Areas, Landlord reserves the right to recalculate such components of the Insurance Cost Increase, and Tenant shall be required to pay its equitable portion thereof as reasonably determined by Landlord. In addition, Landlord reserves the right to reasonably and equitably adjust Landlord's Insurance Costs paid or incurred by Landlord during the Base Year due to extraordinary circumstances occurring in the Base Year. It is the intention of the parties by the preceding three sentences to equitably apportion Insurance Cost Increases.

(g) **Law.** The term "Law" or "Laws" shall mean any judicial decisions and any statute, constitution, ordinance, resolution, regulation, rule, code, administrative order, condition of approval, or other requirements of any municipal, county, state, federal, or other governmental agency or authority having jurisdiction over the parties to this Lease, the Leased Premises, the Building or the Property, or any of them, in effect either at the Effective Date or at any time during the Lease Term, including, without limitation, any regulation, order, or policy of any quasi-official entity or body (e.g. a board of fire examiners or a public utility or special district).

(h) **Lender.** The term "Lender" shall mean the holder of any promissory note or other evidence of indebtedness secured by the Property or any portion thereof.

(i) **Rent.** The term "Rent" shall mean collectively Base Monthly Rent and all Additional Rent.

(j) **Restrictions.** The term "Restrictions" shall mean (as they may exist from time to time) any and all covenants, conditions and restrictions, private agreements, easements, and any other recorded documents or instruments affecting the use of the Property, the Building, the Leased Premises, or the Common Areas.

**13.13 General Waivers.** One party's consent to or approval of any act by the other party requiring the first party's consent or approval shall not be deemed to waive or render unnecessary the first party's consent to or approval of any subsequent similar act by the other party. No waiver of any provision hereof, or any waiver of any breach of any provision hereof, shall be effective unless in writing and signed by the waiving party: The receipt by Landlord of any rent or payment with or without knowledge of the breach of any other provision hereof shall not be deemed a waiver of any such breach. No waiver of any provision of this Lease shall be deemed a continuing waiver unless such waiver specifically states so in writing and is signed by both Landlord and Tenant. No delay or omission in the exercise of any right or remedy accruing to either party upon any breach by the other party under this Lease shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by either party of any breach of any provision of this Lease shall not be deemed to be a waiver of any subsequent breach of the same or any other provisions herein contained.

**13.14 Miscellaneous.** Should any provisions of this Lease prove to be invalid or illegal, such invalidity or illegality shall in no way affect, impair or invalidate any other provisions hereof, and such remaining provisions shall remain in full force and effect. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor. Any copy of this Lease which is executed by the parties shall be deemed an original for all purposes. This Lease shall, subject to the provisions regarding assignment, apply to and bind the respective heirs, successors, executors, administrators and assigns of Landlord and Tenant. The benefit of each indemnity obligation of Tenant under this Lease is assignable in whole or in part by Landlord. The term "party" shall mean Landlord or Tenant as the context implies. If Tenant consists of more than one person or entity, then all members of Tenant shall be jointly and severally liable hereunder. If this Lease is signed by an individual "doing business as "or "dba" another person or entity or entity name, the individual who signs this Lease will be deemed to be the Tenant hereunder for all purposes. Submission of this Lease for review, examination or signature by Tenant does not constitute an offer to lease, a reservation of or an option for lease, or a binding agreement of any kind, and notwithstanding any inconsistent language contained in any other document, this Lease is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant, and prior to such mutual execution and delivery, neither party shall have any obligation to negotiate and may discontinue discussions and negotiations at any time for any reason or no reason. This Lease shall be construed and enforced in accordance with the Laws of the State in which the Leased Premises are located. The headings and captions in this Lease are for convenience only and shall not be construed in the construction or interpretation of any provision hereof. When the context of this Lease requires, the neuter gender includes the masculine, the feminine, a partnership, corporation, limited liability company, joint venture, or other form of business entity, and the singular includes the plural. The terms "must," "shall," "will," and "agree" are mandatory. The term "may" is permissive. The term "governmental agency" or "governmental authority" or similar terms shall include, without limitation, all federal, state, city, local and other governmental and quasi-governmental agencies, authorities, bodies, boards, etc., and any party or parties having enforcement rights under any Restrictions. When a party is required to do something by this Lease, it shall do so at its sole cost and expense without right of reimbursement from the other party unless specific provision is made therefor. Notwithstanding any other provision of this Lease to the contrary, where Landlord's consent is required hereunder, if the consent of any Lender is required under the applicable loan documents, then Landlord shall be reasonable in withholding Landlord's consent unless and until such Lender grants its consent. Landlord and Tenant shall both be deemed to have drafted this Lease, and the rule of construction that a document is to be construed against the drafting party shall not be employed in the construction or interpretation of this Lease. Where Tenant is obligated not to perform any act or is not permitted to perform any act, Tenant is also obligated to restrain any others reasonably within its control, including agents, invitees, contractors, subcontractors and employees, from performing such act. Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of any of the provisions of this Lease.

## ARTICLE 14

## CORPORATE AUTHORITY, BROKERS AND ENTIRE AGREEMENT

**14.1 Corporate Authority.** If Tenant or any entity constituting Tenant is a corporation, limited partnership, limited liability company, or other legal entity, each individual executing this Lease on behalf of such corporation, limited partnership, limited liability company, or other legal entity, represents and warrants that Tenant is validly formed and duly authorized and existing, that Tenant is qualified to do business in the State in which the Leased Premises are located, that Tenant has the full right and legal authority to enter into this Lease, and that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant in accordance with its terms. Tenant shall, within three (3) business days after execution of this Lease, deliver to Landlord a certified copy of the resolution of its board of directors (if a corporation), members and manager(s) (if a limited liability company), or partners (if a limited partnership), authorizing or ratifying the execution of this Lease, as well as a certified copy of binding resolutions of any guarantor in form reasonably acceptable to Landlord, authorizing or ratifying the execution of the applicable guaranty, and if Tenant or any entity constituting Tenant fails to do so, the same shall be a material default on the part of Tenant permitting Landlord at its sole election to terminate this Lease.

**14.2 Brokerage Commissions.** Tenant represents, warrants and agrees that it has not had any dealings with any real estate broker(s), leasing agent(s), finder(s) or salesmen, other than the Brokers (as named in Article 1) with respect to the lease by it of the Leased Premises pursuant to this Lease, and that it will indemnify, defend with competent counsel, and hold Landlord harmless from any liability for the payment of any real estate brokerage commissions, leasing commissions or finder's fees claimed by any other real estate broker(s), leasing agent(s), finder(s), or salesmen to be earned or due and payable by reason of Tenant's agreement or promise (implied or otherwise) to pay (or to have Landlord pay) such a commission or finder's fee by reason of its leasing the Leased Premises pursuant to this Lease.

**14.3 Entire Agreement.** This Lease and the Exhibits (as described in Article 1), which Exhibits are by this reference incorporated herein, constitute the entire agreement between the parties, and there are no other agreements, understandings or representations between the parties relating to the lease by Landlord of the Leased Premises to Tenant, except as expressed herein. No subsequent changes, modifications or additions to this Lease shall be binding upon the parties unless in writing and signed by both Landlord and Tenant.

**14.4 Landlord's Representations.** Tenant acknowledges that neither Landlord nor any of its agents made any representations or warranties respecting the Property, the Building or the Leased Premises, upon which Tenant relied in entering into the Lease, which are not expressly set forth in this Lease. Tenant further acknowledges that neither Landlord nor any of its agents made any representations as to (i) whether the Leased Premises may be used for Tenant's intended use under existing Law, or (ii) the suitability of the Leased Premises for the conduct of Tenant's business, or (iii) the exact square footage of the Leased Premises, the Building, the Property, or any portion thereof, and that Tenant relies solely upon its own investigations with respect to such matters. Tenant expressly waives any and all claims for damage by reason of any statement, representation, warranty, promise or other agreement of Landlord or Landlord's agent(s), if any, not contained in this Lease or in any Exhibit attached hereto.

## ARTICLE 15
## PATRIOT ACT COMPLIANCE

**15.1** Tenant will use its good faith and commercially reasonable efforts to comply with the Patriot Act (as defined below) and all applicable requirements of governmental authorities having jurisdiction over Tenant or the Property, including those relating to money laundering and terrorism. For purposes hereof, the term "Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

**15.2** Neither Tenant nor any partner in Tenant or member of such partner nor any owner of a direct or indirect interest in Tenant (a) is listed on any Government Lists (as defined below), (b) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (c) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below), or (d) is currently under investigation by any governmental authority for alleged criminal activity. For purposes hereof, the term "Patriot Act Offense" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, or the (e) Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists " means (i) the Specially Designated Nationals and Blocked Persons Lists maintained by Office of Foreign Assets Control ("OFAC"), (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Landlord notified Tenant in writing is now included in "Governmental Lists", or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America that Landlord notified Tenant in writing is now included in "Governmental Lists".

## ARTICLE 16
## OPTION TO EXTEND

**16.1 Option to Extend.**

(a) So long as Biolase, Inc. is the Tenant hereunder and occupies the entirety of the Leased Premises (subject to the assignment provisions contained in Article 7 herein), and subject to the conditions set forth in clauses (i) and (ii) below of this subparagraph (a), Tenant shall have one (1) option to extend the term of this Lease with respect to the entirety of the Leased Premises, for a period of five (5) years from the expiration of the initial, unextended Lease Term (the "Extension Term"), subject to the following conditions:

(i) The option to extend shall be exercised, if at all, by notice of exercise given to Landlord by Tenant not more than twelve (12) months nor less than nine (9) months prior to the expiration of the initial, unextended Lease Term; and

(ii) Anything herein to the contrary notwithstanding, if Tenant is in default under any of the terms, covenants or conditions of this Lease, either at the time Tenant exercises the extension option or on the commencement date of the Extension Term, Landlord shall have, in addition to all of Landlord's other rights and remedies provided in this Lease, the right to terminate the option to extend upon notice to Tenant.

(b) In the event the option is exercised in a timely fashion, the Lease shall be extended for the Extension Term upon all of the terms and conditions of this Lease, provided that the Base Monthly Rent for the Extension Term shall be the "Fair Market Rent" for the Leased Premises. For purposes hereof, "Fair Market Rent" shall mean the Base Monthly Rent determined pursuant to the process described below.

(c) Within thirty (30) days after receipt of Tenant's notice of exercise, Landlord shall notify Tenant in writing of Landlord's estimate of the Base Monthly Rent for the Extension Term, based on the provisions of clause (b) above. Within thirty (30) days after receipt of such notice from Landlord, Tenant shall have the right either to (i) accept Landlord's statement of Base Monthly Rent as the Base Monthly Rent for the Extension Term; or (ii) elect to arbitrate Landlord's estimate of Fair Market Rent, such arbitration to be conducted pursuant to the provisions hereof. Failure on the part of Tenant to require arbitration of Fair Market Rent within such 30-day period shall constitute acceptance of the Base Monthly Rent for the Extension Term as calculated by Landlord. If Tenant elects arbitration, the arbitration shall be concluded within 90 days after the date of Tenant's election, subject to extension for an additional 30-day period if a third arbitrator is required and does not act in a timely manner. To the extent that arbitration has not been completed prior to the expiration of any preceding period for which Base Monthly Rent has been determined, Tenant shall pay Base Monthly Rent at the rate calculated by Landlord, with the potential for an adjustment to be made once Fair Market Rent is ultimately determined by arbitration.

(d) In the event of arbitration, the judgment or the award rendered in any such arbitration may be entered in any court in Orange County, California having jurisdiction and shall be final and binding between the parties. The arbitration shall be conducted and determined in Orange County, California in accordance with the then prevailing rules of the American Arbitration Association or its successor for arbitration of commercial disputes except to the extent that the procedures mandated by such rules shall be modified as follows:

(i) Tenant shall make demand for arbitration in writing within thirty (30) days after service of Landlord's determination of Fair Market Rent given under clause (c) above, specifying therein the name and address of the person to act as the arbitrator on its behalf. The arbitrator shall be qualified as a real estate appraiser familiar with the Fair Market Rent of similar office space in the South Orange County area who would qualify as an expert witness over objection to give opinion testimony addressed to the issue in a court of competent jurisdiction. Failure on the part of Tenant to make a proper demand in a timely manner for such arbitration shall constitute a waiver of the right thereto. Within fifteen (15) days after the service of the demand for arbitration, Landlord shall give notice to Tenant, specifying the name and address of the person designated by Landlord to act as arbitrator on its behalf who shall be similarly qualified. If Landlord fails to notify Tenant of the appointment of its arbitrator, within or by the time above specified, then the arbitrator appointed by Tenant shall be the arbitrator to determine the issue.

(ii) In the event that two arbitrators are chosen pursuant to subclause (i) above, the arbitrators so chosen shall, within fifteen (15) days after the second arbitrator is appointed, determine the Fair Market Rent. If the two arbitrators shall be unable to agree upon a determination of Fair Market Rent within such 15-day period, they, themselves, shall appoint a third arbitrator, who shall be a competent and impartial person with qualifications similar to those required of the first two arbitrators pursuant to subclause (i). In the event they are unable to agree upon such appointment within seven (7) days after expiration of such 15-day period, the third arbitrator shall be selected by the parties themselves, if they can agree thereon, within a further period of fifteen (15) days. If the parties do not so agree, then either party, on behalf of both, may request appointment of such a qualified person by the then Presiding Judge of the Superior Court having jurisdiction over the city in which the Property is located, acting in his or her private and not in his or her official capacity, and the other party shall not raise any question as to such Judge's full power and jurisdiction to entertain the application for and make the appointment. The three arbitrators shall decide the dispute if it has not previously been resolved by following the procedure set forth below.

(iii) Where an issue cannot be resolved by agreement between the two arbitrators selected by Landlord and Tenant or settlement between the parties during the course of arbitration, the issue shall be resolved by the three arbitrators within 15 days of the appointment of the third arbitrator in accordance with the following procedure. The arbitrator selected by each of the parties shall state in writing his determination of the Fair Market Rent supported by the reasons therefor with counterpart copies to each party. The arbitrators shall arrange for a simultaneous exchange of such proposed resolutions. The role of the third arbitrator shall be to select which of the two proposed resolutions most closely approximates his determination of Fair Market Rent. The third arbitrator shall have no right to propose a middle ground or any modification of either of the two proposed resolutions. The resolution he chooses as most closely approximating his determination shall constitute the decision of the arbitrators and be final and binding upon the parties.

(iv) In the event of a failure, refusal or inability of any arbitrator to act, his successor shall be appointed by him, but in the case of the third arbitrator, his successor shall be appointed in the same manner as provided for appointment of the third arbitrator. The arbitrators shall decide the issue within fifteen (15) days after the appointment of the third arbitrator. Any decision in which the arbitrator appointed by Landlord and the arbitrator appointed by Tenant concur shall be binding and conclusive upon the parties. Each party shall pay the fee and expenses of its respective arbitrator and both shall share the fee and expenses of the third arbitrator, if any, and the attorneys' fees and expenses of counsel for the respective parties and of witnesses shall be paid by the respective party engaging such counsel or calling such witnesses.

(v) The arbitrators shall have the right to consult experts and competent authorities to obtain factual information or evidence pertaining to a determination of Fair Market Rent, but any such consultation shall be made in the presence of both parties with full right on their part to cross-examine. The arbitrators shall render their decision and award in writing with counterpart copies to each party. The arbitrators shall have no power to modify the provisions of this Lease.

## ARTICLE 17
## TELECOMMUNICATIONS AND NETWORKING

**17.1 Wireless Network.**

(a) Tenant shall have the non-exclusive right to install, at its sole cost and expense and subject to Landlord's approval of Tenant's plans and specifications therefor, a wireless intranet, internet, and/or communications network within the Leased Premises for the use of Tenant and its employees at the Leased Premises (the "Network"), subject to the terms of this Paragraph 17.1.

(b) Tenant agrees that the Network equipment (whether owned by Tenant or Tenant 's service providers and contractors) located in the Leased Premises or elsewhere at the Property, including, without limitation, any antennas, switches, or other equipment (collectively, "Tenant's Network Equipment"), shall be of a type and, if applicable, a frequency that will not cause unreasonable radio frequency, electromagnetic, or other interference to any other party or any equipment of any other party including, without limitation, Landlord, other tenants or occupants of the Property or any other party. If Tenant's Network Equipment causes or is believed to cause any such interference, upon receipt of notice from Landlord of such interference, Tenant will take all steps necessary to correct and eliminate the interference. If the interference is not eliminated within forty-eight (48) hours then, upon request from Landlord, Tenant shall shut down Tenant's Network Equipment pending resolution of the interference, with the exception of intermittent testing upon prior notice to and with the approval of Landlord.

(c) Tenant's Network Equipment and the related installation work (collectively, the " Network Equipment and Work ") shall be conducted in such a manner so as not to void or negatively impact any applicable warranties. Tenant shall supply Landlord with detailed plans and specifications of the Network Equipment and Work prior to the installation thereof for Landlord's review and approval (which shall not be unreasonably withheld, conditioned, or delayed). Furthermore, Tenant shall have secured Landlord's approval and the approval of all governmental authorities and all permits required by governmental authorities having jurisdiction over such approvals and permits for the Network Equipment and Work (if such governmental approval and/or permits are required), and shall provide copies of such approvals and permits (to the extent required) to Landlord prior to commencing any work with respect to such Network Equipment and Work. Tenant will keep and maintain the Network Equipment and Work in good condition and repair at all times and will promptly repair any damage to the Property or any portions thereof caused by such Network Equipment and Work. Upon the expiration or earlier termination of this Lease, Tenant shall remove such Network Equipment and Work and restore the Leased Premises. Tenant shall pay for any and all costs and expenses in connection with, and shall repair all damage resulting from, the installation, maintenance, use and removal of the Network Equipment and Work.

(d) Landlord shall not have any obligations with respect to Tenant's Network Equipment and Landlord makes no representation that Tenant's Network Equipment will be able to receive or transmit communication signals without interference or disturbance (whether or not by reason of the installation or use of similar equipment by Landlord or others at the Property) and Tenant agrees that Landlord shall not be liable to Tenant therefor.

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**IN WITNESS WHEREOF,** Landlord and Tenant have executed this Lease as of the respective dates below set forth with the intent to be legally bound thereby as of the Effective Date first above set forth.

**LANDLORD:**

FOOTHILL CORPORATE I MT, LLC,
a Delaware limited liability company

By: ***s/ Jeff Pori***
Name: Jeff Pori
Title: Director
Date: 2/4/2020

**TENANT:**

BIOLASE, INC.,
a Delaware corporation

By: ***/s/ John R. Beaver***
Name: John R. Beaver
Title: *CFO*
Date: 2/3/2020

EXHIBIT A

SITE PLAN

[See attached]

EXHIBIT B

FLOOR PLAN

[See attached]

**EXHIBIT C**

**WORK LETTER**

THIS WORK LETTER ("**Work Letter**") sets forth the agreement of Landlord and Tenant with respect to the improvements to be constructed in the Leased Premises, as defined in the Lease to which this Work Letter is attached as an exhibit. In the event of any inconsistency between the terms of this Work Letter and the terms of the Lease, the terms of the Lease shall control. All defined terms used herein shall have the meanings set forth in the Lease, unless otherwise defined in this Work Letter.

**1. Construction of Landlord's Work**. Landlord shall, through its general contractor (the "**Contractor**"), furnish and install within the Leased Premises, substantially in accordance with the plans and specifications to be approved by Landlord and Tenant pursuant to Paragraphs 2 and 3 below, certain items of general construction, including necessary governmental fees and permits (the "**Landlord's Work**"). The quantities, character and manner of installation of all of Landlord's Work shall be subject to the limitations imposed by any applicable governmental regulations relating to conservation of energy and by applicable building codes and regulations. In addition, Tenant agrees that Landlord's Work shall not require Landlord to perform work which would (i) require changes to structural components of the Building or the exterior design of the Building; (ii) require any material modification to the Building's mechanical or electrical systems; or (iii) be incompatible with the Building plans filed with all applicable governmental authorities.

**2. Space Planning Documents**.

(a) Landlord and Tenant acknowledge and agree that Landlord shall cause to be prepared for Tenant's approval comprehensive space planning documents (the "**Space Planning Documents**"). Landlord shall submit the completed Space Planning Documents to Tenant for Tenant's approval. Tenant will provide written approval of the Space Planning Documents within five (5) days after submission. If Tenant disapproves any part of the submission, the disapproval shall include written instructions adequate for Landlord's architect and engineers to revise the Space Planning Documents. Such revisions shall be subject to Landlord's approval, which shall not be unreasonably withheld. Tenant will finally approve the revised Space Planning Documents within two (2) days after submission thereof by Landlord to Tenant.

(b) All planning and interior design services relating to furniture and equipment, such as selection of colors, finishes, fixtures, furnishings or floor coverings, will be included in the cost of Landlord's Work, shall be subject to prior written approval of Landlord, and shall be timely delivered so as not to impede the design and construction of Landlord's Work.

(c) Upon execution of the Lease by Tenant and approval by Landlord and Tenant of the Space Planning Documents, Landlord shall be authorized to cause its architect and engineers to prepare the Working Drawings (as defined below).

**3. Approval of Working Drawings.**

(a) Landlord and Tenant acknowledge that Landlord shall retain an architect and engineers to prepare all architectural and engineering plans and specifications required for the construction of Landlord's Work in conformance with the base building and tenant improvement standard specifications of the Building (the "**Working Drawings**"), and to prepare drawings and specifications for Changes (as defined below), if any, requested or required pursuant to Paragraph 5 below.

(b) Landlord shall submit the completed Working Drawings to Tenant for Tenant's approval. Tenant will provide written approval of the Working Drawings within five (5) days after such submission. If Tenant disapproves any part of the submission, the disapproval shall include written instructions adequate for Landlord's architect and engineers to revise the Working Drawings. Such revisions shall be subject to Landlord's approval, which shall not be unreasonably withheld. Tenant will finally approve the revised Working Drawings within two (2) days after submission thereof to Tenant. If Tenant's instructions necessitate (i) revisions to the Working Drawings (as originally submitted) which do not conform with the Space Planning Documents, or (ii) a change of scope relative to the Space Planning Documents, the costs incurred by Landlord as a result of such instructions (including, without limitation, the cost of revising the Working Drawings) shall be promptly borne and paid by Tenant upon demand by Landlord.

(c) If Tenant fails to approve the Working Drawings or the revised Working Drawings within the applicable periods set forth in subparagraph 3(b) above, then (A) Landlord shall not be obligated to commence construction of Landlord's Work, (B) Tenant shall be responsible for any resulting delay, and the cost of such delay, in Landlord's completion of Landlord's Work and delivery of the Leased Premises, and (C) any such delay shall be deemed a Tenant's Delay (as defined below).

(d) Upon Tenant's approval of the Working Drawings, Landlord shall be authorized to cause the Contractor to proceed with the construction of Landlord's Work in accordance with the Working Drawings.

**4. Cost of Landlord's Work**. Unless specified otherwise herein, Landlord shall bear and pay the fees and costs of Landlord's Work. Any costs of Landlord's Work pertaining to components of Landlord's Work that are over and above the approved Space Planning Documents and Working Drawings shall be at Tenant's sole cost and expense.

**5. Changes**.

(a) Any request by Tenant for a change in Landlord's Work after approval of the Working Drawings (a " **Change**") shall be accompanied by all information necessary to clearly identify and explain the proposed Change. As soon as practicable after receipt of any such requested Change, Landlord shall notify Tenant of the estimated cost of such Change as well as the estimated increase in construction time caused by the Change, if any. Tenant shall approve in writing such estimates within two (2) days after receipt of Landlord's notice. Upon receipt of such written request, Landlord shall be authorized to cause the Contractor to proceed with the implementation of the requested Change.

(b) The increased cost, as determined by Landlord, of all Changes, including the cost of architectural and engineering services required to revise the Working Drawings to reflect such Changes, the Contractor's overhead and fee, and Landlord's fee for construction administration services, shall be at Tenant's sole cost and expense, and shall be as determined by Landlord upon completion of Landlord's Work, subject only to Landlord's furnishing to Tenant appropriate back-up information from the Contractor concerning the increased costs.

**6. Tenant's Work**. Landlord and Tenant acknowledge and agree that certain work required for Tenant's occupancy of the Leased Premises, including but not limited to the procurement and installation of furniture, fixtures, equipment, artwork and interior signage, are beyond the scope of Landlord's Work and shall be performed by Tenant or its contractors at Tenant's sole cost and expense. All such work (" **Tenant's Work** ") shall be subject to Landlord's prior written approval. By prior arrangement with Landlord's property manager, Tenant shall be permitted access to the Leased Premises by June 1, 2020 in order to perform Tenant's Work, and Tenant shall adopt a construction/installation

schedule for Tenant's Work in conformance with the Contractor's schedule, and shall perform Tenant's Work in such a way as not to hinder or delay the operations of Landlord or the Contractor in the Building. Any costs incurred by Landlord as a result of any interference with Landlord's operations by Tenant or its contractors shall be promptly paid by Tenant to Landlord upon demand. Landlord shall make all reasonable efforts to notify Tenant of any such interference of which Landlord has actual knowledge, but failure to provide such notice shall in no way limit Landlord's right to demand payment for such costs. Tenant's contractors shall be subject to Landlord's prior written approval, and to the administrative supervision of the Contractor. Tenant's Work shall comply with all of the following requirements:

(a) Tenant's Work shall not proceed until Landlord has approved in writing: (i) Tenant's contractors, (ii) proof of the amount and coverage of public liability and property damage insurance carried by Tenant's contractors in the form of an endorsed insurance certificate naming Landlord, the Contractor, and the agents of Landlord and the Contractor as additional insureds, in an amount not less than two million dollars, and (iii) complete and detailed plans and specifications for Tenant's Work.

(b) Tenant's Work shall be performed in conformity with a valid permit when required, a copy of which shall be furnished to Landlord before such work is commenced. In any event, all of Tenant's Work shall comply with all applicable Laws and Restrictions. Landlord shall have no responsibility for Tenant's failure to comply with such applicable Laws and Restrictions. Any and all delay in obtaining a certificate of occupancy and/or any other governmental approvals due to Tenant's vendors is the responsibility of Tenant and shall be a Tenant's Delay.

(c) In connection with Tenant's Work, Tenant or its contractors shall arrange for any necessary hoisting or elevator service with Landlord and shall pay such reasonable costs for such services as may be charged by Landlord.

(d) Tenant shall promptly pay Landlord upon demand for any extra expense incurred by Landlord by reason of faulty work done by Tenant or its contractors, by reason of damage to existing work caused by Tenant or its contractors, or by reason of inadequate cleanup by Tenant or its contractors.

**7. Completion; Tenant's Delay**.

(a) Upon the earlier to occur of (i) Landlord's delivery to Tenant of a certificate of occupancy , temporary certificate of occupancy, or the substantive equivalent of either certificate, if and to the extent required by applicable Laws, evidencing completion of Landlord's Work, (ii) Tenant's occupancy of all or part of the Leased Premises (other than as provided in Paragraph 6 above for the purpose of performing Tenant's Work), (iii) the date that Landlord's architect furnishes a certificate of substantial completion confirming that Landlord's Work have been substantially completed, subject to minor details of construction, decoration or mechanical adjustment which do not unreasonably affect Tenant's ability to do business in the Leased Premises, or (iv) the date upon which Tenant opens for business in the Leased Premises, Landlord's Work shall be deemed complete and possession of the Leased Premises shall be deemed delivered to Tenant for all purposes under the Lease.

(b) If Landlord shall be delayed in substantially completing Landlord's Work as a result of any of the following (" **Tenant's Delays**"):

(i) Tenant's failure to approve the Space Planning Documents or the Working Drawings, within the applicable time periods specified in Paragraph 2 and 3 above, as applicable; or

(ii) Any changes in the scope of Landlord's Work from that set forth in the Space Planning Documents, or any Changes to the Working Drawings requested by Tenant after approval thereof pursuant to Paragraph 5 above (including without limitation Tenant Changes which are requested but not subsequently approved by Tenant or Landlord pursuant to Paragraph 5 above); or

(iii) Any interruption or interference in Landlord's construction of Landlord's Work caused by Tenant, its contractors or its vendors; or

(iv) Tenant's failure to timely pay any amounts which Tenant is obligated to pay under this Work Letter; or

(v) Any other act, neglect, failure or omission of Tenant, its agents, employees or contractors;

or as a result of Force Majeure, then the date upon which Landlord's Work shall be deemed complete and possession of the Leased Premises shall be deemed delivered to Tenant for all purposes under the Lease shall be advanced by the cumulative duration of such Tenant's Delays or Force Majeure delays.

**8. Designation of Agent**. Tenant hereby designates and appoints _____ _____ ("**Agent**") as its agent to act on its behalf with respect to its duties and obligations under this Work Letter. For the purposes of this appointment, Agent's authority shall specifically include, but in no way be limited to, the following: (i) the approval of the Space Planning Documents and the Working Drawings, (ii) the submission of any Changes, (iii) the approval of any Landlord responses to requests for Changes, (iv) the approval of all costs and time, including architectural and engineering services, required to revise the Working Drawings to reflect any Changes, (v) the authorization of any overtime, and (vi) the authority to execute and deliver to Landlord any written authorizations requested by Landlord in connection with the construction of Landlord's Work. Tenant expressly acknowledges that this appointment is made with the knowledge that Landlord and its affiliates will rely on the authority granted to Agent herein. Accordingly, Landlord shall be deemed a third-party beneficiary of this appointment. Tenant further acknowledges that the authority hereby conferred will continue in full force and effect until Landlord shall receive notice in writing, signed by Tenant, of the revocation of the authority herein granted. Such revocation shall be effective only as to actions taken by Agent subsequent to receipt by Landlord of such notice. Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all claims, liabilities, losses, damages, costs and expenses, including without limitation, all reasonable attorneys' fees, asserted against or suffered by Landlord resulting from Landlord's reliance on this appointment.

EXHIBIT A TO WORK LETTER

SPACE PLANNING

DOCUMENTS

[Attached]

EXHIBIT D

Intentionally deleted

**EXHIBIT E**

**RULES AND REGULATIONS**

1. The sidewalks, halls, passages, exits, entrances, elevators, and stairways of the Building shall not be obstructed by any of the tenants or used by them for any purpose other than for ingress to and egress from their respective Leased Premises. The halls, passages, exits, entrances, elevators, and stairways are not for the general public, and Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Lan lord would be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent ingress to and egress from Tenant's Leased Premises to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Except as specifically set forth in the Lease, no tenant and no employee or invitee of any tenant shall go upon the roof of the Building.

2. No sign, placard, picture, name, advertisement or notice visible from the exterior of any tenant's Leased Premises shall be inscribed, painted, affixed or otherwise displayed by any tenant on any part of the Building without the prior written consent of Landlord. All approved signs or lettering on doors or walls adjacent to doors shall be printed, painted, affixed or inscribed at the expense of the Tenant by a person approved by Landlord, which approval will not be unreasonably withheld (provided that Landlord shall have no such approval right in connection with interior signs which are not visible from the exterior of the Leased Premises). Except as specifically set forth in the Lease, signs visible from outside the Building will not be permitted.

3. No cooking shall be done or permitted on the Leased Premises, except that use by any tenant of food and beverage vending machines and Underwriters' Laboratory approved microwave and toaster ovens and equipment for brewing coffee, tea, hot chocolate and similar beverages shall be permitted; provided that such use is in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations.

4. No tenant shall employ any person or persons other than Landlord's janitorial service for the purpose of cleaning the Leased Premises, unless otherwise approved by Landlord. No person or persons other than those approved by Landlord shall be permitted to enter the Building for the purpose of cleaning the same. No tenant shall cause any unnecessary labor by reason of such tenant's carelessness or indifference in the preservation of good order and cleanliness. Janitor service (other than garbage removal) will not be furnished to rooms when such rooms are occupied after 8:00 P.M. unless, by prior arrangement with Landlord, service is extended to a later hour for specifically designated rooms with any additional cost to be paid by the requesting tenant.

5. Landlord will furnish each tenant free of charge with two keys to each door lock in its Leased Premises. Landlord may make a reasonable charge for any additional keys. Tenants shall have the right to make keys. No tenant shall change any lock without the express written consent of the Landlord. The tenants shall in each case furnish Landlord with a key for any such lock. Each tenant, upon the termination of its tenancy, shall deliver to Landlord all keys to doors in the Building which shall have been furnished to or made by the tenant.

6. Landlord shall have the right to prescribe the weight, size and position of all equipment, materials, furniture or other property brought into the Building. Heavy objects shall, if considered necessary by Landlord, stand on wood strips of such thickness as is necessary properly to distribute the weight.

7. No tenant shall use or keep in the Leased Premises or the Building any kerosene, gasoline or inflammable or combustible fluid or material other than limited quantities thereof reasonably necessary for the operation or maintenance of office equipment, or, without Landlord's prior approval, use any method of heating or air conditioning other than that supplied by Landlord except as otherwise specifically permitted by the Tenant's Lease. No tenant shall use or keep or permit to be used or kept any foul or noxious gas or substance in the Leased Premises, or permit or suffer the Leased Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors or vibrations, or interfere in any way with other tenants or those having business therein except as otherwise specifically permitted by the Tenant's Lease.

8. Landlord shall have the right, exercisable without liability to any tenant to change the name and street address of the Property, provided that Landlord shall reimburse Tenant for reasonable costs of replacing Tenant's stationery resulting from any such change.

9. Landlord reserves the right to exclude from the Building between the hours of 6:00 P.M. and 8:00 A.M. and at all hours on Saturdays, Sundays and legal holidays all persons who do not present a proper access card or other identification as an employee of Tenant or who do not otherwise present proper authorization by Tenant for access to the Leased Premises. In the case of invasion, mob, riot, public excitement or other circumstances rendering such action advisable in Landlord's opinion, Landlord reserves the right to prevent access to the Building during the continuance of the same by such action as Landlord may deem appropriate.

10. No curtains, draperies, blinds, shutters, shades, screens or other coverings, hangings or decorations shall be attached to, hung or placed in, or used in connection with any exterior window in the Building without the prior consent of Landlord. If consented to by Landlord, such items shall be installed on the office side of the standard window covering and shall in no way be visible from the exterior of the Building.

11. Each tenant shall see that the doors of its Leased Premises are closed and locked and that all water faucets or apparatus, cooking facilities and office equipment (excluding office equipment required to be operative at all times) are shut off before the tenant or its employees leave the Leased Premises at night, so as to prevent waste or damage, and for any default or carelessness in this regard the tenant shall be responsible for any damage sustained by other tenants or occupants of the Building or Landlord. All tenants shall keep the doors to the Building corridors closed at all times except for ingress and egress.

12. The toilets, urinals, wash bowls and other restroom facilities shall not be used for any purpose other than that for which they were constructed, no foreign substance of any kind whatsoever shall be thrown therein.

13. Except with the prior consent of Landlord, no tenant shall sell, or permit the sale at retail, of newspapers, magazines, periodicals, theater tickets or any other goods or merchandise to the general public in or on the Leased Premises, in or from the Leased Premises for the service or accommodation of occupants of any other portion of the Building, nor shall the Leased Premises of any tenant be used for manufacturing of any kind, or any business or activity other than that specifically provided for in such tenant's lease.

14. Except as specifically set forth in the Lease, no tenant shall install any antenna, loudspeaker, or any other device on the roof or exterior walls of the Building.

15. There shall not be used in any portion of the Building, by any tenant or its invitees, any hand trucks or other material handling equipment except those equipped with rubber tires and side guards unless otherwise approved by Landlord.

16. Each tenant shall store its refuse within its Leased Premises or in any trash collection area which is part of the Base Building or as otherwise approved by Landlord. No material shall be placed in the refuse boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of refuse in the City of Foothill Ranch without being in violation of any law or ordinance governing such disposal. All refuse disposal shall be made only through entryways and elevators provided for such purposes and at such times as Landlord shall designate.

17. Canvassing, peddling, soliciting, and distribution of handbills or any other written materials in the Building are prohibited, and each tenant shall to prevent the same.

18. Smoking in all portions of the Building is prohibited, and each tenant shall cooperate to prevent the same.

19. Holidays shall be limited to the following: Christmas (December 25); New Year's Day (January 1); Presidents Day; Memorial Day; Independence Day (July 4); Labor Day; and Thanksgiving.

20. The requirements of the tenants will be attended to only upon application by telephone or in person at the office of the Landlord or Landlord's designated representative. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from Landlord.

21. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease of Leased Premises in the Building. In the event of any conflict between these rules and regulations and the Lease, the Lease shall prevail and control.

22. Subject to the terms of the leases, Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Building, and for the preservation of good order therein.

23. For purposes of this **Exhibit E**, all Rules and Regulations applicable to the Leased Premises shall also apply to any storage space leased by Tenant on the Property.

**EXHIBIT F**

**FORM OF SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT**

**[See attached]**

**EXHIBIT G**

**FORM OF ESTOPPEL CERTIFICATE**

**[See attached]**

AIRCRE

# STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - NET

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

1.1 **Parties.** This Lease ("Lease"), dated for reference purposes only January 22, 2020, is made by and between GREEN RIVER PROPERTIES, LLC., a California limited liability company ("Lessor") and BIOLASE, INC., a Delaware corporation ("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as (street address, unit/suite, city, state): 4225 Prado Road, Suite 102 and 103, Corona, CA 92880 containing approximately 11,032 square feet ("Premises"). The Premises are located in the County of Riverside, and are generally described as (describe briefly the nature of the Premises and the "Project"): multi-tenant industrial center known as the Green River Center. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("Building") and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." (See also Paragraph 2)

1.2(b) **Parking:** 38 unreserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 **Term:** five (5) years and zero months ("Original Term") commencing July 1, 2020 ("Commencement Date") and ending June 30, 2025 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing June 1, 2020 ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3) Pursuant to Paragraph 3.2, Lessee shall not be required pay Base Rent and Lessee's Share of Common Area Operating Expenses during the Early Possession period.

1.5 **Base Rent:** $8,800.00 per month ("Base Rent"), payable on the 1st day of each month commencing July 1, 2020. (See also Paragraph 4)

☑ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50 of the Addendum.

1.6 **Lessee's Share of Common Area Operating Expenses:** Six and 22/100 percent ( 6.22 %) ("Lessee's Share"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

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

(a) **Base Rent:** $8,800.00 for the period July 1, 2020 to July 31, 2020.

(b) **Common Area Operating Expenses:** $1,760.00 for the period July 1, 2020 to July 31, 2020.

(c) **Security Deposit:** $10,000.00 ("Security Deposit"). (See also Paragraph 5)

(d) **Other:** $3,479.90 for Tenant Allowance Installment Payment for July 2020.

(e) **Total Due Upon Execution of this Lease:** $24,039.90.

1.8 **Agreed Use:** Industrial Warehouse and Office. (See also Paragraph 6)

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

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

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

Lessor's Brokerage Firm N/A License No. _____ is the broker of (check one): ☐ the Lessor; or ☐ both the Lessee and Lessor (dual agent).

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

Lessee's Brokerage Firm CBRE License No. 00409987 is the broker of (check one): ☑ the Lessee; or ☐ both the Lessee and Lessor (dual agent).

Lessee's Agent Travis Boyd License No. _____ is (check one): ☑ the Lessee's Agent (salesperson or broker associate); or ☐ both the Lessee's Agent and the Lessor's Agent (dual agent).

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

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

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

☑ an Addendum consisting of Paragraphs 50 through 58;

☑ a site plan depicting the Premises;

☑ a site plan depicting the Project;

☑ a current set of the Rules and Regulations for the Project;

☐ a current set of the Rules and Regulations adopted by the owners' association;

a Work Letter;

_____ _____

_____ _____

INITIALS INITIALS

✓ other (specify): Master Sign Plan, Landlord's Tenant Improvements and Plans .

**2. Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.** Lessor shall grant access to Lessee's authorized representative to verify the actual size.

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

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises , including the Improvements in Exhibit 4 attached hereto once fully completed by Lessor, comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 9 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

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

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) subject to Paragraph 58 in the Addendum and Exhibit 4, it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

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

_____ _____

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

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

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

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

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

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

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

**3. Term.**

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

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

3.3 **Delay In Possession**. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter, or Paragraph 58 of the Addendum executed by the Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

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

**4. Rent.**

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

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

(a) "**Common Area Operating Expenses**" are defined, for purposes of this Lease, as all costs relating to the ownership and operation of the Project, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition , and if necessary the replacement, of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

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

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

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

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

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

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

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

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

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

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

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

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

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. See Paragraph 54 of the Addendum. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments of Common Area Operating Expenses. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 30 ~~10~~ days after delivery by Lessor to Lessee of the statement. The Parties agree to resolve any dispute with regards to an over-payment or deficiency in accordance with Section 42 of this Lease.

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

4.3 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. Use.

6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will

not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

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

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

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

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

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

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

(g) **Lessor** Termination Option. If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or $100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

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

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

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

7.1 **Lessee's Obligations.**

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

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

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

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

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises.

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

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

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

(c) **Liens; Bonds.** Except to the extent applicable to the Improvements made by Lessor on behalf of Lessee as set forth in Paragraph 58 of the Addendum, Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest

the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

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

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

(b) **Removal.** 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 and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Except to the extent brought onto the Premises by Lessor in connection with the Improvements in Exhibit 4, Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Project) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

**8. Insurance; Indemnity.**

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

8.2 **Liability Insurance.**

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

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

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

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

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

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

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

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

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $5,000 ~~1,000~~ per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

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

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

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease; provided however, that the limits and forms of coverage of insurance shall be reasonable and commensurate with the type of Premises, Building, and Unit which is the subject of this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to material modification except after ~~20~~ 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

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

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

8.8 **Exemption of Lessor and its Agents from Liability.** ~~Notwithstanding~~ Except to the extent caused by the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 Intentionally Deleted. ~~Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.~~

**9. Damage or Destruction.**

9.1 **Definitions.**

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

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

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

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

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

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to

fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

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

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

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

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

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

(b) **Remedies**. If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

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

**10. Real Property Taxes.**

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

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

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

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

10.5 **Personal Property Taxes**. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If

any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

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

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

**12. Assignment and Subletting.**

**12.1 Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "**assign or assignment**") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

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

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

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

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

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

(a) Regardless of Lessor's consent, no assignment or subletting shall : (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

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

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any

prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

**13. Default; Breach; Remedies.**

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

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 5 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

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

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

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

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

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

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

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

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

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration

or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

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

13.4 **Late Charges**. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or $100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

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

13.6 **Breach by Lessor**.

(a) **Notice of Breach**. Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

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

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

**15. Brokerage Fees.**

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

15.2 **Assumption of Obligations**. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. ~~In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

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

**16. Estoppel Certificates.**

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

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel

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

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

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

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

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

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

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

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

**23. Notices.**

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

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

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

**24. Waivers.**

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

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

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

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

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

(i) *Lessor's Agent*. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: *To the Lessor*: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. *To the Lessee and the*

*Lessor*: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

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

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

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

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

**26. No Right To Holdover**. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on a monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

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

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

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

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

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

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

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

30.4 **Self-Executing**. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that,

upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

**31. Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

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

**33. Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

**34. Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the interior side of the window of the Premises provided such sign shall be no larger than the window pane, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

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

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

**37. Guarantor.**

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

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

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

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

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

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

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

39.4 **Effect of Default on Options**.

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

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

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

**40. Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

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

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

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

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

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

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

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

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

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

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

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

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

(a) The Premises:

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

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

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

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

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation except to the extent related to the Improvements completed by Lessor referenced in Exhibit 4. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

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

_____ _____

_____ _____

INITIALS INITIALS

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

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

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

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

Executed at: Newport Beach, California
On: _____

By LESSOR:
GREEN RIVER PROPERTIES, LLC., a California limited liability company

By: Green River Properties SPE, Inc.,
Name Printed: a Delaware corporation
Title: Manager
Phone: _____
Fax: _____
Email: _____

By: _____
Name Printed: Steven L. Craig
Title: President
Phone: 949-224-4100
Fax: 949-224-4101
Email: _____

Address: 4100 MacArthur Blvd., Suite 100, Newport Beach, CA 92660
Federal ID No.: 33-0678875

BROKER
N/A

Attn: _____
Title: _____

Address: _____
Phone: _____
Fax: _____
Email: _____
Federal ID No.: _____
Broker DRE License #: _____
Agent DRE License #: _____

Executed at: _____
On: _____

By LESSEE:
BIOLASE, INC., a Delaware corporation

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

Address: _____
Federal ID No.: _____

BROKER
CBRE

Attn: Travis Boyd
Title: Executive Vice President

Address: 3501 Jamboree Rd., Suite 100
Newport Beach, CA 92660
Phone: 949-725-8677
Fax: 949-725-8480
Email: travis.boyd@cbre.com
Federal ID No.: _____
Broker DRE License #: 00409987
Agent DRE License #: _____



_____ _____
INITIALS INITIALS

**ADDENDUM TO STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE BETWEEN GREEN RIVER PROPERTIES, LLC ("LESSOR") AND BIOLASE, INC. ("LESSEE") FOR PREMISES AT 4225 PRADO ROAD, SUITE 102 CORONA, CALIFORNIA 92880**

This Addendum is attached to, and modifies and supplements the provisions of the Standard Industrial/ Commercial Multi-Tenant Lease of even date herewith by and between GREEN RIVER PROPERTIES, LLC, a California limited liability company, as Lessor; and BIOLASE, INC., a Delaware corporation, as Lessee. Said Lease, as modified and supplemented by this Addendum, is referred to hereinafter as "this Lease." In the event of any inconsistency between the terms of the original Lease and the terms of this Addendum, the terms of this Addendum shall govern and control.

**50.** **Base Rent**: Lessee shall commence payment of Base Rent and any other monetary obligations under this Lease as of the Commencement Date. Base Rent shall be payable on or before the first day of each calendar month during the Initial Term, in the following amounts (and the time periods below shall relate to the period from and after the Commencement Date, with any partial calendar month bearing the same rate as Month 1 below):

| | | |
|---|---|---|
| Year 1 | Months 1-12 | $8,800.00 per month |
| Year 2 | Months 13-24 | $9,064.00 per month |
| Year 3 | Months 25-36 | $9,335.92 per month |
| Year 4 | Months 37-48 | $9,616.00 per month |
| Year 5 | Months 49-60 | $9,904.48 per month |

**51.** **Option(s) to Extend**: Lessee shall have two (2) options ("Option") to extend this Lease after the Initial term, each for a period of successive five (5) years ("Option Term"). Each Option shall be personal to the original Lessee named in this Lease and shall not be exercisable by any assignee or subtenant of the original Lessee named in this Lease, nor be exercisable by the original Lessee named in this Lease if such original Lessee shall have theretofore assigned its interest in this Lease or sublet all or any part of the Premises. In order for the Option to be effectively exercised, it must be exercised by notice from the original Lessee named in this Lease and actually received by Lessor no earlier than one year prior to the expiration of the Initial Term or any later than nine (9) months prior to expiration of the Initial Term for the first Option and for the second Option , it must be exercised by notice from the original Lessee named in this Lease and actually received by Lessor no earlier than one year prior to the expiration of the first Option Term or any later than nine (9) months prior to expiration of the first Option Term for the second Option. For example, if the Initial Term expires April 30, 2025, Lessee must deliver the notice of exercise to Lessor no earlier than May 1, 2024 and no later than July 31, 2024. Any exercise of the Option shall be of no effect if Lessee is in default beyond the applicable period for curing the same at the time of such notice, or is in default at the commencement of the Option Term. Lessee agrees that it shall waive its right to exercise the Option if Lessee shall fail for any reason whatsoever to give such notice to Lessor by the time provided for the giving of such notice, whether such failure is inadvertent or intentional, time being of the essence as to the exercise of the Option. The Option Term shall be at the same terms and conditions as set forth in this Lease other than Base Rent, which shall be as set forth below, but Lessee shall have no further right to extend the Term of this Lease beyond the Option Terms set forth below. The Base Rent during each Option Term, assuming Lessee timely and properly exercises same in accordance with this Paragraph 51, shall be as follows:

| | | | |
|---|---|---|---|
| **First Option Term:** | Year 6 | Months 60-72 | $10,201.61 per month |
| | Year 7 | Months 73-84 | $10,507.66 per month |
| | Year 8 | Months 85-96 | $10,822.89 per month |
| | Year 9 | Months 97-108 | $11,147.58 per month |
| | Year 10 | Months 109-120 | $11,482.00 per month |
| **Second Option Term:** | Year 11 | Months 121-132 | $11,826.46 per month |
| | Year 12 | Months 133-144 | $12,181.26 per month |
| | Year 13 | Months 145-156 | $12,546.70 per month |
| | Year 14 | Months 157-168 | $12,923.10 per month |
| | Year 15 | Months 169-180 | $13,310.79 per month |

Any references in this Lease to the term of this Lease shall be deemed to refer to the Initial Term and, if the first Option is exercised in accordance with this Paragraph 51, the First Option Term and if the Second Option is exercised in accordance with this Paragraph 51, the Second Option Term.

**52.** **Tenant Improvements by Lessee**: All tenant improvements performed by Lessee shall be approved, in writing by Lessor prior to construction, permitted and signed off by the City of Corona Building Department (and Lessee shall provide Lessor with copies of all such plans and permits), and shall be at Lessee's sole cost and expense. Lessee shall submit all plans to Lessor for Lessor's approval prior to submittal of same to any governmental authority and shall comply with Lessor's procedures with respect to all such submittals.

**53.** **Additional Indemnification**: In addition to the indemnities set forth in this Lease, Lessee shall indemnify, defend with counsel of Lessor's choice, protect and hold harmless Lessor from and against any and all claims, liability, costs, expenses, judgments (including any judgments for contribution), attorney's fees and costs of suit arising out of any release of Hazardous Substances (defined below) caused by or permitted by Lessee or any of Lessee's customers, suppliers, agents, employees, contractors and the like, on, about, in or under the Premises during the term of this Lease. For purposes of this Section 52, "Hazardous Substance" shall mean and include (1) a "hazardous substance" as defined in 42 U.S.C. § 9601 (14), California Health & Safety Code § 25316 and/or California Water Code § 13050 (p), (2) any substance listed in 26 California Code of Regulations § 22-6680 (d), (3) "hazardous wastes" as defined in California Health & Safety Code § 25117, (4) any other material, gas or substance known or suspected to be toxic or hazardous (including, without limitation, any radioactive substance, methane gas, volatile hydrocarbons, industrial solvents and asbestos) and (5) any other material, gas or substance which could cause a material detriment to, or materially impair the beneficial use of, the Premises or any property in the vicinity of the Premises, or which could constitute a health, safety or environmental risk to any occupant of the Premises or any property in the vicinity of the Premises. Notwithstanding the foregoing, Hazardous Substances shall not include, nor shall Lessee be liable with respect to, underground migration of any Hazardous Substances under the Premises from areas outside of the Premises which were not caused or contributed to by Lessee. Lessee's obligations under this paragraph shall survive the termination of the Lease.

**54.** **Common Area Maintenance Charges**: Lessee shall be responsible for Lessee's share of the "Common Area Operating Expenses" as defined in Paragraphs 1.6 and 4.2. Lessee's monthly Common Area Maintenance Charge for the first twelve months of the lease shall be $1,760.00 and shall increase every twelve months after the Commencement Date at a fixed rate of Three Percent (3%) during the Initial Term. After the Initial Term, at the commencement of each of the First Option Term and, if applicable, the Second Option Term, the Common Area Operating Expenses shall be recalculated to Lessee's share of the actual amount of Common Area Expenses for the Project on the Option Term renewal date for the first twelve (12 months) of each Option Term and increasing by a fixed Three Percent (3%) per year for the

remaining four years of each Option term.

The Common Area Operating Expenses for the Initial Term shall be the following:

| | | |
|---|---|---|
| Year 1 | Months 1-12 | $1,760.00 per month |
| Year 2 | Months 13-24 | $1,812.80 per month |
| Year 3 | Months 25-36 | $1,867.18 per month |
| Year 4 | Months 37-48 | $1,923.20 per month |
| Year 5 | Months 49-60 | $1,980.90 per month |

For the Option Terms, the Common Area Operating Expenses shall be recalculated to Lessee's share of the actual amount of Common Area Expenses for the Project for the first twelve (12 months) of each Option Term renewal date and increasing by a fixed Three Percent (3%) per year for the remaining four years of each Option term.

In addition, Lessee shall be solely responsible for contracting and paying for the removal of trash and debris generated by Lessee. Lessee shall also be solely responsible for the maintenance of electrical, plumbing and HVAC systems which exclusively serve the Premises and are not considered to be part of the Common Area.

**55.** **Storage of Goods**: Lessee shall store and warehouse all goods, equipment, supplies and other personal property within the internal boundaries of the Premises. No such items shall be stored in the parking areas or common areas of the Building or Project. Lessee shall be permitted to utilize the driveway isle at the rear lot of the Project (abutting the rear garage door of the Premises) for the temporary loading and unloading of materials and supplies, provided that no such temporary usage in such areas shall occur more than two (2) times per day nor more than one (1) hour during any single session and such use shall be conducted in a manner so as to not interfere with the operations or parking in the Project. If Lessor elects to remove any materials or personal property stored in the parking area or at the rear of the space (exterior), Lessee agrees to reimburse Lessor for all costs and expense relating to such removal. Lessee's breach of the provisions of this Paragraph shall constitute a default under the Lease and Lessor shall be entitled to all rights and remedies Lessor may have for default under this Lease as outlined in Paragraph 13.2 of this Lease.

**56.** **Motor Vehicle Parking**: Motor vehicles shall park in an orderly manner within the lines designating individual parking spaces during operating hours only. Overnight parking is strictly prohibited. Unauthorized vehicles will be towed away immediately at the vehicle owner's expense.

**57.** **Operation of Business**:

A. Lessee shall only operate its business within the Premises defined in Paragraph 1.2(a). **Lessee's operation of its business outside of its Premises, anywhere in or on the Project (including, without limitation, in or on the parking or other Common Areas), for any purpose or duration is strictly prohibited.** In the event that Lessee operates it business outside of the Premises upon any portion of the Project (including, without limitation, in or on the parking or other Common Areas) the Premises, Lessor shall have the right to treat such violation as an immediate incurable "**Breach**" (as defined in Paragraph 13.1) of this Lease, and shall entitle Lessor, at Lessor's sole option, to pursue the remedies set forth in Paragraph 13.2 at any time thereafter without the necessity of any notice on the part of Lessor to Lessee.

B. Lessee acknowledges that the violation of any of the provisions of this Paragraph 57 will cause Lessor to incur costs not contemplated by this Lease, the exact costs being extremely difficult to

ascertain. Accordingly, beginning with the first such violation in respect to Lessee's operation of its business outside the Premises, Lessee shall upon demand pay to Lessor, as additional rent, a $500.00 fee for such first violation and for each subsequent violation; provided, however, that from and after the third such violation, such fee shall be increased to $1,000.00 for such third violation and each subsequent violation. Lessor and Lessee agree that the foregoing fees represent a reasonable estimate of the costs which Lessor will incur by reason of the violation by Lessee of any of the provisions of this Paragraph 57, and are fair compensation to Lessor for its loss suffered by such violation. Lessee expressly understands and agrees that the failure to pay to Lessor upon demand any of the fees in respect of any such violation as hereinbefore set forth shall entitle Lessor to pursue all of its available remedies under this Lease which shall apply to non-payment of rent.

58. **Tenant Improvements by Lessor:** Lessor has agreed to modify the Premises with the improvements requested by Lessee attached hereto as Exhibit 4 ("Improvements") including all plans, permits, architectural fees and other costs required to complete such Improvements in accordance with ADA and Title 24 to the extent applicable, but not to exceed such amount for Lessor's work referenced in Exhibit 4. Lessor shall also provide digital copies of the plans and permits for the Improvements completed by Lessor. Lessee has agreed to repay Lessor for these Improvements monthly in the amount of Three Thousand Four Hundred Seventy Nine Dollars and Ninety Cents ($3,479.90) during the Initial Term of this Lease (60 months). These amounts shall not be prorated and represent the amortized amount of $180,300.00 at a six percent (6.0%) rate of interest over the Initial Term. Lessee shall use best efforts and cause its agent to use best's efforts and all due diligence to cooperate with Lessor to complete the construction of the Improvements. If Lessor shall be directly or indirectly delayed at any time in the progress of the planning or construction of the Improvements by strikes, lockouts, fire, delay in transportation, unavoidable casualties, rain or weather conditions, governmental procedures or delay, or by other cause beyond Lessor's control ("force majeure"), or by Lessee's Breach or Default, by any acts or omissions of Lessee, Lessee's agents, employees, contractors, including extra work, changes in construction ordered by Lessee ("Lessee Delay"), then the Commencement Date established in this Lease shall be extended by the period of such force majeure delay and Lessee delay; provided, however, Lessor may elect to designate the Commencement Date as the date completion of Improvements would have occurred if such Lessee Delays had not occurred. Lessee shall, within 10 days following the date that Lessor delivered possession of the Premises to Lessee, notify lessor in writing of any items of the Improvements that Lessee deems incomplete or incorrect in order for the Premises to be acceptable to Lessee. Lessee shall be deemed to have accepted the Premises and approved construction of the Improvements if and to the extent Lessee does not deliver such a list to Lessor within said time period.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum and the Lease to be duly executed on this _____ day of January, 2020.

| **LESSOR:** | **LESSEE:** |
|---|---|
| GREEN RIVER PROPERTIES, LLC,<br>a California limited liability company | BIOLASE, INC.,<br>a Delaware corporation |
| By: Green River Properties, SPE, Inc.,<br>a Delaware corporation,<br>Manager | By:_____ |
| | Name:_____ |
| By: _____<br>Steven L. Craig, President | Title:_____ |

***Tenant Exterior Identification Sign Program for Green River Center***
*4225, 4235 & 4375 Prado Road, Corona, California*

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*This document is to provide the necessary guidelines for all exterior tenant identification signs at Green River Center. It is the intention of this sign program to provide each tenant with adequate and visible identification to all vehicular traffic on public thoroughfares adjacent to the project and on site visitors.*

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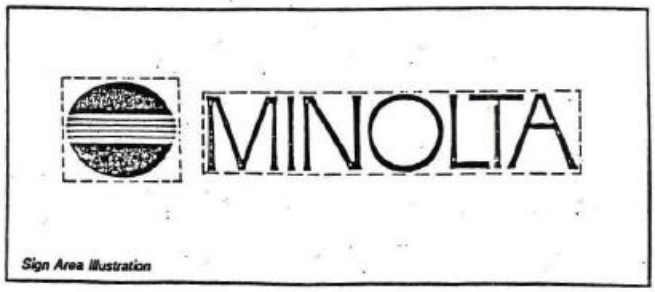
## *General Information*

1. *Signs and logos attached to the north face of the building (facing the Riverside Freeway) shall be internally illuminated and signs attached to the south face of the building (facing Prado Road) shall be non-illuminated.*

2. *All signs shall meet the design and fabrication specifications outlined in this program and are subject to review by owner and the City of Corona. Tenant shall submit three copies of final sign shop drawings, including all necessary engineering data, color chips and typography sample to owner prior to submittal to City of Corona for permitting. Only after written approval of sign drawings by owner and City of Corona, may sign be fabricated and installed. Tenant shall be responsible for all costs associated with the approval, permitting, fabrication and installation of signs.*

3. *All attachment hardware shall be stainless steel, aluminum or anodized steel to preclude rust staining of architectural surfaces and to permit easy future removal of graphics.*

4. *The area of a tenant sign comprised of individual letters shall be computed by adding the sum of the areas measured by a rectangle around the outside of the lettering and pictorial symbol. See illustration below.*




*Sign Area Illustration*

4a. Tenant shall be responsible for the removal of any signs upon the termination of the lease.

**EXHIBIT "1"**

5. A corporate logo may be used in conjunction with the company name as long as both letter forms and logo conform with the City of Corona maximum sign area limitations.

6. See attached drawing for design detail and specification for the various allowable sign types and their respective sizes and locations on the buildings.

7. The tenant shall be responsible for providing his own sign through the use of a sign contractor that is licensed in the State of California.

8. All engineering shall be provided by an engineer licensed in the state of California.

9. Owner reserves the right to amend, alter or vary from this sign program at Owner's sole discretion.

10. All signs must be in the English language.

11. This sign program is part of the legal lease document between tenant and owner and owner has the right to demand that all non-conforming signs be removed at tenants expense.

12. At the termination of lease, or at such time as tenant vacates the leased space, tenant shall be responsible for removing signs and returning the surface of the building to its original condition

13. Section 17.74.040 of the Corona Municipal Code requires that a sign permit be obtained to erect, re-erect, replace, construct or alter any sign. Applicant shall submit three (3) copies of all required sign drawings to scale with a completed application form provided by the city. A Planning Division permit fee of $90.00 and a security deposit of $150.00 is required at time of submittal.

## Sign Types

**Sign Type A** - Internally illuminated individual letter wall sign located on north elevation of building.

**Sign Type B** - Non-illuminated individual letter wall sign located on south elevation of buildings.

**Sign Type C** - Tenant information applied to glass area at primary suite entry.

## Sign Specifications

**Sign Type A** - Sign shall be composed of individual pan channel letters with internal white neon illumination. Letter forms shall be fabricated from 22 gauge paint-loc sheet metal or 0.090" aluminum with 3/4" trim cap retaining 1/8" acrylic face. All letter forms shall be attached to a 2" x 8" fabricated metal raceway containing all concealed wiring. Raceway and letter forms shall be fabricated from like materials to avoid electrolysis and/or metal fatigue. Letter forms shall not be attached directly to wall surface. Sign transformer shall be located behind wall and be directly tied to raceway at one source. Transformer shall be contained in an approved transformer box. All electrical components shall be installed and labeled in accordance with the Underwriter's Laboratory (UL) specifications and in accordance with codes of local governmental agencies having jurisdiction over sign fabrication and installation. All letters shall be welded construction, with all welds ground smooth. All exposed metal surfaces shall be sanded, primed and painted with high quality satin finish automotive acrylic enamel. Interior of letter forms shall be painted white for maximum reflectance. Trim cap shall be painted to match acrylic face. All acrylic faces shall be fabricated from one piece, no seams shall be allowed. (See Exhibit 1 for sign section)

The size of any one Sign Type A is to be one square foot of sign area for each lineal foot of building frontage as outlined in City of Corona sign ordinance maximum area shall not exceed 150 square feet. Tenants with less than 80 feet of building frontage may have a sign not exceeding 80 square feet of area. All sign copy shall be contained on a sign line. Maximum letter height shall not exceed 34". (See Exhibits 4 & 6 for location on buildings)

**Sign Type B** - Sign shall be composed from individual letter forms cut form 2" thick, 1 1/2 lb. polystyrene foam letter with paint and sand finish on the return and 60 mil. high impact polystyrene plastic face permanently laminated to the body of the letter. The letter forms shall be primed and painted with two coats of high quality satin finish latex enamel. Letters shall be permanently secured to wall with silicon adhesive. Face and return of all letter forms shall be painted the same color. (See Exhibit 2 for sign section.)

The size of any one Sign Type B is to be one square foot of sign area for each lineal foot of building frontage as outlined in City of Corona sign ordinance Maximum area shall not exceed 150 square feet. Tenants with less than 80 feet of building frontage may have a sign not exceeding 80 square feet of area. All sign copy shall be contained on a sign line. Maximum letter height shall not exceed 34". (See Exhibits 5 & 7 for location on buildings)

**Sign Type C** - Each tenant shall be allowed to display information on the glass area adjacent to the primary suite entrance. Copy shall be white die-cut vinyl applied to the exterior surface of the glass. Type size shall be 1 1/2" capital height with 1" space between copy lines. All type shall be aligned flush left/ragged right on the glass panel to the right of the entry door. Type style shall be Helvetica Medium, initial upper case and lower case. (See Exhibit 3 for details)

## Color and Typography

All letter returns and raceways on Sign Type A signs shall be painted to match Sinclair CM8660, off white, with a satin finish. Trim caps shall be painted to match the color selected for the acrylic letter face. All sign copy shall be one color, however, if a logo is used it may be painted a second color. Standard corporate colors shall be allowed, but will need owners written approval prior to submittal for City of Corona permit. The following colors are approved by owner for use on any Sign Type A sign.

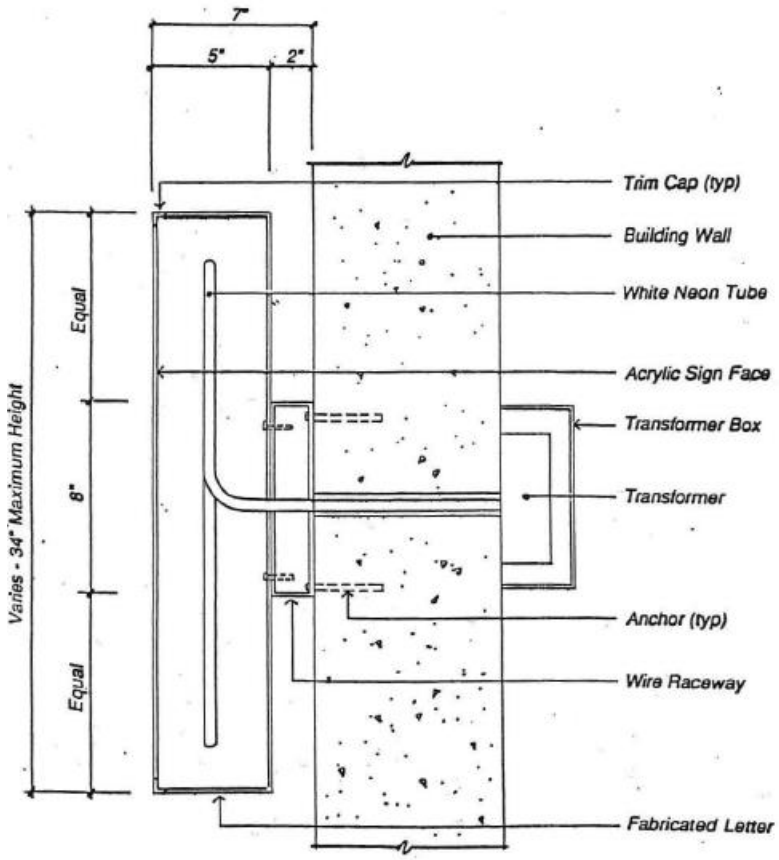
1. Plexiglas 2037 - yellow
2. Plexiglas 2157 - red
3. Plexiglas 2108 - green
4. Plexiglas 2050 - blue

Face and return of Sign Type B signs shall be painted to match the face color of its corresponding Sign Type A sign. All sign copy shall be one color, however, if a logo is used it may be painted a second color. Standard corporate colors shall be allowed, but will need owners written approval prior tosubmittal for City of Corona permit.

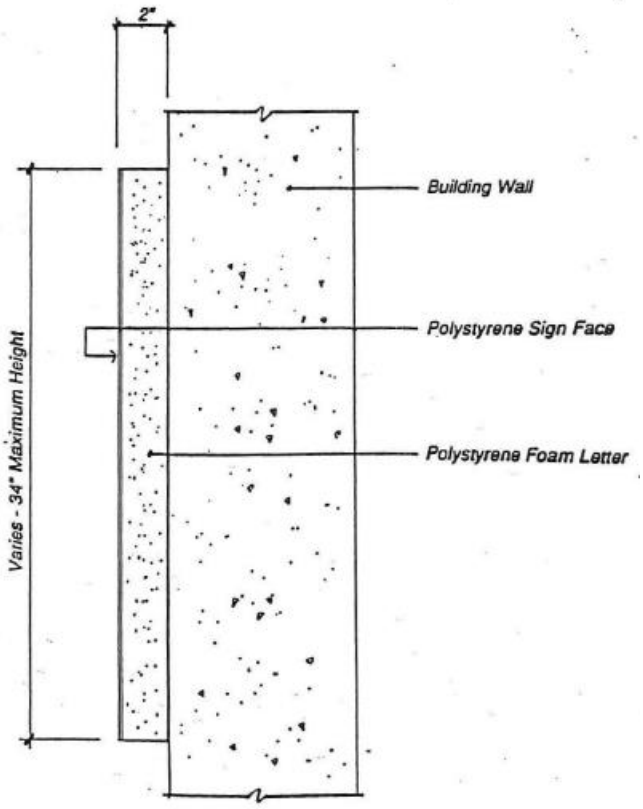
Color for Sign Type C shall be white.

Type style shall be selected for Sign Types A & B by tenant and presented to owner for written approval prior to City of Corona submittal. Type styles should be selected to provide optimum visibility for traffic moving at freeway speeds. Tenant my use all upper case or initial capitals in the sign, however, script faces are discouraged.

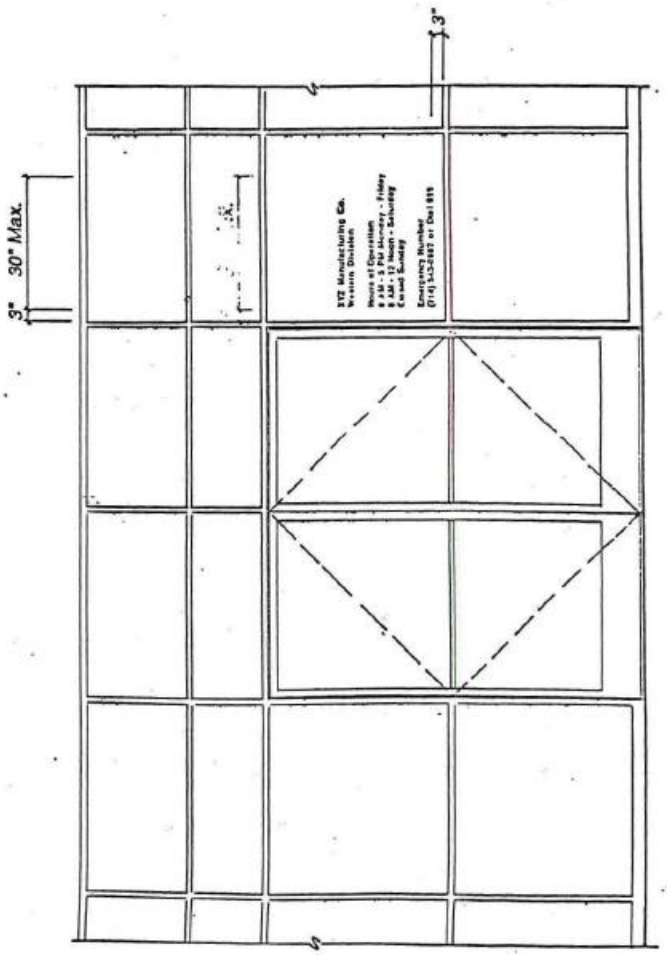
**Exhibit 1 - Sign Type A Section**



## Exhibit 2 - Sign Type B Section



## Exhibit 3 - Entry Elevation - Sign Type C



## Exhibit 4 - Single Story Building North Elevations - Sign Type A

Drawing indicates vertical location only, horizontal location per tenant submittal

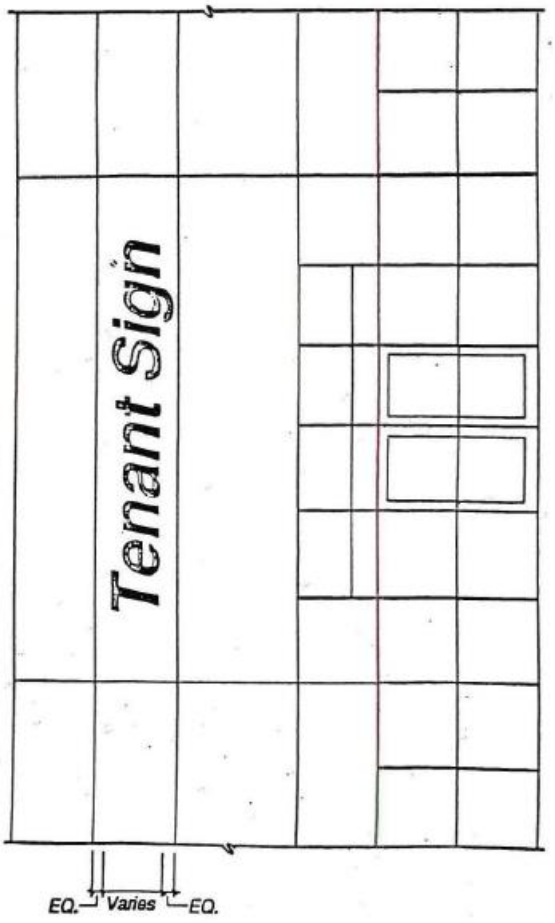
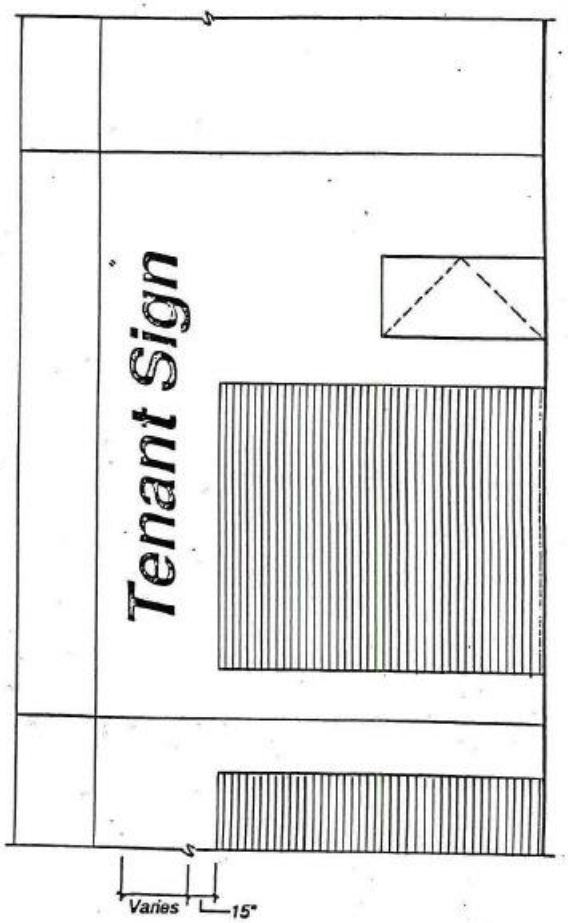


**Exhibit 5 - Single Story Building South Elevations - Sign Type B**

*Drawing indicates vertical location only, horizontal location per tenant submittal*



## Exhibit 6 - Two Story Building North Elevations - Sign Type A

*Drawing indicates vertical location only, horizontal location per tenant submittal*

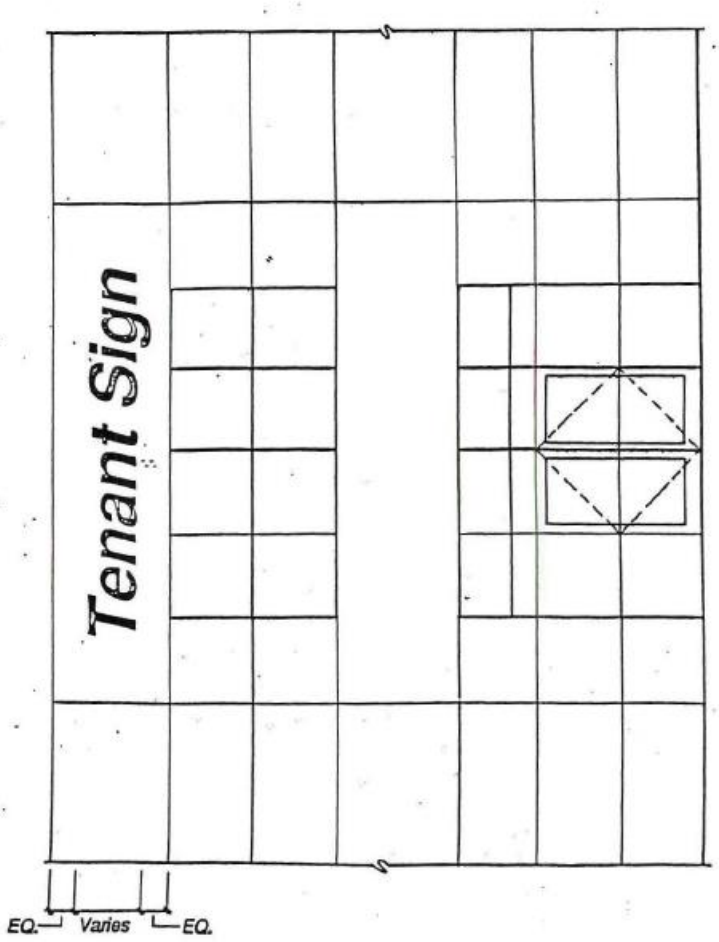


Exhibit "2"
GREEN RIVER CENTER
RULES & REGULATIONS
(Supplemental to Lease Provisions)

1. No signs, marquee, placard, picture, advertisement, name or notice shall be inscribed, displayed, printed, installed or affixed to any portion of the exterior of the Premises including, but not limited to, the roof, facade, doors, windows or walls, without the written consent of approval by the Landlord first had and obtained. Landlord shall have the right to remove any such sign, marquee, placard, picture, advertisement, name or notice without notice to and at the expense of Tenant.

   All approved signs shall be inscribed, printed, painted, installed or affixed at the expense of Tenant by a person or company approved of by Landlord. Tenant shall not place anything or allow anything to be placed near or on the glass of any window, door partition or wall such as, but not limited to, freestanding or hanging signs or advertisements, or bottles, parcels, or other articles placed on the window sills, which may appear unsightly from the outside of the Premises, as determined by the Landlord.

2. No awnings or other projection shall be attached to the outside walls of the Building. No curtains, blinds, shades or screens shall be attached to or hung in, or used on connection with, and window or door of the Premises without prior written consent of the Landlord. Neither the interior or exterior of any windows shall be coated or otherwise sunscreened without the express written consent of the Landlord. Landlord may, at his option, furnish and install a Building Standard window covering at all exterior windows.

3. The walkways, sidewalks, exits, entrances, courts, vestibules, corridors or halls shall not be obstructed or used for any other purpose other than the ingress or egress of pedestrian travel, and shall not be used for loitering or gathering, or to display, store or place any signage, merchandise, equipment, or devices, or for any other purpose.

4. The toilet rooms, urinals, washbowls, sinks and other plumbing fixtures shall not be used for any other purpose other than those for which they were constructed and no sweepings, rubbish, rags or foreign substance of any kind whatsoever shall be placed therein.

   All damages, and the expense thereof, resulting from any misuse of said fixtures, including without limitation, any breakage or stoppage, shall be borne by the Tenant or Tenant's servants, employees, agents, visitors or licensees, who shall have caused the same.

5. Tenant shall not in any way deface the Premises or any part thereof.

6. Tenant shall not use, keep or permit to be used or kept, any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to the Landlord or other occupants of the Building by reason of noise, odors, and/or vibrations or interfere in any way with other Lessees or those having business therein.

7. Tenant shall not use or keep in the Premises, or the Building, any kerosene, gasoline, or inflammable, combustible or explosive fluid, chemical, substance or material.

8. No Tenant shall use any method of heating or air conditioning other than that is supplied by Landlord.

9. Landlord reserves the right to exclude or expel from the Premises any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act of violation of any of these rules and regulations

10. No vending machines or any description shall be installed, maintained or operated upon the Premises without the written consent of the Landlord.

11. Landlord shall have the right, exercisable without notice and without liability to Landlord, to change the name and street address of the building of which the Premises are a part.

12. Canvassing, soliciting, peddling, picketing, demonstrating or otherwise engaging in any conduct that unreasonably impairs the value or use of the Premises of the Center are prohibited, and each Tenant shall cooperate to prevent the same.

# EXHIBIT "2"

13. All trash, refuse and waste materials shall be regularly removed from the Premises by the Tenant and placed in the designated trash bins/enclosures for their use. All cardboard boxes are to be completely "broken down" and other waste materials are to be inside securely tied/closed trash bags, prior to disposal. No large objects including, without limitation, furniture, wood, pallets, piping, aluminum, are to be disposed of in the trash bins/enclosures.

Tenant shall not burn any trash or garbage, of any kind, in or about the Leased Premises of the Project.

14. No aerial antenna shall be erected on the roof or exterior walls of the Lease Premises, or on the grounds, without in each instance, the written consent of the Landlord first being obtained. Any aerial antenna, so installed without such written consent, shall be subject to removal by Landlord, at any time without notice.

15. No loud speakers, television, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the Leased Premises without the prior written consent of the Landlord.

16. The entire Premises, including vestibules, entrances, doors, fixtures, windows and plate glass shall at all times be maintained in a safe, neat and clean condition.

17. The outside areas immediately adjoining the Leased Premises shall be kept clean and free from dirt and rubbish by Tenant, to the satisfaction of the Landlord, and Tenant shall not place or permit any obstruction or materials in such areas.

18. No exterior storage shall be allowed including, without limitation, the storage of motor vehicles, trucks, boats, trailers, pallets, drums, machinery, or equipment of any kind or nature, without the permission in writing of the Landlord.

19. No persons shall use any parking areas in the Center for any purpose other than parking motor vehicles during the period of time such persons or the occupants of the vehicles are customers or business invitees of one or more Tenants in the Center. All such vehicles shall be parked in an orderly manner within the designated lines defining the individual parking spaces.

20. Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord's reasonable opinion, tends to impair the reputation of the center or its desirability as a shopping center and upon written notice from the Landlord any tenant shall refrain from or discontinue such advertising.

21. No residential uses including, without limitation, the generality of the foregoing, residing, sleeping or cooking are permitted on the Premises or anywhere in the project.

22. No animals of any type including, without limitation, the generality of the foregoing, pets, guard dogs, exotic animals, reptiles or birds, are permitted to be brought upon or kept in the Premises or anywhere on the project.

# Green River Center

High Identity Development
for lease at the Green River Exit
In Corona.

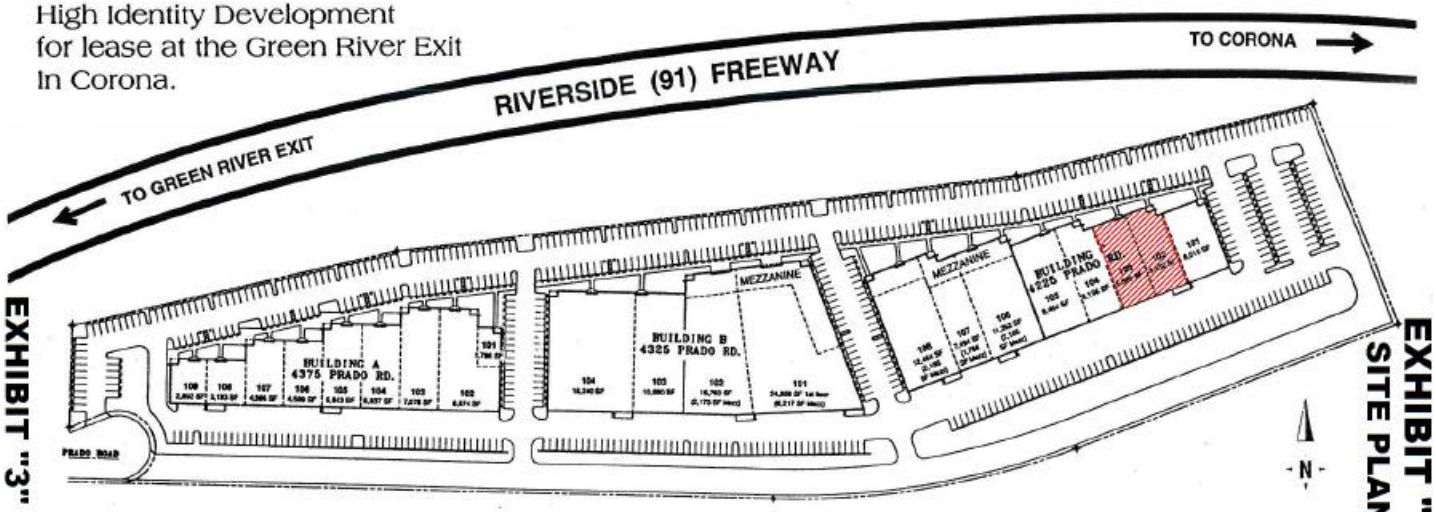



EXHIBIT "3"

EXHIBIT "3"
SITE PLAN

## Park Features:

- Over 1200 Linear Feet of Freeway Frontage
- Situated at the Western Gateway to Riverside County
- all Units have outstanding visibility with 200,000 average daily traffic count.
- Three Buildings totalling 191,798 square feet
- Abundant (3.4:1) parking
- Suitable for a broad range of uses including light manufacturing, showroom, warehouse, limited retail and many others
- 18' - 24' Clearance
- Fully Sprinklered - .45/3,000 GPM
- Power to suit (120/208 Volt & 277/480 Volt Available)
- 12' X 14' Ground Level Loading Doors

**Building A -** 44,638 Sq. Ft.
Divisible to 1,796 Sq. Ft.

**Building B -** 78,132 Sq. Ft.
Divisible to 10,880 Sq. Ft.

**Building C -** 69,028 Sq. Ft.
Divisible to 5,452 Sq. Ft.

EXHIBIT 4

LANDLORD'S TENANT IMPROVEMENTS

ESTIMATES

| | | |
|---|---|---|
| 1) | Drop ceiling 4000 sf@ 7.5/sq foot | $30,000 |
| 2) | Room Construction 180 linear feet @ $40/linear sf and 3 doors@$750 ea | $9,300 |
| 3) | HVAC 7.5 tons for 4,000 sf room installed | $20,000 |
| 4) | Lights 40 lights @$300/light | $12,000 |
| 5) | Flooring 4000 sf@ $4 sf | $16,000 |
| 6) | Electrical | $15,000 |
| 7) | Air Line | $5,000 |
| 8) | Kaeser Compressor | $30,000 |
| 9) | Permits and Drawings | $8,000 |
| 10) | Retrofit Fire Sprinkler 4,000 sf @ $4/sf | $16,000 |
| 11) | Rear Roll Up Doors | $19,000 |

TOTAL $180, 300*

* This amount is being repaid by Lessee to Lessor pursuant to Paragraph 58 of the Lease.

ADDITIONAL COSTS

Any additional costs over the $180,300 outlined above which are required for the completion of the above improvements, including the following, shall be Lessor's obligation, provided Lessor's additional costs shall not exceed $32,500 for a total of $212,500 (collectively "Additional Costs"):

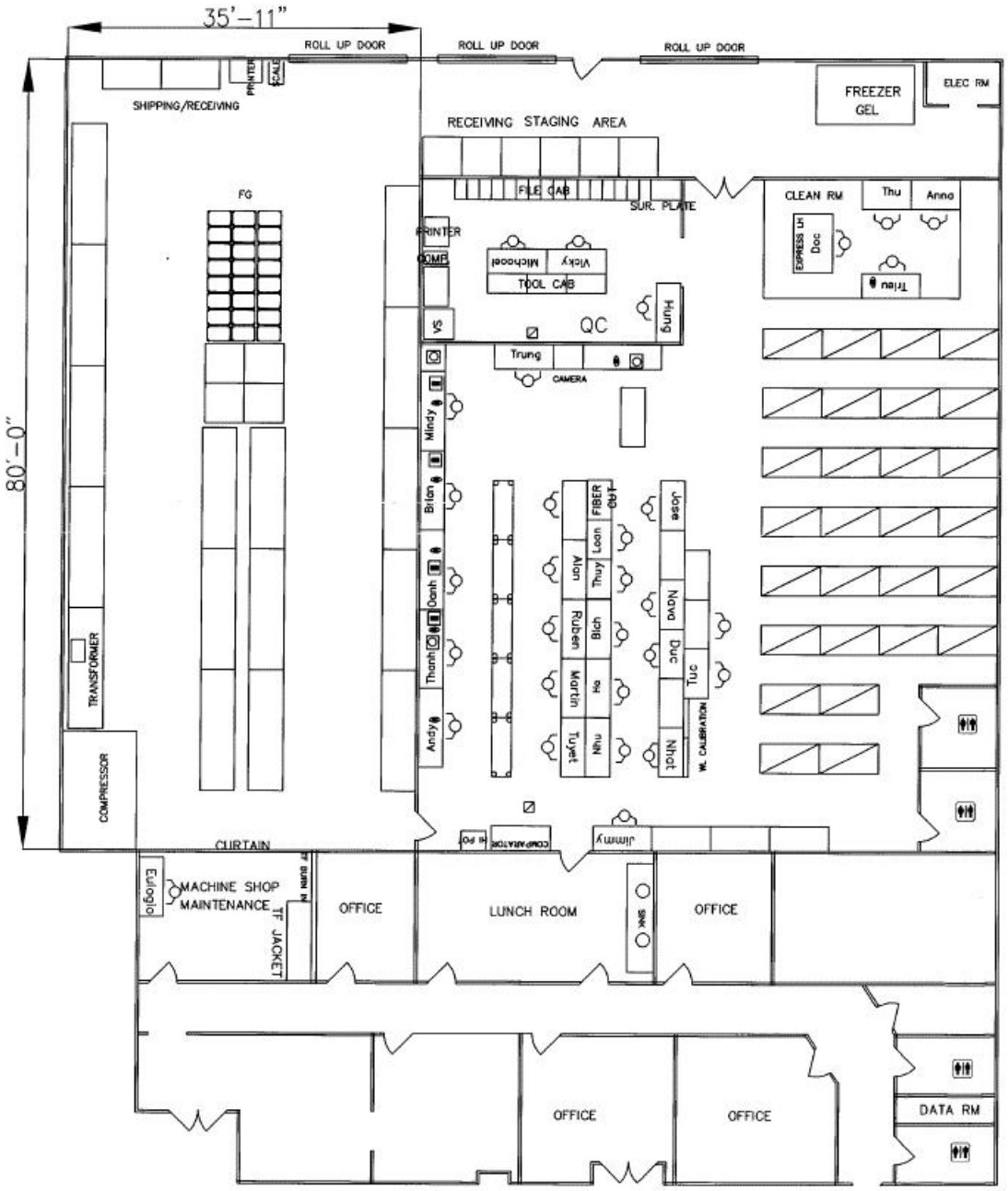
(1) Any additional permit, plan check, and architectural fees over the $8,000 outlined above;

(2) Sales tax and delivery fees for the Kaesar compressor not included in the $30,000 estimate outlined above; and

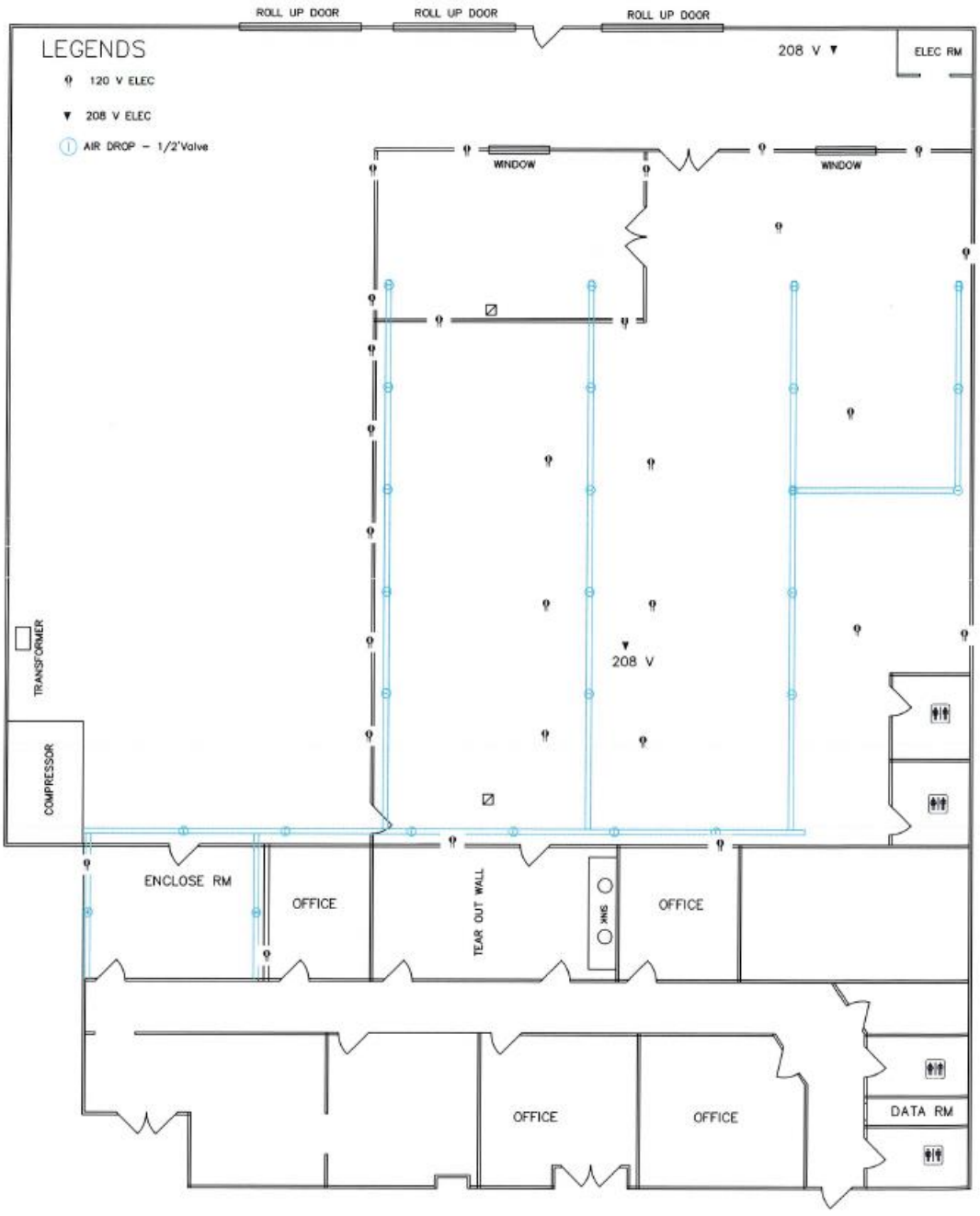
(3) Replacement and/or framing of the rear rollup doors over the $19,000 outlined above.

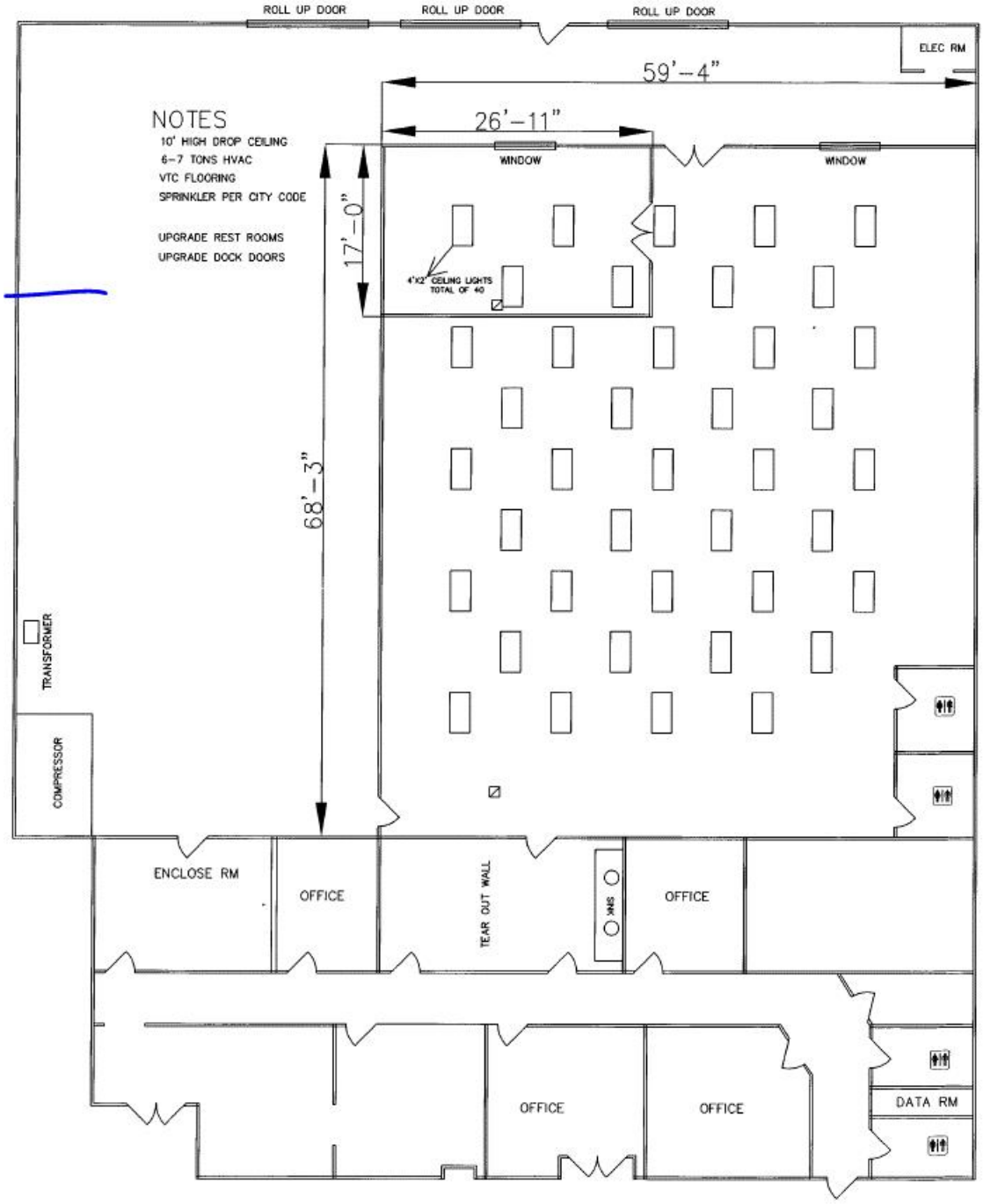
Tenant shall not be required to repay Lessor for these Additional Costs. Any changes requested by Tenant to the scope of work beyond Landlord's Tenant Improvements and the Additional Costs as outlined on this Exhibit 4 and depicted on Exhibit 5 shall be at Tenant's sole cost and expense.

# EXHIBIT 5


35'-11"
80'-0"
ROLL UP DOOR
ROLL UP DOOR
ROLL UP DOOR
SHIPPING/RECEIVING
PRINTER
SCALE
RECEIVING STAGING AREA
FREEZER GEL
ELEC RM
FG
FILE CAB
SUR. PLATE
CLEAN RM
Thu
Anna
EXPRESS LH Doc
Thieu
PRINTER
COMP
TOOL CAB
Vicky
Michael
VS
QC
Hung
Trung
CAMERA
Mindy
Brian
Oanh
Thanh
Andy
FIBER
Loan
Thuy
Alan
Ruben
Bich
Martin
Ha
Tuyet
Nhu
Jose
Nadia
Duc
Tuc
Nhat
WL CALIBRATION
TRANSFORMER
COMPRESSOR
CURTAIN
Jimmy
Eulogio
MACHINE SHOP MAINTENANCE
TF BURN IN
TF JACKET
OFFICE
LUNCH ROOM
SINK
OFFICE
OFFICE
OFFICE
DATA RM

ELECTRICAL/AIR




ROLL UP DOOR
ROLL UP DOOR
ROLL UP DOOR
ELEC RM
59'-4"
26'-11"
NOTES
10' HIGH DROP CEILING
6-7 TONS HVAC
VTC FLOORING
SPRINKLER PER CITY CODE
UPGRADE REST ROOMS
UPGRADE DOCK DOORS
WINDOW
WINDOW
17'-0"
4'X2' CEILING LIGHTS TOTAL OF 40
68'-3"
TRANSFORMER
COMPRESSOR
ENCLOSE RM
OFFICE
TEAR OUT WALL
VANS
OFFICE
OFFICE
OFFICE
DATA RM

# FOURTH AMENDMENT TO CREDIT AGREEMENT

THIS FOURTH AMENDMENT TO CREDIT AGREEMENT (this "**Amendment**"), dated as of March 24, 2020 , is entered into by and among **BIOLASE, INC.**, a Delaware corporation ("**Borrower**"), each of the undersigned financial institutions (individually each a "**Lender**" and collectively "**Lenders**") and **SWK FUNDING LLC,** a Delaware limited liability company, in its capacity as administrative agent for the other Lenders (in such capacity, "**Agent**").

## RECITALS

WHEREAS, Borrower, Agent and Lenders entered into that certain Credit Agreement dated as of November 9, 2018 (as heretofore amended and as the same may be further amended, modified or restated from time to time, being hereinafter referred to as the "**Credit Agreement**"); and

WHEREAS, Borrower, Agent and Lenders have agreed to amend certain provisions of the Credit Agreement as more fully set forth herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

## ARTICLE I

## Definitions

**1.1** Capitalized terms used in this Amendment are defined in the Credit Agreement, as amended hereby, unless otherwise stated.

## ARTICLE II

## Amendments to Credit Agreement

**2.1** **Amendments to Section 1.1**. Effective as of the date hereof, Section 1.1 of the Credit Agreement is hereby amended by deleting the definition of "Operating Burn" therefrom.

**2.2** **Amendments to Section 7.13**. Effective as of the date hereof, Section 7.13 of the Credit Agreement is hereby amended and restated to read as follows:

7.13 Financial Covenants.

7.13.1 Consolidated Unencumbered Liquid Assets.

Not permit the Consolidated Unencumbered Liquid Assets as of any date of determination to be less than $3,000,000.

7.13.2 Minimum Aggregate Revenue.

Not permit the Aggregate Revenue for the consecutive month period ending on the last Business Day of any Fiscal Quarter set forth

in the table below (designated by "Q" in the table below) to be less than the applicable amount set forth in the table below for such period.

| Minimum LTM | as of the end of: |
|---|---|
| Twelve (12) month period ending Q3 2019 | $40,000,000 |
| Twelve (12) month period ending Q4 2019 | $40,000,000 |
| Three (3) month period ending Q1 2020 | $8,500,000 |
| Twelve (12) month period ending Q2 2020 | $41,000,000 |
| Twelve (12) month period ending Q3 2020 | $42,000,000 |
| Twelve (12) month period ending Q4 2020 | $43,000,000 |
| Twelve (12) month period ending Q1 2021 | $44,000,000 |
| Twelve (12) month period ending Q2 2021 | $44,000,000 |
| Twelve (12) month period ending Q3 2021 | $45,000,000 |
| Twelve (12) month period ending Q4 2021 and each Fiscal Quarter thereafter | $46,000,000 |

7.13.3 Minimum EBITDA.

Not permit the EBITDA of Borrower and its Subsidiaries for the consecutive month period ending on the last Business Day of any Fiscal Quarter set forth in the table below (designated by "Q" in the table below) to be less than the applicable amount set forth in the table below for such period.

| | |
|---|---|
| Twelve (12) month period ending Q3 2019 | -($12,000,000) |
| Twelve (12) month period ending Q4 2019 | -($10,000,000) |
| Three (3) month period ending Q1 2020 | -($2,000,000) |
| Twelve (12) month period ending Q2 2020 | -($7,000,000) |
| Twelve (12) month period ending Q3 2020 | -($6,000,000) |

| | |
|---|---|
| Twelve (12) month period ending Q4 2020 | -($5,000,000) |
| Twelve (12) month period ending Q1 2021 | -($3,000,000) |
| Twelve (12) month period ending Q2 2021 | -($2,500,000) |
| Twelve (12) month period ending Q3 2021 | -($2,000,000) |
| Twelve (12) month period ending Q4 2021 and each Fiscal Quarter thereafter | -($2,000,000) |

## ARTICLE III

## Conditions Precedent

**3.1 Conditions Precedent.** The effectiveness of this Amendment is subject to the satisfaction of the following conditions precedent in a manner satisfactory to Agent, unless specifically waived in writing by Agent in its sole discretion:

(A). Agent shall have received (i) this Amendment duly executed by Borrower and (ii) that certain Second Consolidated, Amended and Restated Warrant to Purchase Stock executed by Borrower in favor of Agent.

(B). The representations and warranties contained herein and in the Credit Agreement and the other Loan Documents, as each is amended hereby, shall be true and correct as of the date hereof, as if made on the date hereof, except for such representations and warranties as are by their express terms limited to a specific date.

(C). Agent shall have received payment, for the benefit of Lenders, of an amendment fee in the amount of $25,000, which shall be deemed fully-earned and non-refundable as of the date hereof.

(D). No Default or Event of Default (other than the Specified Non-Compliance Items) under the Credit Agreement, as amended hereby, shall have occurred and be continuing, unless such Default or Event of Default has been otherwise specifically waived in writing by Agent.

## ARTICLE IV

## Limited Waiver, Ratifications, Representations and Warranties

**4.1 Limited Waiver.**

(a) Borrower was or is expecting to be in non-compliance, with each requirement of Section 7.13.2 and Section 7.13.3 of the Credit Agreement in each case for the periods ending December 31, 2019 and March 31, 2020, which failures constitute or

would constitute Events of Default under Section 8.1.4 of the Credit Agreement (the "**Specified Non-Compliance Items**"). Agent, on behalf of itself and the Lenders, hereby waives the Specified Non-Compliance Items effective as of the date hereof.

(b) Except as specifically set forth above in relation to the Specified Non-Compliance Items, nothing contained in this Amendment or any other communication between Agent, any Lender, Borrower or any other Loan Party shall be a waiver of any past, present or future non-compliance, violation, Default or Event of Default of Borrower under the Credit Agreement or any Loan Document. Except as specifically set forth above in relation to the Specified Non-Compliance Items, Agent and each Lender hereby expressly reserves any rights, privileges and remedies under the Credit Agreement and each Loan Document that Lender may have with respect to any non-compliance, violation, Default or Event of Default, and any failure by Agent or any Lender to exercise any right, privilege or remedy as a result of the violations set forth above shall not directly or indirectly in any way whatsoever either (i) impair, prejudice or otherwise adversely affect the rights of Agent or any Lender, except as set forth herein, at any time to exercise any right, privilege or remedy in connection with the Credit Agreement or any Loan Document, (ii) amend or alter any provision of the Credit Agreement or any Loan Document or any other contract or instrument or (iii) constitute any course of dealing or other basis for altering any obligation of Borrower or any rights, privilege or remedy of Agent or any Lender under the Credit Agreement or any Loan Document or any other contract or instrument. Nothing in this Amendment shall be construed to be a consent by Agent or any Lender to any prior, existing or future violations of the Credit Agreement or any Loan Document.

**4.2 Ratifications.** The terms and provisions set forth in this Amendment shall modify and supersede all inconsistent terms and provisions set forth in the Credit Agreement and the other Loan Documents, and, except as expressly modified and superseded by this Amendment, the terms and provisions of the Credit Agreement and the other Loan Documents are ratified and confirmed and shall continue in full force and effect. Borrower, Lenders and Agent agree that the Credit Agreement and the other Loan Documents, as amended hereby, shall continue to be legal, valid, binding and enforceable in accordance with their respective terms. Borrower agrees that this Amendment is not intended to and shall not cause a novation with respect to any or all of the Obligations.

**4.3 Representations and Warranties.** Borrower hereby represents and warrants to Agent and Lenders that (a) the execution, delivery and performance of this Amendment, any and all other Loan Documents executed and/or delivered in connection herewith have been authorized by all requisite action (as applicable) on the part of Borrower and will not violate the organizational documents of Borrower; (b) Borrower's directors and/or managers have authorized the execution, delivery and performance of this Amendment any and all other Loan Documents executed and/or delivered in connection herewith; (c) the representations and warranties contained in the Credit Agreement, as amended hereby, and any other Loan Document are true and correct on and as of the date hereof and on and as of the date of execution hereof as though made on and as of each such date (except to the extent such representations and warranties expressly relate to an earlier date); (d) except as it relates to the Specified Non-Compliance Items, no Default or Event of Default under the Credit Agreement, as amended hereby, has occurred and is continuing; (e) Loan

Parties are in full compliance in all material respects with all covenants and agreements contained in the Credit Agreement and the other Loan Documents, as amended hereby; and (f) except as disclosed to Agent, no Loan Party has amended its organizational documents since the date of the Credit Agreement.

## ARTICLE V

## Miscellaneous Provisions

**5.1** **Survival of Representations and Warranties.** All representations and warranties made in the Credit Agreement or any other Loan Document, including, without limitation, any document furnished in connection with this Amendment, shall survive the execution and delivery of this Amendment and the other Loan Documents, and no investigation by Agent or any Lender or any closing shall affect the representations and warranties or the right of Agent and each Lender to rely upon them.

**5.2** **Reference to Credit Agreement.** Each of the Credit Agreement and the other Loan Documents, and any and all other Loan Documents, documents or instruments now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Credit Agreement, as amended hereby, are hereby amended so that any reference in the Credit Agreement and such other Loan Documents to the Credit Agreement shall mean a reference to the Credit Agreement, as amended hereby.

**5.3** **Expenses of Agent.** As provided in the Credit Agreement, Borrower agrees to pay on demand all costs and expenses incurred by Agent, or its Affiliates, in connection with the preparation, negotiation, and execution of this Amendment and the other Loan Documents executed pursuant hereto and any and all amendments, modifications, and supplements thereto, including, without limitation, the reasonable fees and costs of legal counsel, and all costs and expenses incurred by Agent and each Lender in connection with the enforcement or preservation of any rights under the Credit Agreement, as amended hereby, or any other Loan Documents, including, without, limitation, the reasonable fees and costs of legal counsel.

**5.4** **Severability.** Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

**5.5** **Successors and Assigns.** This Amendment is binding upon and shall inure to the benefit of Agent and each Lender and Borrower and their respective successors and assigns, except that no Loan Party may assign or transfer any of its rights or obligations hereunder without the prior written consent of Agent.

**5.6** **Counterparts.** This Amendment may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument. This Amendment may be executed by facsimile or electronic (.pdf) transmission, which facsimile or electronic (.pdf) signatures shall be considered original executed counterparts for purposes of this Section 5.6, and each party to this

Amendment agrees that it will be bound by its own facsimile or electronic (.pdf) signature and that it accepts the facsimile or electronic (.pdf) signature of each other party to this Amendment.

**5.7** **Effect of Waiver.** No consent or waiver, express or implied, by Agent to or for any breach of or deviation from any covenant or condition by Borrower shall be deemed a consent to or waiver of any other breach of the same or any other covenant, condition or duty.

**5.8** **Headings.** The headings, captions, and arrangements used in this Amendment are for convenience only and shall not affect the interpretation of this Amendment.

**5.9** **Applicable Law.** THE TERMS AND PROVISIONS OF SECTIONS 10.17 (GOVERNING LAW) AND 10.18 (FORUM SELECTION; CONSENT TO JURISDICTION) OF THE CREDIT AGREEMENT ARE HEREBY INCORPORATED HEREIN BY REFERENCE, AND SHALL APPLY TO THIS AMENDMENT *MUTATIS MUTANDIS* AS IF FULLY SET FORTH HEREIN.

**5.10** **Final Agreement.** THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS, EACH AS AMENDED HEREBY, REPRESENT THE ENTIRE EXPRESSION OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF ON THE DATE THIS AMENDMENT IS EXECUTED. THE CREDIT AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS AMENDED HEREBY, MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. NO MODIFICATION, RESCISSION, WAIVER, RELEASE OR AMENDMENT OF ANY PROVISION OF THIS AMENDMENT SHALL BE MADE, EXCEPT BY A WRITTEN AGREEMENT SIGNED BY BORROWER AND AGENT.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, this Amendment has been executed and is effective as of the date first written above.

**BORROWER:**

BIOLASE., INC.,
a Delaware corporation

By: ***/s/ John R. Beaver***
Name: John R. Beaver
Title: Chief Financial Officer

**AGENT AND LENDER:**

SWK FUNDING LLC,
as Agent and a Lender

By: SWK Holdings Corporation,
its sole Manager

By: ***/s/ Winston Black***
Name: Winston Black
Title: Chief Executive Officer and President

**Exhibit 21.1**

**Subsidiaries**

BL Acquisition II, Inc. (Delaware)
BL Acquisition Corp. (Delaware)

Biolase Australia, Pty. Ltd. (AUSTRALIA)
Biolase Europe, GmbH (GERMANY)
Biolase Spain, S.L. (SPAIN)
Biolase India Private Limited (INDIA)

**Exhibit 23.1**

**Consent of Independent Registered Public Accounting Firm**

BIOLASE, Inc.
Irvine, California

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-194889, 333-144095, 333-112173, 333-130677, 333-177339, 333-204059, 333-224832, and 333-150105) and Form S-3 (Nos. 333-233172, 333-222564, 333-219406, 333-200623, 333-198291, 333-214281, 333-175664, 333-141417, 333-106290, 333-89692, and 333-58329), of BIOLASE, Inc. of our report dated March 27, 2020, relating to the consolidated financial statements and financial statement schedule of BIOLASE, Inc., which appear in this Form 10-K. Our report contains an explanatory paragraph regarding the Company's ability to continue as a going concern.

/s/ BDO USA, LLP

Costa Mesa, California
March 27, 2020

**Exhibit 31.1**

**CERTIFICATION**

I, Todd A. Norbe, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2019 of BIOLASE, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 27, 2020

By:/s/ TODD A. NORBE
Todd A. Norbe
President and Chief Executive Officer
(Principal Executive Officer)

**Exhibit 31.2**

**CERTIFICATION**

I, John R. Beaver, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2019 of BIOLASE, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 27, 2020

By:/s/ JOHN R. BEAVER
John R. Beaver
Executive Vice President and Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

**Exhibit 32.1**

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER**
**PURSUANT TO 18 U.S.C. § 1350**
**AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of BIOLASE, Inc. (the "Company") on Form 10-K for the year ended December 31, 2019, (the "Report"), I, Todd A. Norbe, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(i) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 27, 2020

By:/s/ TODD A. NORBE
Todd A. Norbe
President and Chief Executive Officer
(Principal Executive Officer)

**Exhibit 32.2**

**CERTIFICATION OF THE CHIEF FINANCIAL OFFICER**
**PURSUANT TO 18 U.S.C. § 1350**
**AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of BIOLASE, Inc. (the "Company") on Form 10-K for the year ended December 31, 2019, (the "Report"), I, John R. Beaver, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

(i) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 27, 2020

By:/s/ JOHN R. BEAVER
John R. Beaver
Executive Vice President and Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)