

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 8-K
CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): June 5, 2018

OBALON THERAPEUTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

001- 37897

(Commission
File Number)

20-1828101

(IRS Employer
Identification No.)

5421 Avenida Encinas, Suite F
Carlsbad, California

(Address of principal executive offices)

92008

(Zip Code)

(760) 795-6558

(Registrant's telephone number, including area code)

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). Emerging growth company ☒

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

Item 1.01 Entry into a Material Definitive Agreement

On June 1, 2018, Obalon Therapeutics, Inc. (the “Company”) amended its office lease agreement (as amended, the “Lease”) with Gildred Development Company, DBA Ocean Point (“Lessor”) for the purpose of extending the term of the current lease on its corporate headquarters and leasing an additional 2,700 square feet of space in an adjacent building.

This amendment will extend the expiration of the term of the Company’s lease from March 31, 2019 to March 31, 2022. The total payments associated with the Lease will be approximately \$1.9 million over the Lease term. Beginning June 15, 2018, the Company’s total square feet of leased space will increase from 17,500 to 20,200 and the base rent will increase from \$30,643 per month to \$35,773 per month relating to the additional leased space. The Company’s base rent will then periodically increase to a maximum of \$39,024 per month beginning June 2021. The Lease does not include any right or option to extend the term after its expiration.

Under the Lease, the Company is also responsible for paying common area operating expenses of \$3,030 per month in addition to the base rent. The Lease also includes a tenant improvement allowance not to exceed \$121,200 to be used for repairs and maintenance and any other improvements mutually agreed upon by the Company and Lessor.

The foregoing is a summary description of certain terms of the amendment to the Company’s office lease agreement and does not purport to be complete, and it is qualified in its entirety by reference to the full text of the amendment, which is attached as Exhibit 10.1 to this Current Report and incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The information set forth in Item 1.01 above is incorporated by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

	Description
10.1	Fourth Amendment to Lease dated May 31, 2018 between Gildred Development Company, DBA Ocean Point and Obalon Therapeutics Inc.

SIGNATURES

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

OBALON THERAPEUTICS, INC.

Date: June 5, 2018

By: /s/ William Plovanic
William Plovanic
Chief Financial Officer

EXHIBIT INDEX

	Description
10.1	Fourth Amendment to Lease dated May 31, 2018 between Gildred Development Company, DBA Ocean Point and Obalon Therapeutics Inc.

FOURTH AMENDMENT TO LEASE DATED MAY 31, 2018 BY AND BETWEEN GILDRED DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION; DBA OCEAN POINT, HEREINAFTER REFERRED TO AS "LESSOR", AND OBALON THERAPEUTICS, INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS "LESSEE"

Obalon Therapeutics presently leases 17,500 rentable square feet of premises located at and commonly known as 5421 Avenida Encinas, Suite A, B, E, F, G and J, Carlsbad, CA 92008 (which premises have been sometimes referred to previous lease documents as "Suites A through J") hereinafter called the "Existing Premises," pursuant to (a) that certain Standard Industrial/Commercial Multi-Tenant Lease Gross, dated as of November 23, 2015, by and between PLETA & SAN GAL Trusts (as predecessor in interest to Gildred Development Company a California Corporation; dba: Ocean Point, as amended by that certain Amendment to Lease, dated January 30, 2017 (collectively, the "Original Lease"), and (b) that certain Standard Industrial/Commercial Multi-Tenant Lease Gross, dated as of October 3, 2011, as amended by (i) that certain Amendment, dated August 5, 2013, (ii) that certain Second Amendment to Lease, dated as of November 20, 2015,

(iii) that certain Amendment to Lease, dated January 30, 2017 (the "Consolidating Amendment") which Consolidating Amendment consolidated the Original Lease with and into the Lease described in this subsection (b), and (iv) this Fourth Amendment (as so amended and consolidated, collectively, the "Lease"). The terms used in this Fourth Amendment shall have the same definitions as those set forth in the Lease. For clarity, the Parties acknowledge and agree that the Original Lease has been superseded in its entirety by the Lease.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all of the terms and provisions of said Lease shall remain the same and all applicable to this Fourth Amendment to Lease, except as follows:

1. **PREMISES:** Effective from and after June 15, 2018, Lessee agrees to continue to lease the Existing Premises consisting of an area of 17,500 rentable square feet, and Lessee also agrees to lease an additional 2,700 rentable square feet of premises located at and commonly known as 5411 Avenida Encinas, Suite 120, Carlsbad, California 92008 ("Expansion Premises"). The Expansion Premises and the Existing Premises, together consisting of an area totaling approximately 20,200 rentable square feet, are hereinafter collectively referred to as the "Premises" (see attached "Revised Site Plan – Exhibit A", incorporated herein by this reference).
2. **TERM (Paragraph 1.3):** The Expiration Date for the Collective Lease shall hereby be changed to March 31, 2022. Notwithstanding any prior agreement to the contrary, the Parties agree that Lessee has no existing right or option to extend the Term of the Lease beyond said Expiration Date (March 31, 2022).
3. **COMMENCEMENT:** Lessor and Lessee acknowledge and agree that Lessee is currently in possession of the Existing Premises and will continue to have the use and possession of the Existing Premises until the Expiration Date (or earlier termination of the Lease). The commencement date for the Expansion Premises shall occur on June 15, 2018 ("Expansion Premises Commencement Date"). At least five (5) business days prior to the Expansion Premises Commencement Date, Lessor shall provide Lessee with access to the Expansion Premises to, among other things, install Lessee's furniture, trade fixtures, equipment, telephone networks and computer networks, and to perform general set-up for Lessee's business operations. Lessor warrants that, on the Expansion Premises Commencement Date, the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems serving the Expansion Premises shall be in good working condition and repair. Except as expressly provided to the contrary in this Fourth Amendment, Lessee accepts the Premises without any express or implied warranties, in their "as is/where is" condition.

/s/GH Initials

/s/AR
Initials

FOURTH AMENDMENT TO LEASE DATED MAY 31, 2018 BY AND BETWEEN GILDRED DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION; DBA OCEAN POINT, HEREINAFTER REFERRED TO AS “LESSOR”, AND OBALON THERAPEUTICS, INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS “LESSEE”

4. **RENTAL SCHEDULE (Paragraph 50A):** The following schedule for Base Rent and Common Area Operating Expenses (also referred to within the Lease as “CAM” or “CAM charges”) shall be in effect during this extended Term of the Lease:

EXISTING PREMISES	SQUARE FEET	RATE/SQUARE FEET/MONTH	MONTHLY BASE RENT	MONTHLY CAM	TOTAL MONTHLY RENT
04/01/2019 – 03/31/2020	17,500	\$1.800	\$31,500.00	\$2,625.00	\$34,125.00
04/01/2020 – 03/31/2021	17,500	\$1.854	\$32,445.00	\$2,625.00	\$35,070.00
04/01/2021 – 03/31/2022	17,500	\$1.910	\$33,418.00	\$2,625.00	\$36,043.00

 /s/GH Initials

 /s/AR
Initials

FOURTH AMENDMENT TO LEASE DATED MAY 31, 2018 BY AND BETWEEN GILDRED DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION; DBA OCEAN POINT, HEREINAFTER REFERRED TO AS "LESSOR", AND OBALON THERAPEUTICS, INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS "LESSEE"

EXPANSION PREMISES	SQUARE FEET	RATE/SQUARE FEET/MONTH	MONTHLY BASE RENT	MONTHLY CAM	TOTAL MONTHLY RENT
Month 1 – Month 12	2,700	\$1.900	\$5,130.00	\$405.00	\$5,535.00
Month 13 – Month 24	2,700	\$1.957	\$5,284.00	\$405.00	\$5,689.00
Month 25 – Month 36	2,700	\$2.016	\$5,442.00	\$405.00	\$5,847.00
Month 37 – 03/31/2022	2,700	\$2.076	\$5,606.00	\$405.00	\$6,011.00

5. **CAM CHARGES:** CAM Charges shall continue to be estimated for this extended Term of the Lease. CAM Charges are estimated as of the date of this Fourth Amendment to be \$0.15 per rentable square feet per month and shall be reconciled quarterly.
6. **BASE YEAR:** The Base Year applicable to the Expansion Premises shall be calendar year 2018. The Base Year applicable to the Existing Premises shall remain unchanged until March 31, 2019; and, effective from and after April 1, 2019, Base Year applicable to the Existing Premises shall be changed to calendar year 2019.
7. **TENANT IMPROVEMENT ALLOWANCE:** Lessor shall provide a Tenant Improvement Allowance not to exceed \$121,200 to be used for repair and maintenance of all overhead doors and windows, as well as carpet installation in the Expansion Premises and/or the Existing Premises and any other improvements mutually agreed upon and in accordance with Paragraph 7.3 of this Lease Agreement and the following provisions:
- A. Lessee shall assume direct responsibility for negotiating and executing the contract(s) for tenant improvements, for supervising Lessee's contractor(s) to ensure that the work is done satisfactorily, timely and in accordance with the plans and permits, if any, and for making payments to the Lessee's contractor(s) when satisfied with progress and with the labor and material releases received.

/s/GH Initials

/s/AR
Initials

FOURTH AMENDMENT TO LEASE DATED MAY 31, 2018 BY AND BETWEEN GILDRED DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION; DBA OCEAN POINT, HEREINAFTER REFERRED TO AS "LESSOR", AND OBALON THERAPEUTICS, INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS "LESSEE"

- B. Lessor shall make Tenant Improvement Allowance payments directly to Lessee no more frequently than once every thirty (30) days pursuant to request for disbursement which shall include Lessee approved invoices and appropriate lien releases. Disbursements (excluding the final disbursement) shall be for a minimum amount of \$10,000.00
8. **COMMISSIONS:** Lessor shall pay a leasing Commission to Hughes Marino of five percent (5%) of the aggregate Base Rent for months 1-60 of paid Rent, and two percent (2%) for any additional fixed term thereafter. Such Commission shall be paid by the 100% upon mutual Lease execution. Lessor shall fund such commission directly to Hughes Marino.

/s/GH Initials

/s/AR
Initials

FOURTH AMENDMENT TO LEASE DATED MAY 31, 2018 BY AND BETWEEN GILDRED DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION; DBA OCEAN POINT, HEREINAFTER REFERRED TO AS "LESSOR", AND OBALON THERAPEUTICS, INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS "LESSEE"

9. **CONFIDENTIALITY:** Lessee, subject to SEC rules and regulations, and Lessor agrees that the terms of this Lease will be kept strictly confidential and not disclosed to any other person without written consent from Lessor. Disclosure to persons or tenants other than the Lessee will constitute a material uncurable Breach of the Lease.

10. **CASP INSPECTION:** The Premises have not undergone an inspection by a Certified Access Specialist (CASP), and a disability access inspection certificate, as described in subdivision (e) of Section 55.53 of the California Civil Code, has not been issued for the Premises. In accordance with Section 1938 of the California Civil Code, Lessee is advised of the following: "A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

Accordingly, the parties hereby agree that Lessee shall have the right, but not the obligation, to have a CASp inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law; provided, however, that such CASp inspection shall not be conducted unless and until: (i) Lessee has first delivered at least ten (10) days' prior written notice to Lessor and the Parties have thereafter entered into a written agreement confirming the timing, manner and confidentiality of such CASp inspection and any report thereon; and (ii) Lessee has agreed in writing that Lessee shall be solely liable for (and shall indemnify and defend Lessor against any claims or liabilities relating to) any fees, costs or liabilities respecting such CASp inspection and any report thereon. If it is determined that the Premises do not meet all applicable construction-related accessibility standards, then Lessee shall promptly make, as soon as reasonably possible, but subject to Lease provisions otherwise requiring Lessor's prior consent to repairs or other alterations to the Premises, any repairs necessary to correct violations of construction-related accessibility standards identified by such inspection, at Lessee's sole cost and expense.

11. **REPRESENTATION:** Gildred Development Company represents Lessor exclusively and Hughes Marino represents the Lessee in this transaction (please see Exhibit A to this Fourth Amendment, attached hereto and incorporated by this reference). Lessee and Lessor each represent and warrant to the other that no person, firm, broker or finder is entitled to any commission or finder's fee in connection herewith. Each of the Parties represents, acknowledges and agrees that it has been represented by such independent counsel and/or brokers, and has consulted with such consultants and other professionals, as each such Party has deemed necessary or appropriate and as it has voluntarily chosen throughout all negotiations which preceded the execution of this Lease; and that this Lease has been executed on the advice of such independent counsel, broker(s), consultant(s) and other professional(s). The Parties further agree that each has cooperated and participated in the drafting of this Lease and, therefore, any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Lease.

/s/GH Initials

/s/AR
Initials

FOURTH AMENDMENT TO LEASE DATED MAY 31, 2018 BY AND BETWEEN GILDRED DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION; DBA OCEAN POINT, HEREINAFTER REFERRED TO AS "LESSOR", AND OBALON THERAPEUTICS, INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS "LESSEE"

12. GENERAL PROVISIONS:

- A. Lessee and Lessor each represent and warrant to the other to such party's actual knowledge, the other Party has fully performed or satisfied all obligations of such Party under or in connection with the Lease, and such Party is not in breach of any term or condition of the Lease. Lessee represents that, to the Lessee's actual knowledge, there are no defenses, offsets, counterclaims, or deductions against rents or other sums due to Lessor respecting the Premises, or which Lessee has against Lessor's enforcement of the Lease.
- B. Except as otherwise provided herein, the provisions of this Fourth Amendment shall be deemed to obligate, extend to, and inure to the benefit of the successors, assigns, agents, principals, transferees, grantees, trustors, representatives, beneficiaries, insurers and indemnitees of each of the parties.
- C. In the event that any provision of this Fourth Amendment is in conflict with any provision of the Lease, the conflicting provision of this Fourth Amendment shall take precedence and govern. Except as otherwise specified herein, the Lease remains in full force and effect.
- D. If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Fourth Amendment on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Fourth Amendment on its behalf.
- E. The Article, Section and other headings of this Fourth Amendment are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein.

LESSOR:
GILDRED DEVELOPMENT COMPANY;
A CALIFORNIA CORPORATION
DBA: OCEAN POINT

By: /s/ Gregg Haggart
Gregg Haggart, Chief Executive Officer

Date: 6/1/2018

LESSEE:
OBALON THERAPEUTICS, INC.,
A DELAWARE CORPORATION

By: /s/ Andy Rasdal
Andy Rasdal, Chief Executive Officer

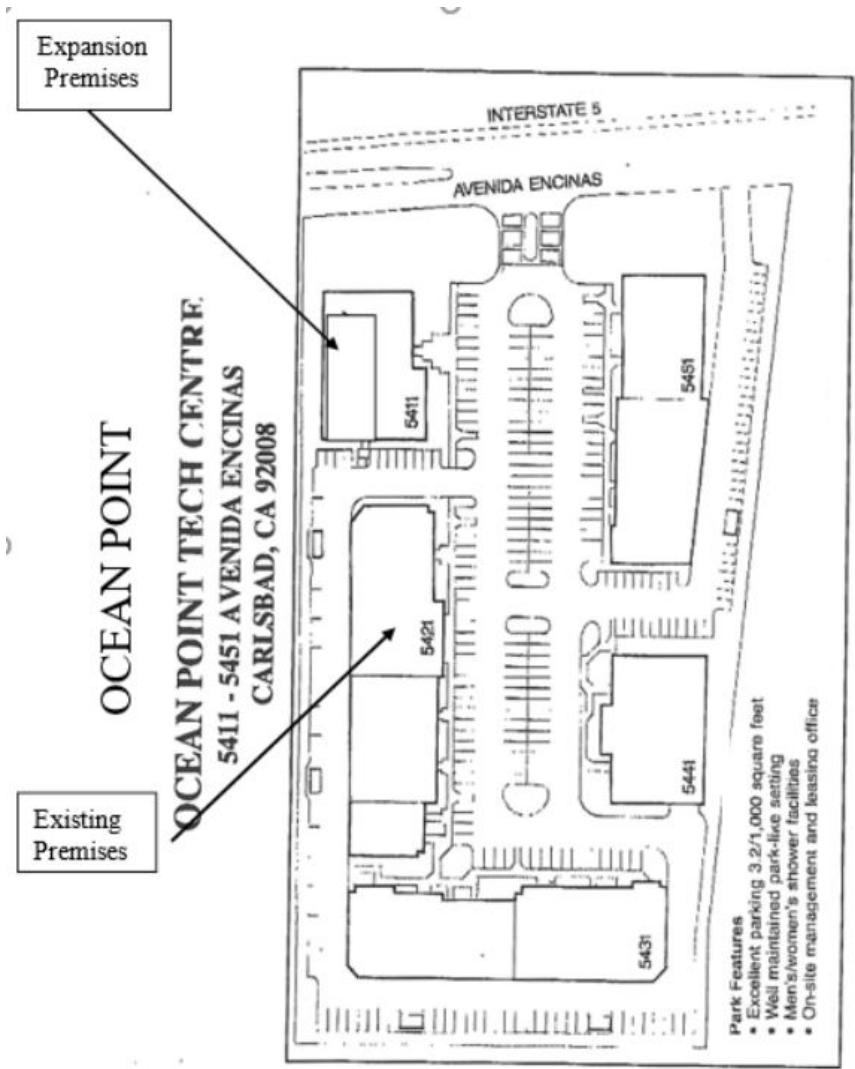
Date: 5/31/2018

EXHIBIT A
SITE PLAN - PREMISES

/s/GH Initials

/s/AR
Initials

FOURTH AMENDMENT TO LEASE DATED MAY 31, 2018 BY AND BETWEEN GILDRED DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION; DBA OCEAN POINT, HEREINAFTER REFERRED TO AS "LESSOR", AND OBALON THERAPEUTICS, INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS "LESSEE"



/s/GH Initials

/s/AR
Initials

FOURTH AMENDMENT TO LEASE DATED MAY 31, 2018 BY AND BETWEEN GILDRED DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION; DBA OCEAN POINT, HEREINAFTER REFERRED TO AS "LESSOR", AND OBALON THERAPEUTICS, INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS "LESSEE"



**EXHIBIT B DISCLOSURE REGARDING
REAL ESTATE AGENCY RELATIONSHIP**

(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT ("Seller" includes both a vendor and a lessor)

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller. To the Buyer and the Seller: (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT ("Buyer" includes both a purchaser and a lessee).

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer. To the Buyer and the Seller: (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative Duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.

(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advice about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction, you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page

2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).

/s/GH Initials

/s/AR
Initials

FOURTH AMENDMENT TO LEASE DATED MAY 31, 2018 BY AND BETWEEN GILDRED DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION; DBA OCEAN POINT, HEREINAFTER REFERRED TO AS "LESSOR", AND OBALON THERAPEUTICS, INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS "LESSEE"

LESSEE IS REPRESENTED BY HUGHES MARINO – SCOT GINSBURG
ACKNOWLEDGED BY LESSEE: OBALON THERAPEUTICS, INC., A DELAWARE COMPANY

By: /s/ Andy Rasdal Date: 5/31/2018 Andy Rasdal, Chief Executive Officer

Agent: Hughes BRE Lic. # Real Estate Broker (Firm)
Marino

Date:

By: Scot BRE Lic. # 01300321 Date: 05/22/2018 (Salesperson or Broker-Associate)
Ginsburg

LESSOR IS REPRESENTED BY ITSELF:
ACKNOWLEDGED BY LESSOR: GILDRED DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION; DBA: OCEAN POINT

By: /s/ Gregg Haggart Date: 6/1/2018 Gregg Haggart, Chief Executive Officer

Agent: Gildred BRE Lic. # 01071252 / 00941329 Real Estate Broker (Firm)
Development
Company
/Gregg Haggart

By: BRE Lic. # 01950942 Date: 05/22/2018 (Salesperson or Broker-Associate)
Dana
Sterle

THIS FORM HAS BEEN PREPARED BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions.

/s/GH Initials

/s/AR
Initials

FOURTH AMENDMENT TO LEASE DATED MAY 31, 2018 BY AND BETWEEN GILDRED DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION; DBA OCEAN POINT, HEREINAFTER REFERRED TO AS “LESSOR”, AND OBALON THERAPEUTICS, INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS “LESSEE”

(c) “Buyer” means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. “Buyer” includes vendee or lessee. (d) “Commercial real property” means all real property in the state, except

/s/GH Initials

/s/AR
Initials

FOURTH AMENDMENT TO LEASE DATED MAY 31, 2018 BY AND BETWEEN GILDRED DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION; DBA OCEAN POINT, HEREINAFTER REFERRED TO AS "LESSOR", AND OBALON THERAPEUTICS, INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS "LESSEE"

single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobile homes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. **(e)** "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. **(f)** "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. **(g)** "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. **(h)** "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. **(i)** "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. **(j)** "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. **(k)** "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobile homes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. **(l)** "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase.

(m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a lease hold exceeding one year's duration. **(n)** "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. **(o)** "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. **(p)** "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: **(a)** The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. **(b)** The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a).

(c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. **(d)** The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. **(b)** As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

(c) (DO NOT COMPLETE, SAMPLE ONLY) is the agent of (check one): ☐ the seller exclusively; or ☐ both the buyer and seller.

(Name of Listing Agent)

(DO NOT COMPLETE, SAMPLE ONLY) is the agent of (check one): ☐ the buyer exclusively; or ☐ the seller exclusively; or

(Name of Selling Agent if not the same as the Listing Agent)

☐ both the buyer and seller.

(a) and (b) shall be in the following form. _____ The confirmation required by subdivisions

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission

/s/GH Initials

/s/AR
Initials

FOURTH AMENDMENT TO LEASE DATED MAY 31, 2018 BY AND BETWEEN GILDRED DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION; DBA OCEAN POINT, HEREINAFTER REFERRED TO AS “LESSOR”, AND OBALON THERAPEUTICS, INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS “LESSEE”

paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

/s/GH Initials

/s/AR
Initials

FOURTH AMENDMENT TO LEASE DATED MAY 31, 2018 BY AND BETWEEN GILDRED DEVELOPMENT COMPANY, A CALIFORNIA CORPORATION; DBA OCEAN POINT, HEREINAFTER REFERRED TO AS "LESSOR", AND OBALON THERAPEUTICS, INC., A DELAWARE CORPORATION, HEREINAFTER REFERRED TO AS "LESSEE"

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

**NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR
Commercial Real Estate Association, 500 N Brand Blvd,
Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.**

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

/s/GH Initials

/s/AR
Initials