

# SECURITIES & EXCHANGE COMMISSION EDGAR FILING

**Celcuity Inc.**

**Form: 10-Q**

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Corporate Issuer CIK: 1603454

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

FORM 10-Q

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

For the quarterly period ended September 30, 2017

Commission File No. 001-38207

**CELCUITY INC.**

(Exact name of registrant as specified in its charter)

Delaware  
(State of incorporation)

No. 82-2863566  
(IRS Employer Identification No.)

16305 36th Avenue North; Suite 450  
Minneapolis, Minnesota 55446  
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (763) 392-0767

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES  NO

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

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

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

On November 6, 2017, there were 10,082,050 shares of the registrant's common stock, \$0.001 par value per share, issued and outstanding.

**Celcuity Inc.**  
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As used in this report, the terms "we," "us," "our," "Celcuity," and the "Company" mean Celcuity Inc., unless the context indicates another meaning.

## PART I. FINANCIAL INFORMATION

## ITEM 1. Financial statements

CELCUITY INC.  
CONDENSED BALANCE SHEETS

	September 30, 2017 (unaudited)	December 31, 2016
<b>Assets</b>		
<b>Current Assets:</b>		
Cash and cash equivalents	\$ 32,304,145	\$ 5,856,348
Investments	245,000	-
Restricted cash	50,000	50,000
Deposits	27,726	5,717
Prepaid assets	247,429	-
<b>Total current assets</b>	<u>32,874,300</u>	<u>5,912,065</u>
Property and equipment, net	272,245	144,912
<b>Total Assets</b>	<u>\$ 33,146,545</u>	<u>\$ 6,056,977</u>
<b>Liabilities and Stockholders' Equity:</b>		
<b>Current Liabilities:</b>		
Accounts payable	\$ 34,861	\$ 331,534
Accrued expenses	301,586	113,825
<b>Total current liabilities</b>	<u>336,447</u>	<u>445,359</u>
<b>Total Liabilities</b>	<u>336,447</u>	<u>445,359</u>
Commitments and contingencies		
<b>Stockholders' Equity:</b>		
Members' equity contributions: 0 and 6,440,105 shares issued and outstanding as of September 30, 2017 and December 31, 2016, respectively	-	13,349,654
Preferred stock, \$0.001 par value: 5,000,000 and 0 shares authorized as of September 30, 2017 and December 31, 2016, respectively; 0 shares issued and outstanding as of September 30, 2017 and December 31, 2016	-	-
Common stock, \$0.001 par value: 45,000,000 and 0 shares authorized as of September 30, 2017 and December 31, 2016, respectively; 10,082,050 and 0 shares issued and outstanding as of September 30, 2017 and December 31, 2016, respectively	10,082	-
Additional paid-in capital	33,083,055	593,365
Accumulated deficit	(283,039)	(8,331,401)
<b>Total Stockholders' Equity</b>	<u>32,810,098</u>	<u>5,611,618</u>
<b>Total Liabilities and Stockholders' Equity</b>	<u>\$ 33,146,545</u>	<u>\$ 6,056,977</u>

*See accompanying notes to the condensed financial statements*

**CELCUITY INC.**  
**CONDENSED STATEMENTS OF OPERATIONS**  
(unaudited)

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2017	2016	2017	2016
Operating expenses:				
Research and development	\$ 1,364,728	\$ 812,803	\$ 3,577,357	\$ 2,224,859
General and administrative	164,665	64,738	551,555	196,155
Total operating expenses	<u>1,529,393</u>	<u>877,541</u>	<u>4,128,912</u>	<u>2,421,014</u>
Loss from operations	<u>(1,529,393)</u>	<u>(877,541)</u>	<u>(4,128,912)</u>	<u>(2,421,014)</u>
Other income (expense)				
Interest expense	(264,905)	-	(451,664)	-
Interest income	30,322	9,021	53,034	13,040
Other income (expense), net	<u>(234,583)</u>	<u>9,021</u>	<u>(398,630)</u>	<u>13,040</u>
Net loss before income taxes	<u>(1,763,976)</u>	<u>(868,520)</u>	<u>(4,527,542)</u>	<u>(2,407,974)</u>
Income tax benefit	-	-	-	-
Net loss	<u>\$ (1,763,976)</u>	<u>\$ (868,520)</u>	<u>\$ (4,527,542)</u>	<u>\$ (2,407,974)</u>
Net loss per share, basic and diluted	\$ (0.26)	\$ (0.13)	\$ (0.69)	\$ (0.38)
Weighted average common shares outstanding, basic and diluted	6,846,827	6,440,139	6,577,191	6,268,471

*See accompanying notes to the condensed financial statements*

**CELCUITY INC.**  
**CONDENSED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY**

	Member Contributions		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount			
<b>Balance at December 31, 2015</b>	5,891,147	\$ 9,961,962	-	\$ -	\$ 75,452	\$ (5,020,993)	\$ 5,016,421
Member shares issued, net	548,958	3,387,692	-	-	330,607	-	3,718,299
Stock-based compensation	-	-	-	-	141,408	-	141,408
Non-employee stock-based compensation	-	-	-	-	45,898	-	45,898
Net loss	-	-	-	-	-	(3,310,408)	(3,310,408)
<b>Balance at December 31, 2016</b>	6,440,105	13,349,654	-	-	593,365	(8,331,401)	5,611,618
Warrants issued - unsecured convertible promissory note holders	-	-	-	-	776,717	-	776,717
Warrants issued - placement agent	-	-	-	-	286,999	-	286,999
Corporate conversion from Celcuity LLC to Celcuity Inc.	-	-	-	-	(12,575,904)	12,575,904	-
Corporate conversion to common stock	(6,440,105)	(13,349,654)	6,440,139	6,440	13,343,214	-	-
Common stock issued in initial public offering, net of underwriter commission of \$1,835,400, initial public offering costs of \$1,123,759 and underwriter warrant of \$784,111	-	-	2,760,000	2,760	22,474,020	-	22,476,780
Warrant issued - underwriter	-	-	-	-	784,111	-	784,111
Conversion of unsecured convertible promissory note to common stock	-	-	881,911	882	6,839,436	-	6,840,318
Stock-based compensation	-	-	-	-	428,904	-	428,904
Non-employee stock-based compensation	-	-	-	-	132,193	-	132,193
Net loss	-	-	-	-	-	(4,527,542)	(4,527,542)
<b>Balance at September 30, 2017 (unaudited)</b>	-	\$ -	10,082,050	\$ 10,082	\$ 33,083,055	\$ (283,039)	\$ 32,810,098

*See accompanying notes to the condensed financial statements*

**CELCUITY INC.**  
**CONDENSED STATEMENTS OF CASH FLOWS**  
(unaudited)

	Nine Months Ended September 30,	
	2017	2016
<b>Cash flows from operating activities:</b>		
Net loss	\$ (4,527,542)	\$ (2,407,974)
Adjustments to reconcile net loss to net cash used in operations:		
Depreciation	76,163	54,230
Stock-based compensation	561,097	109,576
Non-cash interest expense	451,664	-
Changes in operating assets and liabilities:		
Prepaid assets and deposits	(269,438)	-
Accounts payable	(300,792)	34,622
Accrued expenses	170,828	25,263
Net cash used in operating activities	(3,838,020)	(2,184,283)
<b>Cash flows from investing activities:</b>		
Purchases of investments	(245,000)	-
Purchases of property and equipment	(203,496)	(30,774)
Net cash used in investing activities	(448,496)	(30,774)
<b>Cash flows from financing activities:</b>		
Proceeds from sale of member units, net of issuance costs	-	3,718,300
Proceeds from sale of convertible promissory notes	7,493,330	-
Proceeds from initial public offering of common stock	24,109,650	-
Payments for debt issuance costs	(40,961)	-
Payments for initial public offering costs	(827,706)	-
Net cash provided by financing activities	30,734,313	3,718,300
Net change in cash and cash equivalents	26,447,797	1,503,243
<b>Cash and cash equivalents:</b>		
Beginning of period	5,856,348	5,067,240
End of period	\$ 32,304,145	\$ 6,570,483
<b>Non-cash financing activities:</b>		
Debt issuance costs netted against proceeds from sale of convertible promissory notes	\$ 844,170	\$ -
Debt discount related to investor and agent warrants (Note 8)	1,063,715	-
Initial public offering costs included in accounts payable and accrued expenses	21,053	-
Underwriter's reimbursable offering costs netted against initial public offering proceeds	275,000	-

*See accompanying notes to the condensed financial statements*

**CELCUITY, INC.**  
**NOTES TO CONDENSED FINANCIAL STATEMENTS (unaudited)**  
**(For the Three and Nine Months Ended September 30, 2017 and 2016)**

**1. ORGANIZATION**

**Nature of Business**

Celcuity Inc., a Delaware corporation (the "Company"), is a cellular analysis company that is discovering new cancer sub-types and commercializing diagnostic tests designed to significantly improve the response rates of cancer patients treated with targeted therapies. The Company's proprietary CELx diagnostic platform is currently the only commercially ready technology the Company is aware of that uses a patient's living tumor cells to evaluate the functional status of the cell signaling pathways associated with cancer. The CELx platform identifies the abnormal signaling activity driving a patient's cancer and quantifies how effectively a targeted therapy can treat it. This enables physicians to select the therapeutic that precisely matches and inhibits a patient's cellular dysfunction, which significantly increases the likelihood of a positive clinical outcome. The Company's first analytically validated and commercially ready CELx test diagnoses two new sub-types of HER2-negative breast cancer. In late-2017 and through 2018, the Company will be fielding a prospective clinical trial to evaluate the efficacy of HER2 targeted therapies in patients with these newly identified cancer sub-types. In addition to the CELx tests for HER2-negative breast cancer, the Company is developing CELx tests to diagnose 14 new potential cancer sub-types in breast, lung, colon, ovarian, kidney, bladder and hematological cancers. The Company expects to launch these additional tests on a staggered basis over the next few years. The Company was cofounded in 2012 by Brian Sullivan and Lance Laing and is based in Minnesota. The Company has not generated any revenues to date.

**2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Basis of Presentation**

The accompanying unaudited financial statements include the accounts of the Company and have been prepared in accordance with Article 10 of Regulation S-X promulgated by the Securities and Exchange Commission ("SEC"). Accordingly, as permitted by Article 10, the unaudited financial statements do not include all of the information required by accounting principles generally accepted in the United States ("U.S. GAAP"). The Balance Sheet at December 31, 2016 was derived from the audited financial statements at that date and does not include all the disclosures required by U.S. GAAP. In the opinion of management, all adjustments which are of a normal recurring nature and necessary for a fair presentation have been reflected in the financial statements. These unaudited financial statements should be read in conjunction with the audited financial statements as of and for the year ended December 31, 2016 and the related footnotes thereto included in the Company's Prospectus filed pursuant to Rule 424(b)(4) under the Securities Act of 1933, as amended, with the SEC on September 20, 2017. Operating results for the three and nine months ended September 30, 2017 are not necessarily indicative of the results to be expected during the remainder of the current year or for any future period.

On September 15, 2017, in relation to preparing for its initial public offering ("IPO"), Celcuity LLC filed a certificate of conversion, whereby Celcuity LLC effected a corporate conversion from a Minnesota limited liability company to a Delaware corporation and changed its name to Celcuity Inc. Pursuant to the conversion, units of membership interest in the limited liability company were converted into shares of common stock of the corporation at a conversion ratio of 40 units for one share of common stock. As a result of the corporate conversion, accumulated deficit was reduced to zero on the date of the corporate conversion, and the corresponding amount was credited to additional paid-in capital. The corporate conversion was approved by members holding a majority of our outstanding units, and in connection with such conversion, the Company filed a certificate of incorporation and adopted bylaws. Pursuant to the Company's certificate of incorporation, the Company is authorized to issue up to 45,000,000 shares of common stock \$0.001 par value per share and 5,000,000 shares of preferred stock \$0.001 par value per share. The Company determined that the conversion is equivalent to a change in the Company's capital structure. As such, all references in the unaudited interim condensed financial statements to the number of shares and per-share amounts of member units are now presented as common stock and have been retroactively restated to reflect this conversion.

On September 22, 2017, the Company completed its IPO whereby it sold 2,760,000 shares of common stock at a public offering price of \$9.50 per share. The aggregate net proceeds received by the company from the offering were approximately \$23.3 million, net of underwriting discounts and commissions of approximately \$1.8 million and offering expenses of approximately \$1.1 million. Upon the closing of the IPO, 10,082,050 shares of common stock were outstanding, which includes 881,911 shares of common stock as a result of the conversion of the Company's Unsecured Convertible Promissory Notes (See Note 8). The shares began trading on September 20, 2017 on Nasdaq under the symbol "CELC."

## **Accounting Estimates**

Management uses estimates and assumptions in preparing these financial statements in accordance with U.S. GAAP. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Actual results could differ from those estimates. Significant items subject to such estimates and assumptions include the valuation of stock-based compensation and warrants issued to investors, a placement agent and an underwriter, and prepaid or accrued clinical trial costs.

## **Cash and Cash Equivalents**

The Company maintains its accounts primarily at one financial institution. At times throughout the year the Company's cash balances may exceed amounts insured by the Federal Deposit Insurance Corporation. At September 30, 2017 and December 31, 2016, the Company had \$32,179,734 and \$5,842,193, respectively, in money market funds and U.S. Treasury Bills that are considered cash equivalents.

## **Investments**

The Company maintains its investments in certificates of deposit at various financial institutions. To preserve the principal balance, each investment will not exceed amounts insured by the Federal Deposit Insurance Corporation. The certificates of deposit are accounted for at cost plus accrued interest. At September 30, 2017 and December 31, 2016, the Company had \$245,000 and \$0, respectively, of certificates of deposit.

## **Property and Equipment**

Property and equipment are stated at cost. Depreciation is provided over estimated useful lives using the straight-line method. Maintenance and repairs are expensed as incurred; major improvements and betterments are capitalized.

Estimated useful lives of property and equipment are as follows for the major classes of assets:

<b><u>Asset Description</u></b>	<b><u>Estimated Lives</u></b>
Furniture and Equipment	4
Leasehold Improvements	2-3

## **Long-Lived Assets**

Long-lived assets, such as property and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If circumstances require a long-lived asset or asset group be tested for possible impairment, the Company first compares undiscounted cash flows expected to be generated by that asset or asset group to its carrying value. If the carrying value of the long-lived asset or asset group is not recoverable on an undiscounted cash flow basis, an impairment is recognized to the extent that the carrying value exceeds its fair value. Fair value is determined through various valuation techniques including discounted cash flow models, quoted market values, and third party independent appraisals, as considered necessary.

## **Fair Value of Financial Instruments**

The Company's accounting for fair value measurements of assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring or nonrecurring basis adheres to the Financial Accounting Standards Board ("FASB") fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to measurements involving significant unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are as follows:

- Level 1 Inputs: Unadjusted quoted prices in active markets for identical assets or liabilities accessible to the Company at the measurement date.
- Level 2 Inputs: Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.
- Level 3 Inputs: Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at measurement date.

The level in the fair value hierarchy within which a fair measurement in its entirety falls is based on the lowest level input that is significant to the fair value measurement in its entirety.

The carrying values of cash equivalents, investments, restricted cash, accounts payable, accrued expenses and other financial working capital items approximate fair value at September 30, 2017 and December 31, 2016, due to the short maturity nature of these items.

### **Income Taxes**

Following the conversion of Celcuity LLC to Celcuity Inc. on September 15, 2017, Celcuity Inc. will begin filing federal and state returns where required. No income tax benefit was recorded for the 15 days ended September 30, 2017 due to net losses and recognition of a valuation allowance.

Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The Company's deferred tax assets relate primarily to its net operating loss carryforwards and other balance sheet basis differences. In accordance with ASC 740, "Income Taxes," the Company recorded a valuation allowance to fully offset the net deferred tax asset, because it is more likely than not that the Company will not realize future benefits associated with these deferred tax assets at September 30, 2017.

Prior to the conversion, Celcuity was an LLC and therefore was a disregarded legal entity for income tax purposes. Accordingly, no provision for income taxes was recorded prior to the conversion.

For years before 2013, the Company is no longer subject to U.S. federal or state income tax examinations. The Company's policy is to recognize interest and penalties related to uncertain tax positions as a component of general and administrative expenses. As of September 30, 2017 and December 31, 2016, the Company did not have any significant uncertain tax positions.

### **Stock-Based Compensation**

The Company's stock-based compensation consists of common stock options issued to certain employees and nonemployees of the Company and the Company's Employee Stock Purchase Plan. The Company recognizes compensation expense for employees based on an estimated grant date fair value using the Black-Scholes option-pricing method. The Company has elected to account for forfeitures as they occur.

The fair value of options granted to nonemployees is determined using the fair value of the service provided or the fair value of the option granted, whichever is more reliable. The fair value is measured at the value of the Company's common shares at the earlier of the date that the commitment for performance by the counterparty has been reached or the counterparty's performance is complete. Awards granted to nonemployees are remeasured to fair value at each period end date until vested and expensed on a straight-line basis over the vesting period.

### **Research and Development**

Research and development costs are expensed as incurred. Research and development costs amounted to \$3,577,357 and \$2,224,859 for the nine months ended September 30, 2017 and 2016, respectively, and \$1,364,728 and \$812,803 for the three months ended September 30, 2017 and 2016, respectively.

### **Clinical Trial Costs**

The Company records prepaid assets or accrued expenses for prepaid or estimated clinical trial costs conducted by third-party service providers, which include the conduct of preclinical studies and clinical trials. These costs are a significant component of the Company's research and development expenses. The Company accrues for these costs based on factors such as estimates of the work completed and in accordance with agreements established with its third-party service providers under the service agreements. The Company makes significant judgments and estimates in determining the accrued liabilities balance in each reporting period. As actual costs become known, the Company adjusts its prepaid assets or accrued expenses. The Company has not experienced any material differences between accrued costs and actual costs incurred. However, the status and timing of actual services performed, number of patients enrolled and the rate of patient enrollments may vary from the Company's estimates, resulting in an adjustment to expense in future periods. Changes in these estimates that result in material changes to the Company's prepaid assets or accrued expenses could materially affect the Company's results of operations.

### Recently Issued Accounting Pronouncements

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*, which provides guidance for accounting for leases. The new guidance requires companies to recognize the assets and liabilities for the rights and obligations created by leased assets, initially measured at the present value of the lease payments. The accounting guidance for lessors is largely unchanged. The ASU is effective for annual and interim periods beginning after December 15, 2018 with early adoption permitted. It is to be adopted using a modified retrospective approach. The Company is currently evaluating the impact that the adoption of this guidance will have on the Company's financial statements.

In May 2014 and amended in August 2015, the FASB issued ASU No. 2014-09 which amended the *Revenue from Contracts with Customers (Topic 606)* of the Accounting Standards Codification. The core principle of the new guidance is that an entity should recognize revenue to reflect the transfer of goods and services to customers in an amount equal to the consideration the entity receives or expects to receive. The ASU is effective for annual and interim periods beginning after December 15, 2017, with early adoption permitted. The Company is currently evaluating the impact that the adoption of this guidance will have on the Company's financial statements.

### **3. NET LOSS PER COMMON SHARE**

Basic and diluted net loss per common share is determined by dividing net loss attributable to common stockholders by the weighted-average common shares outstanding during the period. For all periods presented, the common shares underlying the options and warrants have been excluded from the calculation because their effect would be anti-dilutive. Therefore, the weighted-average shares outstanding used to calculate both basic and diluted loss per common shares are the same.

For the nine months ended September 30, 2017 and 2016, 66,637 and 65,453 options and 30,846 and 0 warrant share equivalents, respectively, have been excluded from the computations of diluted weighted-average shares outstanding.

### **4. PROPERTY AND EQUIPMENT**

Property and equipment consisted of the following at September 30, 2017 and December 31, 2016:

	<b>September 30, 2017</b>	<b>December 31, 2016</b>
	<b>(unaudited)</b>	
Leasehold improvements	\$ 22,307	\$ 22,307
Furniture and equipment	481,516	278,020
	<u>503,823</u>	<u>300,327</u>
Less: Accumulated depreciation	(231,578)	(155,415)
<b>Totals</b>	<b><u>\$ 272,245</u></b>	<b><u>\$ 144,912</u></b>

Depreciation expense was \$76,163 and \$54,230 for the nine months ended September 30, 2017 and 2016, respectively, and \$30,714 and \$18,746 for the three months ended September 30, 2017 and 2016.

## 5. COMMITMENTS

### Lease Obligation

The Company leases its corporate space in Minneapolis, Minnesota. At September 30, 2017, the Company had the following minimum commitments for payment of rentals which at inception had a non-cancellable term of more than one year:

	<b>Operating Lease</b>
Remainder of 2017	\$ 13,189
2018	145,852
2019	188,850
2020	193,338
2021	64,941
Total	\$ 606,170

Annual rent expense for operating leases was \$38,266 and \$37,224 for the nine months ended September 30, 2017 and 2016, respectively, and \$13,189 and \$12,408 for the three months ended September 30, 2017 and 2016, respectively. In connection with the corporate lease, the Company is required to maintain a \$50,000 standby letter of credit. The standby letter of credit expires on July 31, 2018.

In September 2017, the Company entered into a non-cancelable operating lease agreement for building space to accommodate expansion in research and development and general corporate office needs. The new lease commences and the Company will be moving to the facility in May 2018, in conjunction with the termination of the existing lease. The lease agreement extends through April 2021 and provides for monthly rent, real estate taxes and operating expenses.

### Clinical Research Study

In May 2017, the Company entered into an agreement with a clinical research organization to conduct a clinical research study. The Company made a payment of \$300,000 in June 2017 and is obligated to make payments of \$50,000, \$200,000, and \$50,000 in 2017, 2018, and 2019, respectively. Additional payments will be due as patients are enrolled in the study. The maximum amount of these additional payments is estimated to be approximately \$2,040,000 over the course of the agreement.

## 6. STOCKHOLDERS' EQUITY

On September 15, 2017, in connection with its IPO, Celcuity LLC filed a certificate of conversion, whereby Celcuity LLC effected a corporate conversion from a Minnesota limited liability company to a Delaware corporation and changed its name to Celcuity Inc. Pursuant to the conversion, units of membership interest in the limited liability company were converted into shares of common stock of the corporation at a conversion ratio of 40 units for one share of common stock. The Company had 257,604,208 member units issued and outstanding as of September 15, 2017. After giving effect to the LLC Conversion, the number of common shares outstanding as of such date is 6,440,139. As a result of the corporate conversion, accumulated deficit was reduced to zero on the date of the corporate conversion, and the corresponding amount was credited to additional paid-in capital. The corporate conversion was approved by members holding a majority of our outstanding units, and in connection with such conversion, the Company filed a certificate of incorporation and adopted bylaws. Pursuant to the Company's certificate of incorporation, the Company is authorized to issue up to 45,000,000 shares of common stock \$0.001 par value per share and 5,000,000 shares of preferred stock \$0.001 par value per share. All references in the unaudited interim condensed financial statements to the number of shares and per-share amounts of common stock have been retroactively restated to reflect this conversion.

On September 22, 2017, the Company completed its IPO whereby it sold 2,760,000 shares of common stock at a public offering price of \$9.50 per share. The aggregate net proceeds received by the company from the offering were approximately \$23.3 million, net of underwriting commissions of approximately \$1.8 million and offering expenses of approximately \$1.1 million. Upon the closing of the IPO, 10,082,050 shares of common stock were outstanding, which includes 881,911 shares of common stock issued as a result of the conversion of the Company's Convertible Notes (See Note 8). The shares began trading on September 20, 2017 on Nasdaq under the symbol "CELC."

## Warrants

In connection with the 2016 private placement unit offering, the Company issued ten-year warrants to the placement agent of the private placement. The warrants allow the agent to purchase up to 55,249 common shares at \$7.56 per share. The warrants are immediately exercisable and expire on January 14, 2026 and May 2, 2026. These warrants are equity classified and the fair value of \$330,607 is reflected as additional paid-in capital.

In connection with the private offering of convertible notes (Note 8), the Company issued ten-year warrants to purchase 48,615 common shares at a price of \$8.42 per share to the placement agent. In addition, the Company granted the convertible notes investors the right to receive a seven-year warrant to purchase 131,675 common shares at an exercise price that is equal to the conversion price of the notes (Note 8). With the completion of the IPO on September 22, 2017, these warrants were issued.

In connection with the IPO, the Company issued a five-year warrant to the underwriter. The warrant allows the underwriter to purchase up to 138,000 common shares at \$10.45 per share. This warrant is immediately exercisable and expires on September 19, 2022. This warrant is equity classified and the fair value is \$784,111.

At September 30, 2017 and December 31, 2016, the Company had warrants to purchase 373,539 and 55,249 common shares outstanding, respectively, at a weighted average exercise price of \$8.03 and \$7.56, respectively.

## **7. STOCK-BASED COMPENSATION**

### 2012 Equity Incentive Plan

The 2012 Equity Incentive Plan, as amended, was adopted by the Company's board and approved by the members of the company on August 10, 2012. The Company reserved a maximum of 625,000 common shares available for issuance under the 2012 Equity Incentive Plan. The 2012 Equity Incentive Plan provides for share options, restricted share awards, performance share awards or share bonuses. The exercise price of each share option granted under our 2012 Equity Incentive Plan is not less than one hundred percent (100%) of the fair market value of one share on the date of grant. The maximum permitted term of options granted under our 2012 Equity Incentive Plan is ten years. The Company's board has administered the plan and determined the provisions of incentive awards, including eligible recipients, number of shares subject to an incentive award, exercise price, vesting schedule, duration of an incentive award and other restrictions an incentive award may be subject to. The 2012 Equity Incentive Plan was fixed on September 6, 2017 and any new awards will be issued under the terms of the 2017 Stock Incentive Plan.

### 2017 Stock Incentive Plan

The 2017 Stock Incentive Plan, or the 2017 Plan, was adopted by the Company's board on September 6, 2017 and became effective following the LLC conversion which took place on September 15, 2017. The Company reserved a maximum of 750,000 common shares available for issuance under the 2017 Plan. The number of shares reserved for issuance under the 2017 Plan will increase automatically on January 1, 2019 and each subsequent anniversary through January 1, 2027 by the number of shares equal to 1.0% of the aggregate number of outstanding shares of the Company's common stock as of the immediately preceding December 31. However, the Company's board may reduce the amount of the increase in any particular year. The maximum permitted term of options granted under our 2017 Plan is ten years. The 2017 Plan provides for share options, restricted stock awards, stock appreciation rights, restricted stock units, performance awards and stock bonuses. The exercise price of each share option granted under the 2017 Plan is not less than one hundred percent (100%) of the fair market. The 2017 Plan will generally be administered by the compensation committee of the Company's board of directors and has the authority to interpret the plan, grant awards and make all other determinations necessary for the administration of the plan.

The Black-Scholes option-pricing model was used to estimate the fair value of equity-based awards with the following weighted-average assumptions for the nine months ended September 30:

	<u>2017</u>	<u>2016</u>
Risk-free interest rate	1.89 - 2.00%	2.00%
Expected volatility	75.0%	72.0%
Expected life (years)	5.5 to 10.00	6.25 to 10.00
Expected dividend yield	0%	0%

The inputs for the Black-Scholes valuation model require management's significant assumptions. The common share price was determined by the Company's board based on recent prices of common shares sold in private offerings prior to the IPO. Subsequent to the IPO, the common share price was determined by using the price on the last trading date of the grant period. The risk-free interest rates were based on the rate for U.S. Treasury securities at the date of grant with maturity dates approximately equal to the expected life at the grant date. The expected life was based on the simplified method in accordance with the SEC Staff Accounting Bulletin Nos. 107 and 110. The expected volatility was estimated based on historical volatility information of peer companies that are publicly available.

All assumptions used to calculate the grant date fair value of nonemployee options are generally consistent with the assumptions used for options granted to employees, except the expected life is equal to the contractual term. In the event the Company terminates any of its consulting agreements, the unvested options underlying the agreements would also be cancelled. Unvested nonemployee options are marked-to-market at each reporting period.

The following table summarizes the activity for all stock options outstanding for the nine months ended September 30 under the Plan:

	2017		2016	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Options outstanding at beginning of year	302,088	\$ 5.91	114,525	\$ 3.07
Granted	191,730	\$ 8.56	175,813	\$ 7.60
Forfeited	(15,365)	\$ 3.60	(2,500)	\$ 3.60
Balance at September 30	478,453	\$ 7.05	287,838	\$ 5.83
Options exercisable at September 30:	178,275	\$ 5.65	59,791	\$ 2.82
Weighted Average Grant Date Fair Value for Options Granted During the period:		\$ 5.42		\$ 5.16

The following table summarizes additional information about stock options outstanding and exercisable at September 30, 2017 under the Plan:

Options Outstanding				Options Exercisable		
Options Outstanding	Weighted Average Remaining Contractual Life	Weighted Average Exercise Price	Aggregate Intrinsic Value	Options Exercisable	Weighted Average Exercise Price	Aggregate Intrinsic Value
478,453	8.75	\$ 7.05	\$ 2,484,466	178,275	\$ 5.65	\$ 1,175,571

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2017	2016	2017	2016
Stock-based compensation expense in operating expenses:				
Research and development	\$ 126,600	\$ 73,275	\$ 420,789	\$ 109,576
General and administrative	11,682	-	140,308	-
	\$ 138,282	\$ 73,275	\$ 561,097	\$ 109,576

The Company recognized stock-based compensation expense of \$561,097 and \$109,576 for the nine months ended September 30, 2017 and 2016, respectively and \$138,282 and \$73,275 for the three months ended September 30, 2017 and 2016, respectively. Total unrecognized compensation cost related to stock options is estimated to be recognized as follows:

Remainder of 2017	\$ 154,224
2018	545,734
2019	393,997
2020	280,901
2021	97,858
<b>Total estimated compensation cost to be recognized</b>	<b>\$ 1,472,714</b>

## **2017 Employee Stock Purchase Plan**

The Company's employee stock purchase plan, or ESPP, was adopted by the Company's board on September 6, 2017, subject to stockholder approval at our next meeting of stockholders. If our stockholders do not approve the ESPP, it will be terminated and all contributions returned to the participants without the purchase of any shares. The Company has reserved a total of 100,000 shares for issuance. The number of shares authorized and reserved for issuance under the ESPP will be automatically increased on the first day of each of our fiscal years beginning in 2019 by the number of shares equal to 0.5% of the total outstanding number of shares of common stock. However, the Company's board may reduce the amount of the increase in any particular year. The ESPP provides participating employees with an opportunity to purchase shares of our common stock at a discount through payroll deductions. The plan is available to all employees unless they are employed for less than 20 hours per week or own 5% or more of the total combined voting power or value of our common stock. The plan is administered using overlapping 24 month offering periods, referred to as an Offering Period. Each Offering Period has four six-month Purchase Periods. A new Offering Period and Purchase Period begin every six months on May 1 and November 1 of each year. Participating employees may purchase common stock, on a voluntary after tax-basis, at a price equal to 85% of the fair market value of a share of common stock on either the Offering Date or the Purchase Date, whichever is lower. If the Purchase Date has a lower price, the employee will automatically be placed in the Offering Period beginning immediately after the Purchase Date. To date, we have not recognized any stock-based compensation expense related to the ESPP due to immateriality.

## **8. UNSECURED CONVERTIBLE PROMISSORY NOTES**

In April and May of 2017, the Company issued to certain accredited investors convertible notes in the original principal amount of \$5,750,000 and \$2,587,500, respectively, for total principal of \$8,337,500 (the "Convertible Notes").

The Convertible Notes accrued interest at a rate of 1.25% per annum from date of issuance until December 31, 2018 on a non-compounding basis. All principal and interest was due on December 31, 2018. The IPO was considered a qualified financing, therefore the outstanding principal balance and all accrued interest under the Convertible Notes automatically converted into 881,911 shares of common stock pursuant to the terms of such notes. The conversion price of the Convertible Notes was equal to the price at which the equity securities were sold in the IPO, which was \$9.50 per share. Warrants of 131,675 were also issued to the note holders at an exercise price of \$9.50 per share.

In connection with the issuance of the Convertible Notes, the Company granted those investors the right to receive a seven-year warrant to purchase 131,675 common shares at an exercise price that is equal to the conversion price of the Convertible Notes. The gross proceeds of \$8,337,500 was allocated \$7,560,783 and \$776,717 to the Convertible Notes and warrants, respectively, based on their relative fair value. The relative fair value of the warrants of \$776,717 was recorded as debt discount and credited to additional paid-in capital. The resulting debt discount is amortized to interest expense using the effective interest method over the term of the Convertible Notes.

Cedar Point Capital, LLC ("Cedar") served as the Company's placement agent in connection with the placement of the Convertible Notes and earned a commission of approximately 10% of the original principal balance of such notes. Debt financing costs in the aggregate of \$885,131 (not including the agent warrant discussed below), comprised primarily of the commission earned by Cedar, are amortized to interest expense using the effective interest method over the term of the Convertible Notes. In addition to the commission earned by Cedar, the Company issued an agent's ten-year warrant to purchase 48,615 common shares. The exercise price was \$8.42 per share. The fair value of the agent's warrant was \$286,999 and is considered additional debt discount and was credited to additional paid-in capital. During the period beginning on January 1, 2017 and ending on September 22, 2017 (the date of the IPO closing), the Company amortized \$411,375 of debt discount and financing costs to interest expense for these Convertible Notes.

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

You should read the following discussion and analysis of our financial condition and results of operations together with our financial statements and the related notes appearing under Item 1 of Part I of this Quarterly Report on Form 10-Q. Some of the information contained in this discussion and analysis or set forth elsewhere in this quarterly report, including information with respect to our plans and strategy for our business and expected financial results, includes forward-looking statements that involve risks and uncertainties. You should review the "Risk Factors" discussed in our Prospectus dated September 19, 2017 filed with the Securities and Exchange Commission on September 20, 2017 pursuant to Rule 424(b)(4) under the Securities Act of 1933, as amended, and elsewhere in this Quarterly Report on Form 10-Q, for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis. "We," "our," "us," "the Company" and similar words or phrases refer to Celcuity Inc. or Celcuity LLC (which converted into Celcuity Inc.).

### OVERVIEW

We are a cellular analysis company that is discovering new cancer sub-types and commercializing diagnostic tests designed to significantly improve the clinical outcomes of cancer patients treated with targeted therapies. Our proprietary CELx diagnostic platform is the only commercially ready technology we are aware of that uses a patient's living tumor cells to identify the specific abnormal cellular process driving a patient's cancer and the targeted therapy that best treats it. We believe our CELx platform provides two important improvements over traditional molecular diagnostics. First, molecular diagnostics can only provide a snapshot of the genetic mutations present in a patient's tumor because they analyze dead cells. Using dead cells prevents molecular diagnostics from analyzing in real-time the dynamic cellular activities, known as cell signaling, that regulate cell proliferation or survival. Cancer can develop when certain cell signaling activity becomes abnormal. Since genetic mutations are often only weakly correlated to the cell signaling activity driving a patient's cancer, a molecular diagnostic is prone to providing an incomplete diagnosis. CELx tests overcome this limitation by measuring real-time cell signaling activity in a patient's living tumor cells. When a CELx test detects abnormal signaling activity, a more accurate diagnosis of the patient's cancer driver is obtained. Second, molecular diagnostics can only estimate the probability of a patient's potential drug response based on a statistical analysis of the drug's clinical trial results. Instead of this indirect estimate of drug response, CELx tests directly measure the effectiveness of a targeted therapy in a patient's living tumor cells. This enables physicians to confirm that the therapeutic matching the patient's cancer driver is functional in the patient's tumor cells before prescribing it, which significantly increases the likelihood of a positive clinical outcome.

Our first analytically validated and commercially ready test using our CELx platform, the CELx HSF Test, diagnoses two new sub-types of HER2-negative breast cancer that traditional molecular diagnostics cannot detect. Our internal studies show that approximately 20% of HER2-negative breast cancer patients have abnormal HER2 signaling activity similar to levels found in HER2+ breast cancer cells. As a result, these HER2-negative patients have undiagnosed HER2-driven breast cancer and would be likely to respond to the same anti-HER2 targeted therapies only HER2+ patients receive today. Our CELx HSF Test is targeting HER2-negative breast cancer patients receiving treatment, which, based on 2016 estimates from the NCI SEER Review and a May 2017 publication by the AACR, includes approximately 278,000 patients annually in the U.S. In late-2017 and through 2018, we will be fielding a prospective clinical trial in collaboration with Genentech and the NSABP to evaluate the efficacy of Genentech's HER2 targeted therapies in patients with these newly identified cancer sub-types. We expect interim results 10 to 12 months from this trial after the first patient is enrolled and final results in 18 to 21 months.

In addition to our CELx tests for HER2-negative breast cancer, we are developing CELx tests to diagnose 14 new potential cancer sub-types we have discovered in breast, lung, colon, ovarian, kidney, bladder and hematological cancers. Approved or investigational drugs are currently available to treat these new potential cancer sub-types. We expect to launch these additional tests on a staggered basis over the next few years while continuing our research to identify additional new cancer sub-types.

On September 22, 2017, we completed our underwritten initial public offering, or IPO, of 2,760,000 shares of our common stock at a price to the public of \$9.50 per share. The aggregate net proceeds received by the company from the offering were approximately \$23.3 million, net of underwriting discounts and commissions. Shares of our common stock began trading on September 20, 2017 on The Nasdaq Capital Market under the symbol "CELX."

Following the IPO, we entered into a lease agreement for building space to accommodate expansion in research and development and general corporate office needs. The new lease commences and we will be moving to the space in May 2018, in conjunction with the termination of our existing lease. The lease agreement extends through April 2021 and provides for monthly rent, real estate taxes and operating expenses.

We have not generated any revenue from sales to date, and we continue to incur significant research and development and other expenses related to our ongoing operations. As a result, we are not and have never been profitable and have incurred losses in each period since our inception in 2012. For the nine months ended September 30, 2017 and 2016, we reported a net loss of approximately \$4.5 million and \$2.4 million, respectively. As of September 30, 2017, we had a combined accumulated deficit of approximately \$12.9 million under Celcuity LLC and Celcuity Inc., which includes \$1.3 million of non-cash charges, consisting of approximately \$0.8 million for equity-based compensation and approximately \$0.5 million for non-cash interest expense. As of September 30, 2017, we had cash, cash equivalents, and investments of approximately \$32.5 million.

## **RESULTS OF OPERATIONS**

### ***Components of Operating Results***

#### *Revenue*

To date, we have not generated any revenue. Initially, our ability to generate revenue will depend primarily upon our ability to obtain partnership agreements with pharmaceutical companies to provide companion diagnostics for such pharmaceutical partners' existing or investigational targeted therapies. We expect these partnerships to generate significant revenue from the sale of tests to identify patients eligible for clinical trials, from milestone payments, and, potentially, from royalties on the incremental drug revenues our tests enable. Once a new drug indication is received that requires use of our companion diagnostic to identify eligible patients, we expect to generate revenues from sales of tests to treating physicians.

#### *Research and Development*

Since our inception, we have primarily focused on research and development of our CELx platform, development and validation of our CELx HSF Test, and research related to the discovery of new cancer sub-types. Research and development expenses primarily include:

- employee-related expenses related to our research and development activities, including salaries, benefits, travel and stock-based compensation expenses;
- laboratory supplies;
- consulting fees paid to third parties;
- clinical trial costs;
- facilities expenses; and
- legal costs associated with patent applications.

Internal and external research and development costs are expensed as they are incurred. As we initiate clinical trials to evaluate efficacy of targeted therapies in cancer patients selected with one of our CELx tests, the proportion of research and development expenses allocated to external spending will grow at a faster rate than expenses allocated to internal expenses.

#### *General and Administrative*

General and administrative expenses consist primarily of salaries and related benefits related to our executive, finance and support functions. Other general and administrative expenses include travel expenses for our general and administrative personnel and professional fees for auditing, tax, and legal services.

#### *Sales and Marketing*

Selling and marketing expenses consist primarily of professional and consulting fees related to these functions. To date, we have incurred immaterial sales and marketing expenses as we continue to focus primarily on the development of our CELx platform and corresponding CELx tests. We expect to begin to incur increased selling and marketing expenses in anticipation of the commercialization of our CELx HSF Test. These increased expenses are expected to include payroll-related costs as we add employees in the commercial departments, costs related to the initiation and operation of our sales and distribution network and marketing related costs.

### Interest Expense

Interest expense primarily consists of the amortization of debt discount and debt financing costs related to the issuance of our unsecured convertible promissory notes that were converted to common stock upon our IPO.

### Interest Income

Interest income consists of interest income earned on our cash, cash equivalents, and investment balances.

### Results of Operations

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2017	2016	Percent Change	2017	2016	Percent Change
Operating expenses:		(unaudited)			(unaudited)	
Research and development	\$ 1,364,728	\$ 812,803	68%	\$ 3,577,357	\$ 2,224,859	61%
General and administrative	164,665	64,738	154	551,555	196,155	181
Total operating expenses	1,529,393	877,541	74	4,128,912	2,421,014	71
Loss from operations	(1,529,393)	(877,541)	74%	(4,128,912)	(2,421,014)	71%
Other income (expense)						
Interest expense	(264,905)	-	na	(451,664)	-	na
Interest income	30,322	9,021	61	53,034	13,040	307
Total other income (expense)	(234,583)	9,021	(2,700)	(398,630)	13,040	(3,157)
Net loss	\$ (1,763,976)	\$ (868,520)	103%	\$ (4,527,542)	\$ (2,407,974)	88%

### Research and Development

Our total research and development expenses for the three and nine months ended September 30, 2017 were approximately \$1.4 and \$3.6 million, respectively, representing an increase of approximately \$0.6 million and \$1.4 million, or 68% and 61%, compared to the same periods in 2016. The increases for such periods primarily resulted from an increase in employee-related expenses, including approximately \$0.05 million and \$0.3 million of non-cash stock-based compensation, to support development of our CELx platform, validation studies of our CELx HSF Test, legal expenses related to patent costs, start-up clinical trial costs, and business development activities.

Conducting a significant amount of research and development is central to our business model. We plan to increase our research and development expenses for the foreseeable future as we seek to discover new cancer sub-types and to develop and validate additional CELx tests to diagnose such sub-types. We also expect to incur increased expenses to support companion diagnostic business development activities with pharmaceutical companies as we develop additional CELx tests.

## *General and Administrative*

Our total general and administrative expenses for the three and nine months ended September 30, 2017 were approximately \$0.2 million and \$0.6 million, respectively, representing an increase of approximately \$0.1 million and \$0.4 million, or 154% and 181%, compared to the same periods in 2016. The increases for such periods primarily resulted from increases in employee-related expenses, including approximately \$0.01 million and \$0.1 million of non-cash stock-based compensation, professional accounting and audit fees, and director and officer insurance.

We anticipate that our general and administrative expenses will increase in future periods, reflecting both increased costs in connection with the potential future commercialization of CELx tests, an expanding infrastructure, and increased professional fees associated with being a public reporting company.

To date, we have incurred immaterial sales and marketing expenses as we continue to focus primarily on the development of our CELx platform and corresponding CELx tests. We expect to begin to incur increased selling and marketing expenses in anticipation of the commercialization of our CELx HSF Test. These increased expenses are expected to include payroll-related costs as we add employees in the commercial departments, costs related to the initiation and operation of our sales and distribution network and marketing related costs.

## *Interest Expense*

Interest expense for the three and nine months ended September 30, 2017 was approximately \$0.3 million and \$0.5 million, respectively. We incurred no interest expense in 2016. The increases for the three and nine-month periods consisted of approximately \$0.3 million and \$0.5 million, respectively, of non-cash amortization of debt discount and debt financing costs and accrued interest related to the issuance of our unsecured convertible promissory notes.

## *Interest Income*

Interest income for the three and nine months ended September 30, 2017 was approximately \$0.03 million and \$0.05 million, respectively, representing an increase of approximately \$0.02 million and \$0.04 million, or 61% and 307%, compared to the same periods in 2016. The increases resulted from interest earned on our cash, cash equivalents, and investment balances.

## **LIQUIDITY AND CAPITAL RESOURCES**

Since our inception, we have incurred losses and cumulative negative cash flows from operations. Through September 30, 2017, we have raised capital of approximately \$13.7 million and \$7.5 million through private placements of common equity and unsecured convertible notes, respectively. On September 22, 2017, we also closed on the initial public offering of our common stock, which generated approximately \$23.3 million of additional cash after taking into account underwriting discounts and commissions and offering expenses. Cash from these capital raising activities has been our primary source of funds for our operations since inception. As of September 30, 2017, our cash, cash equivalents, and investments were approximately \$32.5 million and we had a combined accumulated deficit of approximately \$12.9 million under Celcuity LLC and Celcuity Inc.

We expect that our research and development and general and administrative expenses will increase as we continue to develop our CELx platform and additional CELx tests, conduct research related to the discovery of new cancer sub-types, conduct clinical trials, and pursue other business development activities. We will also start to incur sales and marketing expenses as we commercialize our CELx HSF Test. We expect to use cash on hand to fund our research and development expenses, capital expenditures, working capital, sales and marketing expenses, and general corporate expenses, as well as for the increased costs associated with being a public company.

Based on our current business plan, we believe that our current cash on hand will provide sufficient cash to finance operations and pay obligations when due during at least the next 24 months.

We may seek to raise additional capital beyond the currently anticipated amount to expand our business, pursue strategic investments, and take advantage of financing or other opportunities that we believe to be in the best interests of the Company and our stockholders. Additional capital may be raised through the sale of common or preferred equity or convertible debt securities, entry into debt facilities or other third-party funding arrangements. The sale of equity and convertible debt securities may result in dilution to our stockholders and those securities may have rights senior to those of our common shares. Agreements entered into in connection with such capital raising activities could contain covenants that would restrict our operations or require us to relinquish certain rights. Additional capital may not be available on reasonable terms, or at all.

## Cash Flows

	Nine Months Ended September 30,	
	2017	2016
	(unaudited)	
Net cash provided by (used in):		
Operating activities	\$ (3,838,020)	\$ (2,184,283)
Investing activities	(448,496)	(30,774)
Financing activities	30,734,313	3,718,300
Net increase in cash and cash equivalents	<u>\$ 26,447,797</u>	<u>\$ 1,503,243</u>

### Operating Activities

Net cash used in operating activities was approximately \$3.8 million for the nine months ended September 30, 2017, and consisted primarily of a net loss of approximately \$4.5 million and approximately \$0.4 million in working capital changes, adjusted for non-cash items of approximately \$1.1 million. The approximately \$0.4 million of working capital was primarily due to approximately \$0.3 million in prepaid insurance and deposits and approximately \$0.1 million in accounts payable and accrued expenses. Non-cash expense items of approximately \$1.1 million consisted of depreciation of approximately \$0.08 million, stock-based compensation expense of approximately \$0.6 million and interest expense of approximately \$0.5 million primarily related to amortization of debt discount and debt financing costs. The net cash used in operating activities was approximately \$2.2 million for the nine months ended September 30, 2016 and consisted primarily of a net loss of approximately \$2.4 million, adjusted for approximately \$0.2 million of non-cash items, including depreciation of approximately \$0.05 million, stock-based compensation expense of approximately \$0.1 million.

### Investing Activities

Net cash used in investing activities for the nine months ended September 30, 2017 was approximately \$0.4 million and consisted of approximately \$0.2 million of investments in certificates of deposit and approximately \$0.2 million in purchases of property and equipment. Net cash used in investing activities for the nine months ended September 30, 2016 was approximately \$0.03 million and consisted of purchases of property and equipment.

### Financing Activities

Net cash provided by financing activities for the nine months ended September 30, 2017 was approximately \$30.7 million and reflects the net proceeds of approximately \$7.5 million from the sale of unsecured convertible promissory notes and warrants to certain investors through a private placement, as well as the net proceeds of approximately \$23.3 million from the sale of common stock in our initial public offering. Net cash provided by financing activities for the nine months ended September 30, 2016 was approximately \$3.7 million and reflects the net proceeds from the sale of membership units of Celcuity LLC to certain investors.

## OFF-BALANCE SHEET ARRANGEMENTS

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

## RECENT ACCOUNTING PRONOUNCEMENTS

From time to time new accounting pronouncements are issued by the Financial Accounting Standards Board, or FASB, or other standard setting bodies and adopted by us as of the specified effective date. Unless otherwise discussed in Note 2 to our condensed financial statements included elsewhere in this Quarterly Report on Form 10-Q, we believe that the impact of recently issued standards that are not yet effective will not have a material impact on our financial position or results of operations upon adoption.

## CRITICAL ACCOUNTING POLICIES AND USE OF ESTIMATES

Our management's discussion and analysis of financial condition and results of operations is based on our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States, or Generally Accepted Accounting Principles ("U.S. GAAP"). The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported expenses during the reporting periods. These items are monitored and analyzed by us for changes in facts and circumstances, and material changes in these estimates could occur in the future. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances; the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Changes in estimates are reflected in reported results for the period in which they become known. Actual results may differ materially from these estimates.

Our significant accounting policies are more fully described in Note 2 to our condensed financial statements included in this Quarterly Report on Form 10-Q.

## PRIVATE SECURITIES LITIGATION REFORM ACT

The Private Securities Litigation Reform Act of 1995 provides a "safe harbor" for forward-looking statements. Such "forward-looking" information is included in this Form 10-Q and in other materials filed or to be filed by us with the Securities and Exchange Commission (as well as information included in oral statements or other written statements made or to be made by us). Forward-looking statements include all statements based on future expectations. This Form 10-Q contains forward-looking statements that involve risks and uncertainties, including but not limited to, (i) our clinical trial plans, the estimated costs for such trials and our expectations regarding the timeframe for such trials; (ii) our expectations regarding the development, launch and commercialization of our CELx test; (iii) our beliefs related to the perceived advantages of our CELx tests compared to traditional molecular or other diagnostic tests; (iv) our expectations regarding building a sales and marketing function; (v) our expectations regarding revenue from sales of CELx tests and revenue from milestone or other payment sources; (vi) our plans with respect to research and development and related expenses for the foreseeable future; (vii) our expectations regarding business development activities, including partnering with pharmaceutical companies and other companion diagnostic related activities with pharmaceutical companies; (viii) our expectations with respect to costs and timelines to develop and validate CELx tests; (ix) our plans to transition into our newly leased space and expand operations; and (x) our beliefs regarding the ability of our cash on hand to fund our research and development expenses, capital expenditures, working capital, sales and marketing expenses, and general corporate expenses, as well as for the increased costs associated with being a public company.

In some cases, you can identify forward-looking statements by the following words: "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "ongoing," "plan," "potential," "predict," "project," "should," "will," "would," or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these words. Forward-looking statements are only predictions and are not guarantees of performance. These statements are based on our management's beliefs and assumptions, which in turn are based on their interpretation of currently available information.

These statements involve known and unknown risks, uncertainties and other factors that may cause our results or our industry's actual results, levels of activity, performance or achievements to be materially different from the information expressed or implied by these forward-looking statements. Certain risk, uncertainties and other factors include, but are not limited to, our limited operating history; our initial success being heavily dependent on the success of our CELx HSF Test; our inability to determine whether our CELx tests are currently commercially viable; challenges we may face in developing and maintaining relationships with pharmaceutical company partners; the complexity and timeline for development of CELx tests; the uncertainty and costs associated with clinical trials; the uncertainty regarding market acceptance by physicians, patients, third-party payors and others in the medical community, and with the size of market opportunities available to us; the pricing of molecular and other diagnostic products and services that compete with us; uncertainty with insurance coverage and reimbursement for our CELx tests; difficulties we may face in managing growth, such as hiring and retaining a qualified sales force and attracting and retaining key personnel; changes in government regulations; and obtaining and maintaining intellectual property protection for our technology and time and expense associated with defending third-party claims of intellectual property infringement, investigations or litigation threatened or initiated against us. These and additional risks, uncertainties and other factors are described more fully in our Prospectus filed with the Securities and Exchange Commission on September 20, 2017 pursuant to Rule 424(b)(4) under the Securities Act of 1933, as amended. Copies of filings made with the SEC are available through the SEC's electronic data gathering analysis and retrieval system (EDGAR) at [www.sec.gov](http://www.sec.gov).

You should read these risk factors and the other cautionary statements made in this Form 10-Q as being applicable to all related forward-looking statements wherever they appear in this Form 10-Q. We cannot assure you that the forward-looking statements in this Form 10-Q will prove to be accurate. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. You should read this Form 10-Q completely. Other than as required by law, we undertake no obligation to update these forward-looking statements, even though our situation may change in the future.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

As a smaller reporting company, we are not required to provide disclosure pursuant to this item.

**ITEM 4. CONTROLS AND PROCEDURES**

**Evaluation of Disclosure Controls and Procedures**

Our Chief Executive Officer and Chief Financial Officer, referred to collectively herein as the Certifying Officers, are responsible for establishing and maintaining our disclosure controls and procedures. The Certifying Officers have reviewed and evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Securities Exchange Act of 1934 (the "Exchange Act")) as of September 30, 2017. Based on that review and evaluation, the Certifying Officers have concluded that, as of the end of the period covered by this Report, our disclosure controls and procedures, as designed and implemented, are effective and provide reasonable assurance that information required to be disclosed by us in the periodic and current reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the periods specified by the Securities and Exchange Commission's rules and forms.

**Changes in Internal Control Over Financial Reporting**

There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the nine months ended September 30, 2017 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II. — OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

From time to time we may be involved in disputes or litigation relating to claims arising out of our operations. We are not currently a party to any legal proceedings that could reasonably be expected to have a material adverse effect on our business, financial condition and results of operations.

### **ITEM 1A. RISK FACTORS**

As a smaller reporting company, we are not required to provide disclosure pursuant to this item. However, in addition to other information set forth in this report, including the important information in the section entitled “Private Securities Litigation Reform Act,” you should carefully consider the “Risk Factors” discussed in our Prospectus filed with the Securities and Exchange Commission on September 20, 2017 pursuant to Rule 424(b)(4) under the Securities Act of 1933, as amended, and elsewhere in this Quarterly Report on Form 10-Q, for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial might materially adversely affect our actual business, financial condition and/or operating results.

### **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

#### ***Use of Proceeds from Initial Public Offering of Common Stock***

On September 22, 2017, we completed our IPO of 2,760,000 shares of our common stock at a price to the public of \$9.50 per share. The total number of shares of common stock sold in the IPO includes the exercise of an over-allotment we granted to Craig-Hallum Capital Group LLC, the sole managing underwriter of the IPO (“Craig-Hallum”), to purchase 360,000 shares of common stock. The shares of common stock were registered for sale pursuant to Registration Statements on Form S-1 (Registration Nos. 333-220128 and 333-220527), filed with the Securities and Exchange Commission and declared effective on September 19, 2017 (the “Effective Date”). The aggregate offering price for the registered shares of common stock was approximately \$26.2 million. The offering commenced on September 20, 2017 and did not terminate before all of the shares of common stock that were registered in the Registration Statement were sold.

The aggregate offering price for the shares sold in the offering was approximately \$26.2 million. We received net proceeds of approximately \$23.3 million from the offering, after deducting underwriting discounts and commissions of approximately \$1.8 million and offering expenses of approximately \$1.1 million. No payments for the foregoing expenses were made by us to any of our officers, directors or persons owning ten percent or more of our common stock, or to the associates of any of the foregoing, or to its affiliates, other than payments in the ordinary course of business to our officers for salaries, bonuses and expense reimbursements.

There has been no material change in the planned use of proceeds as described in our Prospectus filed with the Securities and Exchange Commission on September 20, 2017. From the Effective Date through September 30, 2017, we did not use any material portion of the offering proceeds.

#### ***Unregistered Sales of Equity Securities***

##### Underwriter Warrant

Upon closing of the IPO on September 22, 2017, as additional underwriting compensation and in exchange for cash consideration of \$50, we granted Craig-Hallum warrants to purchase up to an aggregate of 138,000 shares of common stock at an exercise price of \$10.45 per share, subject to customary anti-dilution provisions. The warrants were issued pursuant to a warrant agreement (the “Warrant Agreement”) between us and Craig-Hallum. The warrants are exercisable for a term of five years. The Warrant Agreement includes a cashless exercise provision entitling Craig-Hallum to surrender a portion of the underlying common stock that has a value equal to the aggregate exercise price, in lieu of paying cash upon exercise.

The warrants were issued to Craig-Hallum in reliance on the exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended, since the issuance did not involve a public offering, the recipient took the securities for investment and not resale, and the Company took appropriate measures to restrict transfer. The Company did not pay underwriter discounts or commissions in connection with the issuance of the warrants to Craig-Hallum.

The foregoing disclosure is qualified in its entirety by reference to the Warrant Agreement, which is incorporated by reference to Exhibit 10.1 to our Current Report on Form of 8-K filed on September 25, 2017.

#### Conversion of Convertible Promissory Notes

We previously issued an aggregate of \$8,337,500 principal amount of unsecured convertible promissory notes (collectively, the "Notes") in two private placements. Pursuant to the terms of the Notes, upon the completion of the IPO on September 22, 2017, the principal and accrued interest of the Notes were automatically converted into an aggregate of 881,911 shares of common stock (the "Conversion Shares") at a conversion price of \$9.50 per share (which was equal to the price to the public in the IPO). In addition, holders of the Notes received warrants to purchase an aggregate of 131,675 shares of common stock (the "Conversion Warrants"). The Conversion Warrants have a seven-year term and an exercise price of \$9.50 per share.

The Conversion Shares and Conversion Warrants were issued to 77 holders of Notes in reliance on the exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended, since the issuance did not involve a public offering. The Notes were originally issued in private offerings in reliance on Rule 506 of Regulation D and Section 4(2) of the Act.

The foregoing disclosure is qualified in its entirety by reference to the form of Conversion Warrant, which is incorporated by reference from Exhibit 10.2 to our Current Report on Form of 8-K filed on September 25, 2017.

#### **ITEM 3.        DEFAULTS UPON SENIOR SECURITIES**

None.

#### **ITEM 4.        MINE SAFETY DISCLOSURES**

None.

#### **ITEM 5.        OTHER INFORMATION**

None.

**ITEM 6. EXHIBITS**

<b>Exhibit No.</b>	<b>Description</b>
<a href="#"><u>3.1*</u></a>	<a href="#"><u>Certificate of Incorporation</u></a>
<a href="#"><u>3.2*</u></a>	<a href="#"><u>Bylaws</u></a>
<a href="#"><u>4.1</u></a>	<a href="#"><u>Specimen Certificate representing shares of common stock of Celcuity Inc., incorporated by reference from Exhibit 4.1 to the Company's Registration Statement on Form S-1/A filed September 12, 2017</u></a>
<a href="#"><u>10.1</u></a>	<a href="#"><u>Celcuity Inc. 2017 Employee Stock Purchase Plan, incorporated by reference from Exhibit 10.1 to the Company's Registration Statement on Form S-1/A filed September 12, 2017</u></a>
<a href="#"><u>10.2</u></a>	<a href="#"><u>Celcuity Inc. 2017 Incentive Stock Plan, incorporated by reference from Exhibit 10.2 to the Company's Registration Statement on Form S-1/A filed September 12, 2017</u></a>
<a href="#"><u>10.3</u></a>	<a href="#"><u>Form of Stock Option Agreement pursuant to Celcuity Inc. 2017 Stock Incentive Plan, incorporated by reference from Exhibit 10.3 to the Company's Registration Statement on Form S-1/A filed September 12, 2017</u></a>
<a href="#"><u>10.4</u></a>	<a href="#"><u>Form of Restricted Stock Agreement pursuant to Celcuity Inc. 2017 Stock Incentive Plan, incorporated by reference from Exhibit 10.4 to the Company's Registration Statement on Form S-1/A filed September 12, 2017</u></a>
<a href="#"><u>10.5</u></a>	<a href="#"><u>Form of Restricted Stock Unit Award Agreement pursuant to Celcuity Inc. 2017 Stock Incentive Plan, incorporated by reference from Exhibit 10.5 to the Company's Registration Statement on Form S-1/A filed September 12, 2017</u></a>
<a href="#"><u>10.6</u></a>	<a href="#"><u>Form of Stock Appreciation Right Agreement pursuant to Celcuity Inc. 2017 Stock Incentive Plan, incorporated by reference from Exhibit 10.6 to the Company's Registration Statement on Form S-1/A filed September 12, 2017</u></a>
<a href="#"><u>10.7</u></a>	<a href="#"><u>Form of Conversion Warrant, incorporated by reference from Exhibit 10.2 to the Company's Current Report on Form of 8-K filed September 25, 2017</u></a>
<a href="#"><u>10.8</u></a>	<a href="#"><u>Warrant Agreement, dated September 19, 2017, between Craig-Hallum and the Company, incorporated by reference from Exhibit 10.1 to the Company's Current Report on Form 8-K filed September 25, 2017</u></a>
<a href="#"><u>10.10</u></a>	<a href="#"><u>Form of Indemnification Agreement between Celcuity Inc. and each of its officers and directors, incorporated by reference from Exhibit 10.17 to the Company's Registration Statement on Form S-1/A filed September 12, 2017</u></a>
<a href="#"><u>10.11*</u></a>	<a href="#"><u>Commercial Lease, dated September 28, 2017, by and between West Glen Development I, LLC and Celcuity Inc.</u></a>
<a href="#"><u>31.1*</u></a>	<a href="#"><u>Certification of Chairman and Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u></a>
<a href="#"><u>31.2*</u></a>	<a href="#"><u>Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u></a>
<a href="#"><u>32.1**</u></a>	<a href="#"><u>Certification of Chairman and Chief Executive Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u></a>
<a href="#"><u>32.2**</u></a>	<a href="#"><u>Certification of Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u></a>
101.INS***	XBRL Instance Document
101.SCH***	XBRL Taxonomy Extension Schema
101.CAL***	XBRL Taxonomy Extension Calculation
101.DEF***	XBRL Taxonomy Extension Definition
101.LAB***	XBRL Taxonomy Extension Label
101.PRE***	XBRL Taxonomy Extension Presentation

\* Filed herewith.

\*\* Furnished herewith.

\*\*\* To be filed by amendment.

**SIGNATURES**

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

Dated: November 13, 2017

CELCUITY INC.

By /s/ Brian F. Sullivan  
Brian F. Sullivan  
Chairman and Chief Executive Officer  
(Principal Executive Officer)

By /s/ Vicky Hahne  
Vicky Hahne  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

**CERTIFICATE OF INCORPORATION  
OF  
CELCUITY INC.**

The undersigned, being of full age, for the purpose of forming a corporation under and pursuant to the Delaware General Corporation Law, as amended (the "DGCL"), hereby adopts the following Certificate of Incorporation:

**ARTICLE 1  
NAME**

The name of the corporation is Celcuity Inc.

**ARTICLE 2  
REGISTERED OFFICE AND AGENT**

The address of the registered office of the corporation in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of the registered agent of the corporation at such address is The Corporation Trust Company.

**ARTICLE 3  
PURPOSE**

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the DGCL.

**ARTICLE 4  
CAPITAL STOCK**

4.1 The aggregate number of shares the corporation has authority to issue is 50,000,000 shares, par value of \$0.001 per share, consisting of 45,000,000 shares of Common Stock and 5,000,000 shares of undesignated Preferred Stock. The Board of Directors of the corporation has the authority, without first obtaining approval of the stockholders of the corporation or any class thereof, to establish from the undesignated shares of Preferred Stock, by resolution adopted and filed in the manner provided by law, one or more series of Preferred Stock and to fix the number of shares, the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions of such class or series.

4.2 The Board of Directors is expressly authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series. The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the votes represented by all outstanding shares of stock of the Company entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

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4.3 Unless and except to the extent set forth in a resolution adopted and filed in the manner provided by law establishing one or more series of Preferred Stock, no holder of shares of the corporation of any class or series now or hereafter authorized has any preferential or preemptive right provided under applicable law to subscribe for, purchase or receive any shares of the corporation of any class or series now or hereafter authorized, or any options or warrants for such shares, that may at any time be issued, sold or offered for sale by the Company.

4.4 No holder of shares of the Company of any class now or hereafter authorized will be entitled to cumulative voting.

**ARTICLE 5  
MEETINGS AND BOOKS**

5.1 Meetings of the stockholders may be held within or outside the State of Delaware, as the Bylaws may provide.

5.2 Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the corporation shall be given in the manner provided in the Bylaws of the corporation.

5.3 The books of the corporation may be kept within or (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the corporation.

**ARTICLE 6  
INCORPORATOR**

The name and mailing address of the incorporator are as follows:

Annette Peterson-Igbinovia  
Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402-1425

**ARTICLE 7  
DIRECTORS**

7.1 The management of the business and the conduct of the affairs of the corporation shall be vested in its Board of Directors. The number of directors which shall constitute the Board of Directors shall be fixed exclusively by resolutions adopted by a majority of the authorized number of directors then constituting the Board of Directors.

7.2 The directors of the corporation need not be elected by written ballot unless the Bylaws so provide.

7.3 To the fullest extent permitted by law, any past or present director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. No amendment to, modification of or repeal of this Article 7 will apply to or have any effect on the liability or alleged liability of any past or present director of the Company for or with respect to any acts or omissions of such director occurring prior to such amendment.

#### **ARTICLE 8 BYLAWS**

The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the corporation. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the corporation.

#### **ARTICLE 9 SHAREHOLDER ACTION**

Any action required or permitted to be taken by the stockholders of the corporation must be effected at an annual or special meeting of stockholders called in accordance with the Bylaws and may not be effected by any consent in writing by such stockholders pursuant to Section 228 of the DGCL or any other provision of the DGCL.

#### **ARTICLE 10 AMENDMENT**

10.1 The corporation reserves the right to amend, alter or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by statute, except as provided in Section 10.2, and all rights conferred upon the stockholders herein are granted subject to this reservation.

10.2 Notwithstanding any other provisions of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the corporation required by law or by this Certificate of Incorporation or any certificate of designation filed with respect to a series of Preferred Stock, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or repeal Articles 5, 7, 8, 9 and 10.

THE UNDERSIGNED, being the incorporator named herein, for the purpose of forming a corporation pursuant to the DGCL, makes this Certificate, hereby declaring and certifying that this is his or her act and deed and the facts herein stated are true, and accordingly has hereunto set his or her hand on September 15, 2017.

/s/ Annette Peterson-Igbinovia  
Annette Peterson-Igbinovia, Incorporator

**BYLAWS**

**OF**

**CELCUITY INC.**

(a Delaware Corporation)

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**BYLAWS  
OF  
CELCUITY INC.**  
(a Delaware Corporation)

**ARTICLE 1  
OFFICES**

**1.1. Registered Office.** The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle.

**1.2. Other Offices.** The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

**ARTICLE 2  
MEETINGS OF STOCKHOLDERS**

**2.1. Place of Meetings.** Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law ("DGCL").

**2.2. Annual Meetings.**

(a) **Date, Time and Purpose.** The annual meeting of the stockholders of the corporation, for the purpose of electing directors and transacting such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders; (ii) by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving the stockholder's notice provided for in the following paragraph, who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 2.2. Clause (iii) above shall be the exclusive means for a stockholder to make nominations and propose other business (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "1934 Act") and included in the corporation's notice of meeting of stockholders) to be considered at an annual meeting of stockholders.

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(b) **Nominations and Proposals by Stockholders.** At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 2.2(a) of these Bylaws, (i) the stockholder must have given timely notice thereof in proper form and timely updates and supplements thereof, in each case in proper form, in writing to the Secretary of the corporation, (ii) such other business must be a proper matter for stockholder action under the DGCL, (iii) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the corporation with a Solicitation Notice (as defined in Section 2.2(c)), such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the corporation's voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice, and (iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 2.2.

To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that if the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than sixty (60) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or, if the first public announcement of the date of such annual meeting is less than one hundred (100) days prior to the date of such annual meeting, the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above.

Notwithstanding anything in the immediately preceding paragraph to the contrary, if the number of directors to be elected to the Board of Directors of the corporation is increased and no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors is made by the corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 2.2 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which a public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors is first made by the corporation.

In addition, to be considered timely, a stockholder's notice must further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice is true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement must be delivered to the Secretary at the principal executive offices of the corporation not later than five (5) business days after the record date for the meeting in the case of the update and supplement required to be made as of the record date, and not later than eight (8) business days prior to the date for the meeting or any adjournment or postponement thereof in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof. For the avoidance of doubt, the obligation to update and supplement set forth in this paragraph or any other Section of these Bylaws will not limit the corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding nominees, matters, business and/or resolutions proposed to be brought before a meeting of the stockholders.

(c) **Stockholder's Notice.** To be in proper form, a stockholder's notice to the Secretary must include the following, as applicable:

(1) As to each person whom the stockholder proposed to nominate for election or reelection as a director (i) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act and Rule 14a-4(d) thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K under the 1934 Act if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant;

(2) As to any other business the stockholder proposes to bring before the meeting, (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith, if any, in such business, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration and, if such proposal or business includes a proposal to amend the Bylaws of the corporation, the text of the proposed amendment), and (iii) a description of any agreements, arrangements and understandings between such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder; and

(3) As to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, if any, and of their respective affiliates or associates or others acting in concert therewith, (ii) (1) the class or series and number of shares of the corporation which are, directly or indirectly, owned beneficially and of record by such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith, (2) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the corporation or with a value derived in whole or in part from the value of any class or series of shares of the corporation, or any derivative or synthetic arrangement having the characteristics of a long position in any class or series of shares of the corporation, or any contract, derivative, swap or other transaction or series of transactions designed to produce economic benefits and risks that correspond substantially to the ownership of any class or series of shares of the corporation, including due to the fact that the value of such contract, derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any class or series of shares of the corporation, whether or not such instrument, contract or right is subject to settlement in the underlying class or series of shares of the corporation, through the delivery of cash or other property, or otherwise, and without regard to whether the stockholder of record, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right, or any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the corporation (any of the foregoing, a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, (3) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith have any right to vote any class or series of shares of the corporation, (4) any agreement, arrangement, understanding, relationship or otherwise, including any repurchase or similar so-called "stock borrowing" agreement or arrangement, involving such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith, directly or indirectly, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of any class or series of the shares of the corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith with respect to any class or series of the shares of the corporation, or which provides, directly or indirectly, the opportunity to profit or share in any profit derived from any decrease in the price or value of any class or series of the shares of the corporation (any of the foregoing, a "Short Interest"), (5) any rights to dividends on the shares of the corporation owned beneficially by such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith that are separated or separable from the underlying shares of the corporation, (6) any proportionate interest in shares of the

Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership, (7) any performance-related fees (other than an asset-based fee) to which such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith are entitled based on any increase or decrease in the value of shares of the corporation or Derivative Instruments, if any, including without limitation any such interests held by members of the immediate family sharing the same household of such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith, (8) any significant equity interests or any Derivative Instruments or Short Interests in any principal competitor of the corporation held by such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith and (9) any direct or indirect interest of such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith in any contract with the corporation, any affiliate of the corporation or any principal competitor of the corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (iii) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of the proposal, at least the percentage of the corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a "Solicitation Notice"), (iv) all information that would be required to be set forth in a Schedule 13D filed pursuant to Rule 13d-1(a) or an amendment pursuant to Rule 13d-2(a) if such a statement were required to be filed under the Exchange Act and the rules and regulations promulgated thereunder by such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith, if any, and (v) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the 1934 Act and the rules and regulations promulgated thereunder.

(4) In addition, such stockholder's notice shall be accompanied by, with respect to each nominee for election or reelection to the Board of Directors, a completed and signed questionnaire, representation and agreement required by Section 2.2(g). The corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(d) **Business to be Conducted.** Only such persons who are nominated in accordance with the procedures set forth in this Section 2.2 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.2. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

(e) **Compliance with Federal Securities Laws.** Notwithstanding the foregoing provisions of this Section 2.2, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 2.2; however, any references in these Bylaws to the 1934 Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 2.2. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act.

(f) **Public Announcement.** For purposes of these Bylaws, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act and the rules and regulations promulgated thereunder.

(g) **Eligibility of Stockholder-Proposed Nominees.** To be eligible to be a stockholder-proposed nominee for election or reelection as a director of the corporation in accordance with Section 2.2 or 2.3, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Sections 2.2 and 2.3, as applicable) to the Secretary at the principal executive offices of the corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (A) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the corporation, with such person's fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and (C) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock trading policies and guidelines of the corporation.

### 2.3. Special Meetings.

(a) **Right to Call.** Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by the affirmative vote of a majority of the directors then in office.

(b) **Time, Place and Purpose.** The Board of Directors shall determine the time and place of such special meeting. Upon determination of the time and place of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 2.4 of these Bylaws. No business may be transacted at such special meeting other than the business specified in the notice of meeting. Nothing contained in this paragraph (b) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

(c) **Nominations.** Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting (i) by or at the direction of the Board of Directors or (ii) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the corporation who is a stockholder of record at the time of giving notice provided for in this paragraph who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in Section 2.2 of these Bylaws. If the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice and other materials required by Section 2.2(c) of these Bylaws (including the completed and signed questionnaire, representation and agreement required by Section 2.2(g)) shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such meeting or, if the first public announcement of the date of such special meeting is less than 100 days prior to the date of such special meeting, the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

(d) **Nominations by Stockholders.** Notwithstanding the foregoing provisions of this Section 2.3, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 2.3; however, any references in these Bylaws to the 1934 Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 2.3. Nothing in these Bylaws shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock if and to the extent provided for under law, the Certificate of Incorporation or these Bylaws. Subject to Rule 14a-8 under the Exchange Act, nothing in these Bylaws will be construed to permit any stockholder, or give any stockholder the right, to include or have disseminated or described in the corporation's proxy statement any nomination of director or directors or any other business proposal.

**2.4. Notice of Meetings.** Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. Such notice shall specify the place, if any, and date and hour of the meeting; in the case of special meetings, the purpose or purposes of the meeting; and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his or her attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

**2.5. Quorum.** At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute, by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors the affirmative vote of the majority of shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, the election of directors shall be by a plurality of the votes present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except as otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to the vote on that matter. Except as otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (except in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series. Except as otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of a plurality of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series in the case of the election of directors.

**2.6. Adjournment and Notice of Adjourned Meetings.** Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**2.7. Voting Rights.** For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 2.9 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder.

**2.8. Joint Owners of Stock.** If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, the voting person's act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

**2.9. List of Stockholders.** The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. If the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

**2.10. Action Without a Meeting.** No action shall be taken by the stockholders except at an annual or special meeting of stockholders called in accordance with these Bylaws, and no action shall be taken by the stockholders by written consent or by electronic transmission.

**2.11. Organization of Meetings.**

(a) **Chairman of the Meeting.** At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the Chief Executive Officer, or, if the Chief Executive Officer is absent, the President, or, if the President is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

(b) **Conduct of Meeting.** The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and except to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

**ARTICLE 3  
DIRECTORS**

**3.1. Number and Term of Office.** The authorized number of directors of the corporation shall be fixed in accordance with the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation or Section 2.2(g) of these Bylaws. If for any reason the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws. Each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

**3.2. Powers.** The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

**3.3. Vacancies.** Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, *provided, however*, that whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Any director elected in accordance with the preceding sentence shall hold office until such director's successor shall have been elected and qualified or until his or her earlier death, resignation or removal.

**3.4. Resignation.** Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his or her successor shall have been duly elected and qualified or until his or her earlier death, resignation or removal.

**3.5. Meetings.**

(a) **Regular Meetings.** Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.

(b) **Special Meetings.** Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the Chief Executive Officer or a majority of the directors then in office.

(c) **Meetings by Electronic Communications Equipment.** Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) **Notice of Special Meetings.** Notice of the time and place of all special meetings of the Board of Directors shall be given orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by US mail, it shall be sent by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(e) **Waiver of Notice.** The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if a quorum is present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

### 3.6. **Quorum and Voting.**

(a) Unless the Certificate of Incorporation requires a greater number, and except with respect to questions related to indemnification arising under Article 5 for which a quorum shall be one-third of the directors then in office, a quorum of the Board of Directors shall consist of a majority of the of the directors then in office; provided, however, at any meeting whether a quorum is present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote is required by law, the Certificate of Incorporation or these Bylaws.

**3.7. Action Without a Meeting.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**3.8. Fees and Compensation.** Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

**3.9. Chairman of the Board.** The Board of Directors may elect or appoint a Chairman of the Board who, if elected or appointed, shall preside at all meetings of the Board of Directors and of the stockholders. The Chairman of the Board of Directors shall perform other duties commonly incident to the office and shall perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

**3.10. Committees.**

(a) **Executive Committee.** The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors appointing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the corporation.

(b) **Other Committees.** The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) **Term.** The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) or (b) of this Section 3.10, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his or her death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) **Meetings.** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 3.10 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any Director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

**3.11. Organization of Meetings.** At each meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the Chief Executive Officer (if a director), or, if the Chief Executive Officer is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his or her absence, any Assistant Secretary or other officer, director or other person directed to do so by the chairman of the meeting or the Board of Directors, shall act as secretary of the meeting.

#### **ARTICLE 4 OFFICERS**

**4.1. Number and Designation.** The Board of Directors shall appoint a Chief Executive Officer, a Chief Financial Officer, and a Secretary and may elect or appoint a President, Vice Presidents, a Secretary, a Treasurer and such other officers and agents as it may from time to time determine. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any number of offices may be held by the same person.

**4.2. Appointment and Term of Office.** Unless otherwise provided at the time of election or appointment, each officer shall hold office at the pleasure of the Board of Directors and until such officer's successor is elected and qualified or until such officer's earlier death, resignation, or removal.

(a) **Resignation.** Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors, the Chief Executive Officer or the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights or obligations, if any, of the resigning officer or the corporation under any contract with the resigning officer.

(b) **Removal.** Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee upon whom such power of removal may have been conferred by the Board of Directors, or by the Chief Executive Officer or other superior officers upon whom such power of removal may have been conferred by the Board of Directors. Any removal shall be without prejudice to the rights or obligations, if any, of such officer or the corporation under any contract with such officer.

**4.3. Vacancies in Offices.** If there be a vacancy in any office of the corporation, by reason of death, resignation, removal or otherwise, such vacancy may be filled for the unexpired term by the Board of Directors.

**4.4. Duties of Officers.**

(a) **Chief Executive Officer.** The Chief Executive Officer shall (a) have general active management of the business of the corporation; (b) in the absence of the Chairman of the Board, or if no Chairman shall have been elected, preside at all meetings of the Board of Directors and of the stockholders; (c) see that all orders and resolutions of the Board of Directors are carried into effect; (d) sign and deliver in the name of the corporation any deeds, mortgages, bonds, contracts, certificates for shares or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or these Bylaws or by the Board of Directors to some other officer or agent of the corporation; and (e) perform other duties prescribed by the Board of Directors.

(b) **Chief Financial Officer.** The Chief Financial Officer shall (a) keep accurate financial records for the corporation; (b) deposit all moneys, drafts and checks in the name of and to the credit of the corporation in the banks and depositories designated by the Board; (c) endorse for deposit all notes, checks and drafts received by the corporation as ordered by the Board, making proper vouchers therefor; (d) disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the Board; (e) render to the Board and the Chief Executive Officer, whenever requested, an account of all transactions by the Chief Financial Officer and of the financial condition of the corporation; (f) perform other duties prescribed by the Board or by the Chief Executive Officer; and (g) if required by the Board, give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board shall determine.

(c) **President; Vice President.** Unless otherwise determined by the Board of Directors, the President shall be the Chief Executive Officer. If an officer other than the President is designated Chief Executive Officer, the President shall perform such duties as may from time to time be assigned to the president by the Board of Directors. Each Vice President shall have such powers and shall perform such duties as may be specified in these Bylaws or prescribed by the Board of Directors. In the event of absence or disability of the President, the Board of Directors may designate a Vice President or Vice Presidents to succeed to the power and duties of the President. In the absence of the Chief Executive Officer or in the event of his or her death, inability or refusal to act, the President (if one is elected or appointed) or the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the Chief Executive Officer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer. The President or any Vice President may sign, with the Secretary or an assistant secretary, certificates for shares of the corporation, and shall perform other duties prescribed by the Board of Directors or by the Chief Executive Officer.

(d) **Secretary.** The Secretary shall (a) maintain records of and, whenever necessary, certify all proceedings of the Board of Directors and the stockholders; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the corporate seal, if any; (d) see that a share register of the corporation is maintained in accordance with Section **Error! Reference source not found.** of these Bylaws; (e) sign with the Chief Executive Officer, the President or a Vice President, certificates for shares of the corporation; and (f) perform other duties prescribed by the Board of Directors or by the Chief Executive Officer.

(e) **Treasurer.** Unless otherwise determined by the Board of Directors, the Treasurer shall be the Chief Financial Officer. If an officer other than the Treasurer is designated Chief Financial Officer, the Treasurer shall perform such duties as may be prescribed by the Board of Directors or the Chief Executive Officer from time to time.

(f) **Other Officers.** The Board of Directors may appoint one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers, agents and employees as the Board of Directors may deem advisable. Each officer, agent or employee so appointed shall hold office at the pleasure of the Board of Directors and shall perform such duties as may be assigned by the Board of Directors, Chief Executive Officer or President.

**4.5. Delegation of Authority.** The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

## **ARTICLE 5 INDEMNIFICATION**

### **5.1. Indemnification of Directors, Officers, Employees and Other Agents.**

(a) **Directors and Officers.** The corporation shall indemnify its current and former directors and officers to the fullest extent not prohibited by the DGCL or any other applicable law; *provided, however*, that the corporation may modify the extent of such indemnification by individual contracts with its directors and officers; and, *provided, further*, that the corporation shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or any other applicable law or (iv) such indemnification is required to be made under Section 5.3. Except as provided in Section 5.5, the corporation shall not be obligated to indemnify any director or officer in connection with any proceeding brought by or on behalf of the corporation against such director or officer that is authorized by the corporation's Board of Directors.

(b) **Employees and Other Agents.** The corporation shall have power to indemnify its employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person to such officers or other persons as the Board of Directors shall determine.

**5.2. Advancement of Expenses.** The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses actually and reasonably incurred by any director or officer in connection with such proceeding; *provided, however*, that an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Article 5 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to Section 5.4, no advance shall be made by the corporation to an officer of the corporation (except by reason of the fact that such officer is or was a director of the corporation in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding, that such person had reasonable cause to believe that his or her conduct was unlawful.

**5.3. Enforcement.** Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Bylaw shall be deemed to be vested contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or officer. Such rights shall be deemed to have vested as of the effective date of this Bylaw. Any right to indemnification or advances granted by this Article 5 to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, by the corporation, or (ii) no disposition of such claim is made by the corporation within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise as a defense to any such action that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his or her conduct was lawful. Neither the failure of the corporation (including its Board of Directors or independent legal counsel) to have made a determination prior to the commencement of such enforcement action that indemnification of, or advancement to, the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or officer is not entitled to be indemnified, or to such advancement of expenses, under this Article 5 or otherwise shall be on the corporation.

**5.4. Non-Exclusivity of Rights.** The rights conferred on any person by this Article 5 shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL or by any other applicable law.

**5.5. Indemnification for Expenses of Successful Party.** Notwithstanding the limitations of any other provisions of these Bylaws, to the extent that a director or officer is successful on the merits or otherwise in defense of any proceeding, or in defense of any claim, issue or matter therein, including, without limitation, the dismissal of any action without prejudice, or if it is ultimately determined that the director or officer is otherwise entitled to be indemnified against expenses, the director and/or officer shall be indemnified against all expenses actually and reasonably incurred in connection therewith. If the director or officer is partially successful on the merits or otherwise in defense of any proceeding, such indemnification shall be apportioned appropriately to reflect the degree of success.

**5.6. Survival of Rights.** The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

**5.7. Insurance.** To the fullest extent permitted by the DGCL or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Article 5.

**5.8. Amendments.** Any repeal or modification of this Article 5 shall only be prospective and shall not affect the rights under this Article 5 in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

**5.9. Saving Clause.** If this Article 5 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this Article 5 that shall not have been invalidated or by any other applicable law. If this Article 5 shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and officer to the full extent under any other applicable law.

**5.10. Certain Definitions.** For the purposes of this Bylaw, the following definitions shall apply:

(a) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(b) The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(c) References to a “director,” “officer,” “employee,” or “agent” of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(d) References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this Article 5.

## **ARTICLE 6 SHARES OF STOCK**

**6.1. Form and Execution of Certificates.** The shares of the corporation shall be represented by certificates, or shall be uncertificated, or a combination thereof. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock represented by certificate in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, the Chief Executive Officer, the President or any Vice President and the Chief Financial Officer, Treasurer or Assistant Treasurer, or the Secretary or Assistant Secretary, certifying the number of shares owned by such stockholder in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he or she were such officer, transfer agent, or registrar at the date of issue. Each certificate shall state upon the face or back thereof, in full or in summary, all of the powers, designations, preferences, and rights, and the limitations or restrictions of the shares authorized to be issued or shall, except as otherwise required by law, set forth on the face or back a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or otherwise required by law or with respect to this section a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

**6.2. Lost Certificates.** A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

**6.3. Transfers.**

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

**6.4. Fixing Record Dates.**

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

**6.5. Registered Stockholders.** The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

## **ARTICLE 7 GENERAL PROVISIONS**

**7.1. Fiscal Year.** The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

**7.2. Corporate Seal.** The Board of Directors may adopt a corporate seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." The corporate seal, if adopted, may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

**7.3. Notices.**

(a) **Notice to Stockholders.** Written notice to stockholders of stockholder meetings shall be given as provided in Section 3.4 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by US mail or nationally recognized overnight courier, or by facsimile, electronic mail or other electronic means.

(b) **Notice to Stockholders Sharing an Address.** Except as otherwise prohibited under DGCL, any notice given under the provisions of DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within 60 days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

(c) **Notice to Directors.** Any notice required to be given to any director may be given by the method stated in subsection (a), as otherwise provided in these Bylaws, or by overnight delivery service, facsimile, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(d) **Methods of Notice.** It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) **Affidavit of Notice.** An affidavit, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(f) **Notice to Person with Whom Communication is Unlawful.** Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or these Bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. If the action taken by the corporation requires the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

#### **7.4. Dividends.**

(a) **Declaration of Dividends.** Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

(b) **Dividend Reserve.** Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, deem proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

**7.5. Voting of Securities Owned by the Corporation.** All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

**7.6. Execution of Corporate Instruments.** The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

All checks and drafts drawn on banks or other depositories on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**7.7. Execution of Other Securities.** All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 6.1), may be signed by the Chairman of the Board of Directors, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however*, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

## **ARTICLE 8 EXCLUSIVE FORUM FOR CERTAIN ACTIONS**

**8.1. Exclusive Forum.** Unless the corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the corporation to the corporation or the corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or the Certificate of Incorporation or these Bylaws, (iv) any action asserting a claim governed by the internal affairs doctrine, or (v) any other action asserting an internal corporate claim, as defined in Section 115 of the DGCL, shall be the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court located within the State of Delaware or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware), in all cases subject to such court's having personal jurisdiction over the indispensable parties named as defendants. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the provisions of this Article.

**8.2. Enforcement.** If any action the subject matter of which is within the scope of Section 8.1 above is filed in a court other than a court located within the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Section 8.1 above (an "FSC Enforcement Action") and (ii) having service of process made upon such stockholder in any such FSC Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

## **ARTICLE 9 AMENDMENTS**

**9.1. Amendments.** Subject to the limitations set forth in Section 5.8 of these Bylaws or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the corporation. Any adoption, amendment or repeal of the Bylaws of the corporation by the Board of Directors shall require the approval of a majority of the directors then in office. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

**CERTIFICATION OF BYLAWS**

The undersigned hereby certifies that the foregoing Bylaws of Celcuity Inc. were adopted pursuant to an Action by Written Consent of the Board of Directors effective as of the 15th day of September, 2017.

/s/ Lance G. Laing \_\_\_\_\_

Name: Lance G. Laing

Title: Secretary

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**COMMERCIAL LEASE**

This Lease, dated this 28th day of September, 2017, is by and between West Glen Development I, LLC, a Minnesota limited liability company ( "**Landlord**" ), and Celcuity, LLC, a Minnesota limited liability company (hereinafter referred to as "**Tenant**").

**DEFINITIONS:**

**"Property"**—That certain real property located in the City of Plymouth (the "**City**"), County of Hennepin and State of Minnesota and legally described on Exhibit A attached hereto and made a part hereof, including all buildings and site improvements located thereon.

**"Building"**—That certain office/warehouse building containing approximately 83,121 square feet located upon the Property and commonly described as West Glen Development I, located at 16305 – 36<sup>th</sup> Avenue North, Plymouth, Minnesota 55446.

**"Premises"**—That certain portion of the Building designated as Suite 100, totaling approximately 16,313 square feet, consisting of approximately 14,718 square feet of office space and approximately 1,555 square feet of warehouse space shown as on Exhibit B, and 40 square feet of shared mechanical space as measured from the outside walls of the Premises to the center of the partition wall. The Premises include a non-exclusive license for access to, and use of, Common Areas, as hereinafter defined, and all licenses and easements appurtenant to the Premises.

**"Common Areas"**—The areas to be used for the non-exclusive use by Tenant and other tenants in the Building, including, but not limited to, corridors, lavatories, driveways, truck docks, parking lots and landscaped areas. Subject to reasonable rules and regulations promulgated by Landlord attached hereto and made a part hereof as Exhibit C, the Common Areas are hereby made available to Tenant and its employees, agents, customers, and invitees for reasonable use in common with other tenants, their employees, agents, customers and invitees.

**WITNESSETH:**

**1. TERM:**

For and in consideration of the rents, terms, provisions and covenants herein contained, Landlord hereby lets, leases and demises to Tenant, the Premises for the term of 36 months commencing May 1, 2018 (hereinafter called the "**Commencement Date**") and expiring the 36 months thereafter (sometimes called the "**Expiration Date**"), unless sooner terminated as hereinafter provided (the "**Term**").

**2. BASE RENT:**

Landlord reserves and Tenant shall pay to Landlord, the rent designated in *Article 42* of the attached Addendum, payable in advance without notice, offset, deduction or demand, in equal monthly installments as set forth in the Addendum, commencing on the Commencement Date and continuing on the first day of each and every month thereafter for the next succeeding months during the Term (the "**Base Rent**") or any extension or renewal thereof. In the event the Commencement Date falls on a date other than the first of a month, or the Expiration Date falls on a date other than the last of the month, Base Rent for that month shall be prorated and adjusted accordingly.

### 3. ADDITIONAL RENT:

Tenant shall pay to Landlord throughout the Term of this Lease the following ( "**Additional Rent**"):

a. Tenant shall pay a sum equal to 19.56% of the Real Estate Taxes. The term "**Real Estate Taxes**" shall mean all real estate taxes, fees, charges and assessments, general and special, and any taxes in lieu thereof, which become due or payable against or upon the Building or the Property of which the Premises are a part. All attorneys' fees and other costs and expenses incurred by Landlord during negotiation for or contests of the amount of Real Estate Taxes shall be included in the term "Real Estate Taxes." Tenant, in addition to all other payments to Landlord by Tenant required hereunder, shall pay to Landlord, in each year during the Term of this Lease and any extension or renewal thereof, Tenant's proportionate share of Real Estate Taxes. Any tax year commencing during any lease year shall be deemed to correspond to such lease year. In the event the taxing authorities include in such real estate taxes and assessments the value of any improvements made by Tenant, or of machinery, equipment, fixtures, inventory or other personal property or assets of Tenant, then Tenant shall pay all the taxes attributable to such items in addition to its proportionate share of said Real Estate Taxes. A copy of the tax statement submitted by Landlord to Tenant shall be sufficient evidence of the amount of Real Estate Taxes assessed or levied against the Property of which the Premises are a part. Where any Real Estate Taxes may be paid in annual installments, only the amount of the annual installment levied in such year will be included within the computation of Real Estate Taxes for such year. In the case of general or special assessments, regardless of whether Landlord elects to pay the assessments in installments, Tenant's share of such assessments shall be computed as if Landlord has elected to pay the same in installments over the longest period allowed by applicable law, and only those installments (or partial installments) attributable to installment periods (or partial periods) falling within the Lease Term shall be included in Real Estate Taxes.

b. Tenant shall pay a sum equal to 19.56% of the annual aggregate Operating Expenses incurred by Landlord in the operation, maintenance and repair of the Building and Property during the Term of this Lease and any renewals or extensions thereof. The term "**Operating Expenses**" shall include but not be limited to all payments by Landlord for maintenance, repair, operation, replacement and care of all Common Areas (including common area utilities and lighting), mechanical rooms, common area plumbing, roofs, parking and landscaped areas, signs, snow removal, non-structural repair and maintenance of the exterior of the Building, insurance premiums, management fee (not to exceed 5% of gross building revenue), wages and fringe benefits of personnel employed for such work, costs of equipment purchased and used for such purposes, and the cost or portion thereof properly allocable to the Property (amortized in accordance with GAAP standards together with the interest at the rate of ten percent (10%) per annum on the unamortized balance) of any capital improvements made to the Building by Landlord after the Base Year which result in a reduction of Operating Expenses or made to the Building by Landlord after the date of this Lease that are required under any governmental law or regulation that was not applicable to the Building at the time it was constructed or that are required by the insurer under any insurance policy carried on the Property and Building by Landlord. Operating Expenses shall also include a yearly capital reserve to be held in a segregated account until and for the use of replacement of black topped surfaced driveway and parking areas and Building mechanical equipment when needed. The amount of such reserve shall be determined by reasonable accounting and building management purposes. Notwithstanding anything in this Lease to the contrary, Operating Expenses in which Tenant is to share under this Lease shall not include (i) costs for which Landlord is reimbursed by insurance or otherwise compensated by third parties, (ii) costs which are to be capitalized in accordance with GAAP (except as expressly provided in this paragraph); (iii) leasing commissions, leasing fees or advertising fees, (iv) attorneys' fees for enforcing leases against other tenants, (v) costs directly billed to other tenants; (vi) repairs necessitated by the negligent acts or willful omissions of Landlord, its employees, agents or contractors, (vii) improvements, repairs and replacements within the premises of another tenant within the Building; (viii) depreciation; (ix) interest, on debt or amortization on any mortgage or mortgages encumbering the Property; (x) Landlord's general overhead; (xi) repairs or replacements covered by warranties or guaranties to the extent of service or payment thereunder; (xii) executive salaries or salaries of service personnel to the extent that such executives or service personnel perform services other than in connection with the management, operation, repair or maintenance of the Building or Common Areas; (xiii) any charges that would result in Landlord collecting in excess of one hundred percent (100%) of all Operating Expenses; (xiv) costs relating to or in connection with the presence of Hazardous Materials on, in, under, migrating to or from the Premises or Property; and (xv) management fees (in excess of 5% of gross building revenue).

For purposes of this *Article*, Tenant's "**pro rata share**" or "**proportionate share**" shall be determined on the same ratio as the total square feet in the Premises bears to the total square feet in the Building. Landlord may at any time designate a fiscal year in lieu of a calendar year or visa versa and in such event, at the time of such change, there may be a billing for the year which is less than twelve (12) calendar months. Landlord reserves, and Tenant hereby assigns to Landlord, the sole and exclusive right to contest, protest and petition for review, or otherwise seek a reduction in Real Estate Taxes.

The payment of the sums set forth in this *Article 3* shall be in addition to the Base Rent payable pursuant to *Article 2* of this Lease. All sums due hereunder as Additional Rent shall be due and payable within thirty (30) days of delivery of written certification by Landlord setting forth the computation of the amount due from Tenant. In the event the Term shall begin or expire at any time during the calendar year, Tenant shall be responsible for his pro-rata share of Real Estate Taxes and Operating Expenses during the Term of this Lease and/or occupancy time.

Prior to commencement of the Term of this Lease, and prior to the commencement of each calendar year thereafter commencing during the Term of this Lease or any renewal or extension thereof, Landlord may estimate for each calendar year (i) the total amount of Real Estate Taxes; (ii) the total amount of Operating Expenses; (iii) Tenant's share of Real Estate Taxes for such calendar year; (iv) Tenant's share of Operating Expenses for such calendar year; and (v) the computation of the annual and monthly Rent payable during such calendar year as a result of increases or decreases in Tenant's share of Real Estate Taxes and Operating Expenses. Said estimates will be in writing and will be delivered or mailed to Tenant.

The amount of Tenant's share of Real Estate Taxes and Operating Expenses for each calendar year, so estimated, shall be payable as Additional Rent by Tenant, without offset, deduction or demand, in equal monthly installments, in advance, on the first day of each month during such calendar year at the option of Landlord. In the event that such estimate is delivered to Tenant before the first day of January of such calendar year, said amount, so estimated, shall be payable as Additional Rent in equal monthly installments, in advance, on the first day of each month during such calendar year. In the event that such estimate is delivered to Tenant after the first day of January of such calendar year, said amount, so estimated, shall be payable as Additional Rent in equal monthly installments, in advance, on the first day of each month over the balance of such calendar year, with the number of installments being equal to the number of full calendar months remaining in such calendar year.

Upon completion of each calendar year during the Term of this Lease or any renewal or extension thereof, Landlord shall cause its accountants to determine the actual amount of the Real Estate Taxes and Operating Expenses payable in such calendar year and Tenant's share thereof and deliver a written certification of the amounts thereof to Tenant. If Tenant has underpaid its share of Real Estate Taxes or Operating Expenses for such calendar year, Tenant shall pay the balance of its share of same within ten (10) business days after the receipt of such statement. If Tenant has overpaid its share of Real Estate Taxes or Operating Expenses for such calendar year, Landlord shall either (i) refund such excess, or (ii) credit such excess against the most current monthly installment or installments due Landlord for its estimate of Tenant's share of Real Estate Taxes and Operating Expenses for the next following calendar year. A pro rata adjustment shall be made for a fractional calendar year occurring during the term of the Lease or any renewal or extension thereof based upon the number of days of the term of the Lease during said calendar year as compared to three hundred sixty-five (365) days and all additional sums payable by Tenant or credits due Tenant as a result of the provision of this *Article 3* shall be adjusted accordingly.

c. Landlord shall keep reasonably detailed records of all Operating Expenses and Real Estate Taxes for a period of at least three (3) years. Not more frequently than once in every 12-month period and after at least twenty (20) days' prior written notice to Landlord, Tenant shall be permitted to review or audit the records of the Operating Expenses and Real Estate Taxes either directly or through agents. If Tenant exercises its review or audit rights as provided above, Tenant shall conduct any inspection at a reasonable time and in a manner so as not to unduly disrupt the conduct of Landlord's business. Any such inspection by Tenant shall be for the sole purpose of verifying the Operating Expenses and/or Real Estate Taxes. Any shortfall or excess revealed and verified by Tenant's audit shall be paid to the applicable party within thirty (30) days after that party is notified of the shortfall or excess to the extent such overage or shortfall has not previously been adjusted pursuant to this Lease. If Tenant's inspection of the records for any given calendar year or partial calendar year reveals that Tenant was overcharged for Operating Expenses or Real Estate Taxes by an amount of greater than four percent (4%), or if any overcharge was due to intentional fraudulent or grossly negligent conduct by Landlord, then, Landlord shall reimburse Tenant for the reasonable costs of the review or audit.

**4. COVENANT TO PAY RENT:**

The covenants of Tenant to pay the Base Rent and the Additional Rent are each independent of any other covenant, condition, provision or agreement contained in this Lease (together Base Rent and Additional Rent shall sometimes be referred to as "**Rent**"). All Rent is payable to Landlord at 3600 Holly Lane North, Suite 100, Plymouth, MN 55447. No receipt or acceptance by Landlord from Tenant of less than the monthly Rent herein stipulated shall be deemed to be other than a partial payment on account for any due and unpaid stipulated Rent; no endorsement or statement on any check or any letter or other writing accompanying any check or payment of Rent to Landlord shall be deemed an accord and satisfaction, and Landlord may accept and negotiate such check or payment without prejudice to Landlord's rights to recover the remaining balance of such unpaid Rent or pursue any other remedy provided in this Lease.

**5. UTILITIES:**

Landlord shall provide mains and conduits to supply water, gas, electricity and sanitary sewage to the Property. Tenant shall pay, when due, directly to the appropriate provider, all charges for sewer usage or rental, garbage disposal, trash or refuse removal, water, electricity, gas, fuel oil, L.P. gas, telephone and/or other utility services or energy source separately metered and furnished to the Premises during the Term of this Lease, or any renewal or extension thereof, together with any related installation or connection charges or deposits ("**Utility Costs**"). If additional costs are required to separately meter the Premises it will be at Landlord's sole cost and expense. If any services or utilities furnished to the Premises are jointly metered with other premises, Landlord will make a commercially reasonable determination of Tenant's proportionate share of such Utility Costs and Tenant, within ten (10) days following Tenant's receipt of an invoice therefore, shall pay such share to Landlord as Additional Rent. If Landlord elects to furnish any of the foregoing utility services or other services furnished or caused to be furnished to Tenant, then the rate charged by Landlord shall not exceed the rate Tenant would be required to pay to a utility company or service company furnishing any of the foregoing utilities or services. The charges thereof shall be deemed Additional Rent in accordance with *Article 3*. Landlord shall not be liable for, and Tenant shall not be entitled to any abatement or reduction of Base Rent or Additional Rent by reason of Landlord's failure to furnish any of the foregoing utilities, when such failure is caused by accident, breakage, repairs (including replacements), strikes, lockouts or other labor disturbances or labor disputes of any character, or for any other causes not attributable to Landlord.

**6. CARE AND REPAIR OF PREMISES:**

Tenant shall, at all times throughout the Term of this Lease, including renewals and extensions, and at its sole expense, keep and maintain the Premises in a clean, safe, sanitary and first class condition and in compliance with all applicable laws, codes, ordinances, rules and regulations. Tenant's obligations hereunder shall include but not be limited to the maintenance, repair and replacement, if necessary, of mechanical, heating and air conditioning fixtures, equipment, and systems; all lighting and electrical systems; all plumbing fixtures and equipment; any and all other fixtures, motors and machinery; all interior walls, partitions, doors and windows, including the regular painting thereof; all exterior entrances, windows, doors, garage doors, docks and dock levelers, bumpers and seals, and the replacement of all broken glass; and all interior walls, columns, floors and doors of the trash enclosures. When used in this provision, the term "repairs" shall include replacements or renewals when necessary, and all such repairs made by Tenant shall be equal in quality and class to the original work. The Tenant shall keep and maintain all portions of the Premises, trash enclosures and the sidewalk and areas adjoining the same in a safe, clean and orderly condition, free of accumulation of dirt and rubbish. Tenant shall be responsible for the prompt removal of snow, ice and other hazardous conditions accumulating or occurring on the sidewalks and walkways between the Premises and parking areas. Maintenance of the HVAC shall specifically include the reasonable cost of quarterly inspections performed by Landlord's own engineers or by an independent mechanical contractor who shall be contracted for by Landlord. In either event, said cost shall be included by Landlord in Operating Expenses under *Article 3* of this Lease Agreement and Landlord warrants that any such cost will be reasonable and competitive.

If Tenant fails, refuses or neglects to maintain or repair the Premises as required in this Lease after written notice shall have been given to Tenant, in accordance with *Article 33* of this Lease, Landlord may, at its option, make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures or other property or to Tenant's business by reason thereof, and upon completion thereof, Tenant shall pay to Landlord all costs plus 10% of overhead incurred by Landlord in making such repairs upon presentation to Tenant of a bill therefore.

Landlord shall repair, at its expense, the structural portions of the Building, provided however where structural repairs are required to be made by reason of the acts of Tenant, the costs thereof shall be borne by Tenant and payable by Tenant to Landlord upon demand.

Landlord shall be responsible for all outside maintenance of the Premises, including grounds, parking areas and outside areas around trash enclosures. All such maintenance which is the responsibility of Landlord shall be provided as reasonably necessary to the comfortable use and occupancy of Premises during business hours, except Saturdays, Sundays and holidays, upon the condition that Landlord shall not be liable for damages for failure to do so due to causes beyond its control. Landlord shall ensure access to the Premises, including timely snow removal all days.

**7. SIGNS:**

Any sign, lettering, picture, notice or advertisement installed on or in any part of the Property and visible from the exterior of the Building, or visible from the exterior of the Premises, must be approved in advance by Landlord and the City and installed at Tenant's expense. In the event of a violation of the foregoing by Tenant, Landlord may remove the same without notice and without any liability and may charge the expense incurred for such removal to Tenant. Tenant agrees to comply with the sign criteria of the City and the sign criteria attached here to as Exhibit E. Tenant agrees to maintain its signage in good repair, and to hold Landlord harmless from any loss, cost or damages resulting from the erection, existence, maintenance or removal of the signage.

## 8. ALTERATIONS:

Tenant will not make any alterations, repairs, installations, additions or improvements in or to the Premises, or add, disturb or in any way change any plumbing, wiring, life/safety or mechanical systems, locks, or structural portions of the Building (for purposes of this *Article 8*, any of the foregoing being referred to as “**Alterations**”) without the prior written consent of the Landlord as to the character of the Alterations, the manner of doing the Alterations, and the contractor(s) doing the Alterations. Such consent shall not be unreasonably withheld or delayed if such Alterations are required of Tenant or is the obligation of Tenant pursuant to this Lease. As a condition to Landlord’s consent to the Alterations proposed by Tenant, Landlord may impose reasonable conditions with respect thereto as Landlord deems appropriate, including, without limitation, requiring Tenant to furnish surety performance and/or payment bonds or other security for the payment of all costs incurred in connection with such Alterations, insurance against liabilities that may arise out of such Alterations, plans and specifications approved by Landlord and permits necessary for such Alterations. If such Alterations are performed by contractor(s) not retained by Landlord, Tenant shall upon completion of such Alterations, (i) deliver to Landlord evidence that payment for all such Alterations have been made by Tenant, including contractors’ affidavits and full and final mechanic’s lien waivers and (ii) pay to Landlord a construction supervision fee of five percent (5%) of the total cost of such Alterations, but in no event less than \$500.00 to reimburse Landlord for the costs incurred by its construction manager in inspecting and supervising such Alterations (provided, however, that the construction supervision fee for minor Work approved by Landlord with a total cost less than \$1,000.00 shall be charged at \$101.00 per hour). All such Alterations shall be done in a good and workmanlike manner using quality materials and shall comply with all applicable governmental laws, ordinances, rules and regulations. Tenant agrees to indemnify and hold Landlord free and harmless from any liability, loss, cost, damage or expense (including attorney’s fees) by reason of any of such Alterations. The provisions of *Article 18* of this Lease Agreement shall apply to all Alterations performed under this *Article 8*. All Alterations to the Premises made by Tenant shall at the option of Landlord become the property of Landlord and shall be either removed by Tenant at Tenant’s sole cost or surrendered to Landlord upon the termination of this Lease Agreement, provided, however, this clause shall not apply, and Tenant shall retain title and rights to all, to movable equipment, whiteboard, artwork, audio visual equipment and industrial and other property or machinery mounted or secured to the Premises, or furniture owned by Tenant which may be removed by Tenant at the end of the Term of this Lease Agreement if Tenant is not then in default. Landlord shall provide Tenant with notice of Tenant’s obligation to remove any such Alteration at the end of the Lease Term at the time that Landlord grants consent to such Alteration. If Landlord does not notify Tenant that Tenant is obligated to remove such Alteration, such Alteration may be removed at Tenant’s option, as provided in *Article 25* hereof.

## 9. POSSESSION:

Except as otherwise provided, Landlord shall deliver possession of the Premises with any tenant improvements thereto substantially completed on or before the Commencement Date, but delivery of possession prior to such Commencement Date shall not affect the Expiration Date of this Lease. Time is of the essence. Failure of Landlord to deliver possession of the Premises by the Commencement Date due to any cause beyond the reasonable control of Landlord, including, without limitation, a holding over by a prior tenant, labor or material shortages, strikes, casualty loss, acts of God or failure by the City to timely approve any plans or issue a building permit (any of the foregoing being hereafter referred to as an “**Excused Delay**”), shall automatically postpone the Commencement Date and shall extend the Expiration Date accordingly, and Tenant may continue its occupancy of Suite 450 of the Building during the period of any such delay. The Rent herein reserved shall commence on the first day of the Term, provided, however, in the event of any occupancy by Tenant prior to the beginning of the Term, such occupancy shall in all respects be the same as that of a tenant under this Lease, and the Rent shall commence as of the date that Tenant enters into such occupancy of the Premises. Provided further, that if Landlord shall be delayed in delivery of the Premises to Tenant due to Tenant’s failure to timely deliver any plans to Landlord or make any required deposit, changes in or additions to plans or tenant improvements made at the request of Tenant or any other delay caused by Tenant or any of its contractors, agents or employees, or by Tenant’s failure to pay for the costs of the tenant improvements in excess of any tenant improvement allowance and any deposit (any of the foregoing being hereafter referred to as a “**Tenant Delay**”), then in such case Tenant’s obligation to pay Rent shall be accelerated by the number of days of such Tenant Delay. Prior to the commencement of the Term, Landlord shall have no responsibility or liability for loss or damage to trade fixtures or equipment installed or left on the Premises. By occupying the Premises as a tenant, or to install trade fixtures or equipment, or to perform finishing work, Tenant shall be conclusively deemed to have accepted the same and to have acknowledged that the Premises are in the condition required by this Lease, except for any items for which Tenant has given Landlord a detailed, written list within thirty (30) days of Tenant’s first occupancy of the Premises. Should the commencement date of the Term of this Lease occur for any reason on a day other than the first day of the calendar month, then in that event solely for the purposes of determining the Expiration Date of the Term of this Lease, the Term shall be deemed to have commenced on the first (1<sup>st</sup>) day of the calendar month immediately following. Following Tenant’s occupancy of the Premises and within ten (10) days of Landlord’s request, Landlord and Tenant shall execute a ratification agreement which shall set forth the final commencement and expiration dates of the Term, shall acknowledge the Base Rent, the square footage of the Premises (office space and warehouse, shared mechanical space), delivery of the Premises in the condition required by this Lease Agreement and shall include such other matters as Landlord may reasonably request (hereafter the “**Ratification Agreement**”). A draft of the Ratification Agreement is attached hereto as Exhibit F.

**10. SECURITY AND DAMAGE DEPOSIT:**

Tenant, contemporaneously with the execution of this Lease, has deposited with Landlord the sum of Twenty-Two Thousand Eight and 96/100 Dollars (\$22,008.96), receipt of which is acknowledged hereby by Landlord, which deposit is to be held by Landlord, without liability for interest, as a security and damage deposit for the faithful performance by Tenant during the Term hereof, or any renewal or extension thereof (the "**Security Deposit**"). Prior to the time when Tenant shall be entitled to the return of the Security Deposit, Landlord may commingle the Security Deposit with Landlord's own funds and use the Security Deposit for such purpose as Landlord may determine. In the event Tenant fails to keep and perform any of the terms, covenants and conditions of this Lease to be kept and performed by Tenant, then Landlord, either with or without terminating this Lease may (but shall not be required to) apply such portion of the Security Deposit as may be necessary to compensate or repay Landlord for all losses or damages sustained or to be sustained by Landlord due to such breach on the part of Tenant, including, but not limited to overdue and unpaid Rent, any other sum payable by Tenant to Landlord pursuant to the provisions of this Lease, damages or deficiencies in the reletting of Premises, and reasonable attorney's fees incurred by Landlord. Should the entire Security Deposit or any portion thereof, be appropriated and applied by Landlord, in accordance with the provisions of this paragraph, Tenant upon written demand by Landlord, shall remit forthwith to Landlord a sufficient amount of cash to restore the Security Deposit to the original sum deposited, and Tenant's failure to do so within five (5) days after receipt of such demand shall constitute a breach of this Lease. The Security Deposit shall be returned to Tenant, less any depletion thereof as the result of the provisions of this paragraph, at the end of the Term of this Lease or any renewal or extension thereof, or upon the earlier termination of this Lease. Tenant shall have no right to anticipate return of the Security Deposit by withholding any amount required to be paid pursuant to the provisions of this Lease or otherwise. Tenant understands that its potential liability under this Lease is not limited to the amount of the Security Deposit. Use of the Security Deposit by Landlord shall not constitute a waiver, but is in addition to any other remedies available to Landlord under this Lease and under law.

In the event Landlord shall sell the Property, or shall otherwise convey or dispose of its interest in this Lease, Landlord may assign the Security Deposit or any balance thereof to Landlord's assignee, whereupon Landlord shall be released from all liability for the return or repayment of the Security Deposit and Tenant shall look solely to the said assignee for the return and repayment of the Security Deposit. The Security Deposit shall not be assigned or encumbered by Tenant without such consent of Landlord, and any assignment or encumbrance without such consent shall not bind Landlord. In the event of any rightful and permitted assignment of this Lease by Tenant, the Security Deposit shall be deemed to be held by Landlord as a deposit made by the assignee, and Landlord shall have no further liability with respect to the return of the Security Deposit to Tenant.

**11. USE:**

The Premises shall be used and occupied by Tenant solely for the purposes of general office, lab, warehouse and other related ancillary uses and such use by Tenant shall at all times be in full compliance with all applicable laws, ordinances and governmental regulations affecting the Building and Property and subject to the reasonable rules and regulations of Landlord set forth on Exhibit C. Tenant agrees not to commit or permit any act to be performed on the Premises or any omission to occur which will be in violation of any statute, regulation, or ordinance of any governmental body or which will increase the insurance rates on the Building or which will be in violation of any insurance policy carried on the Building by Landlord. Tenant, at its expense, shall comply with all governmental laws, ordinances, rules and regulations applicable to the use of the Premises and its occupancy and shall promptly comply with all governmental orders, rulings and directives for the correction, prevention and abatement of any violation upon, or in connection with the Premises or Tenant's use or occupancy of the Premises, including the making of any alterations or improvements to the Premises, all at Tenant's sole cost and expense. Without limiting the scope of the foregoing provisions of this *Article 11*, Tenant's use of the Premises shall comply with all applicable requirements of the Minnesota State Fire Code, Minnesota Rules, Chapter 7511, including the 2006 International Fire Code, as amended and as may hereafter be amended from time to time and of any replacement and/or successor law, ordinance, code or rule or regulation, expressly including requirements relating to the types of materials that may be stored in the Premises, the storage containers that may be used, the heights such storage containers may be stacked and the separation that must exist between materials and stacks. Notwithstanding the foregoing, Landlord shall be responsible for modifications or additions to the Premises or the Building required for compliance (including the ADA) regarding any legal non-conformities that exist prior to the Commencement Date. Tenant shall not disturb other occupants of the Building by making any undue or unseemly noise or otherwise and shall not do or permit to be done in or about the Premises or Building anything which will be dangerous to life or limb. The employees of Tenant shall not be permitted, during their breaks or otherwise, to congregate or loiter in any of the common areas of the Building, including the Common Areas, in such a manner that would be disruptive of the use of such Common Areas by the other tenants and occupants of the Building or that would obstruct access to, from or within the Building. Tenant shall not, without the prior consent of Landlord, use any apparatus, machinery, device or equipment in or about the Premises that will cause any substantial noise or vibration or any increase in the normal consumption level of electric power. If any of Tenant's apparatus, machinery, devices or equipment should disturb the enjoyment of any other tenant in the Building, then Tenant shall provide, at its sole cost and expense, adequate insulation or take such other action, including removing such apparatus, machinery, devices or equipment, as may be necessary to eliminate the disturbance. No food or beverage dispensing machines (except those solely servicing Tenant's on-premises employees) shall be installed by Tenant in the Premises without the prior written consent of Landlord. In no event shall Tenant (i) permit the storage of any materials, equipment or other personal property outside of the Building or (ii) permit any motor vehicle to be parked outside of the Building overnight.

**12. ACCESS TO PREMISES:**

Tenant agrees to permit Landlord and the authorized representatives of Landlord to enter the Premises at all times during usual business hours for the purpose of inspecting, making necessary repairs, conducting environmental testing, and performing work that may be necessary to comply with laws, ordinances, rules, regulations or requirements of any public authority or of the Board of Fire Underwriters or any similar body or that Landlord may deem necessary to prevent waste or deterioration in connection with the Premises. Nothing herein shall imply any duty upon the part of Landlord to do any such work that, under any provision of this Lease, Tenant may be required to perform and the performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. The Landlord may, during the progress of work in the Premises, keep and store upon the Premises all necessary materials, tools and equipment. The Landlord shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business, or other damage of Tenant by reason of making repairs or the performance of any work in the Premises, or on account of bringing materials, supplies and equipment into or through the Premises during the course thereof and the obligations of Tenant under this Lease shall not thereby be affected in any manner whatsoever. Tenant agrees that no additional locks will be placed on any of the doors to the Premises without the written consent of Landlord. Tenant shall have the right to install an access reader to the Building and access to the Premises 24 hours per day, 7 days a week, 52 weeks per year of the Lease Term. Tenant shall also have the right to install additional security to the Premises if Tenant determines necessary; provided however that Tenant shall supply Landlord with an access card in the event of emergency and that notwithstanding any other terms in this Lease, Tenant shall repair or replace the latch or door as necessary at the end of the Lease Term.

Landlord reserves the right to enter upon the Premises at any time in the event of an emergency and at reasonable hours to exhibit the Premises to prospective purchasers or others; and to exhibit the Premises to prospective tenants and to display "For Lease" or similar signs on windows or doors in the Premises during the last twelve months of the Term of this Lease, all without hindrance or molestation by Tenant.

Landlord acknowledges that Tenant is performing research with secret and proprietary information, and hereby agrees that any inspection or entering of the Premises, except in an emergency, shall be subject to the following: (a) Landlord will give notice of at least twenty-four (24) hours prior to any such inspection including the identities of who will be performing the inspection and in what areas of the Premises such inspections will be taking place; and (b) all persons entering the Premises shall execute a nondisclosure agreement provided by Tenant protecting any confidential or trade secret information that they may learn during such inspection.

**13. EMINENT DOMAIN:**

In the event of eminent domain or condemnation proceeding, or private sale in lieu thereof, in respect to the Property during the Term thereof, the following provisions shall apply:

**a.** If the whole of the Property shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the Term of this Lease shall cease and terminate as of the date possession shall be taken in such proceeding and all Rent shall be paid up to that date.

**b.** If any part constituting less than the whole of the Property shall be acquired or condemned as aforesaid, and in the event that such partial taking or condemnation shall materially affect the Premises so as to render the Premises unsuitable for the business of Tenant, in the reasonable opinion of Landlord, then the Term of this Lease shall cease and terminate as of the date possession shall be taken by the condemning authority and Rent shall be paid to the date of such termination.

In the event of a partial taking or condemnation of the Property which shall not materially affect the Premises so as to render the Premises unsuitable for the business of Tenant, in the reasonable opinion of Landlord, this Lease shall continue in full force and effect but with a proportionate abatement of the Base Rent and Additional Rent based on the portion, if any, of the Premises taken. Landlord reserves the right, at its option, to restore the Building and the Premises to substantially the same condition as they were prior to such condemnation. In such event, Landlord shall give written notice to Tenant, within thirty (30) days following the date possession shall be taken by the condemning authority, of Landlord's intention to restore. Upon Landlord's notice of election to restore, Landlord shall commence restoration and shall restore the Building and the Premises with reasonable promptness, subject to delays beyond Landlord's control and delays in the making of condemnation or sale proceeds adjustment by Landlord; and Tenant shall have no right to terminate this Lease except as herein provided. Upon completion of such restoration, the Rent shall be adjusted based upon the portion, if any, of the Premises restored.

c. In the event of any condemnation or taking as aforesaid, whether whole or partial, Tenant shall not be entitled to any part of the award paid for such condemnation and Landlord is to receive the full amount of such award, Tenant hereby expressly waiving any right to claim to any part thereof, provided, however, that nothing contained herein shall be deemed to give Landlord any interest in or require Tenant to assign to Landlord any separate award made to Tenant for its relocation expenses, the taking of personal property and fixtures belonging to Tenant, the unamortized value of improvements made or paid for by Tenant, or the interruption of or damage to Tenant's business. Tenant agrees that any claims made by Tenant for condemnation awards shall not in any way diminish the award due to Landlord for its interest in the Premises.

d. Although all damages in the event of any condemnation shall belong to Landlord whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Premises, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment. However, Tenant shall have no claim against Landlord or make any claim with the condemning authority for the loss of its leasehold estate, any unexpired term or loss of any possible renewal or extension of said Lease, or loss of any possible value of said lease, any unexpired term, renewal or extension of said Lease.

#### **14. DAMAGE OR DESTRUCTION:**

In the event of any damage or destruction to the Property by fire or any other cause during the Term hereof, the following provisions shall apply:

a. If the Building is damaged by fire or any other cause to such extent that the cost of restoration, as reasonably estimated by Landlord, will equal or exceed thirty percent (30%) of the replacement value of the Building (exclusive of foundations) just prior to the occurrence of the damage, then Landlord may, no later than the sixtieth (60th) day following the damage, give Tenant written notice of Landlord's election to terminate this Lease.

b. If the cost of restoration as estimated by Landlord shall amount to less than thirty percent (30%) of said replacement value of the Building, or if, despite the cost, Landlord does not elect to terminate this Lease, Landlord shall restore the Building and the Premises with reasonable promptness, subject to delays beyond Landlord's control and delays in the making of insurance adjustments by Landlord; and Tenant shall have no right to terminate this Lease except as herein provided. Landlord shall not be responsible for restoring or repairing leasehold improvements of Tenant.

c. In the event of either of the elections to terminate, this Lease shall be deemed to terminate on the date of the receipt of the notice of election and all Rent shall be paid up to that date. Tenant shall have no claim against Landlord for the value of any unexpired Term of this Lease.

d. In any case where damage to the Building shall materially affect the Premises so as to render them unsuitable in whole or in part for the purposes for which they are demised hereunder, then, unless such destruction was wholly or partially caused by the negligence or breach of the terms of this Lease by Tenant, its employees, contractors or licensees, a portion of the Base Rent and Additional Rent, based upon the amount of the extent to which the Premises are rendered unsuitable, shall be abated until repaired or restored. If the destruction or damage was wholly or partially caused by negligence or breach of the terms of this Lease by Tenant as aforesaid and if Landlord shall elect to rebuild, the Base Rent and Additional Rent shall not abate and Tenant shall remain liable for the same.

Notwithstanding anything contained in this *Article 14* to the contrary, Landlord shall only be obligated to restore the Premises to the extent of the insurance proceeds actually received, but if the insurance proceeds actually received do not permit Landlord to restore the Premises, Landlord shall so notify Tenant and either Landlord or Tenant may terminate this Lease by written notice given within sixty (60) days after Landlord's notice. If Landlord restores the Premises or the Building in accordance with the provisions of this *Article*, then Tenant shall not have any right to terminate this Lease because of such damage.

**15. CASUALTY INSURANCE:**

a. Landlord shall at all times during the Term of this Lease, at its expense, maintain a policy or policies of insurance with premiums paid in advance issued by an insurance company licensed to do business in the State of Minnesota insuring the Building against loss or damage by fire, explosion or other insurable hazards and contingencies for the full insurable value, provided that Landlord shall not be obligated to insure any furniture, equipment, machinery, goods, supplies or other contents not covered by this Lease which Tenant may bring upon the Premises or any additional improvements which Tenant may construct or install on the Premises. Tenant shall at all times during the Term of this Lease, at its expense, maintain a policy or policies of insurance with premiums paid in advance issued by an insurance company licensed to do business in the State of Minnesota insuring against loss or damage by fire, explosion or other insurable hazards and contingencies for the full insurable value of Tenant's improvements to the Premises and Tenant's personal property.

b. Tenant shall not carry any stock of goods or do anything in or about the Premises that will in any way impair or invalidate the obligation of the insurer under any policy of insurance required by this Lease.

c. Landlord hereby waives and releases all claims, liabilities and causes of action against Tenant and its agents, servants and employees for loss or damage to, or destruction of, the Property or any portion thereof, including the buildings and other improvements situated thereon, resulting from fire, explosion and other perils included in standard extended coverage insurance, whether caused by the negligence of any of said persons or otherwise. Likewise, Tenant hereby waives and releases all claims, liabilities and causes of action against Landlord and its agents, servants and employees for loss or damage to, or destruction of, any of the improvements, fixtures, equipment, supplies, merchandise and other property, whether that of Tenant or of others, upon or about the Property resulting from fire, explosion or the other perils included in standard extended coverage insurance, whether caused by the negligence of any of said persons or otherwise. The waiver shall remain in force whether or not Tenant's insurer shall consent thereto.

d. In the event that the use of the Premises by Tenant increases the premium rate for insurance carried by Landlord on the improvements of which the Premises are a part, Tenant shall pay Landlord, upon demand, the amount of such premium increase. If Tenant installs any electrical equipment that overloads the power lines to the building or its wiring, Tenant shall, at its own expense, make whatever changes are necessary to comply with the requirements of the insurance underwriter, insurance rating bureau and governmental authorities having jurisdiction.

**16. PUBLIC LIABILITY INSURANCE:**

Tenant shall during the Term hereof keep in full force and effect at its expense a policy or policies of commercial general liability insurance with respect to the Premises and the business of Tenant, on terms with companies licensed to do business in the State of Minnesota, in which Landlord and Landlord's designees are named as additional insureds under prudent limits of liability not less than: \$1,000,000 for injury/death to any one person; \$2,000,000 for injury/death to more than one person, and \$1,000,000 with respect to damage to property. Such policy(ies) shall: (i) provide that such policies are primary and Landlord's policy(ies) are noncontributing; (ii) if available, include an endorsement that requires at least thirty (30) days prior written notice must be given to Landlord prior to cancellation, expiration or material adverse changes to such policy(ies). Tenant shall furnish a certificate of insurance to Landlord at the time this Lease is executed evidencing that such coverage is in full force and effect.

**17. DEFAULT OF TENANT:**

a. In the event of any failure of Tenant to pay any Rent due hereunder on the date the same shall be due, or any failure to perform any other of the terms, conditions or covenants of this Lease to be observed or performed by Tenant for more than twenty (20) days after written notice of such failure shall have been given to Tenant (or if the default cannot be reasonably cured within said thirty (30) day period and Tenant fails promptly to commence with due diligence and dispatch the curing of such default within said thirty (30) day period), or if Tenant or an agent of Tenant shall falsify any report required to be furnished to Landlord pursuant to the terms of this Lease, or if Tenant or any guarantor of this Lease shall become bankrupt or insolvent, or file any debtor proceedings or any person shall take or have against Tenant or any guarantor of this Lease in any court pursuant to any statute either of the United States or of any state a petition of bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's or any such guarantor's property, or if Tenant or any such guarantor makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement, or if Tenant shall abandon the Premises or suffer this Lease to be taken under any writ of execution, then in any such event Tenant shall be in default hereunder, and Landlord, in addition to other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the Premises and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, all without service of notice or resort to legal process and without being guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby.

b. Should Landlord elect to re-enter the Premises, as herein provided, or should it take possession of the Premises pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time, without terminating this Lease, make such alterations and repairs as may be necessary in order to relet the Premises, and relet the Premises or any part thereof upon such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. Upon each such subletting all rentals received by Landlord from such reletting shall be applied first to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees and reasonable attorney's fees and costs of such alterations and repairs; third, to the payment of the Rent due and unpaid payment of future Rent as the same may become due and payable hereunder. If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant, upon demand, shall pay any such deficiency to Landlord. No such re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time after such re-entry and reletting elect to terminate this Lease for any such breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises, reasonable attorney's fees, and including the worth at the time of such termination of the excess, if any, of the amount of rental and charges equivalent to Rent reserved in this Lease for the remainder of the stated term, minus the amount of rental loss which Tenant proves could have been reasonably avoided, all of which amounts shall be immediately due and payable from Tenant to Landlord. Landlord shall also be entitled to any other amounts necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to comply with the requirements of this Lease.

c. Landlord may, at its option, instead of exercising any other rights or remedies available to it in this Lease or otherwise by law, statute or equity, spend such money as is reasonably necessary to cure any default of Tenant herein and the amount so spent, and costs incurred, including reasonable attorney's fees in curing such default, shall be paid by Tenant, as Additional Rent, upon demand.

d. In the event suit shall be brought for recovery of possession of the Premises, for the recovery of Rent of any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and a breach shall be established, Tenant shall pay to Landlord all expenses incurred therefore, including a reasonable attorney's fee, together with interest on all such expenses at the rate of ten percent (10%) per annum from the date of such breach of the covenants of this Lease.

f. No remedy herein or elsewhere in this Lease or otherwise by law, statute or equity, conferred upon or reserved to Landlord or Tenant shall be exclusive of any other remedy, but shall be cumulative, and may be exercised from time to time and as often as the occasion may arise.

**18. DEFAULT OF LANDLORD:**

The failure by Landlord to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Landlord, where such failure shall continue for a period of thirty (30) days after written notice thereof by Tenant to Landlord, shall be deemed to be a default by Landlord under this Lease; provided, however, that if the nature of Landlord's default is such that more than thirty (30) days are reasonably required for its cure, then Landlord shall not be deemed to be in default if Landlord commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion, provided that the default shall actually be cured within a reasonable period after notice. In the event of a default by Landlord beyond applicable cure periods, Tenant shall have the right, at its election, to either (a) sue for all actual (but not consequential, speculative or punitive) damages sustained by reason of the default; or (b) perform the obligations described in the notice in which case Landlord shall reimburse Tenant for the reasonable cost of the performance of such obligations within ten (10) business days after Tenant's submission of an invoice therefor. If Tenant elects to proceed under clause (b) above, then the Landlord's default shall be deemed to have been cured when Tenant's expense has been reimbursed in full. In the event Tenant commences a suit for damages sustained by reason of a Landlord Default and prevails in such suit and obtains a final, non-appealable judgment with respect to such suit, Landlord shall reimburse Tenant for all reasonable costs including attorney's fees.

**19. INDEMNITY & HOLD HARMLESS:**

Both Tenant and Landlord shall indemnify, protect, defend (at Landlord's request and with counsel approved by Landlord) and hold each other and both parties' affiliates and each of their respective partners, directors, officers, shareholders and employees, harmless from and against every demand, claim, cause of action, judgment, costs and expense, including, but not limited to, reasonable attorneys' fees and disbursements of counsel, whether suit is initiated or not, and all loss and damage arising from any injury, loss or damage to the person or property of Tenant, any other tenant in the Property or to any other person rightfully in the Property, (i) occurring in or about the Premises, or (ii) caused by the negligence or misconduct of Tenant or Landlord, Tenant's affiliates or any of their respective employees, representatives, agents or contractors, or (iii) resulting from the violation of any legal requirements or the provisions of this Lease by Tenant, Tenant's affiliates or any of their respective employees, representatives, agents or contractors. Tenant's and Landlord's indemnity obligations under this *Article* shall survive the expiration or earlier termination of this Lease.

If any mechanic's lien is filed against any part of the Property for work claimed to have been done for, or materials claimed to have been furnished to, Tenant, such mechanic's lien shall be discharged by Tenant within ten (10) days thereafter, at Tenant's sole cost and expense, by the payment thereof or by making any deposit required by law or by posting a bond with such surety, in such amount and in such form as Landlord deems proper. Tenant shall immediately notify Landlord of any mechanic's lien or other lien filed against the Property or any part thereof by a contractor or subcontractor of Tenant or otherwise by reason of work claimed to have been done for or materials claimed to have been furnished to Tenant. If Tenant fails to remove such lien or post such bond within the ten (10) day period following the filing thereof, Landlord may, at its sole discretion and without waiving its rights and remedies based on such breach by Tenant and without releasing Tenant from any of its obligations, cause such lien to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. Tenant shall, in such event, pay to Landlord at once, upon notice by Landlord, any sum paid by Landlord to remove such lien including reasonable attorney's fees, together with interest at the rate of 12% from the date of such payment by Landlord. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by applicable law, or that Landlord shall deem proper for the protection of Landlord, the Premises, the Property and any other party having an interest therein, from liens. All material suppliers, contractors, artisans, mechanics, laborers and other parties contracting with Tenant for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the Premises are hereby charged with notice that they must look solely to Tenant for payment of the same and Tenant's purchase orders, contracts and subcontracts in connection therewith must clearly state this requirement.

**20. NON-LIABILITY OF LANDLORD; RIGHTS RESERVED:**

Landlord will not be liable for any damage or injury to the person, business (or any loss of income therefrom), inventory, furnishings, equipment or other property of Tenant, Tenant's employees, invitees, customers or any other person in or about the Premises or Building, whether such damage or injury to the person or property is caused by or results from: (i) fire, steam, electricity, water, gas, explosions, falling plaster, snow or rain; (ii) the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (iii) conditions arising in or about the Premises or Building, or from other sources or places; (iv) any curtailment or interruption in utility services; or (v) any act or omission of any other tenant of the Building or persons in the Property, occupants of adjacent property, of the buildings, or the public or caused by operations in construction of any private, public or quasi-public work. The provisions of this Article will not exempt Landlord from liability for its gross negligence or willful misconduct; provided, however, in no event shall Landlord be liable for any consequential damages. Landlord shall not be liable to Tenant for any damages as the result of any latent defect in the Premises. All property of Tenant kept or stored on the Premises shall be so kept or stored at the risk of Tenant only and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier.

Landlord shall have the following rights, exercisable without liability by Landlord to Tenant: (a) to change the Building's name and/or street address; (b) to install, affix and maintain any and all signs on the exterior and in the interior of the Building; (c) to change the leasable areas and common areas of the Building and/or construct additional buildings on the land on which the Building is located. Landlord also reserves all airspace rights above, below and to all sides of the Premises; and (d) to grant anyone the exclusive right to conduct any business or render any service in or to the Building, so long as it does not exclude Tenant's permitted use of the Premises.

**21. SUBORDINATION, ESTOPPEL AND FINANCIAL STATEMENTS:**

This Lease shall be subordinated to any mortgages, deeds of trust, security agreements, ground leases, master leases or other encumbrances (collectively, "**Encumbrances**") that may now exist or that may hereafter be placed upon the Property, or any part thereof, and to any and all advances made thereunder, and to the interest upon the indebtedness evidenced by such Encumbrances, and to all renewals, modifications, consolidations, replacements and extensions of any of the Encumbrances. In the event of execution by Landlord after the date of this Lease of any such Encumbrance, renewal, modification, consolidation, replacement or extension, Tenant agrees, within ten (10) days of its receipt, to execute and return any commercially reasonable subordination agreement required by the holder of such Encumbrance, which agreement shall provide that:

- a. Such holder shall not disturb the possession and other rights of Tenant under this Lease so long as Tenant is not in default hereunder;
- b. In the event of acquisition of title to the Premises by such holder, such holder shall accept Tenant as tenant of the Premises under the terms and conditions of this Lease and shall perform all the obligations of Landlord hereunder; and
- c. In such event Tenant shall recognize such holder as landlord hereunder.

Tenant shall, upon receipt of a request from Landlord therefore, within ten (10) days after receipt of such request, execute and deliver to Landlord or to any proposed holder of an Encumbrance, an estoppel certificate in recordable form, certifying that this Lease is in full force and effect, that there are no offsets against Rent nor defenses to Tenant's performance under this Lease, or setting forth any such offsets or defenses claimed by Tenant, as the case may be, and such other terms as reasonably requested by Landlord. In the event that Tenant fails to execute and return the estoppel certificate within such ten (10) day period, the holder of such Encumbrance shall be entitled to rely, as against the Tenant, that (i) this Lease is in full force and effect, without amendment except as specified by the Landlord, (ii) Tenant has no offsets against Rent nor any defenses to Tenant's performance under this Lease, (iii) Tenant has no right to any offset or defenses to the payment of Rent, and (iv) Tenant has not paid any Rent under this Lease more than one month in advance.

Tenant agrees to give prompt written notice to the holder of each Encumbrance who has given Tenant written notice of its address of any default by Landlord under this Lease which would entitle Tenant to terminate or cancel this Lease or abate the Rent payable hereunder, and agrees that, notwithstanding any provision of this Lease to the contrary, no Rent abatement or notice of termination of this Lease by Tenant shall be effective unless all such notified holders of Encumbrances have received said notice and have failed for thirty (30) days after receipt thereof to cure Landlord's default, or if the default cannot be cured within thirty (30) days, have failed to commence and to diligently pursue the cure of Landlord's default which gave rise to such right of termination or abatement.

Unless Tenant's current financial statements are readily available to the public (e.g., via internet access), Tenant agrees to provide Landlord (but no more than twice in any calendar year), within ten (10) days of request, the then most current financial statements of Tenant and any guarantors of this Lease Agreement, which shall be certified by Tenant, and if available, shall be audited and certified by a certified public accountant. Landlord shall keep such financial statements confidential, except Landlord shall, in confidence, be entitled to disclose such financial statements to existing or prospective mortgagees or purchasers of the Building.

## 22. ASSIGNMENT OR SUBLETTING:

a. Tenant Assignment. Tenant agrees not to assign, sublet, license, mortgage or encumber this Lease Agreement, the Premises, or any part thereof, whether by voluntary act, operation of law, or otherwise, without the specific prior written consent of Landlord in each instance and such consent shall not be unreasonably withheld. If Tenant is a corporation, partnership or other legal entity, transfer of a controlling interest of Tenant shall be considered an assignment of this Lease Agreement for purposes of this *Article*. Consent by Landlord in one such instance shall not be a waiver of Landlord's rights under this *Article* as to requiring consent for any subsequent instance. Any purported assignment, subletting, licensing, mortgaging or other transfer of this Lease Agreement or the Premises hereunder by Tenant that does not comply with the provisions of this *Article 21* shall be void. Notwithstanding anything herein to the contrary, Tenant may, without the consent of Landlord, assign this Lease Agreement or sublet all or any part of the Premises to an Affiliate of Tenant, or if Tenant is acquired pursuant to a merger or acquisition, or sells substantially all of the assets of its business conducted at the Premises. As used herein, an "Affiliate" of Tenant shall be deemed to be any entity which either controls, is controlled by or is under common control with Tenant, with "control" meaning the power to direct the management and policies, directly or indirectly, through the ownership of voting capital stock or other ownership interest. In connection with any assignment of this Lease Agreement or subletting of the Premises made or requested by Tenant, Tenant shall pay Landlord (i) a processing fee of \$500.00 and (ii) all out-of-pocket costs incurred by Landlord, including reasonable attorneys' fees. In the event Tenant desires to sublet a part or all of the Premises, or assign this Lease Agreement, including to an Affiliate of Tenant, Tenant shall give written notice to Landlord at least thirty (30) days prior to the proposed subletting or assignment, which notice shall state the name of the proposed subtenant or assignee and the terms of any sublease or assignment documents and shall include copies of financial statements or other relevant financial information of the proposed subtenant or assignee. Any rents and other consideration received by Tenant from an assignment of this Lease Agreement or subletting of the Premises which exceed the Rent then payable by Tenant under this Lease Agreement shall be immediately paid by Tenant to Landlord as Additional Rent hereunder. At Landlord's option following a default by Tenant under this Lease Agreement, any and all payments by the subtenant with respect to the sublease shall be paid directly to Landlord. In any event no assignment or subletting, including to an Affiliate of Tenant, shall release Tenant of its obligation to pay the Rent and to perform all other obligations to be performed by Tenant hereunder for the Term of this Lease Agreement. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. At Landlord's option and with the exception of an assignment or subletting to an Affiliate of Tenant, Landlord may terminate this Lease Agreement in lieu of giving its consent to any proposed assignment of this Lease Agreement or subletting of all of the Premises (which termination may be contingent upon the execution of a new lease with the proposed assignee or subtenant).

b. Landlord Assignment. Landlord's right to assign this Lease Agreement is and shall remain unqualified upon any sale or transfer of the Building and, provided the purchaser succeeds to the interests of Landlord under this Lease Agreement, Landlord shall thereupon be entirely freed of all obligations of the Landlord's hereunder and shall not be subject to any liability resulting from any act or omission or event occurring after such conveyance.

## 23. ATTORNMENMENT:

In the event of any sale, transfer or assignment of Landlord's interest in the Property, or the Building in which the Premises are located, or this Lease, or if the Property comes into custody or possession of a mortgagee or any other party whether because of a mortgage foreclosure, or otherwise, Tenant shall attorn to such assignee or other party and recognize such party as Landlord hereunder; provided, however Tenant's peaceable possession will not be disturbed so long as Tenant faithfully performs its obligations under this Lease. Tenant shall execute, on demand, any attornment agreement required by any such party to be executed, containing such provisions as such party may require.

## 24. NOVATION IN THE EVENT OF SALE:

In the event of the sale of the Premises, Landlord shall be and hereby is relieved of all of the covenants and obligations created hereby accruing from and after the date of sale, and such sale shall result automatically in the purchaser assuming and agreeing to carry out all the covenants and obligations of Landlord herein. Notwithstanding the foregoing provisions of this *Article*, Landlord, in the event of a sale of the Premises, shall cause to be included in the agreement of sale and purchase a covenant whereby the purchaser of the Premises assumes and agree to carry out all of the covenants and obligations of Landlord herein.

The Tenant agrees at any time and from time to time upon not less than ten (10) days prior written request by Landlord to execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect, or as modified and stating the modifications, and the dates to which Base Rent, Additional Rent and other charges have been paid in advance, if any, and such other terms as Landlord shall reasonably require, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser of the fee or mortgagee, or assignee of any mortgage of the Premises. In the event that Tenant fails to execute and return such statement within such ten (10) day period, the requesting party shall be entitled to rely, as against the Tenant, that: (i) this Lease is in full force and effect, without amendment except as specified by the Landlord, (ii) Tenant has no offsets against Rent nor any defenses to Tenant's performance under this Lease, (iii) Tenant has no right to any offset or defenses to the payment of Rent, and (iv) Tenant has not paid any Rent under this Lease more than one month in advance.

**25. SUCCESSORS AND ASSIGNS:**

The terms, covenants and conditions hereof shall be binding upon and inure to the successors and assigns of the parties hereto.

**26. REMOVAL OF FIXTURES:**

Notwithstanding anything contained in *Article 8*, *Article 29*, or elsewhere in this Lease, if Landlord requests, Tenant will promptly remove at the sole cost and expense of Tenant, all fixtures, equipment and Alterations (as defined in *Article 8*) made by Tenant simultaneously with vacating the Premises and Tenant will promptly repair all damage and restore said Premises to the condition that existed immediately prior to said fixtures, equipment and Alterations having been made, all at the sole cost and expense of Tenant, including the removal of any or all data and voice cabling or other wiring, all at Tenant's sole cost.

**27. QUIET ENJOYMENT:**

Landlord warrants that it has full right to execute and to perform this Lease and to grant the estate demised, and that Tenant, upon payment of the Rent and other amounts due and the performance of all the terms, conditions, covenants and agreements on Tenant's part to be observed and performed under this Lease, may peaceably and quietly enjoy the Premises for the business uses permitted hereunder, subject, nevertheless, to the terms and conditions of this Lease.

**28. RECORDING:**

Tenant shall not record this Lease without the written consent of Landlord. However, upon the request of either party hereto, the other party shall join in the execution of a Memorandum Lease for the purposes of recordation. Said Memorandum Lease shall describe the parties, the Premises and the Term of the Lease and shall incorporate this Lease by reference.

**29. OVERDUE PAYMENTS:**

All monies due under this Lease from Tenant to Landlord shall be due on demand, unless otherwise specified and if not paid when due, shall result in the imposition of a service charge for such late payment in the amount of five percent (5%) of the amount due, provided, however, Landlord will waive one monthly late payment service charge per year provided such payment is received by the fifteenth (15th) day of said month. All unpaid or delinquent Rent and Tenant obligations of any kind shall accrue interest at the rate of one and one-half (1-1/2%) percentage per month from and after the due date.

**30. SURRENDER:**

On the Expiration Date or upon the termination hereof upon a day other than the Expiration Date, Tenant shall peaceably surrender the Premises broom-clean in good order, condition and repair, reasonable wear and tear only excepted, and subject to the terms and conditions of Exhibit G. On or before the last day of the Term or the sooner termination thereof, Tenant shall at its expense remove all of its furnishings, equipment and other personal property from the Premises, repairing any damage caused thereby, and any property not so removed shall be deemed abandoned. At the election of Landlord and if Tenant is so notified in writing at the time Landlord approves any Alterations, all Alterations (as defined in *Article 8*) and fixtures, other than Tenant's trade fixtures, which have been made or installed by either Landlord or Tenant upon the Premises, shall at the end of the Term or the earlier termination thereof, at Landlord's option (i) remain as Landlord's property and shall be surrendered with the Premises as a part thereof, or (ii) shall be removed from the Premises, in which event Tenant shall remove the same at its sole cost and expense and repair any damage caused thereby. The Tenant Improvements shall not be required to be restored at the Expiration Date or upon termination hereof. If the Premises are not vacated and surrendered at the end of the Term or the sooner termination thereof as required by this *Article 29*, Tenant shall indemnify Landlord against any and all loss, cost, damage, liability and expense resulting from delay by Tenant in so vacating and surrendering the Premises, including, without limitation, claims made by any succeeding tenant founded on such delay, which indemnity obligation shall survive the expiration or earlier termination of this Lease Agreement. Tenant shall promptly surrender all keys for the Premises to Landlord and shall inform Landlord of any combinations to any locks and/or safes on the Premises.

**31. END OF TERM AND HOLDING OVER:**

Tenant will, at the expiration of this Lease Agreement, whether by lapse of time or termination, vacate and surrender immediate possession of the Premises to Landlord. If Tenant fails to vacate and surrender possession of the Premises, the Landlord may, at its option, serve written notice upon Tenant that such holdover constitutes the creation of a month-to-month tenancy. If Landlord does not give said notice, Tenant's holdover shall create a tenancy at sufferance. In any event, the tenancy shall be upon the terms and conditions of this Lease Agreement, except that the Base Rent and Additional Rent shall be 150% of the Base Rent and Additional Rent Tenant was obligated to pay Landlord under this Lease Agreement immediately prior to expiration (in the case of tenancy at sufferance such Base Rent and Additional Rent shall be prorated on the basis of a 365 day year for each day Tenant remains in possession); excepting further that in the case of a tenancy at sufferance, no notices shall be required prior to commencement of any legal action to regain possession of the Premises. The provisions of this *Article* shall not constitute a waiver by Landlord of any right of re-entry as otherwise available to Landlord; nor shall receipt of any Rent or any other act in apparent affirmation of the tenancy operate as a waiver of the right to terminate this Lease Agreement for a breach by Tenant hereof. If Tenant determines to extend or renew the Term of this Lease, whether by new lease agreement or amendment to this Lease, Landlord shall have no obligation to pay commissions or fees of any kind to any brokers that Tenant may engage regarding such new lease term. Tenant hereby acknowledges that any claim for brokerage commissions or fees in connection with a new term of this Lease shall be paid in full by Tenant.

**32. CONSENTS BY LANDLORD, TENANT FINANCING:**

Whenever provision is made under this Lease for Tenant securing the consent or approval by Landlord, such consent or approval shall only be in writing.

In the event that Tenant requires Landlord to sign any agreement related to third-party financing obtained by Tenant, Tenant shall pay a fee to Landlord equal to \$500 or the total hourly charges of any professional necessary to review such agreement, whichever is less. Further, Tenant agrees to indemnify Landlord for any costs or expenses resulting from such agreement.

**33. NOTICES:**

Any notice required or permitted under this Lease shall be in writing and deemed sufficiently given or secured if sent by registered or certified return receipt mail or registered overnight courier service to Tenant at the address of the Premises provided in Definitions on Page 1 of this Lease and to Landlord at the address as provided in *Article 4* of this Lease, and either party may by like written notice at any time designate a different address to which notices shall subsequently be sent or Rent to be paid.

**34. RULES AND REGULATIONS:**

Tenant shall observe and comply with the rules and regulations set forth on Exhibit C or as Landlord may reasonably promulgate from time to time, for the safety, care and cleanliness of the Premises, Building, Common Areas and Property.

**35. INTENT OF PARTIES:**

Except as otherwise provided herein, Tenant covenants and agrees that if it shall at any time fail to pay any costs or expenses, or fail to take out, pay for, maintain or deliver any of the insurance policies, or fail to make any other payment or perform any other act on its part to be made or performed as required in this Lease, then Landlord may, but shall not be obligated to, and without notice to or demand upon Tenant and without waiving or releasing Tenant from any obligations of Tenant contained in this Lease, pay any such cost or expense, effect any such insurance coverage and pay premiums therefore, and may make any other payment or perform any other act on the part of Tenant to be made and performed as provided in this Lease, in such manner and to such extent as Landlord may deem desirable, and in exercising any such right, to also pay all necessary and incidental costs and expenses, employ counsel and incur and pay reasonable attorneys' fees. All sums so paid by Landlord and all necessary and incidental costs and expenses in connection with the performance of any such act by Landlord, together with interest thereon at the rate of twelve percent (12%) per annum from the date of making of such expenditure by Landlord, shall be deemed Additional Rent hereunder, and shall be payable to Landlord on demand. Tenant covenants to pay any such sum or sums with interest as aforesaid and Landlord shall have the same rights and remedies in the event of the non-payment thereof by Tenant as in the case of default by Tenant in the payment of the Base Rent or Additional Rent due under this Lease.

**36. GENERAL:**

**a.** The Lease does not create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, the sole relationship between the parties hereto being that of landlord and tenant.

**b.** No waiver of any default of Tenant hereunder shall be implied from any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord shall not then be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent to or approval by Landlord of any act by Tenant requiring Landlord's consent or approval shall not waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant. No action required or permitted to be taken by or on behalf of Landlord under the terms or provisions of this Lease shall be deemed to constitute an eviction or disturbance of Tenant's possession of the Premises. All preliminary negotiations are merged into and incorporated in this Lease. The laws of the State of Minnesota shall govern the validity, performance and enforcement of this Lease.

c. This Lease and the exhibits, attached hereto and forming a part hereof, constitute the entire agreement between Landlord and Tenant affecting the Premises and there are no other agreements, either oral or written, between them other than as herein set forth. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and executed in the same form and manner in which this Lease is executed. If Tenant is a legal entity, each individual executing this Lease on behalf of said entity represents and warrants that s/he is duly authorized to execute and deliver this Lease on behalf of said entity in accordance with duly adopted resolutions of the governing body of said entity or in accordance with the organizational documents of said entity, and that this Lease is binding upon said entity in accordance with its terms.

d. If any agreement, covenant or condition of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such agreement, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each agreement, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

e. The obligations of Landlord under this Lease do not constitute the personal obligations of the individual partners, members, trustees, shareholders, directors or officers of Landlord or its constituent members or partners. If Landlord shall fail to perform any covenant, term or condition of this Lease required of Landlord, Tenant shall be required to deliver to Landlord written notice of the same. If, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of Landlord in the Property and out of Rent or other income from the Property receivable by Landlord, or out of consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title or interest in the Property, and no action for any deficiency may be sought or obtained by Tenant.

f. Tenant represents to Landlord, and Landlord represents to Tenant, that the representing party is not (and such party is not engaged in this transaction on behalf of) a person or entity with which either party is prohibited from doing business pursuant to any law, regulation or executive order pertaining to national security ("**Anti-Terrorism Laws**") and; such party has not violated and, to the best of such party's knowledge it is not under investigation for, the violation of any Anti-Terrorism Laws pertaining to money laundering. "Anti-Terrorism Laws", as referenced above, shall specifically include, but shall not be limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56 (aka, the USA Patriot Act); Executive Order 13224; the Bank Secrecy Act, 31 U.S.C. Section 5311 et. Seq.; the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. Seq.; the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. Seq.; sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control ("OFAC"), as well as laws related to the prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957.

### **37. ENVIRONMENTAL:**

a. Tenant will not cause or permit any Hazardous Materials (as defined below) to be brought upon, kept or used on the Property (as defined below) in a manner or for a purpose prohibited by or which would result in liability under any Hazardous Materials Law (as defined below). Tenant, at its sole cost and expense, will comply with all Hazardous Materials Laws and prudent industry practice relating to the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under or about the Property required for Tenant's use of the Property and its operations therein and will notify Landlord in writing in advance of any and all Hazardous Materials Tenant brings upon, keeps or uses on the Property (other than small quantities of office cleaning or other office supplies as are customarily used in the ordinary course of a general office use). On or before the expiration or earlier termination of this Lease Agreement, Tenant will, at its sole cost and expense, cause all Hazardous Materials in, on, under or about the Property as a result of or in any way related to Tenant's use of the Property or its operations therein, whether prior to or following the commencement date of this Lease Agreement, to be removed from the Property in accordance and in compliance with all Hazardous Materials Laws. Tenant will not take any remedial action in response to the presence of any Hazardous Materials in, on, under or about the Property, nor enter into any settlement agreement, consent decree or other compromise with respect to any Claims (as defined below) relating to or in any way connected with the Property, without first notifying Landlord of Tenant's intention to do so and affording Landlord reasonable opportunity to investigate, appear, intervene or otherwise appropriately assert and protect Landlord's interest in the Property.

**b.** Tenant will notify Landlord of any of the following actions affecting Landlord, Tenant or the Property and resulting from or in any way relating to Tenant's use of the Property or its operations therein immediately after receiving notice of the same: (a) any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed or threatened under any Hazardous Materials Law; (b) any Claim made or threatened by any person relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Material; and (c) any reports made by any person, including Tenant, to any environmental agency relating to any Hazardous Material, including any complaints, notices, warnings or asserted violations. Tenant will also provide Landlord, as promptly as possible and in any event within ten (10) days after Tenant first receives or sends the same, with copies of all Claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Property. Upon Landlord's written request, Tenant will promptly deliver to Landlord notices of manifests reflecting the legal and proper disposal of all Hazardous Materials removed or to be removed from the Property. All such manifests will list Tenant or its agent as a responsible party and will not attribute responsibility for any such Hazardous Materials to Landlord.

**c.** Subject to the provisions of *Article 12* above, including but not limited to the notice and confidentiality provisions, Landlord shall have the right, from time to time, by itself or by its agent, to enter upon the Property for purposes of inspecting the compliance thereof, and the operations conducted thereon, with Hazardous Materials Laws, and to take such samples or perform such intrusive testing, or "Phase II" investigation, as Landlord may, in its discretion, determine; provided that any such entry, or such intrusive testing, shall not unreasonably interfere with the business operations of Tenant on the Property. Tenant shall afford Landlord, or its agent, access to Tenant's books and records evidencing compliance with Hazardous Materials Laws, including, but not limited to, access to appropriate licenses and permits, as well as manifests or other records relative to the handling, treatment, storage, shipment, or disposal of Hazardous Materials, as required under applicable Hazardous Materials Laws. The costs incurred in exercising Landlord's rights under this *Article 37 C* shall be paid by Landlord unless such entry and/or testing by Landlord reveals either a violation of Hazardous Materials Laws or the presence of Hazardous Materials requiring remediation, in either which case and in addition to being responsible for all of the costs of remedying such violation and/or remediating such Hazardous Materials, Tenant shall reimburse Landlord for the costs incurred by Landlord under this *Article 37 C* within thirty (30) days following Tenant's receipt of an invoice therefore.

**d.** Tenant acknowledges and agrees that all reporting and warning obligations required under Hazardous Materials Laws resulting from or in any way relating to Tenant's use of the Property or its operations therein are Tenant's sole responsibility, regardless whether such Hazardous Materials Laws permit or require Landlord to report or warn.

**e.** With respect to all Hazardous Materials brought unto the Property by Tenant, the following specific rules shall govern:

Tenant shall at all times be in full compliance with all Hazardous Materials Laws. Tenant shall advise Landlord prior to the generation or handling of Hazardous Materials (other than small quantities of office cleaning or other office supplies as are customarily used in the ordinary course of a general office use). Upon request by Landlord, Tenant shall deliver to Landlord copies of all contracts, programs, management plans or certifications regarding the generation, storage, removal or disposal of Hazardous Materials which are required in order for Tenant to be in compliance with the Hazardous Materials Laws.

All Hazardous Materials located upon the Property shall be transported therefrom, and appropriately disposed of directly by Tenant pursuant to Hazardous Materials removal contracts executed by Tenant and in compliance with all Hazardous Materials Laws.

Tenant shall, immediately upon receipt provide Landlord with copies of, and shall comply with, all Environmental Requirements.

In no event shall any Hazardous Materials be stored, handled or disposed of on the Property other than in strict compliance herewith.

f. As between Tenant and Landlord, Tenant will indemnify, defend (with counsel reasonably acceptable to Landlord), protect and hold harmless the Landlord Parties (as defined below) from and against any and all Claims whatsoever arising or resulting from the discharge of Hazardous Materials in, on or upon the Premises, the Building or the Property by Tenant after the Commencement Date of the Original Lease (as defined in Section 46 below. Tenant's obligation under this Section shall survive the expiration or earlier termination of the Original Lease and the Term of this Lease. The foregoing indemnifications shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

g. Landlord warrants and covenants that to the best of its knowledge there is no contamination of the Premises, the Building or the Property caused by Hazardous Materials. Landlord hereby agrees to defend, indemnify and hold harmless Tenant and its officers, directors, shareholders, partners and principals from and against any claims arising as of the result of any past discharge of any Hazardous Substances in, on or upon the Premises, the Building or the Property, and any release of Hazardous Materials at or from the Building or the Property. Landlord's obligations under this Section shall survive the expiration or earlier termination of the Term of this Lease and the sale of the Premises, the Building or the Property by the Landlord. The foregoing indemnifications shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

The terms of this section relating to Tenant shall not apply to conditions pre-existing, caused by another tenant of Property, or otherwise not related to or caused by Tenant.

h. As used herein, the following terms shall have the following meanings:

i. **"Hazardous Materials"** means any of the following, in any amount: (a) any petroleum or petroleum product, asbestos in any form, urea formaldehyde and polychlorinated biphenyls; (b) any radioactive substance; (c) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound; and (d) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in the definitions of "hazardous substances," "hazardous wastes," "pollutants," "contaminants," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "solid waste," or words of similar import in any federal, state or local statute, law, ordinance or regulation now existing or existing on or after the Effective Date, including, without limiting the generality of the foregoing, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601, et seq., and the Minnesota Environmental Response and Liability Act, Minn. Stat. Chapter 115B, as any of the same may be interpreted by government offices and agencies.

- ii. **"Property"** means the Premises and the Building (expressly including the all Common Areas) together.
- iii. **"Hazardous Materials Laws"** means any federal, state or local statutes, laws, ordinances or regulations now or hereafter existing that control, classify, regulate, list or define Hazardous Materials, or the generation, storage, transportation, treatment or disposal of Hazardous Materials.
- iv. **"Landlord Parties"** means Landlord and its property manager and their respective officers, governors, members, managers and employees.
- v. **"Claims"** means all claims, actions, liabilities, damages, costs, penalties, forfeitures, losses or expenses, including, without limitation, reasonable attorneys' fees.
- vi. **"Environmental Requirements"** means all permits, inspection reports, monitoring reports, licenses, orders, demands, compliance requests, edicts or other documentation filed, served, delivered or transmitted either with, to or from the Minnesota Pollution Control Agency, Minnesota Department of Health or the Environmental Protection Agency or any other governmental body, including Hazardous Materials Laws.
- h. The obligations of Tenant under this *Article 37* shall survive the expiration or earlier termination of this Lease Agreement.

**38. CAPTIONS:**

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease nor the intent or any provision thereof.

**39. ATTACHMENTS:**

Attached hereto and made a part hereof is an Addendum containing *Article 42 through Article 46* inclusive and Exhibits A through Exhibit H, inclusive, which Exhibits are as follows:

Exhibit	Description
Exhibit A	Legal Description
Exhibit B	Premises
Exhibit C	Building Rules and Regulations
Exhibit D	The Plans for Tenant Improvements
Exhibit E	Sign Criteria
Exhibit F	Ratification Agreement
Exhibit G	Requirements upon Lease Termination

**40. SUBMISSION:**

Submission of this Lease Agreement by Landlord to Tenant for examination and/or execution shall not in any manner bind Landlord and no obligations on Landlord shall arise under this Lease Agreement unless and until this Lease Agreement is fully signed and delivered by Landlord and Tenant; provided, however, the execution and delivery by Tenant of this Lease Agreement to Landlord shall constitute an offer by Tenant of the terms, covenants and conditions contained in this Lease Agreement, which offer may not be revoked for a period of thirty (30) days after such delivery.

**41. REPRESENTATION:**

Each of the parties represents and warrants that except only as may be provided in *Article 44* of the Addendum, there are no claims for brokerage commissions or finder's fees (collectively "**Leasing Commissions**") in connection with this Lease Agreement, and agrees to indemnify the other party against, and hold it harmless from all liabilities arising from any claim for Leasing Commissions asserted by a broker, agent or other person or entity claiming through the indemnifying party, including without limitation, reasonable attorneys' fees incurred in connection therewith. Further, each of the parties agrees that in the event of an extension, renewal, expansion or other amendment to the Lease, the parties will negotiate directly. In the event that Tenant wishes to retain a broker for such negotiations, Tenant shall be fully responsible for all commissions related thereto,

**IN WITNESS WHEREOF**, Landlord and Tenant have caused this Lease to be executed in form and manner sufficient to bind them at law, as of the day and year first above written.

**Landlord:**

**West Glen Development I LLC**  
**A Minnesota limited liability company**

**Date: 10/3/17**

**By: /s/ Bradley L. Moen**  
\_\_\_\_\_  
**Bradley L. Moen, Governor**

**Date: 9/28/17**

**By: /s/ Michael J. Leuer**  
\_\_\_\_\_  
**Michael J. Leuer, Governor**

**Tenant:**

**Celcuity, LLC**  
**A Minnesota limited liability company**

**Date: 9/20/17**

**By: /s/ Brian Sullivan**  
\_\_\_\_\_  
**Name: Brian Sullivan**  
**Its: CEO**

## LEASE ADDENDUM

This Lease Addendum, dated this 20th day of September, 2017 by and between West Glen Development I, LLC, a Minnesota limited liability company (“**Landlord**”), and Celcuity, LLC, a limited liability company (“**Tenant**”), is attached to and made a part of that certain Commercial Lease of even date hereof (the “**Lease Form**”). The Lease Form as modified by this Addendum is hereinafter referred to as the Lease. Except to the extent otherwise defined below, all capitalized terms used in this Addendum shall be as defined in the Lease Form.

Any provision of the Lease Form to the contrary notwithstanding, Landlord and Tenant mutually agree as follows:

**42. Base Rent:**

Months	Price Per Square	
	Foot	Monthly
May1, 2018 to April 30, 2019	\$ 11.39	\$ 15,483.75
May1, 2019 to April 30, 2020	\$ 11.67	\$ 15,864.39
May1, 2020 to April 30, 2021	\$ 11.95	\$ 16,235.07

**43. Amounts Due Upon Lease Execution:** In addition to the Security and Damage Deposit described in *Article 10* of the Lease in the amount of \$22,008.96, upon execution of the Lease, Tenant shall in addition submit to Landlord a check in amount representing the first month's Base Rent of \$15,483.75, for a total due of \$37,492.71.

**44. Tenant Improvements:** Preliminary plans prepared by Landlord for permanent improvements to the Premises are attached hereto as Exhibit D and by this reference incorporated herein (the “**Plans**”). The Plans have been approved by each of Landlord and Tenant. The parties acknowledge that the Plans will modify the Premises to accommodate Tenant's intended use. Upon any required approval of the Plans by the City and the issuance of a building permit by the City, Landlord shall retain Moen Management LLC (“**Contractor**”) which shall be responsible for constructing the improvements as shown on the Plans (hereafter called “**Tenant Improvements**”) for and on behalf of Tenant. Landlord and Tenant have agreed that the estimated costs of such Tenant Improvements is \$100,000.00 and shall be paid as follows: \$25,000 by Tenant, and \$75,000 by Landlord. Upon the commencement of the Tenant Improvement work by Contractor, Tenant shall pay to Landlord said \$25,000. Any improvements to the Premises, other than as shown on the Plans (including cost increases to the Tenant Improvements caused due to change orders to the Plans requested by Tenant), and the furnishing of the Premises, shall be made by Tenant at the sole cost and expense of Tenant, subject to all other provisions of this Lease Agreement. If the Tenant Improvements cannot be substantially completed prior to the Commencement Date, then the provisions of *Article 9* shall apply. As used in this Lease Agreement, “substantial completion” of the Tenant Improvements or their being “substantially completed” means (i) Landlord has completed construction of the Tenant Improvements in accordance with the Plans to such an extent that Tenant may occupy the Premises for the purpose of conducting its business operations therein, subject to completion by Landlord of normal punch list items (hereafter called the “**Punch List Items**”) and (ii) any required certificate of occupancy/completion or its local equivalent has been issued by the City for the Premises so as to permit the use and occupancy of the Premises by Tenant.

**45. Option to Extend Term.**

A. Subject to the provisions of Article 45B below and provided this Lease Agreement or Tenant's right of possession hereunder has not been earlier terminated, Tenant shall have the right to extend the Term of the Lease Agreement as to all, but not less than all, of the Premises then being leased hereunder, for two periods of one (1) years beginning immediately following the end of the initial Term (the "**Extended Term**") subject to the following terms and conditions:

(i) Tenant shall give written notice to Landlord of the exercise of Tenant's right to extend the Term of this Lease Agreement no later than nine (9) months prior to the commencement of the Extended Term, time being of the essence (the "**Renewal Notice**"). If no such Renewal Notice is timely given, this Lease Agreement shall terminate as of the end of the initial Term;

(ii) Tenant shall not be in default under this Lease Agreement beyond the passage of any applicable period of cure, grace or notice at the time of giving the Renewal Notice or at any time thereafter to and including the commencement of the Extended Term; and

(iii) The extension of the Term hereunder for the Extended Term shall be on the same terms and conditions as are applicable to the initial Term;

provided, however, (i) Tenant shall have no further right to extend the Term of this Lease Agreement, (ii) and (ii) the Base Rent payable by Tenant to Landlord in monthly installments during the Extended Term shall be as follows:

Months	Price Per Square		Monthly
	Foot		
May1, 2021 to April 30, 2022	\$	12.23	\$ 16,625.67
May1, 2022 to April 30, 2023	\$	12.52	\$ 17,019.89

B. It is acknowledged and agreed by the parties that the right of Tenant (hereafter the "**Original Tenant**") to extend the Term of this Lease Agreement under Article 45A above is personal to Original Tenant. and should said Original Tenant either assign this Lease Agreement or sublet all or any part of the Premises to any person or entity other than to an Affiliate of said Original Tenant, Article 45A above shall automatically become null and void and of no further force or effect.

**46. HVAC Repair and Replacement.** Tenant's obligations as set forth in Article 6 of the Lease with respect to the maintenance, repair and replacement, if necessary, of heating and air conditioning fixtures, equipment, and systems, are modified as follows: If the HVAC equipment requires replacement during the Term of the Lease, Landlord shall pay for the cost of such replacement. Tenant shall reimburse Landlord for said replacement costs based on the following formula in equal monthly payments:

$$\frac{\text{Number of months remaining in Lease Term}}{\text{One Hundred Forty-Four Months}} \times \text{Replacement Cost}$$

**46. EXISTING LEASE.** The existing Commercial Lease by and between Landlord and Tenant dated March 11, 2014 of Suite 450 of the Building (the "Existing Lease") shall automatically terminate upon the Commencement Date of this Lease; provided, however, that Tenant shall have up to fifteen (15) business days following the Commencement Date to relocate its equipment, property and fixtures from Suite 450 to the Premises.

**Landlord:**

**West Glen Development I, LLC  
A Minnesota limited liability company**

**Date: 10/3/17**

**By: /s/ Bradley L. Moen**  
\_\_\_\_\_  
**Bradley L. Moen, Governor**

**Date: 9/28/17**

**By: /s/ Michael J. Leuer**  
\_\_\_\_\_  
**Michael J. Leuer, Governor**

**Tenant:**

**Celcuity, LLC  
A Minnesota limited liability company**

**Date: 9/20/17**

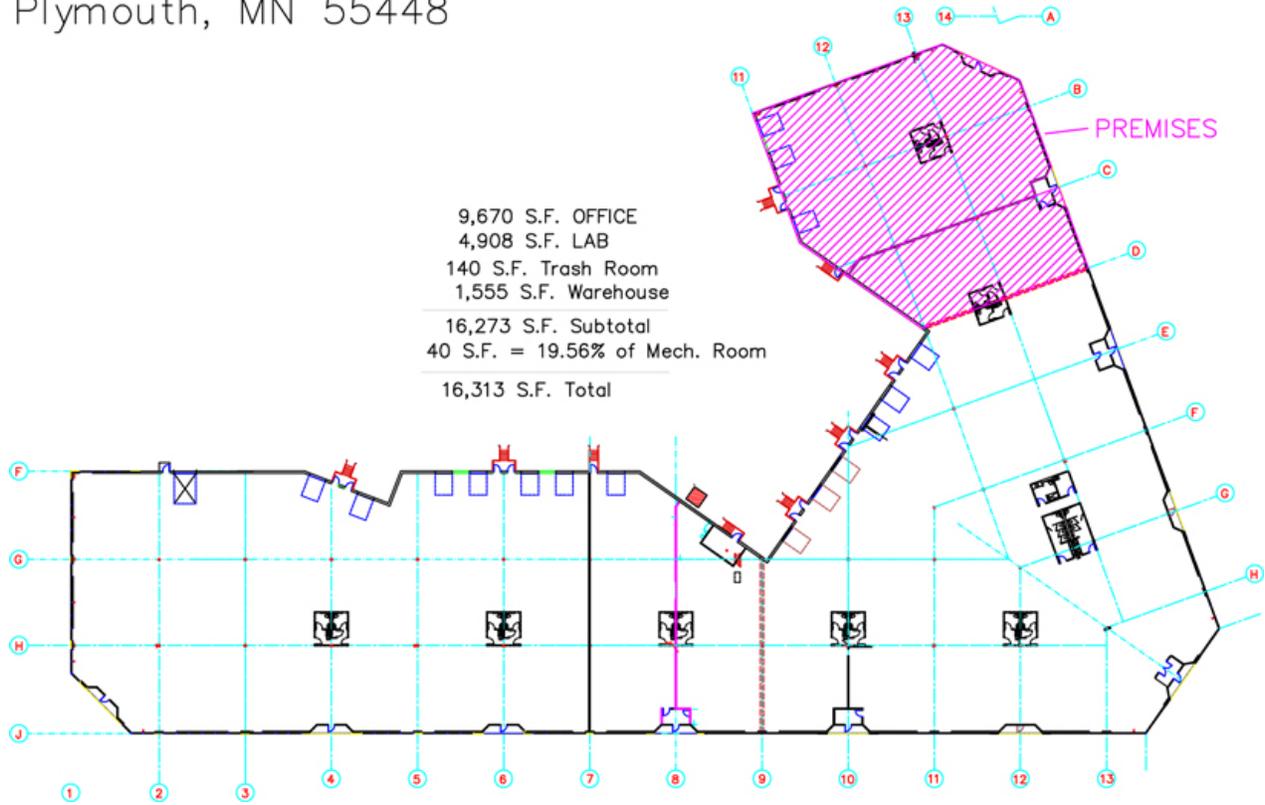
**By: /s/ Brian Sullivan**  
\_\_\_\_\_  
**Name: Brian Sullivan**  
**Its: CEO**

**EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTY**

**Lot 1, Block 1, West Glen Corporate Center, Hennepin County, Minnesota**

EXHIBIT B  
PREMISES

EXHIBIT B – PREMISES – CELCUITY, LLC  
16305 36th Ave. North – Suite 100  
Plymouth, MN 55448



**EXHIBIT C**  
**BUILDING RULES AND REGULATIONS**

1. Any sign, lettering, picture, notice or advertisement installed on or in any part of the Property and visible from any exterior or interior common area of the "Complex" or from the exterior of the Property, shall be installed at Tenant's sole cost and expense, and in such manner, character and style as Landlord may approve in writing. Anything herein to the contrary notwithstanding, approval as to signs shall be subject to Landlord's approval that may be withheld in Landlord's sole discretion. In the event of a violation of the foregoing by Tenant, Landlord may remove the same without any liability and may charge the expense incurred by such removal to Tenant. The term "Complex" shall be defined to mean all real property on which the buildings, driveways, parking areas, landscaped areas and related common areas, commonly referred to as "West Glen", is located in the City of Plymouth, Minnesota.

2. Tenant, its employees, customers, invitees and guests shall not obstruct sidewalks, entrances, passages, corridors, vestibules, halls, or stairways in and about the Complex which are used in common with other tenants and their employees, customers, guests and invitees, and which are not a part of the property of Tenant. Tenant shall not place objects against glass partitions or doors or windows that would be unsightly from the Complex corridors or from the exterior of the Complex and will promptly remove any such objects upon notice from Landlord.

3. Tenant shall not make excessive noises, cause disturbances or vibrations, use or operate any electrical or mechanical devices that emit excessive sound or other waves, disturbances or create obnoxious odors, nor operate any device/equipment for radio/television broadcasting or reception from or within the Complex or elsewhere and shall not place or install any projections, antennas, aerials or similar devices inside or outside the Property or on the Complex.

4. Tenant shall not waste electricity, water or vestibule heat furnished by Landlord, if any, and shall cooperate fully with Landlord to ensure the most effective operation of the Complex's heating and air conditioning systems.

5. Tenant assumes full responsibility for protecting its space from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Property closed and secured at all times.

6. In no event shall Tenant bring into the Complex flammables, such as gasoline, kerosene, naphtha, benzene, explosives or any other article of intrinsically dangerous nature. If, by reason of the failure of Tenant to comply with the provisions of this subparagraph, any insurance premium for all or any part of the Complex shall at any time be increased, Tenant shall make immediate payment of the whole of the increased insurance premium, without waiver of any of Landlord's other rights at law or in equity for Tenant's breach of this Lease. Any permitted items must be stored in a fireproof cabinet.

7. Tenant shall comply with all applicable federal, state and municipal laws, ordinances and regulations, and building rules and shall not directly or indirectly make any use of the Property which may be prohibited by any of the foregoing or which may be dangerous to persons or property or may increase the cost of insurance or require additional insurance coverage.

8. Landlord shall have the right to prohibit any advertising by Tenant which in Landlord's reasonable opinion tends to impair the reputation of the Complex or its desirability as a building complex for office/warehouse use, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.

9. The Property shall not be used for cooking (as opposed to heating of food), lodging, sleeping or for any immoral or illegal purpose.

10. Unless expressly permitted by Landlord, no additional locks or similar devices shall be attached to any door or window and no keys other than those provided by Landlord shall be made for any door. If more than two keys for one lock are desired by Tenant, Landlord may provide the same upon payment by Tenant. Upon termination of this Lease or of Tenant's possession, Tenant shall surrender all keys of the Property and shall explain to Landlord all combination locks on safes, cabinets and vaults.

11. Any carpeting cemented down shall be installed with a releasable adhesive. In the event of a violation of the foregoing by Tenant, Landlord may charge the expense incurred by removal to Tenant.

12. The restrooms, drinking fountains and other plumbing fixtures shall not be used for any purpose other than those for which they are constructed, and no sweepings, rubbish, rags, coffee grounds or other substances shall be disposed of therein. All damages resulting from any misuse of the fixtures shall be borne by Tenant who, or whose employees, agents, visitors or licensees have caused same. No person shall waste water by interfering or tampering with the faucets or otherwise.

13. Tenant shall not overload any utilities serving the Property.

14. No dog or other animal shall be allowed in the Building or within/on the Business Park's grounds.

15. All loading/unloading, receiving/delivery of goods/supplies or disposal of garbage/refuse shall be made only through entryways provided for such purposes. Tenant shall be responsible for any damage to the Complex or the property of its employees or others and injuries sustained by any person whomsoever resulting from the use or moving of such articles in or out of the Property, and shall make all repairs and improvements required by Landlord or governmental authorities in connection with the use or moving of such articles.

16. All safes, equipment or other heavy articles shall only be used by Tenant in a manner which will not interfere with or cause damage to the Property or the Complex in which they are located, or to the other tenants or occupants of said Complex. Tenant shall be responsible for any damage to the Building or the property of its employees or others and injuries sustained by any person whomsoever resulting from the use or moving of such articles in or out of the Property, and shall make all repairs and improvements required by Landlord or governmental authorities in connection with the use or moving of such articles.

17. Canvassing, soliciting, and peddling in or about the Complex is prohibited and each Tenant shall cooperate to prevent the same.

18. Wherever in these Building Rules and Regulations the word "Tenant" occurs, it is understood and agreed that it shall mean Tenant's associates, employees, agents, clerks, invitees, and visitors. Wherever the word "Landlord" occurs, it is understood and agreed that it shall mean Landlord's assigns, agents, employees, and visitors.

19. Landlord shall have the right to enter upon the Property at all reasonable hours for the purpose of inspecting the same.

20. Landlord shall have the right to enter the Property at hours convenient to Tenant for the purpose of exhibiting the same to prospective tenants.

**21.** Tenant, its employees, customers, invitees and guests shall, when using the parking facilities in and around the Complex, observe and obey all signs regarding fire lanes and no parking zones, and when parking always park between the designated lines. Landlord reserves the right to tow away, at the expense of the owner, any vehicle that is improperly parked or parked in a no parking zone. All vehicles shall be parked at the sole risk of the owner, and Landlord assumes no responsibility for any damage to or loss of vehicles. No vehicles shall be parked overnight, except for vehicles owned by persons working overnight.

**22.** In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Complex during the continuance of the same by closing the doors or otherwise, for the safety of the tenants or the protection of the Complex and the property therein. Landlord shall in no case be liable for damages resulting from any error or action taken with regard to the admission to or exclusion from the Complex of any person.

**23.** All entrance doors to the Property shall be locked when the Property is not in use. All common corridor doors, if any, shall also be closed during times when the heating and air conditioning equipment in the Complex is operating so as not to dissipate the effectiveness of the system or place an overload thereon.

**24.** No awning or other projection shall be attached to the outside walls of the Complex. No curtains, blinds, shades or screens visible from the exterior or interior common area of the Complex or visible from the exterior of the Property, shall be attached to, hung in, or used in connection with any window or door of the Property without the prior written consent of Landlord. Such curtains, blinds, shades, screens or other fixtures must be of a quality, type, design and color, and attached in manner approved by Landlord.

**25.** Landlord reserves the right at any time to rescind, alter or waive, in whole or in part, any of these Rules and Regulations when deemed necessary, desirable, or proper, in Landlord's judgment, for its best interest or for the best interest of the tenants of the Complex.

**26.** Any trash dumpsters must be kept inside the Premises.

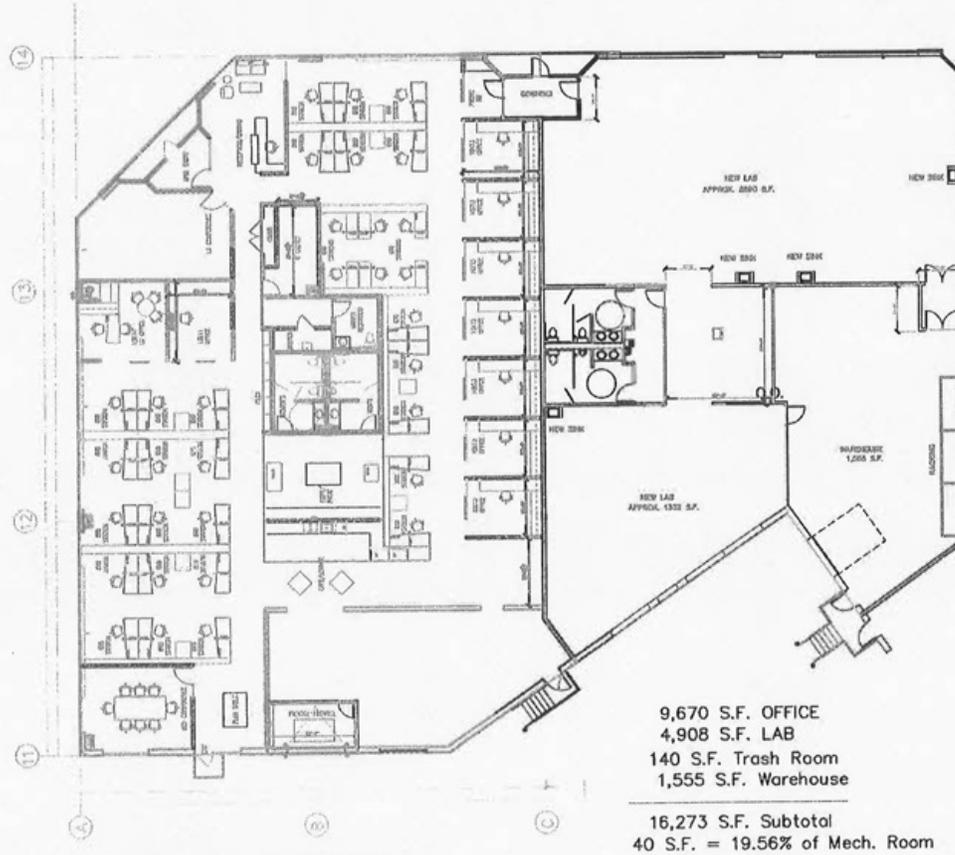
**27.** No outside storage of materials is allowed. (This includes trailer storage parked longer than 96 hours.)

**28.** To the extent these rules are in conflict with the terms of the Lease, the terms of the Lease shall rule and govern.

**29.** Tenant and Tenant's employees, agents, visitors and licensees shall observe faithfully and comply strictly with the foregoing rules and regulations and such other and further appropriate rules and regulations as Landlord or Landlord's agent may from time to time adopt. Reasonable notice of any additional rules and regulations shall be given in such manner as Landlord may reasonably elect.

EXHIBIT D  
THE PLANS FOR TENANT IMPROVEMENTS

EXHIBIT D – CELCUITY, LLC  
16305 36TH AVE. NORTH – SUITE 100



Tenant Improvements shall include:

- Build out and finishing of lab area per drawing.
- Dropped ceiling in lab area and parabolic T-8 lights
- Fifty (50) electrical receptacles in the lab area
- Tenant will supply four (4) lab sinks and Landlord shall install and provide plumbing to said sinks
- Epoxy floor coating with a urethane top coat and 4" vinyl base in lab area
- Clean and paint restrooms

## PRELIMINARY ESTIMATE OF CONSTRUCTION

Date: 7-13-17

Tenant Name:  
Bldg. Address:

CELCUITY

16305 36th Ave. North - Suite 100  
Plymouth, MN 55447

<u>ITEMS</u>	<u>DESCRIPTION</u>	<u>ESTIMATE</u>
1 Permits	ALLOWANCE	1,500.00
2 Electrical	ALLOWANCE	9,000.00
3 H.V.A.C.	ALLOWANCE	5,000.00
4 Plumbing	ALLOWANCE	10,000.00
5 Fire Protection	ALLOWANCE	3,500.00
6 Drywall Work	ALLOWANCE	8,000.00
7 Insulation	NONE	-
8 Paint	ALLOWANCE	6,000.00
9 Wallpaper	NONE	-
10 Carpet & VCT	ALLOWANCE	1,500.00
11 Acoustic Ceiling	ALLOWANCE	2,500.00
12 Ceramic Tile	NONE	-
13 Bath Partitions	NONE	-
14 Block Work & Lintles	NONE	-
15 Floor Sawing & Removal	ALLOWANCE	2,000.00
16 Concrete Floors (Patch)	ALLOWANCE	2,000.00
17 Floor Painting or Sealing	ALLOWANCE	18,000.00
18 Overhead/Service Doors	NONE	-
19 Hardware	NONE	-
20 Structural Steel	NONE	-
21 Roof Work	ALLOWANCE	1,500.00
22 Glass/Windows	NONE	-
23 Sidelites	NONE	-
24 Interior Wood Doors		2,400.00
25 Trim Work		1,200.00
26 Cabinets/Counters/Shelf	NONE	-
27 Mirrors & Shower Doors	NONE	-
28 Signage/Misc. H/C Hdw	NONE	-
29 Demolition	ALLOWANCE	7,500.00
30 Dumpster Disposal	ALLOWANCE	1,800.00
31 Exterior Sitework	NONE	-

7-13-17

32 Window Shades & Blinds	NONE	-
33 Computer Flooring	NONE	-
34 Appliances	NONE	-
35 Lumber		400.00
36 Gas Piping	NONE	-
37 Fire Extinguishers		200.00
38 Dock Equipment	NONE	-
39 Final Clean-Up	ALLOWANCE	800.00
40 Lift Rental		800.00
41 Architectural Fees		1,500.00
42 SUBTOTAL		86,900.00
43 Supervisory	\$101.00 / hr. (Estimate)	7,500.00
44 Contractor's Fee	Ten (10%)	9,440.00
45 TOTAL		103,840.00

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**EXHIBIT E**  
**SIGN CRITERIA**

GENERAL:

1. Tenant is required to identify the Premises with a sign. All such signs shall be subject to the requirements and limitations as outlined hereafter or as Landlord shall determine to be necessary, in its sole judgment.
2. Tenant's signs shall be identity sign ONLY and shall be placed on the exterior wall in sign area designated by Landlord.
3. Light sources may be concealed by translucent material. Sign letters or components may be illuminated with lamps contained fully within the depth of the letter. In any event, light sources shall not exceed 100 foot lamberts.

PROHIBITION: The following types of signs or sign components shall be PROHIBITED:

- a. Signs employing moving or flashing lights.
- b. Signs employing exposed ballast boxes or transformers.
- c. Sign manufacturers' names, stamps or decals.
- d. Signs employing painted non-illuminated letters.
- e. Signs of box or cabinet type on metal fascia.
- f. Signs employing letters with no returns or exposed fastenings.
- g. Paper or cardboard signs, stickers or decals hung around, on or behind storefront (including glass doors and/or windows).
- h. Signs placed at right angles to any front.
- i. Signs purporting to identify leased departments or concessionaires or contained within the premises.

PROCEDURE: Tenant shall submit two (2) drawings of its proposed signage to the Landlord for approval prior to installation of any signage. Tenant must receive Landlord's written approval prior to installation of its signage. Signs must meet approval of the City of Plymouth, Minnesota. Sign contractor must obtain a building permit.

FASCIA SIGNS:

- a. Signs shall be composed of individual lit letters and shall be no more than 30 inches in height.
- b. Signs shall be internally illuminated. Lighting fixtures attached to the building to illuminate an unlit sign are prohibited.
- c. Signs may have one line of copy above another line but the total height shall not exceed the designated sign area.
- d. The color of the interior shell and/or the lens of individually lit letters and the color of the light source or the returns for the individually lit letters shall be subject to Landlord's written approval.
- e. A sign shall not cover more than eighty percent (80%) of the linear distances of the storefront to which it is attached. All signs shall be set in at least eighteen inches (18") from the borders of the Tenant's lease area. Signs shall be placed to optimally identify the Tenant's entry. Proposed placement shall be subject to Landlord's written approval.
- f. Logos may be used in the allocated sign but are subject to the size limitation. There shall be no more than one (1) logo per tenant frontage.
- g. Upon termination of the lease agreement, by lapse of time or otherwise, Tenant shall remove and dispose of its signage at its sole cost and expense.

INTERIOR SIGNS: Neon window signs shall be acceptable on the inside of display windows ONLY. Interior signs shall be subject to Landlord's written approval as to size, style and color. Interior signs must also be approved by the City of Plymouth.

**EXHIBIT F  
RATIFICATION AGREEMENT**

**WHEREAS**, West Glen Development I LLC, a Minnesota limited liability company ("Landlord"), and Celcuity, LLC, a Minnesota limited liability company ("Tenant"), entered into a lease agreement dated September \_\_, 2017 (the "**Lease Agreement**") with respect to Suite 100 of the Building at West Glen Development I, 16305 – 36<sup>th</sup> Avenue North, Plymouth, Minnesota. Unless otherwise indicated, the terms defined in the Lease Agreement shall have the same meanings when used herein; and

**WHEREAS**, pursuant to *Article 9* of the Lease Agreement, the parties agreed to ratify in writing the following terms of the Lease Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, the parties hereby agree that:

1. The Term of the Lease Agreement commenced on \_\_\_\_\_, 20\_\_ and will terminate on \_\_\_\_\_, 20\_\_ unless sooner terminated in accordance with the provisions of the Lease Agreement.

2. The monthly installments of Base Rent payable for the Premises during the Term are as follows:

<u>Months</u>	<u>Price Per SF</u>	<u>Monthly Base Rent</u>
---------------	---------------------	--------------------------

3. The Premises contain \_\_\_\_\_ square feet, consisting of \_\_\_\_\_ square feet of office space and \_\_\_\_\_ square feet of warehouse, service or storage space.

4. Tenant acknowledges and agrees that the Premises have been delivered to Tenant by Landlord in the condition required by the Lease Agreement and Tenant has accepted possession of the Premises.

5. **[If Applicable]** Under *Article* \_\_ of the Lease Agreement, the Termination Fee that would be payable by Tenant thereunder totals \$\_\_\_\_\_.

Except as otherwise stated herein, all of the remaining terms and conditions of the Lease Agreement shall continue to be in full force and effect.

**Landlord:**

**West Glen Development I, LLC  
A Minnesota limited liability company**

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

**By:** \_\_\_\_\_  
**Bradley L. Moen, Governor**

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

**By:** \_\_\_\_\_  
**Michael J. Leuer, Governor**

**Tenant:**

**Celcuity, LLC  
A Minnesota limited liability company**

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

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Its:** \_\_\_\_\_

**EXHIBIT G**  
**BROOM CLEAN CONDITION AND REPAIR**  
**END OF TERM REQUIREMENTS**

To be performed and complete by Tenant upon termination of the Lease:

1. All lighting is to be placed into good working order. This includes replacement of bulbs, ballasts, and lenses and needed. All bulbs must be the same color.
2. All truck doors and dock levelers should be serviced and placed in good operating order (including but not limited to overhead door springs, rollers, tracks and motorized door operator). This would include the necessary (a) replacement of any dented truck door panels, broken panels and cracked lumber, and (b) adjustment of door tension to insure proper operation. All door panels that are replaced shall be painted to match the building standard.
3. All structural steel columns in the warehouse and office should be inspected for damage and must be repaired. Repairs of this nature shall be pre-approved by the Landlord prior to implementation.
4. HVAC system shall be in good working order, including the necessary replacement of any parts to return the unit to a well-maintained condition. This includes, but is not limited to, filters, thermostats, warehouse heaters and exhaust fans. Upon move-out, Landlord will have an exit inspection performed by a certified mechanical contractor to determine the condition of the HVAC system. Tenant shall leave the HVAC system in good working order upon move out.
5. All holes in the sheet rock walls shall be repaired prior to move-out. All walls shall be clean. When damage occurs to a sheetrock panel, the whole panel must be replaced—no partial patching of drywall is permitted.
6. The carpet and vinyl tiles shall be intact, allowing for normal wear and tear. Flooring shall be free of excessive dust, dirt, grease, oil and stains. Cracks in concrete and asphalt shall be acceptable as long as they are ordinary wear and tear, and are not the result of misuse.
7. Facilities shall be returned in a broom clean condition, including but not limited to the cleaning of the coffee bar, restroom area, windows and other portions of the Premises.
8. There shall be no protrusion of anchors from the warehouse floor and all holes shall be appropriately patched. If machinery/equipment is removed, the electrical lines shall be properly terminated at the nearest junction box.
9. All exterior windows with cracks or breakage shall be replaced. All windows shall be clean.
10. Tenant shall provide keys for all locks on the Premises, including front doors, rear doors, and interior doors.
11. All mechanical and electrical systems shall be left in a safe condition that conforms to code. Bare wires and dangerous installations shall be corrected to Landlord's reasonable satisfaction.
12. All plumbing fixtures shall be in good working order, including but not limited to the water heater. Faucets and toilets shall not leak or run.
13. All dock bumpers shall be left in place and well-secured.
14. Acoustic ceiling grid shall be free of excessive dust from lack of changing filters. No ceiling tiles may be missing or damaged.
15. All trash shall be removed from both inside and outside of the Building.
16. All signs in front of the Building and on glass entry door and rear door shall be removed.
17. All fire extinguishers must be current and in place.

## CERTIFICATION UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Brian F. Sullivan, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Celcuity 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.

By /s/ Brian F. Sullivan  
Brian F. Sullivan  
Chairman and Chief Executive Officer

Dated: November 13, 2017

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## CERTIFICATION UNDER SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Vicky Hahne, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Celcuity 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.

By /s/ Vicky Hahne  
Vicky Hahne  
Chief Financial Officer

Dated: November 13, 2017

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**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the filing of the Quarterly Report on Form 10-Q for the quarter ended September 30, 2017 (the "Report") by Celcuity Inc. ("Registrant"), I, Brian F. Sullivan, the Chief Executive Officer of the Company, certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

By /s/ Brian F. Sullivan  
Brian F. Sullivan  
Chairman and Chief Executive Officer

Dated: November 13, 2017

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**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the filing of the Quarterly Report on Form 10-Q for the quarter ended September 30, 2017 (the "Report") by Celcuity Inc. ("Registrant"), I, Vicky Hahne, the Chief Executive Officer of the Company, certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

By /s/ Vicky Hahne  
Vicky Hahne  
Chief Financial Officer

Dated: November 13, 2017

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